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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

Agricultural Stabilization and Conservation Service

7 CFR Part 723

RIN 0560–AD56

Tobacco Marketing Quotas, Acreage Allotments, and Production Adjustment

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: With revisions, this final rule adopts the proposed rule published in the **Federal Register** on January 11, 1994 (59 FR 1493). The proposed rule set out regulations for implementing for tobacco the domestic content assessment provisions added, as section 320C, to the Agricultural Adjustment Act of 1938 (1938 Act) by section 1106 of the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). Those provisions generally require a "domestic manufacturer of cigarettes" (as defined in the 1938 Act) to pay certain additional assessments and make certain tobacco purchases if, for any calendar year beginning with the 1994 calendar year, domestic tobacco constitutes less than 75 percent of the total tobacco used by the manufacturer to produce cigarettes in the United States. This final rule sets out requirements for recordkeeping, penalties, appeals, and other matters necessary to the enforcement and administration of section 320C.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael D. Thompson, Agricultural Program Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P. O. Box 2415, Washington, DC 20013–2415, telephone 202–720–4281.

SUPPLEMENTARY INFORMATION:

Executive Order 12886

This rule is issued in conformance with Executive Order 12866. This final rule has been determined to be economically significant. Therefore, a final regulatory impact analysis has been conducted. A copy of the Final Regulatory Impact Statement may be obtained from Dr. Robert Miller, Director, Tobacco and Peanut Analysis Division, Agricultural Stabilization and Conservation Service, USDA, P. O. Box 2415, Washington, DC 20013–2415, telephone: 202–720–8839.

The domestic marketing assessment (DMA) provisions of the 1993 Act are expected to increase the usage of domestic tobacco by 222 million pounds for marketing year (MY) 1994. Even if cigarette production declines to the extent forecast in the Final Regulatory Impact Analysis, by the sixth year with DMA provisions, extra domestic tobacco required to avoid any additional assessments by cigarette manufacturers will still be 115 million pounds. The increase in the use of domestic tobacco is expected to draw down current loan stocks of burley and flue-cured tobacco by 159 million pounds in MY 1994. Consequently, the Commodity Credit Corporation's loan outlays for tobacco for the 1994 MY are estimated to be about $320 million less. These actions should, in subsequent years, reduce the amount of the No-Net-Cost tobacco program assessments paid by producers and purchasers of domestic burley and flue-cured tobacco. Additionally, with the DMA in place, about 8,000 farms may remain in operation over the next six years that would otherwise go out of business.

Since the cost of domestic tobacco is higher than that of imported tobacco, manufacturers may shift some cigarette production to foreign based operations. The Final Regulatory Impact Analysis indicates that at a maximum, approximately 10,300 jobs could be lost if manufacturers shift cigarette production to foreign based operations and there is a reduction in U.S. unmanufactured exports. However, the largest domestic manufacturer of cigarettes has testified before a House of Representatives Subcommittee that it will not shift any cigarette production overseas as a result of the DMA.

The impact statement indicated little effect on the consumer prices for cigarettes because tobacco accounts for only about 3 percent of the retail cost of cigarettes.

This regulatory action is not expected to have an adverse effect on the environment, public health or safety, or State, local, or tribal governments or communities. This regulatory action is not expected to be inconsistent nor interfere with any action taken or planned by another Federal agency. Other than as indicated in the summary of the regulatory impact statement, this action would not alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of the recipients thereof. This rule would be consistent with the President's priorities and principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are retroactive to January 1, 1994, and preempt State laws to the extent that such laws are inconsistent with the provisions of this rule. Before any legal action is brought regarding determinations made under the provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

This final rule imposes new recordkeeping and information collection requirements on "domestic manufacturers of cigarettes" (as defined in the 1938 Act) and related tobacco industry businesses. The content of, and justification for, the reporting and recordkeeping requirements has been submitted to the Office of Management and Budget (OMB), as an addendum to OMB No. 0560–0058, in accordance with the requirements of the Paperwork Reduction Act of 1980, as amended. The Department is seeking Expedited Clearance by OMB within 21 days of the date of the publication of this rule. These requirements will be conditional until such clearance is obtained. No person shall be penalized or otherwise adversely affected for a failure to comply with any recordkeeping requirements in this rule as concerns records that would have been required to be generated prior to the publication of the final rule implementing the program provided for in this rule. However, all persons shall be required to maintain and submit on request, all records generated prior to the publication of the final rule which are relevant to the provisions of this rule and shall be required, to the full extent possible, for all uses of tobacco relevant to this rule. Those comments which were received in response to the proposed rule which addressed recordkeeping and reporting requirements are addressed in the discussion which follows. The public burden is estimated to average 20 hours annually per response, including time for reviewing instructions, searching existing data sources, and completing and reviewing the information collection. Additional comments regarding the recordkeeping and reporting requirements contained in this final rule, and suggested alternatives, may also be sent to OMB, Paperwork Reduction Project (OMB No. 0560–0058), Washington, DC 20503; and to USDA, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250.

Background

Section 320C applies only to "domestic manufacturers of cigarettes" which are defined in Section 301 of the 1938 Act as including any manufacturer that produces at least 1 percent of the cigarettes produced and sold in the United States. Under Section 320C, effective with calendar year 1994, such a manufacturer must pay an assessment and make certain compensatory tobacco purchases unless domestic tobacco equals or exceeds 75 percent of the total tobacco used by the manufacturer to produce cigarettes in the United States for the calendar year. The Secretary of Agriculture can reduce the percentage in some circumstances. Penalties and other charges can apply for failing to pay the assessments or make the compensatory purchases. Domestic tobacco, under the proposed rule, was defined to be tobacco produced in the United States and "United States" was defined for all geographical purposes under the rule to include the fifty States, the territories and possessions of the United States, Puerto Rico, and the District of Columbia. Section 1106 of the 1993 Act, which added Section 320C to the 1938 Act, also provided for certain assessments on imported tobacco. Those assessments, which are different from those added in Section 320C, were implemented in an interim rule published on December 23, 1993 (58 FR 68017), and a final rule published on March 9, 1994 (59 FR 10939).

Comments

A. Commenters

Twenty-three comments were received in response to the rule proposed to implement section 320C. Six comments were from major cigarette manufacturers, six were from tobacco State farm organizations, one from a national farm organization, one from a tobacco producer loan association, one from a tobacco export organization, two from businesses related to the tobacco industry, one from a member of Congress, one from an international governmental commission, one from a national health organization, and three from individuals.

B. Discussion

(1) General Comments. One comment objected to the use of the term "domestic content requirement" in the rule since the 75 percent standard, even apart from the ability of the Secretary to reduce the percentage in certain instances, is not an absolute requirement. Rather the target, if met, serves as an alternative to certain additional assessments and purchases. Two comments suggested that section 320C violates understandings under the General Agreement on Tariffs and Trade (GATT). One comment sought an exemption from coverage for manufacturers of cigarettes whose output of cigarettes is sufficiently low that the manufacturer is not subject under other programs to certain labelling requirements. Four comments suggested delaying implementation of the rule until any GATT challenges were resolved or delaying implementation until January 1996 in order to allow for uninhibited use of current inventories of tobacco.

The use of "domestic content requirement" in this context can be misleading. The rule has been modified accordingly. GATT objections to the Congressionally-mandated 75 percent provision go beyond the scope of this rulemaking. Also, given that section 320C was enacted in August of 1993, and the lack of any provision in section 320C for delay, there is no authority or warrant for delaying the implementation of the rule. If needed, surplus quantities of foreign tobacco could, presumably, be re-sold.

(2) Regulatory Impact Analysis. Nine comments objected to matters contained in the regulatory impact analysis and have been considered in the final impact statement. To the extent those comments addressed particular provisions of the rule they are addressed in this discussion as well.

(3) Covered Tobacco and Cigarettes. Some have questioned whether two groups of tobacco, in particular, should be counted as being foreign or imported tobacco for the use calculations; namely: (1) Turkish and Oriental tobaccos and (2) stems, reconstituted tobacco and other unmanufactured tobacco for which no duty is collected by the United States Customs Service. Five comments favored, and two opposed, treating the two groups as countable tobacco. Three comments argued that limiting coverage to cigarettes produced in the United States was a "loophole" which could be avoided by subject manufacturers by relocating. Two comments suggested that cigarettes made in the United States and then exported should be excluded from coverage on the ground that such coverage would be detrimental to domestic manufacturing operations. Two comments favored the rule's provisions on coverage of cigarettes as they stood in the proposed rule. There are six manufacturers who, at the present time, appear to qualify as

"domestic manufacturers of cigarettes" (as defined in the 1938 Act). The six manufacturers suggested that the rule needed clarification on when tobacco would be considered used to produce cigarettes. They suggested that such use should be deemed to occur when the tobacco is removed from inventory for immediate manufacture into cigarettes. Three comments specified that they favored not counting reclaimed tobacco against the use calculations. In addition, manufacturers suggested that they should be able to rely on third party certifications regarding whether tobacco is foreign or domestic.

The treatment of all of that which is commonly considered to be "tobacco" as countable tobacco use is a matter of statutory construction. Upon review of the comments it continues to appear inappropriate, for reasons set out with the proposed rule, to exclude any such tobacco from such consideration despite some definitional issues that arise in connection with the 1938 Act. Thus, the final rule continues to treat Oriental and Turkish tobacco and tobacco in any form (including tobacco for which no duty is due) as "tobacco" for purposes of the rule. Countable tobacco would include, though not necessarily be limited to, all tobacco which is within the scope of Chapter 2401 of Harmonized Tariff Schedule (HTS) and certain classes within Chapter 2403 of the HTS. Likewise, the limitation of coverage in the rule to cigarettes produced in the United States by subject manufacturers is a matter of statutory construction and it continues to appear, for the reasons set out with the proposed rule, that this limitation is proper. With respect to weight calculations, it has been determined, as suggested in the comments, that tobacco be considered to have been used to produce cigarettes at the point at which it is removed from inventory for immediate manufacture into cigarettes. The commenters have indicated that manufacturers keep current records on that basis and adoption of that standard should be administratively workable with the least interference with commerce. Manufacturers will continue to have the burden of demonstrating compliance with the rule. Also, the final rule reflects agreement that reclaimed tobacco should not be counted when re-used by the same manufacturer. With respect to certifications for category of origin (foreign or domestic), the final rule allows such reliance by providing that certain purchases of tobacco whose identity might otherwise be unknown may be considered domestic tobacco if an appropriate certification is obtained from the party who transfers the tobacco to the manufacturer. The rule sets out requirements for the certification, which include acknowledgement that false certifications can lead to criminal or civil penalties or sanctions. The rule allows the Director of the Tobacco and Peanuts Division of the Agricultural Stabilization and Conservation Service (hereafter "Director") to prescribe the form of the certification to be used. If the Director has not prescribed such a form, then the manufacturer will be required to ensure that a form of the manufacturer's own design is used, maintained, and meets the specific requirements of the regulation.

(4) Domestic Assessment Rate, Required Purchases and Appeals. Under section 320C, those manufacturers who do not meet the critical use percentage must pay an assessment, over and above other assessments that may apply under the 1938 Act and other legislation, equal to the difference, by a formula set out in the statute, between the market prices of certain domestic tobaccos and the market price of imported tobacco. Four comments suggested that the domestic and foreign price comparison should be on the same weight basis ("green" or "dry") and it was also suggested that cigar tobacco should be excluded from the calculation of the imported tobacco market price. Two comments suggested the DMA should not be considered due until all administrative appeals by the manufacturer are completed. The statute further provides that a manufacturer who fails to make the critical use percentage must, to the full extent of the shortfall, purchase an equal amount of tobacco from the inventories of the producer owned cooperative marketing associations for burley and flue-cured tobacco. Two comments suggested that the rule's 30 calendar day period for such compensatory purchases was too short and should be 90 days. Also, two comments suggested that the time for administrative appeals should not be the 15 calendar days provided for in the proposed rule but 30 calendar days instead. Another suggested that a clarification was needed in the rule to ensure that all adverse determinations under the rule were administratively appealable.

Domestic tobacco is normally marketed on a "green" (unprocessed) weight basis but imported tobacco normally is purchased on a "dry" (processed) weight basis. In order to provide for a more accurate comparison of the market prices for use in calculating the DMA rate, the rule specifies that, as determined appropriate, the Director may use "dry" weight figures for both domestic and imported prices and may exclude cigar and other non-cigarette tobacco as the Director deems appropriate and practicable. The due date for the assessment has not been adjusted in the rule. To do so would provide an incentive for unnecessary appeals, and would dilute the intended effect of the assessment. However, the Director will have the discretion to extend the time for actual payment, subject to such conditions as the Director considers to be appropriate. Such extension will not toll the accrual of interest. The Director may also for cause extend the time for submitting an appeal; the 15 calendar day period should be enough time to express interest in an appeal and request an extension. The 15 calendar day period comports with the normal time for administrative appeals provided for in the generic appeal regulations found at 7 CFR part 780. The provisions of the rule have, however, been clarified, consistent with original intent, to specify that a manufacturer may appeal any adverse determination made under the rule with respect to that manufacturer. Also, to reflect commercial exigencies, the time for making compensatory purchases has been changed in the rule from 30 calendar days to 60 calendar days; the Director may grant further extensions for cause.

(5) Recordkeeping and Reporting Requirements. The six domestic manufacturers complained that the recordkeeping provisions of the rule did not comport with their current procedures, were excessive, and would require costly adjustments in their operations, particularly the proposal for batch-by-batch and lot-by-lot recordkeeping for tobacco removed from inventory for manufacture into cigarettes. Consistent with their other comments, the manufacturers suggested that recordkeeping for such tobacco uses be directed at total removals from inventory immediately before manufacture. The manufacturers indicated that all manufacturers, for that stage of the manufacturing process, maintain records by weight and category (domestic or foreign). These commenters also objected to the proposal requiring reporting of the manufacturer's total tobacco inventory and reporting of non-cigarette tobacco use; further, some suggested that USDA's Form TB–26, Tobacco Stock Report, be used instead of reports created specifically for compliance with the rule. The proposed rule provided for recordkeeping for a minimum of three years and four comments criticized a statement in the rule placing the risk on

the record keeper for any destruction of records after the minimum period. Another comment specifically supported having a provision in the final rule mandating that submitted records and reports be kept confidential by the agency. Further, as to audits, the statute allows for assessing the audit costs against the manufacturer. One comment suggested that the costs should, instead, be paid out of domestic assessments.

To comport with other changes in the rule, the recordkeeping requirements are modified in the final rule to focus, as far as end use is concerned, on the point at which tobacco is removed from inventory for immediate manufacture into cigarettes. Other modifications have been made, including removal of the need to keep records based on country of origin. Also, with the modifications, the manufacturer's records for tobacco used for the actual manufacture of cigarettes will not have to be kept batch-by-batch or lot-by-lot. However, lot-by-lot accounting will still be required for accounting for tobacco taken into inventory. The rule continues to require recordkeeping and reports for total inventory and for manufacturing uses for purposes other than cigarettes as such information will be needed as a check on reports of the tobacco used to manufacture cigarettes. Use of Form TB–26 will not be allowed in lieu of reports specifically created for compliance with the rule as that form is intended to serve other purposes and may not contain all the information and/or explicit or implied certifications of compliance needed. However, manufacturers are free to use whatever data source they wish in preparing reports relating to compliance with the rule, including data contained on Form TB–26, with the understanding that the resubmission of any data would carry with it a reaffirmation of its accuracy.

The three-year provision for mandatory recordkeeping is less than may be the applicable statute of limitations. Accordingly, it is not possible or appropriate to immunize parties subject to the rule from the effects of an imprudent record destruction. That risk can be avoided by more extended recordkeeping as circumstances dictate. Regarding confidentiality, it is the agency's intent to maintain the confidentiality of all records to the extent permitted by law. Section 320C(b)(2)(d) of the 1938 Act adopts the confidentiality provisions of Section 320B of the same Act. However, as confidentiality matters go to internal agency matters, rather than regulation of private entities or individuals, it has been determined that the final rule should not contain confidentiality provisions. Finally, as to audits, manufacturers will remain potentially liable for the cost of the audit since such liability is statutory. Moreover, relieving manufacturers of that liability would not only raise the potential cost of administering the program but could also discourage efficient recordkeeping which leads to easily-verified information.

In addition to the modifications indicated above, provisions have been included in the rule to take into account absences of records for events occurring prior to the publication of the final rule.

(6) Reduction in the Domestic Content Percentage. Section 320C(f) provides that if the Secretary, in consultation with producer owned cooperative marketing associations, determines that because of drought or other conditions beyond the control of producers, the quantity of domestic burley or flue-cured tobacco that is harvested and suitable for marketing is substantially less than the expected yield for the crop, and that pool inventories for the kind of tobacco involved have been depleted, then, effective for the calendar year following the year in which the crop loss occurs, the Secretary of Agriculture may reduce the critical domestic content percentage below 75 percent. The proposed rule specified that such reductions would be made only if the inventories of domestic burley or flue-cured tobacco fell below 25 percent of the "reserve stock level" for the respective tobacco. The manner in which the "reserve stock level" is calculated is by a formula set out in section 301 of the 1938 Act.

Three comments suggested that the reduction of the domestic content level be allowed in either of the two years following the disaster because the inventory effect on an individual manufacturer might not be felt for two years. Another comment suggested that reasons other than crop loss should trigger the reduction and that a reduction should be considered without adherence to a rigid requirement that domestic inventories of burley or flue-cured tobacco be down to 25 percent of the "reserve stock level." Another comment suggested that major cigarette manufacturers be consulted with respect to percentage reduction issues.

By statute, reductions in the domestic content nonassessment percentage is limited to the year following the year of the crop loss. Further, the necessity of such a crop loss is also statutory. However, in order to provide greater flexibility in responding to market circumstances, the reference to 25 percent of the reserve stock level has been dropped from the rule so as to allow the Director to exercise greater judgment in determining whether to reduce the percentage where the statutory preconditions for a reduction exist. Formal consultation with manufacturers regarding reductions is not provided for in the statute and goes to internal agency decision making; however, where there is a potential for a reduction, major manufacturers and other interested members of the public will be free to make their views known to the producer owned cooperative marketing associations and to USDA in the normal manner.

List of Subjects in 7 CFR Part 723

Acreage allotments, Assessments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 723 is amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Part 723 is amended by adding subpart E to read as follows:

Subpart E—Domestically Produced Cigarettes

Sec.

723.501 Definitions.
723.502 Domestic tobacco content nonassessment percentage.
723.503 Domestic content marketing assessment.
723.504 Required purchases from tobacco loan stocks.
723.505 Reduction of domestic content nonassessment percentage.
723.506 Required records and reports; burden of proof.
723.507 False reports; failure to file reports; examinations of records; and records for events occurring prior to the publication of the final rule.
723.508 Reconsideration and appeal.

Subpart E—Domestically Produced Cigarettes

§ 723.501 Definitions.

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

ASCS. The USDA's Agricultural Stabilization and Conservation Service.

CCC. The Commodity Credit Corporation, an instrumentality of the USDA.

Covered cigarettes. Cigarettes produced in the United States.

Director. Except with respect to references to the National Appeals Division of ASCS, the Director of the Tobacco and Peanuts Division, or the successor to the Director.

Domestic assessment use shortage. For any domestic manufacturer, the domestic assessment use shortage shall be, as determined by the Director, the amount, converted to pounds, by which, for the relevant calendar year, domestic tobacco use for covered cigarettes produced by the manufacturer was less than the amount which, as a percentage of total tobacco use for these cigarettes, would have equaled the domestic content nonassessment percentage.

Domestic content nonassessment percentage. The domestic content nonassessment percentage shall be 75 percent unless otherwise specified in this subpart.

Domestic manufacturer. A domestic manufacturer of cigarettes.

Domestic manufacturer of cigarettes. A person who, as determined by the Director, produces and sells more than 1 percent of the cigarettes produced and sold in the United States.

Domestic tobacco. Any quantity of harvested tobacco which has been cultivated, grown, and produced in the United States.

Foreign tobacco. Tobacco that is not domestic tobacco.

Imported tobacco. Any tobacco, including (but not limited to) Oriental and Turkish tobaccos, that is not domestic tobacco and has been entered into the commerce of the United States. Any tobacco that cannot, as determined by the Director, be verified as to its being domestic tobacco shall be presumed to be imported tobacco.

NASS. The National Agricultural Statistics Service, USDA.

Origin category. The categorization of tobacco as either domestic or foreign tobacco.

Price support inventory. The inventory of tobacco which has been pledged as collateral for a price support loan made by CCC through a producer owned cooperative marketing association.

Producer owned cooperative marketing associations. Those associations which by law act as agents for producers for price support loans for tobacco. Those associations for burley and flue-cured tobacco are the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation, or their successors.

Tobacco. Any commodity or substance that is commonly considered to be tobacco in the trade.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco in any form that is not processed and packaged as a ready consumer tobacco product, including, but not limited to, tobacco in the form of leaf tobacco, strips, stems, scrap, and reconstituted, homogenized, and blended tobacco or products (other than consumer-ready products).

USDA. The U.S. Department of Agriculture.

§ 723.502 Domestic tobacco content nonassessment percentage.

(a) *General requirements.* (1)(i) For cigarette production for each calendar year beginning with calendar year 1994, the Director shall determine for each domestic manufacturer the percentage that domestic tobacco constitutes of the total tobacco used by that manufacturer to produce cigarettes in the United States. If such percentage use of domestic tobacco does not equal or exceed the domestic content nonassessment percentage for that calendar year, the manufacturer shall be deemed to have a domestic assessment use shortage and shall pay an assessment in the amount specified in § 723.503 and shall make compensatory tobacco purchases in the amount specified in § 723.504.

(ii) For any calendar year, the domestic content nonassessment percentage shall be 75 percent unless for that calendar year the percentage is reduced under § 723.505, in which case the domestic content nonassessment percentage shall be such reduced percentage.

(iii) Any assessment or purchase requirement which shall follow in the event of a domestic assessment use shortage shall be in addition to any other assessment or obligation that may be due or imposed.

(2) Any tobacco that has been reconstituted, or otherwise processed to the extent that it has lost its respective identity as either domestic tobacco or imported tobacco, shall be considered to be foreign tobacco when making determinations under this subpart.

(3) Any tobacco otherwise subject to paragraph (a)(2) of this section which is purchased by the manufacturer from a broker or processor may nonetheless be considered to be domestic tobacco by the Director if a valid certification meeting the requirements of this section and satisfactory to the Director is signed by the transferring party.

(4) In order to be credited under paragraph (a)(3) of this section, a certification must conform to all requirements imposed by the Director which may include use of a prescribed form.

(5) If the Director has not prescribed a form for use for such certifications, it shall be the responsibility of the domestic manufacturer to ensure that a proper certification has been obtained on a form devised by such manufacturer. In order to be valid for purposes of this section, the certification so devised must:

(i) Specify the total amount of tobacco being transferred to the domestic manufacturer by the certifying party and the amount of such tobacco which is domestic tobacco;

(ii) Certify, except as provided in paragraph (a)(6) of this section, that such domestic tobacco was purchased directly from a domestic producer (at auction, directly or from the price support inventory of the applicable association) at market rates for domestic tobacco, and that the certifying party can demonstrate the actual disbursement of the purchase price.

(iii) Certify that the certifying party has no reason to believe that the tobacco certified as domestic tobacco is foreign tobacco;

(iv) Refer to this subpart and section 320C of the Agricultural Adjustment Act of 1938 and state the purposes for which the certification is requested and made;

(v) State that the certification involves material information which may or will be relied upon by the United States government for purposes of enforcement of the provisions of this subpart;

(vi) State that false or inaccurate information may lead to civil or criminal penalties or sanctions under the provisions of 18 U.S.C. 1001 or other provisions of law.

(6)(i) If any such certifying party has not purchased the tobacco from a domestic producer or the price support inventory of the applicable association, the certifying party shall be required in lieu of the requirements of paragraph (a)(5)(ii) of this section to attach a certification from the party from whom the certifying party obtained the tobacco. Such sub-certification shall conform to the provisions of paragraph (a)(5)(i) through (a)(5)(vi) of this section. Additional sub-certifications shall be required as needed to trace the tobacco back to the domestic producer.

(ii) In the event that such certifications as are otherwise required in order to treat tobacco as domestic tobacco cannot be reasonably obtained,

the Director may relieve the domestic manufacturer from such requirements based on such representations of the origin category of the tobacco as the Director finds sufficient to serve the purposes of this subpart.

(7) The domestic manufacturer shall be required to maintain all records as may be needed to establish the origin of tobacco taken into inventory including any certifications regarding such origin.

(8) Any tobacco having lost its identity with respect to its origin category during the manufacturing process but which in the normal course of business is recaptured and reused by the same manufacturer to manufacture cigarettes in the United States and any tobacco in any cigarettes returned to the manufacturer of the cigarettes which is reused by the same manufacturer to manufacture new cigarettes in the United States shall not be counted toward the domestic content calculations made under this subpart. The domestic manufacturer shall maintain such records that show the quantity of tobacco so reclaimed or reused in the manufacturing of cigarettes for the calendar year. However, any tobacco reused by a manufacturer different than the original manufacturer shall be counted toward the domestic use calculations for both manufacturers.

(b) *Year-end reports required to be made by manufacturers.* (1) In addition to any other reports required by this subpart, beginning with the 1994 calendar year, a domestic manufacturer of cigarettes shall report to the Director, for each calendar year, the following information:

(i) The total quantity of tobacco used by the manufacturer to produce cigarettes in the United States during such calendar year.

(ii) The total quantity of imported tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(iii) The total quantity of domestic tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(iv) The total quantity of tobacco reused in the production of cigarettes during such calendar year that was reclaimed from the manufacturing process or from returned cigarettes and is exempt from counting toward the total final domestic use calculation for the manufacturer under paragraph (a)(8) of this section.

(v) The total number of individual cigarettes produced during such calendar year.

(2) For purposes of the information required to be reported by paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the quantities reported shall be based on the packed, redried weight of the tobacco when it is removed from inventory for immediate entry into the manufacturing process for making cigarettes. The weights required for paragraph (b)(1)(iv) of this section shall be the actual weight of the reclaimed tobacco.

(c) *Where and when to report.* The reports required by this subpart shall, unless otherwise specified in this subpart, be mailed or otherwise delivered in hard copy to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, USDA, P. O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year to which the report applies. The Director may specify the form in which any report required by this subpart shall be made and may make other requests for information as may be necessary to effectively enforce the provisions of this subpart.

(d) *Failure to report.* A manufacturer who fails to report the quantities of domestic and imported tobacco used for manufacturing cigarettes shall be presumed to have used only imported tobacco in such cigarettes. In addition, with respect to any recordkeeping or reporting requirement imposed by this subpart, the failure to file any report timely or to supply any required information shall permit the Director to determine that the information not timely filed or supplied is adverse to the party responsible for the submission and to make determinations under this subpart accordingly by any method determined reasonable by the Director. If the correct and verifiable information is later submitted, the Director may, in lieu of drawing such conclusions, assess the costs incurred as a result of the failure to supply the information in a timely manner.

§ 723.503 Domestic content marketing assessment.

(a) *General.* Effective beginning with the 1994 calendar year, each domestic manufacturer of cigarettes with a domestic assessment tobacco use shortage for a calendar year shall pay to CCC a non-refundable domestic marketing assessment under this section in an amount which equals the product calculated by multiplying the amount in pounds of the shortage by the assessment rate per pound calculated under paragraph (b) of this section.

(b) *Assessment rate.* The domestic marketing assessment rate for purposes of this section shall be determined separately for each calendar year. The assessment rate shall be the difference per pound between:

(1) One-half the sum of the average prices per pound received by domestic producers of burley tobacco and flue-cured tobacco, respectively, for their respective marketing years preceding the calendar year of the domestic assessment use shortage, and,

(2) The average price per pound of unmanufactured imported cigarette tobacco for the calendar year preceding the year of the shortage.

(c) *Data used to calculate market prices.* The Director may use data published by NASS for purposes of making market price determinations under this section and may use a weighted average price of unmanufactured cigarette tobacco which was imported during the previous calendar year, as calculated from Bureau of Census data, for such calendar year. The Director may make adjustments in the average prices or weights used to determine the domestic marketing assessment rate as determined appropriate by the Director to ensure that the average prices used for both domestic and imported tobacco are on an equivalent basis to the extent practical. Such adjustments, if any, shall be based on historical conversion yields common to the tobacco trade and may include the exclusion of cigar tobacco from the calculation of the average import price or the exclusion of other non-cigarette tobacco from such calculation.

(d) *Time for paying assessment.* The domestic manufacturer shall pay the domestic marketing assessment provided for in this section within 30 calendar days after demand for payment. However, if the manufacturer timely requests reconsideration or timely appeals the determination, the time for payment of the amount in dispute may be extended by the Director to a date no later than 30 calendar days after the final determination is rendered. Such extensions shall be subject to such conditions as the Director may impose and shall be subject to a continued accrual of interest, unless otherwise specified by the Director. The rate for such interest shall be the rate charged on any obligation owing to CCC at the time of the assessment, as determined by the Director.

(e) *Failure to timely pay assessment.* If a domestic manufacturer fails in a timely manner to pay any assessment under this section, such manufacturer shall be subject to a penalty in an amount equal to twice the amount of the initial assessment in addition to any interest that has accrued on such

obligations and in addition to any other charges or obligations that may apply.

(f) *Interest.* All sums due to CCC under this subpart shall accrue interest at a rate of interest which the Director determines is currently being assessed for any other obligations due CCC. Such charges shall be in addition to any other charges due.

§ 723.504 Required purchases from tobacco loan stocks.

(a) *General.* In addition to paying a domestic marketing assessment, each domestic manufacturer of cigarettes who for any calendar year beginning with the 1994 calendar year has a domestic assessment use shortage shall purchase a quantity of burley and flue-cured tobacco from the loan stocks of the producer owned cooperative marketing associations for burley and flue-cured tobacco in the amounts prescribed in this section.

(b) *Purchase quantity.* The amount of tobacco that must be purchased shall be an amount equal to the amount, in pounds, of the manufacturer's domestic assessment use shortage. The total amount of required purchases shall be divided equally between burley and flue-cured tobacco. If it is determined that the required amount of purchases by all manufacturers would reduce the inventories of burley or flue-cured tobacco below the reserve stock level, the Director may reduce the required purchase quantity on a proportional basis. Required purchases under this section shall not be considered as purchases for purposes of meeting the manufacturer's purchase intentions under section 320B of the 1938 Act.

(c) *Purchase price.* In order to receive credit for a purchase to satisfy a purchase required by this section, the purchase price must not be less than the published offer list price of the applicable producer owned cooperative marketing association which shall be a price available to all qualified buyers. Credit for required purchases shall not be allowed if discounts, rebates, or other special incentives have been offered and received in connection with purchases of tobacco loan stocks from association inventories.

(d) *Failure to purchase required amount.* Each manufacturer shall have 60 calendar days from date of notification of the required purchase amount to complete the purchases required under this section. The producer owned cooperative marketing associations shall report to the Director the quantities of required purchases that have been made. A manufacturer who fails to purchase, within the allotted time, the required quantity of burley or flue-cured tobacco shall be liable for penalty on each pound of tobacco for which there has been a failure to make a timely purchase. The penalty rate shall be the amount determined to be equal to 75 percent of the average market price for the kind of tobacco required to be purchased for the marketing year that ends in the calendar year of the manufacturer's domestic assessment use shortage.

§ 723.505 Reduction of domestic content nonassessment percentage.

(a) *General.* The Director, in consultation with the appropriate producer owned cooperative marketing associations, may reduce the domestic content nonassessment percentage for a calendar year to a percentage below 75 percent for any calendar year with respect to which the Director determines that the production of burley or flue-cured tobacco for the preceding year was substantially reduced because of natural disaster or other conditions beyond the control of producers and the loan stock inventory for the kind of tobacco is effectively depleted.

(b) *Expected production.* For purposes of this section, the Director may determine, but shall not be required to determine, the expected amount of production of tobacco based on the planted acreage as reported by NASS for the respective kind of tobacco multiplied by the simple average of the five most recent years' average yields per acre for the respective kind of tobacco. The Director may take into account such other factors as the Director may deem to be relevant and appropriate, including changes in the national quota set by the USDA for the kind of tobacco involved.

(c) *Deadline for determination.* The Director shall announce the reduced percentage by November 30 of the year preceding the calendar year to which the reduced percentage will apply.

§ 723.506 Required records and reports; burden of proof.

(a) *Required records.* Each domestic manufacturer, for all manufacturing plants producing cigarettes covered under this subpart, shall maintain records on a calendar year basis for each lot of unmanufactured tobacco taken into inventory that shows for each lot the:

(1) Kind or type of tobacco,

(2) Form of tobacco, such as leaf, strips, scrap, stems, reconstituted, reclaimed, etc.,

(3) Origin category of the tobacco (domestic or imported); and

(4) Weight of the tobacco.

(b) *Record retention period.* Records shall be retained for at least 3 calendar years after the calendar year to which the records apply. The minimum period of record retention may be extended upon written notification by the USDA Office of Inspector General or the Director. Nothing in this paragraph shall relieve the domestic manufacturer of the burden of establishing compliance with the provisions of this subpart.

(c) *Required reports.* (1) In addition to any other report or recordkeeping that may be required under this subpart or otherwise, each domestic manufacturer shall for each calendar year file a report with the Director showing, with the same particularity and categories of data required under paragraph (a) of this section, the quantity of unmanufactured tobacco that the manufacturer:

(i) Acquired during the calendar year,

(ii) Used to manufacture covered cigarettes during the calendar year,

(iii) Used, or otherwise disposed of, other than to manufacture covered cigarettes during the calendar year, and

(iv) Has in inventory at end of the calendar year.

(2) In addition, a one-time report containing the same particularity and categories of data required under paragraph (a) of this section shall be made by each domestic manufacturer setting out the total amount of unmanufactured tobacco in the manufacturer's inventory as of January 1, 1994. Such report shall be submitted within 15 calendar days after publication of this rule in the **Federal Register.**

(3) The information provided in the reports required in paragraph (c) of this section may be obtained from reports prepared and submitted to USDA for other purposes. The resubmission of such information shall constitute a current affirmation of the accuracy of such data or information.

(4) Reports required by this section shall be mailed or otherwise delivered in hard copy to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, USDA, P. O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year for which the report applies except with respect to the one-time report required by paragraph (c)(2) of this section, which shall be submitted by the date specified in paragraph (c)(2) of this section.

(d) *Variances in reports and recordkeeping and deadlines.* The Director may grant variances from the report, recordkeeping, and deadlines required by this section or subpart but only in writing and only to the extent that it is determined that such variances are justified, taking into account the overall purposes of this subpart and the

desire to avoid undue interference with commerce.

(e) *Burden of proof.* The burden of proof on all issues arising under this subpart regarding compliance with the provisions of this subpart shall be on the domestic manufacturer of cigarettes.

§ 723.507 False reports; failure to file reports; examination of records; and records for events occurring prior to the publication of the final rule.

(a) *False reports, failure to file report.* In addition to any other sanction or remedy or presumption that may apply, a person shall be subject to all other remedies provided for by law including, but not limited to, those that apply under section 320C of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1314i), and 18 U.S.C. 1001 for any:

(1) False or inaccurate report, certification, or statement, or

(2) Failure to provide required information.

(b) *Examination of records.* The Director, the Office of Inspector General, or any authorized representative of the United States may examine such records, books, computer files, or any other material to determine the correctness of any report or information provided to the Director or to obtain relevant information. Reasonable costs incurred with respect to any such audit may be charged to the domestic manufacturer which is the subject of the audit or examination.

(c) *Records for events occurring prior to the publication of the final rule.* No person shall be penalized or otherwise adversely affected for a failure to comply with any recordkeeping requirements in this rule as concerns records that would have been required to be generated prior to the publication of the final rule implementing the program provided for in this subpart. However, all persons shall be required to maintain and submit on request, all records generated prior to the publication of the final rule which are relevant to the provisions of this subpart and shall be required, to the full extent possible, for all uses of tobacco relevant to this subpart. Nothing in this paragraph shall be justification for the destruction of records or information, or for refusing a request for relevant information.

§ 723.508 Reconsideration and appeal.

A domestic manufacturer of cigarettes may request that the Director reconsider any adverse determination with respect to such manufacturer under this subpart. A request for reconsideration shall be made within 15 calendar days after the date of the notification of failure to comply except that the manufacturer for cause may request that the time for such filing be extended. The Director may grant such requests and may set conditions for such extensions. Unless otherwise specified by the Director, an extension of the time for reconsideration, or the pendency of reconsideration or appeal, shall not toll the time for payment of any amount due, nor toll the accrual of interest. If the domestic manufacturer is dissatisfied with the reconsideration determination rendered, such manufacturer may appeal the determination to the Director, National Appeals Division in accordance with part 780 of this title.

Signed at Washington, DC, on May 24, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

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Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 92–129–2]

Ruminants and Horses Imported From Canada; Importation of Wild Ruminants and Wild Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations to require that all ruminants imported from Canada for immediate slaughter be handled in a manner that now is required only for cattle, sheep, and goats imported from Canada for immediate slaughter. This action is necessary to help prevent the spread of livestock diseases into the United States. We are also making two additional amendments. The first will allow cattle, sheep, and goats imported from Canada for immediate slaughter to enter the United States without a certificate. The second will allow zoological parks approved to receive wild ruminants and wild swine from countries where foot-and-mouth disease or rinderpest exists to dispose of manure and other animal wastes outside the zoological park after the animal has been in the park for 1 year. These actions will relieve regulatory burdens without presenting a significant risk of introducing livestock diseases into the United States.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) restrict the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases of livestock and poultry.

On November 9, 1993, we published in the **Federal Register** (58 FR 59414–59417, Docket No. 92–129–1) a proposal to make six amendments to the regulations, as follows: (1) We proposed to amend § 92.317 to allow blood samples taken from horses for a required test for equine infectious anemia (EIA) to be drawn within 365 days preceding the horses' importation into the United States, rather than 180 days, as is currently required; (2) we proposed to amend §§ 92.317, 92.418, and 92.419 to allow horses, cattle, sheep, and goats imported from Canada for immediate slaughter to be imported without a certificate; (3) we proposed to amend § 92.420 to require that all ruminants imported from Canada for immediate slaughter (not just cattle, sheep, and goats) be handled in a specified way to minimize any disease risk to U.S. livestock; (4) we proposed to amend §§ 92.404(c) and 92.504(c) to allow zoological parks that receive wild ruminants and wild swine from countries where foot-and-mouth disease and rinderpest exists to dispose of manure and other animal wastes outside the park after the animal has been in the park for 1 year, provided the animal shows no sign of any illness at the end of that year; (5) we proposed to update the regulations in §§ 92.404(c) and 92.504(c) by removing the reference to the "Animal Quarantine Station in Clifton, New Jersey" and replacing it with "Animal Import Center in Newburgh, New York," as the quarantine station in Clifton, New Jersey, is no longer in operation; and (6) we proposed to amend the regulations in §§ 92.316 and 92.518 to clarify what we mean by "directly", as used in the phrase "consigned from the port of entry directly to a recognized slaughtering establishment."

We solicited comments concerning our proposal for a 60-day comment period ending January 10, 1994. We

received two comments by that date. They were from a veterinarian association and a horse industry association. They are discussed below.

One comment favored the proposed rule, but questioned the part of the proposal that would allow horses, cattle, sheep, and goats imported from Canada for immediate slaughter to enter the United States without a certificate. The commenter noted that the our assertion that the proposal presents no significant risk of introducing livestock diseases into the United States depends on the assurance that these animals are not diverted from slaughter and are not commingled with other livestock, as well as a determination during inspection at the port of entry that the animals have not been exposed to communicable disease within 60 days prior to such inspection. The commenter asked us to clarify how we ensure the animal is not diverted from slaughter and how we determine whether or not an animal has been exposed to communicable disease within 60 days prior to inspection.

In almost all cases, it takes only about 7 days after exposure to a communicable disease for signs of the disease to appear. Therefore, inspection at the port of entry almost always reveals an exposed animal. If signs of a communicable disease are found in an animal that is part of a shipment of other animals, the entire shipment is denied importation into the United States. However, even if an exposed animal being sent to slaughter were to remain undetected during inspection, the risk of spreading the disease to U.S. animals is negligible, because slaughter animals move directly to slaughter and are not commingled with other livestock. To verify that the shipment was not diverted from slaughter, confirmation of the animals' arrival is sent from the slaughtering establishment to the port of entry.

The other comment opposed two of the proposed amendments. First, the commenter was concerned about the proposal to allow blood samples for the EIA test to be drawn within 365 days preceding a horse's importation into the United States. The commenter believes that the length of time is too long and significantly lessens the ability to prevent the importation of infected horses into the United States. Second, the commenter was opposed to allowing horses imported from Canada for immediate slaughter to be imported without a certificate.

We are withdrawing both these portions of the proposed rule. Our belief that the required time between EIA testing could be extended without significant risk was based on the low incidence of EIA in Canada, as established under Canada's current EIA program. Since publication of the proposal, we have learned that the Department of Agriculture of the Government of Canada may be making substantial changes to its EIA program within the next year. We do not wish to reduce any of our health certification requirements for horses from Canada until we have more information about Canada's changes to its EIA program. Therefore, we do not wish to extend our EIA testing requirement or remove the requirement for a certificate for slaughter horses at this time. If at a later date we determine that the required time between EIA tests can be extended to 365 days or that we can remove the certificate requirement without posing any significant risk to U.S. livestock, we will repropose the amendments.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule will require that all ruminants (not just cattle, sheep, and goats) imported into the United States from Canada for immediate slaughter be consigned from the port of entry directly to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. APHIS does not expect that the imposition of these requirements will increase or decrease the number of ruminants exported from Canada for immediate slaughter. This rule will not have a significant economic impact on importers, slaughtering establishments, or other entities, as the ruminants that will be affected, primarily bison and deer, normally go directly from the port of entry to slaughter and are slaughtered within 2 weeks. However, this action is necessary to ensure that bison, deer, and other ruminants imported for immediate slaughter are always handled in this way.

This rule also will allow cattle, sheep, and goats imported from Canada for immediate slaughter to enter the United States without a certificate. This action will facilitate the importation of cattle, sheep, and goats from Canada for immediate slaughter, thereby saving importers some time. It will also save importers the cost of acquiring a certificate for cattle, sheep, and goats. However, this savings constitutes an insignificant portion of the cost of importing these animals.

Finally, this rule will require that zoological parks approved to receive wild ruminants and wild swine from countries where foot-and-mouth disease or rinderpest exists dispose of manure and other animal wastes within the zoological park only for the first year after the animal enters the zoological park. This amendment will relieve some burden on approximately 30 zoos that import wild ruminants or wild swine from countries where foot-and-mouth disease or rinderpest exists. Each zoo may save an estimated $100 to $1000 each year in disposal costs, depending on the number of affected animals in the park.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b,

134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.316 is amended by adding a second and third sentence to read as follows:

§ 92.316 Horses from Canada for immediate slaughter.

* * * Such horses shall be inspected at the port of entry and otherwise handled in accordance with § 92.306. As used in this section, "directly" means without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner.

§ 92.404 [Amended]

3. Section 92.404 is amended as follows:

a. In paragraph (c)(1), second sentence, the reference "(c)(3)" is removed and "(c)(4)" is added in its place.

b. Paragraph (c)(3) is redesignated as paragraph (c)(4).

c. A new paragraph (c)(3) is added to read as set forth below.

d. In newly designated paragraph (c)(4), paragraph 4 of the agreement, the phrase "Animal Quarantine Station in Clifton, New Jersey" is removed and the phrase "Animal Import Center in Newburgh, New York" is added in its place.

§ 92.404 Import permits for ruminants and for ruminant specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

* * * * *

(c) * * *

(3) Manure and other animal wastes must be disposed of within the zoological park for a minimum of 1 year following the date a ruminant enters the park. If an APHIS veterinarian determines that a ruminant shows no signs of any illness at the end of this 1-year period, its manure and other wastes need not be disposed of within the park. If, however, an APHIS veterinarian determines that a ruminant does show signs of any illness at the end of this 1-year period, an APHIS veterinarian will investigate the illness and determine whether the ruminant's manure and other wastes may safely be disposed of outside the zoological park.

* * * * *

§ 92.418 [Amended]

4. In § 92.418, paragraph (a) is amended by removing the first word "Cattle" and adding the phrase "Except for cattle imported for slaughter in accordance with § 92.420, cattle" in its place.

§ 92.419 [Amended]

5. In § 92.419, paragraph (a) is amended by removing the first word "Sheep", and adding the phrase "Except for sheep and goats imported for slaughter in accordance with § 92.420, sheep" in its place; and paragraph (c) is removed.

6. Section 92.420 is revised to read as follows:

§ 92.420 Ruminants from Canada for immediate slaughter.

Any ruminant imported from Canada for immediate slaughter shall be consigned from the port of entry directly to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. Such ruminants shall be inspected at the port of entry and otherwise handled in accordance with § 92.408.

§ 92.504 [Amended]

7. Section 92.504 is amended as follows:

a. In paragraph (c)(1), second sentence, the reference "(c)(3)" is removed and "(c)(4)" is added in its place.

b. Paragraph (c)(3) is redesignated as paragraph (c)(4).

c. A new paragraph (c)(3) is added to read as set forth below.

d. In newly redesignated paragraph (c)(4), paragraph 4 of the agreement, the phrase "Animal Quarantine Station in Clifton, New Jersey" is removed and the phrase "Animal Import Center in Newburgh, New York" is added in its place.

§ 92.504 Import permits for swine and for swine specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

* * * * *

(c) * * *

(3) Manure and other animal wastes must be disposed of within the zoological park for a minimum of 1 year following the date the swine enters the park. If an APHIS veterinarian determines that the swine shows no signs of any illness at the end of this 1-year period, its manure and other wastes need not be disposed of within the park. If, however, an APHIS veterinarian determines that the swine does show signs of any illness at the end of this 1-year period, an APHIS veterinarian will investigate the illness and determine whether the swine's manure and other wastes may safely be disposed of outside the zoological park.

* * * * *

8. Section 92.518 is amended by adding a second sentence to read as follows:

§ 92.518 Swine from Canada for immediate slaughter.

* * * As used in this section, "directly" means without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner.

Done in Washington, DC, this 25th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13289 Filed 5-31-94; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 94

[Docket No. 93-172-2]

Change in Disease Status of Hungary Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Hungary free of rinderpest and foot-and-mouth disease. As part of this action, we are adding Hungary to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to restrictions on meat and other animal products offered for importation into the United States. We are also adding Hungary to the list of countries from which the importation into the United States of llamas and alpacas is restricted. This rule removes the prohibition on the importation into the United States, from Hungary, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations will be subject to certain restrictions. This rule also relieves restrictions on the importation, from Hungary, of milk and milk products of ruminants.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including

rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.

On March 2, 1994, we published in the **Federal Register** (59 FR 9939–9941, Docket No. 93–172–1) a proposal to amend the regulations by adding Hungary to the list in § 94.1(a)(2) of countries declared free of rinderpest and FMD and to the list in § 94.1(d) of countries from which the importation into the United States of llamas and alpacas is restricted. In that document, we also proposed to add Hungary to the list in § 94.11(a) of countries that, although declared free of rinderpest and FMD, are subject to special restrictions on the importation of their meat and other animal products into the United States. We further proposed to make several nonsubstantive editorial changes in the regulations.

We solicited comments concerning our proposal for a 60-day period ending on May 2, 1994. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from Hungary, of ruminants and fresh, chilled, and frozen meat from ruminants and relieves restrictions on the importation, from Hungary, of milk and milk products from ruminants. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the regulations in part 94 by adding Hungary to the list of countries declared to be free of rinderpest and FMD. This action removes the prohibition on the importation into the United States, from Hungary, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations will be subject to certain restrictions. This revision also relieves restrictions on the importation, from Hungary, of milk and milk products of ruminants.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Hungary into the United States as a result of this rule.

The value of total U.S. imports of cattle in 1992 was $1.24 billion, and the value of total U.S. imports of sheep in 1992 was about $2 million. The United States did not import any cattle or sheep from Hungary during 1992. In fact, with the exception of a small number of cattle imported from the former Czechoslovakia, no cattle or sheep were imported into the United States from any country in Europe during 1992 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Clearly, Europe is not a source of ruminants for the United States, and it is unlikely that declaring Hungary free of rinderpest and FMD will have any effect on the existing trade patterns.

Due to current APHIS restrictions, the United States does not import any uncooked meat or meat products from Hungary. Total U.S. meat production in 1991 (excluding pork) was just under 10.7 million metric tons, while Hungarian meat production in 1991 reached approximately 115,000 metric tons, about 1 percent of the U.S. total (USDA, National Agricultural Statistics Service, "Agricultural Statistics, 1992," 1992). Therefore, even if Hungary exports a significant portion of its meat production exclusively to the United States, which is unlikely, the effect of those exports on U.S. domestic prices or supplies will be negligible.

As with the ruminants and meat products discussed above, the Department does not anticipate a major increase in exports of milk and milk products from Hungary into the United States as a result of this rule. The importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Although the importation of casein into the United States is not regulated by quotas, world prices of casein are competitively set. The United States does not produce casein, but does import more than half of the casein produced in the world. The regulations currently allow casein and other caseinates to be imported into the United States from countries where rinderpest or FMD exists if the importer has applied for and obtained written permission from the Administrator. The United States imported about 662 metric tons of casein from Hungary in 1992 (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Declaring Hungary free of rinderpest and FMD, thus removing the requirement for written permission from the Administrator, is not expected to have any effect on the amount of casein imported into the United States from Hungary because the restrictions we are removing did not substantially impede imports.

The importation of bovine semen and cattle embryos from countries affected with rinderpest and FMD is restricted under 9 CFR part 98. Although this rule has the effect of removing certain restrictions on the importation of bovine semen and cattle embryos from Hungary, the economic effect of this rule on the bovine semen and cattle embryo industries is also expected to be minimal. The United States is a net exporter of bovine semen and cattle embryos. In 1992, the value of U.S. bovine semen and cattle embryo imports was $4 million and $195,000, respectively, while the value of U.S. bovine semen and cattle embryo exports was $49.3 million and $6.8 million, respectively (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Although it is likely that a few U.S. importers will be interested in importing bovine semen or cattle embryos from Hungary, the amount of each that might be imported is minimal when compared to U.S. domestic production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "Hungary," immediately after "Honduras,".

3. In § 94.1, paragraph (d)(1) is amended by adding "Hungary," immediately after "France,".

§ 94.9 [Amended]

4. Section 94.9 is amended as follows:

a. Paragraphs (b)(1)(ii)(*a*) and (*b*) are redesignated as paragraphs (b)(1)(ii) (A) and (B).

b. Paragraphs (b)(1)(iii)(*a*), (*b*), and (*c*) are redesignated as paragraphs (b)(1)(iii) (A), (B), and (C).

c. In newly designated paragraph (b)(1)(iii)(C)(*2*), the words "paragraph (b)(1)(iii)(*c*)(*1*) of" are removed and the words "paragraph (b)(1)(iii)(C)(*1*) of" added in their place, and the words "paragraphs (b)(1), (i), (ii), or (iii)" are removed and the words "paragraph (b)(1)(i), (ii), or (iii)" added in their place.

d. In paragraph (b)(2), the words "under paragraphs" are removed and the words "under paragraph" added in their place.

e. In paragraph (b)(3), the first sentence, the words "under paragraphs" are removed and the words "under paragraph" added in their place, and the words "paragraph (b)(1) (ii) or (iii) of this section has" are removed and the words "the provisions of paragraph (b)(1)(ii) or (iii) of this section have" added in their place.

f. In paragraph (c), the words "provisions of" are added immediately before the reference "§ 94.12(b)(1)(iii)".

§ 94.11 [Amended]

5. In § 94.11, paragraph (a), the first sentence is amended by adding "Hungary," immediately before "Japan,".

Done in Washington, DC, this 25th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13290 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 93–173–2]

Change in Disease Status of Austria Because of Rinderpest, Foot-and-Mouth Disease, and Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Austria free of rinderpest, foot-and-mouth disease, and swine vesicular disease. As part of this action, we are adding Austria to the lists of countries that, although declared free of rinderpest, foot-and-mouth disease, and swine vesicular disease, are subject to restrictions on meat and other animal products offered for importation into the United States. We are also adding Austria to the list of countries from which the importation into the United States of llamas and alpacas is restricted. This rule removes the prohibition on the importation into the United States, from Austria, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations are still subject to certain restrictions. This rule also relieves restrictions on the importation, from Austria, of milk and milk products of ruminants.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

On March 2, 1994, we published in the **Federal Register** (59 FR 9941–9944, Docket No. 93–173–1) a proposal to amend the regulations by adding Austria to the list in § 94.1(a)(2) of countries declared free of rinderpest and FMD and to the list in § 94.1(d) of countries from which the importation into the United States of llamas and alpacas is restricted. In that document, we also proposed to add Austria to the list in § 94.11(a) of countries that, although declared free of rinderpest, FMD, and SVD, are subject to special restrictions on the importation of their meat and other animal products into the United States. We further proposed to add Austria to the list in § 94.12(a) of countries that have been declared to be free of SVD. We also proposed to make several nonsubstantive editorial changes in the regulations.

We solicited comments concerning our proposal for a 60-day period ending on May 2, 1994. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from Austria, of ruminants and fresh, chilled, and frozen meat from ruminants and relieves restrictions on the importation, from Austria, of milk and milk products from ruminants. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant

Health Inspection Service has determined that this rule should be made effective 15 days after publication in the Federal Register.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This final rule amends the regulations in part 94 by adding Austria to the list of countries declared to be free of rinderpest and FMD and to the list of countries declared free of SVD. This action removes the prohibition on the importation into the United States, from Austria, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations will remain subject to certain restrictions. This revision also relieves restrictions on the importation, from Austria, of milk and milk products of ruminants.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Austria into the United States as a result of this final rule.

The value of total U.S. imports of cattle in 1992 was $1.24 billion, and the value of total U.S. imports of sheep in 1992 was about $2.0 million. The United States did not import any cattle or sheep from Austria during 1992. In fact, with the exception of a small number of cattle imported from the former Czechoslovakia, no cattle or sheep were imported into the United States from any country in Europe during 1992 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Clearly, Europe is not a source of ruminants for the United States, and it is unlikely that declaring Austria free of rinderpest and FMD will have any effect on the existing trade patterns.

Due to current APHIS restrictions, the United States does not import any uncooked meat or meat products from Austria. Total U.S. meat production in 1991 (excluding pork) was just under 10.7 million metric tons, while Austrian meat production in 1991 reached approximately 230,000 metric tons, about 2 percent of the U.S. total (USDA, National Agricultural Statistics Service, "Agricultural Statistics, 1992," 1992). Therefore, even if Austria exports a significant portion of its meat production exclusively to the United States, which is unlikely, the effect of those exports on U.S. domestic prices or supplies will be negligible.

As with the ruminants and meat products discussed above, the Department does not anticipate a major increase in exports of milk and milk products from Austria into the United States as a result of this final rule. The importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Although the importation of casein into the United States is not regulated by quotas, world prices of casein are competitively set. The United States does not produce casein, but does import more than half of the casein produced in the world. The regulations currently allow casein and other caseinates to be imported into the United States from countries where rinderpest or FMD exists if the importer has applied for and obtained written permission from the Administrator. The United States did not import any casein from Austria in 1992 (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Declaring Austria free of rinderpest and FMD, thus removing the requirement for written permission from the Administrator, is not expected to have any effect on the amount of casein imported into the United States from Austria because the restrictions we are removing do not substantially impede imports.

The importation of bovine semen and cattle embryos from countries affected with rinderpest and FMD is restricted under 9 CFR part 98. Although this final rule removes certain restrictions on the importation of bovine semen and cattle embryos from Austria, the economic effect of this rule on the bovine semen and cattle embryo industries is also expected to be minimal. The United States is a net exporter of bovine semen and cattle embryos. In 1992, the value of U.S. bovine semen and cattle embryo imports was $4 million and $195,000, respectively, while the value of U.S. bovine semen and cattle embryo exports was $49.3 million and $6.8 million, respectively (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Although it is likely that a few U.S. importers will be interested in importing bovine semen or cattle embryos from Austria, the amount of each that might be imported will be minimal when compared to U.S. domestic production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "Austria," immediately after "Australia,".

3. In § 94.1, paragraph (d)(1) is amended by removing "September 28, 1990;" and by adding "September 28, 1990: Austria," in its place.

§ 94.11 [Amended]

4. In § 94.11, paragraph (a), the first sentence is amended by adding "Austria," immediately before "The Bahamas,".

§ 94.12 [Amended]

5. In § 94.12, paragraph (a), the first sentence is amended by adding "Austria," immediately after "Australia,".

§ 94.13 [Amended]

6. In § 94.13, in the introductory text, the first sentence is amended by adding "Austria," immediately before "The Bahamas,"; by adding a comma immediately after "Yugoslavia"; by removing the words "§ 94.12(a); are countries which" and adding the words "§ 94.12(a), are countries that" in their place; and by removing the words "or which have a common border with such countries; or which" and adding the words "have a common border with such countries; or" in their place.

Done in Washington, DC, this 25th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13291 Filed 5-31-94; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150-AE77

Uranium Mill Tailings Regulations; Conforming NRC Requirements to EPA Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the disposal of uranium mill tailings. These changes conform existing NRC regulations to regulations published by the Environmental Protection Agency (EPA). The conforming amendments are intended to clarify the existing rules by ensuring timely emplacement of the final radon barrier and by requiring appropriate verification of the radon flux through that barrier. This action is related to another action by EPA to rescind its National Emissions Standard for Hazardous Air Pollutants (NESHAPs) for radon emissions from the licensed disposal of uranium mill tailings at non-operational sites.

EFFECTIVE DATE: This regulation becomes effective on July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6264.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1983 (48 FR 19584), EPA proposed general environmental standards for uranium and thorium mill tailings sites licensed by NRC or one of its Agreement States. Final standards were published on September 30, 1983 (48 FR 45926), and codified in 40 CFR part 192, subparts D and E. On October 16, 1985 (50 FR 41852), NRC published amendments to 10 CFR part 40 to conform its rules to EPA's general standards in 40 CFR part 192, as it affected matters other than ground water protection. Both NRC and EPA regulations included a design standard requiring that the tailings or wastes from mill operations be covered to provide reasonable assurance that radon released to the atmosphere from the tailings or wastes will not exceed an average of 20 picocuries per square meter per second (pCi/m²s) for 1000 years, to the extent reasonably achievable, and in any case, for 200 years.

Neither the EPA standards of 1983 nor NRC's conforming standards of 1985 established compliance schedules to ensure that the tailings piles would be expeditiously closed and the 20 pCi/m²s standard would be met within a reasonable period of time. Criterion 6 of appendix A to part 40 was initially only a design standard and did not require verification that the radon releases meet this "flux standard."

In response to the separate requirements of the Clean Air Act (CAA), EPA promulgated additional standards in 40 CFR part 61 (subpart T for non-operational sites) to ensure that the piles would be closed in a timely manner (December 15, 1989; 54 FR 51654). This regulation applies only to uranium mill tailings and requires, in addition to the flux standard of 20 pCi/m²s, that once a uranium mill tailings pile or impoundment ceases to be operational, it must be closed and brought into compliance with the standard within two years of the effective date of the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. If it were not physically possible for the mill owner or operator to complete disposal within that time, EPA contemplated a negotiated compliance agreement with the mill owner or operator pursuant to EPA's enforcement authority in order to assure that disposal would be completed as quickly as possible. Subpart T of 40 CFR part 61 also requires testing for all piles within the facility to demonstrate compliance with the emission limit and specifies reporting and recordkeeping associated with this demonstration.

Subpart T was challenged by a number of parties including the American Mining Congress (AMC), the Environmental Defense Fund (EDF), and the Natural Resources Defense Council (NRDC). In addition, AMC, the NRC, and others filed an administrative petition for reconsideration of subpart T. Among the concerns of these parties was the argument that the overlap between EPA's subpart D of 40 CFR part 192 (based on the Uranium Mill Tailings Radiation Control Act (UMTRCA)) and subpart T of 40 CFR part 61 (based on the CAA) resulted in regulations that are unnecessarily burdensome and duplicative. Among other things, the industry also alleged that subpart T was unlawful because it was physically impossible to come into compliance with subpart T in the time required. In November 1990, Congress amended the CAA by including a new provision, section 112(d)(9). This provision authorized EPA to decline to regulate radionuclide emissions from NRC licensees under the CAA if EPA found, by rule, after consultation with NRC, that the regulatory program implemented by NRC protects the public health with an ample margin of safety.

In July 1991, EPA, NRC, and the affected Agreement States began discussions concerning the dual regulatory programs established under UMTRCA and the CAA. In October 1991, those discussions resulted in a Memorandum of Understanding (MOU) between EPA, NRC, and the affected Agreement States. The MOU outlines the steps each party would take to both eliminate regulatory redundancy and to ensure uranium mill tailings piles are closed as expeditiously as practicable. (The MOU was published by EPA on October 25, 1991 (56 FR 55434) as part of a proposal to stay subpart T.) The primary purpose of the MOU is to ensure that the owners and operators of all disposal sites that have ceased operation and those owners and operators of sites that will cease operation in the future effect emplacement of a final earthen cover to limit radon emissions to a flux of no more than 20 pCi/m²s as expeditiously as practicable considering technological feasibility. The MOU presents a goal that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997 or within seven years of the date on which existing operations cease and standby sites enter disposal status. The attachment to the MOU lists specific target dates for completing emplacement of final earthen covers to limit radon emissions from non-operational tailings impoundments. These target dates were

based on consultations with the licensed mill operators.

On December 31, 1991, the EPA published three **Federal Register** notices: a final rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67537); a proposed rule to rescind 40 CFR part 61, subpart T, as it applies to uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67561); and an advance notice of proposed rulemaking to amend 40 CFR part 192, subpart D, to require that site closure occur as expeditiously as practicable considering technological feasibility and to add a demonstration of compliance with the design standard for radon releases (56 FR 67569). The stay of effectiveness of subpart T is to remain in effect until EPA takes final action to rescind subpart T and amend 40 CFR part 192, subpart D, to ensure that the remaining rules are as protective of the public health with an ample margin of safety as implementation of subpart T, or until June 30, 1994. If EPA fails to complete these rulemakings by that date, the stay will expire and the requirements of subpart T will become effective.

The stay of effectiveness of subpart T was also challenged. Discussions continued between EPA, the litigants, and the NRC. In February 1993, final agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a consensus approach to regulation of licensed non-operational uranium mill tailings disposal sites. EPA announced the settlement agreement in a notice of April 1, 1993 (58 FR 17230). The NRC was not a signatory to this agreement but agreed in principle with the settlement agreement. The settlement agreement further defined steps for implementing the MOU. It called for the NRC to amend its regulations in appendix A of part 40 to be substantially consistent with a specific regulatory approach described in the settlement agreement. It also described actions to be taken by the parties to the agreement which were intended to implement the MOU and eliminate further litigation with respect to subpart T.

On June 8, 1993 (58 FR 32174), the EPA proposed minor amendments to 40 CFR part 192, subpart D, to ensure timely emplacement of the final radon barrier and to require monitoring to verify radon flux levels (a one-time verification). In that notice, the EPA stated its tentative conclusion that if those amendments to 40 CFR part 192, subpart D, were properly implemented by NRC and the Agreement States to ensure specific, enforceable closure schedules and radon level monitoring, the NRC's regulatory program for non-operational uranium mill tailings piles would protect the public health with an ample margin of safety. The EPA also noted its intent to publish a proposed finding for public comment on whether the NRC program protects public health with an ample margin of safety before taking final action on rescission of 40 CFR part 61, subpart T.

On November 3, 1993 (58 FR 58657), the NRC published a proposed revision to appendix A of part 40 intended to conform to EPA's proposed revisions to 40 CFR part 192, subpart D. On November 15, 1993 (58 FR 60340), the EPA published a final effective rule amending 40 CFR part 192, subpart D. This final amendment to appendix A of 10 CFR part 40 must conform to 40 CFR part 192, subpart D, as amended on November 15, 1993. Changes in this final rule that relate to changes made in EPA's final rule are noted in the detailed discussion.

On February 7, 1994 (59 FR 5674), the EPA published a supplement to its proposed rescission of subpart T as it applies to owners and operators of uranium mill tailings disposal sites licensed by the NRC or an Agreement State. That action was also taken in accordance with the settlement agreement. That notice did not present a change from EPA's plans, strategies, or findings as discussed in the actions pertaining to the revision of 40 CFR part 192, subpart D. EPA invited comments on the proposed rescission of subpart T and on its determination that the NRC regulatory program protects public health and safety with an ample margin. It does not specifically address NRC actions except that EPA has again stated that this conforming rule is necessary to support the rescission of 40 CFR part 61, subpart T.

EPA's revision to 40 CFR part 192 is not intended to change EPA's original rationale or scheme set forth in its 1983 rule. The EPA rule "seeks to clarify and supplement that scheme in a manner that will better support its original intent." EPA's final rule and this NRC conforming rule require that when a uranium mill becomes non-operational, the final barrier to control radon will be emplaced as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Setting interim dates for achieving milestones towards emplacement will support and better assure this progress. Also, post-emplacement determination of radon flux will serve as confirmation that the design of the cover is working as intended. EPA's June 8, 1993 (58 FR 32174), notice of proposed rulemaking and its November 15, 1993 (58 FR 60340), notice of final rulemaking provide detailed discussion of the rationale for the action and the legislative and regulatory history leading to its proposal.

Coordination With Affected NRC Agreement States

The affected Agreement States of Colorado, Texas, and Washington, as well as the State of Illinois, were provided a draft of the proposed rule before its promulgation. These States' comments and the Commission's responses were discussed in the notice of proposed rulemaking of November 3, 1993 (58 FR 58657). Copies of that notice were sent to the affected States. One State submitted comments, which are addressed below along with the other comments received.

Issue of Compatibility With Agreement States

The Commission has determined that these changes are a Division 2 matter of compatibility. Under Division 2, States must adopt the provisions of an NRC rule but can adopt more stringent provisions. A State may not adopt less stringent ones. This designation (Division 2) is compatible with section 274o of the Atomic Energy Act of 1954, as amended (AEA).

Description of the Rule

Section 84a(2) of the AEA requires the Commission to conform its regulations governing uranium mill tailings to applicable EPA requirements and standards. Based on this requirement and the plans and schedules related to the rescission discussed in this document, the NRC proposed to amend appendix A of 10 CFR part 40 to conform to EPA proposed amendments to 40 CFR part 192, subpart D, concerning non-operational, NRC or Agreement State licensed mill tailings sites. Criterion 6 of appendix A to part 40 requires that an earthen cover (or approved alternative cover) be placed over uranium mill tailings to control the release of radon-222 at the end of milling operations. This cover is to be designed to provide reasonable assurance that releases of radon will not exceed an average of 20 pCi/m^2s and that the barrier will be effective in controlling radon releases to this level for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years. The design for satisfying the

longevity requirement includes features for erosion control such as the placement of riprap over the earthen cover itself. (Criterion 6 is also applicable to thorium mill tailings. These amendments to Criterion 6 apply to uranium mill tailings only.)

This rule, both as proposed and as now being adopted, amends Criterion 6, adds a new Criterion 6A, and adds to the definitions contained in the Introduction to appendix A to part 40.

Paragraphs (1), (5), (6), and (7) of revised Criterion 6 contain the previously existing requirements of Criterion 6. These provisions were not the subject of or affected by this rulemaking. These preexisting portions of Criterion 6 appear in this notice only for the purpose of numbering the paragraphs for ease of reference to specific requirements contained within the criterion. However, minor conforming revisions, as proposed, have been made to paragraph (1) of Criterion 6 and its footnotes for clarity and consistency with the new requirements.

This rule adds a requirement to Criterion 6 for a one-time verification that the barrier, as constructed, is effective in controlling releases of radon from uranium byproduct material to levels no greater than 20 pCi/m^{2}s when averaged over the pile or impoundment. This provision, which appears at paragraph (2), also specifies EPA method 115, as described in 40 CFR part 61, appendix B, as a standard for adequate demonstration of compliance. As is required by the recent amendments to 40 CFR part 192, subpart D, the licensee must use this method or another approved by the NRC as being at least as effective in demonstrating the effectiveness of the final radon barrier. A copy of 40 CFR part 61, appendix B, has been made available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Because of practical reasons, the verification of radon flux levels must take place after emplacement of the final radon barrier but before completion of erosion protection features. In order for the results of the verification to remain valid, erosion protection features must be completed before significant degradation of the earthen barrier occurs. The NRC will consider this in a final determination of compliance with Criterion 6. The NRC could require, among other things, repetition of part or all of the verification procedures on a case-by-case basis if significant delay occurs before completion of erosion protection features.

Paragraph (3) of revised Criterion 6 adds a requirement that, if the reclamation plan calls for phased emplacement of the final radon barrier, the verification of radon flux be performed on each portion of the pile or impoundment as the final radon barrier is completed.

Paragraph (4) specifies the reporting and recordkeeping to be made in connection with this demonstration of effectiveness of the final radon barrier. A one-time report that details the method of verification is to be made within 90 days of completion of the final determination of radon flux levels. Records will be required to be kept until license termination documenting the source of input parameters and the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These reporting and recordkeeping requirements are comparable to the EPA requirements in 40 CFR part 61, subpart T.

The Commission notes that the proper implementation of the design standard of paragraph (1) of Criterion 6 is of primary importance in the control of radon releases. The addition of the requirement for verification of radon flux levels does not replace or detract from the importance of the radon attenuation tailings cover design standard.

The new Criterion 6A addresses the timeliness of achieving radon emission control in the case of uranium mill tailings. Criterion 6A requires that the emplacement of the earthen cover (or approved alternative cover) be carried out in accordance with a written, Commission-approved, reclamation plan that includes enforceable dates for the completion of key reclamation milestones. This plan will be incorporated as a condition of the individual license. This plan must provide for the completion of the final radon barrier as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation. This timeliness requirement has the same goals for completing the final radon barrier as were in the MOU discussed above. In addition, erosion protection features must also be completed in a timely manner in accordance with the Commission-approved reclamation plan.

For the purposes of Criterion 6A, definitions are being added to the Introduction of appendix A to part 40 (in alphabetical order with the preexisting definitions) for: *as expeditiously as practicable considering technological feasibility, available technology, factors beyond the control of the licensee, final radon barrier, milestone, operation,* and *reclamation plan.* These definitions are substantively the same as contained in the EPA's recent amendment to 40 CFR part 192, subpart D. However, *reclamation plan* covers a broader range of activities than required in EPA's *tailings closure plan (radon).* Reclamation of the tailings in accordance with appendix A to part 40 includes activities also occurring after the end of operation that are beyond those involved in the control of radon releases, such as groundwater remediation. Thus, it is appropriate and efficient for planning if these activities are addressed in a single document. (This rule would also allow the reclamation plan to be incorporated into the pre-existing closure plan, also required by appendix A, which includes other activities associated with decommissioning of the mill.)

A definition of *final radon barrier* was also included in the Commission's proposed rule to facilitate the drafting of clear regulatory text and to eliminate any ambiguity with respect to compliance with the 20 pCi/m^{2}s "flux standard" after completion of the final earthen barrier and not as a result of any temporary conditions or interim measures. This definition excludes the erosion protection features which were not a subject of EPA's amendment to 40 CFR part 192. The EPA's proposed rule had not provided a definition of this term or comparable term. However, in its final rule, the EPA added a definition of the term *permanent radon barrier,* also to reduce ambiguity. The EPA's definition is substantively the same as the NRC definition of *final radon barrier.* The EPA used the word "permanent" in keeping with the terminology of the settlement agreement but defined "permanent radon barrier" as "the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii)." Both definitions refer to comparable standards requiring control of radon releases to levels not exceeding 20 pCi/m^{2}s after closure. This final NRC rule continues to use the word "final" as proposed, because it is more appropriate. The word "final" more accurately describes the last earthen cover over the tailings pile without the erosion protection features. The barrier would not provide permanent protection without the erosion protection features. Even after these features are completed, the applicable long-term design standard in paragraph

(1) of Criterion 6 is "effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years." Although not intended by EPA, the term "permanent" could be interpreted to imply "forever."

Factors beyond the control of the licensee are defined as factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier. Consistent with the final version of EPA's rule, the following description of possible factors beyond the control of the licensee has been added to the definition in this final rule: these factors may include, but are not limited to:

Physical conditions at the site;

Inclement weather or climatic conditions;

An act of God;

An act of war;

A judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

Labor disturbances;

Any modifications, cessation, or delay ordered by State, Federal, or local agencies;

Delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

An act or omission of any third party over whom the licensee has no control.

In the definition of *available technology*, the phrase "and provided there is reasonable progress toward emplacement of a permanent radon barrier" was not included in the Commission's proposed rule as it seemed inappropriate within the definition and the concept is incorporated into the standard itself, i.e., Criterion 6A. This phrase has been included in the final definition with the word "final" in place of "permanent" in keeping with the terminology used in this rule. A parenthetical with illustrative examples of grossly excessive costs has also been added consistent with EPA's final amendments.

The definitions for *as expeditiously as practicable considering technological feasibility* and *reclamation plan* have been specifically identified as applying to only Criterion 6A to prevent any potential misapplication. This has not been done in the case of the other definitions because either the terms are not used elsewhere in appendix A or are used consistently with the definitions being added.

This rule goes beyond EPA's rule by requiring that the erosion protection barriers (or other features for longevity) be completed in a timely manner. However, the rule does not require that enforceable dates be established for completion of erosion protection as a condition of license. (The key reclamation activities or "milestones" for which enforceable dates are to be established are the same as in EPA's rule.) The reason for this difference is so that the NRC can assure that erosion protection is completed before the barrier could degrade significantly while allowing more flexibility in this regard than for the "key reclamation milestones." Allowing significant degradation of the cover before completion of other aspects of the design could violate the design basis.

As a result of the MOU, most affected licensees (those facilities that were non-operational at the time of the MOU) have voluntarily submitted reclamation plans which include proposed dates for attainment of key reclamation milestones. (Planning for reclamation activities with Commission approval was required by previously existing regulations.) The process of approving those reclamation plans, at least those portions dealing with control of radon emissions, and amending the licenses to make the dates for completion of key reclamation milestones a condition of license is complete with the exception of the Atlas site in Moab, Utah. (In this case, license amendment has been delayed pending resolution of issues raised when the action was noticed in the **Federal Register**.) These impoundments are in the process of being reclaimed with varying degrees of completion. Other affected NRC licensees include one whose impoundment has ceased operation since the MOU and who is in the process of preparing a reclamation plan, and four with operational impoundments who will be affected at the time the impoundments cease to be operational.

The considerations made in these recent licensing actions have been consistent with those reflected in this rule, i.e., paragraph (1) of Criterion 6A has essentially been implemented prior to promulgation as a result of the MOU and the settlement agreement and in anticipation of the amendments to 40 CFR part 192 and this rulemaking. Thus, the deadlines for completion of milestones established in licenses will not need to be reconsidered as a result of this rule. Also, the actions taken since the MOU in the case of the Atlas site in Moab, Utah are consistent with this rulemaking. The licensee has submitted proposed revisions to its reclamation plans. The licensee has also supplied further information and proposed modifications to address concerns that have been raised. Notices of proposed amendments to the license to provide for public participation have been published. The most recent of these was published on April 7, 1994 (58 FR 16665). Delays in the schedule for radon barrier emplacement are as a result of difficulties in resolving technical issues related to the adequacy of plans for erosion protection and groundwater protection and the consideration of alternatives under the National Environmental Policy Act. Thus, delays result from a combination of "the need for consistency with mandatory requirements of other regulatory programs" and "factors beyond the control of the licensee." This case is primarily an example of factor number (8) in the definition of *factors beyond the control of the licensee* concerning delays in obtaining necessary approvals. The issues of concern in the approval of this revised reclamation plan are yet to be resolved and further delays are possible. However, no new issues with regard to the scheduling of final radon barrier emplacement are added as a result of this rule. The license amendment process and the approval of the reclamation plans will not be adversely affected. The NRC staff is continuing to provide timely attention to the resolution of this case.

Paragraph (2) of Criterion 6A adds specific criteria for certain circumstances under which the NRC may extend the time allowed for completion of key milestones once enforceable dates have been established. An opportunity for public participation will be provided in a decision to extend the time allowed in these cases. The Commission may approve an extension of the schedule for meeting milestones if it is demonstrated that radon emissions do not exceed 20 pCi/m^2s averaged over the entire impoundment. The intent of this provision is that, if the radon release rates are as low as will be required after closure, there is no need

for complex justifications for delaying completion of reclamation. However, the Commission may not necessarily extend deadlines for completion of milestones indefinitely on this basis alone. In addition, the Commission may approve an extension of the final compliance date for completion of the final radon barrier based upon cost if the Commission finds that the licensee is making good faith efforts to emplace the final radon barrier, that the delay is consistent with the definition of *available technology*, and that the radon releases caused by the delay will not result in a significant incremental risk to the public health. If the basis for approving a delay is that the radon levels do not exceed 20 pCi/m^{2}s, verification of radon levels will be required annually. Any other reconsideration of deadlines once established as a result of changing circumstances would be evaluated under paragraph (1) of Criterion 6A giving consideration to all factors relevant to the "as expeditiously as practicable considering technological feasibility" standard.

Paragraph (3) of Criterion 6A, as proposed, was to allow for the continued acceptance of uranium byproduct material or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes in the pile or impoundment, from other sources, for disposal into a portion of the impoundment after the end of operation but during closure activities. This authorization was to be made only after providing an opportunity for public participation. This paragraph was intended to conform with proposed 40 CFR 192.32(a)(3)(iii). In the context of appendix A, "during closure activities" could include the period after emplacement of the final radon barrier. In this circumstance, the Commission may except completion of reclamation activities for a small portion of the impoundment from the deadlines established in the license. The proposed rule specified that the verification requirements for radon releases may still be satisfied in this case if the Commission finds that the impoundment will continue to achieve a level of radon releases not exceeding 20 pCi/m^{2}s averaged over the entire impoundment. However, reclamation of the remaining disposal area, as appropriate, would be required in a timely manner once the waste disposal operations cease.

This paragraph has been somewhat revised in the final rule consistent with revisions made in EPA's final rule; these provisions now appear at 40 CFR 192.32(a)(3) (iv) and (v). Both final rules are more consistent with the settlement agreement in this regard. The revisions are (1) that only byproduct material, not "similar" material, will be approved for disposal after the final radon barrier is complete except for the continuing disposal area and the verification of radon flux levels has been made, and (2) that public participation is specifically to be provided for only in the case of continued disposal after radon flux verification.

The final rule has also been modified by changing the words "as expeditiously as practicable" in the last sentence of this paragraph to "in a timely manner" to avoid the unintended application of the definition of the term "as expeditiously as practicable considering technological feasibility" to activities beyond the emplacement of the final radon barrier. Additional clarifying language has also been added to this paragraph.

Note, as discussed in EPA's statements of consideration for its amendment of 40 CFR part 192 (at 58 FR 32183; June 8, 1993 and reiterated at 58 FR 60354; November 15, 1993), the reclamation of evaporation ponds may be dealt with separately from meeting the expeditious radon cover requirements if deemed appropriate by the Commission or the regulating Agreement State. This may be the case whether or not the evaporation pond area is being used for continued disposal of byproduct material.

The opportunities for public participation specified in Criterion 6A are in keeping with the MOU and the settlement agreement, and will be made through a notice in the **Federal Register** providing an opportunity for public comment on the proposed license amendment. This notice will also provide the opportunity to request an informal hearing in accordance with the Commission's regulations in 10 CFR part 2, subpart L.

Analysis of Comments

In response to the proposed rule, the Commission received comments from seven organizations including one State regulatory agency, the Environmental Protection Agency, and five industry organizations. Copies of the comments may be examined and copied for a fee at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC. The following discussion summarizes and responds to the comments.

General: Need and Basis for Rule

Comment. The commenters were generally in favor of the proposed rule. However, most had some suggestions for modifications. Many of these proposed modifications reflected a desire for stricter adherence to the words of the settlement agreement or to EPA's final rule. One commenter said that it understood the proposal to be consistent with the terms that industry litigants accepted in the related EPA proceedings. The American Mining Congress (AMC) and the Atlantic Richfield Company (ARCO), which incorporated all of the AMC comments by reference in its comments, specifically supported the rule for the purpose of implementing the settlement agreement and in order that the "duplicative" Clean Air Act requirements in 40 CFR part 61, subpart T, would be rescinded. AMC and ARCO contended that the rule was not needed to protect public health with the ample margin of safety required as a basis for rescinding subpart T, but that it would strengthen existing protection. Specifically, it was suggested that § 40.63 gives NRC the ability to provide post-closure testing; that § 40.42(c)(2)(i), (iii), and (iv) can provide for timely reclamation of the tailings; that proper milestones have been added to licenses under the existing regulatory program; and that EPA has never issued a finding of unacceptable risk. In addition, AMC provided extensive background and support for rescission of subpart T and elimination of dual regulation.

Response. The Commission has stated and continues to believe that its program provides an adequate degree of protection of the public health and safety but that this rule provides greater assurance that the final radon barrier will be completed in a timely manner and in accordance with the design standard. The Commission disagrees with certain statements made by commenters to support their contention that this rule was not necessary to support the rescission of subpart T. With regard to § 40.63 and post-closure testing, because footnote 1 to Criterion 6 specifically indicated that no radon monitoring was required, the Commission would not have considered it appropriate to use § 40.63 to require post-closure testing to verify that radon flux levels do not exceed 20 pCi/m^{2}s. It was also suggested that § 40.42 adequately addresses the timeliness of tailings reclamation. Although decommissioning normally includes cleanup of a site, appendix A provides the detailed closure requirements for mills in which the reclamation of tailings is covered as a separate activity and, thus, is an exception to the general requirements for decommissioning. This

is a result of the unique treatment of tailings under UMTRCA, which provides for the ultimate custodial care of tailings by the Federal government rather than a return to unrestricted use. The timeliness statement in § 40.42(c)(2)(iv) is interpreted as applying to the decommissioning of the mill not to reclamation of the tailings. The background materials submitted by AMC have been reviewed to assure that there are no gaps in the information previously available to the Commission in its deliberations.

As a general response concerning the use of the exact words of the settlement agreement and the EPA regulations, the Commission notes that it is required to "conform" to 40 CFR part 192 by section 84a(2) of the AEA and has agreed in principle to, but was not a party to, the settlement agreement. In past conforming changes, conformance has not been viewed as requiring identical wording and flexibility has been used for clarity and to account for different formats and contents of rules. Thus, the Commission is not bound to the exact words in either case. Some differences are necessary to avoid ambiguity or confusion. For example, with regard to this rulemaking, the scope of both the settlement agreement and the EPA amendments were limited to the completion of the final radon barrier and did not extend to the longevity aspect of radon control nor to other aspects of reclamation. The terms "reclamation" and "closure" have a broader meaning in appendix A than as used in the settlement agreement or in EPA's amendments to 40 CFR part 192. It would not be practical to limit the use of these terms for the purpose of these specific amendments to appendix A. There are other terms that must also be used carefully because of their use in NRC regulations or by the regulated industry. Beyond what was considered necessary to avoid ambiguity and to provide appropriate expansion beyond the scope of EPA's amendments, the Commission has attempted to be consistent with the words of the settlement agreement and 40 CFR part 192.

Definitions

Comment. The four industry commenters who suggested that changes were needed all believed it was important that the definitions of *factors beyond the control of the licensee* and *available technology* be completely consistent with the settlement agreement and the final amendments to 40 CFR part 192, subpart D, and specifically, to include all the illustrative examples within the definition, not just in the statement of considerations. Some also suggested that the words "complete the barrier" in the definition of *factors beyond the control of the licensee* be changed to "achieve compliance." They were concerned that the intent of the parties to the settlement agreement would not be carried out in the interpretation of these terms in the future. Some specifically noted the loss of personnel familiar with the issues that will accompany the close of the NRC uranium recovery field office (URFO). The EPA did not suggest that including all of the illustrative text was necessary for conformance but suggested it would be best to include the phrase "provided there is reasonable progress toward emplacement of the final radon barrier" (from 40 CFR 192.31(m)) in NRC's definition of *available technology*. The EPA also suggested adding "in compliance with Criterion 6A-(1)" after "complete the barrier" in the definition of *factors beyond the control of the licensee* for clarity and to assure proper implementation of subpart D of 40 CFR part 192.

Response. Explanations concerning the Commission's intent regarding its interpretation of its regulations that appear in statements of consideration stand as a record of the Commission's intent. However, inclusion within the regulatory text makes the illustrative examples more readily available so that questions of interpretation are less likely to arise. Consistent with EPA's final amendments to 40 CFR part 192, all of the illustrative examples have been added in the final definitions. The additional text suggested by EPA has also been included in these definitions.

Comment. Most of the industry commenters also wanted the definition of *milestone* to be worded exactly as in 40 CFR part 192. The concern was primarily that milestones not be required to be established for actions beyond meeting the radon "flux standard." Some of the commenters also suggested that the use in the preamble of varying modifiers, "key," "interim," and "reclamation," to "milestones" and "milestone activities," which are used interchangeably, was confusing.

Response. The definition of *milestone* has not been changed because the Commission believes it is less confusing in that it is in better agreement with normal usage. There is no substantive difference in the standard as a result of this difference and it gives the Commission the flexibility to use the term generically. The concerns expressed are addressed alternatively through minor revisions to the definition of *reclamation plan* and paragraph (2) of Criterion 6A to further clarify that no deadlines are required to be established in the licenses beyond completing the final radon barrier as a result of this rulemaking and that any other schedules established in a license do not come under the specific provisions of paragraph (2) of Criterion 6A. The term "milestone activities" has been avoided in this final rule as it is redundant given this definition. The terms "key," "interim," and "reclamation" are used in accordance with their dictionary definitions and require no further definition. As is clear from the definition of *reclamation plan*, the term "reclamation" is not limited to radon control measures.

No comments were received concerning the definitions of: *as expeditiously as practicable considering technological feasibility, final radon barrier,* and *operation.*

Criterion 6—Verification of Radon Release Levels

Comment. Some commenters suggested that paragraph (4) of Criterion 6 could be interpreted to require submission of the results of radon measurements after measurements are made on a portion of an impoundment in the case of phased emplacement of the radon barrier. Two commenters suggested that interim reports might be required in a particular case subject to the agreement of the licensee, but objected to the possible interpretation that separate reports be required routinely on each portion. One suggested that it should be clarified that the testing need not be done on each portion as the cover is completed.

Response. Paragraph (3) specifically requires testing to be done on each portion of the impoundment as the cover is completed in the case of phased emplacement. This was made a requirement rather than simply being allowed as in 40 CFR 192.32(b)(4)(ii) because of the requirement in paragraph (2) of this Criterion to conduct testing and analysis prior to placement of erosion protection features and the importance of timeliness in completing erosion protection features. There is, however, no specific time limit established in the regulation for these measurements on the individual portions of the impoundment.

Paragraph (4) requires submittal of a report 90 days after completion of the testing and analysis. Because this verification is of radon flux levels averaged over the impoundment, it is not complete until all testing and analysis is complete for the whole impoundment. Thus, only one report is required, although further testing and

analysis with associated reporting could be required in a particular case if the initial report is not acceptable. Minor editorial changes have been made to further clarify this point. Note, although it is impractical to do so routinely, riprap or other erosion protection barriers can be disturbed in order to take a radon emission measurement if necessary.

Comment. One commenter suggested that paragraph (2) of Criterion 6 should contain details such as are contained in 40 CFR part 61 on the one-time measurement which are intended to assure that conditions under which the flux is measured lead to a reasonable average flux. It was suggested that this would eliminate confusion with footnote 2 that applies to the design criterion. Related to this, some commenters argued for deletion of part of existing footnote 2 regarding average radon emissions being "over a period of at least one year, but a period short compared to 100 years." These commenters were concerned that long-term monitoring could be implied. Also, two commenters said the footnote was contrary to the settlement agreement and the EPA rule. One said specifically that it was inconsistent with language of 40 CFR 192.12(b)(2).

Response. Footnote 2 applies only to the design criterion. Although the new testing and analysis is intended to verify the effectiveness of the radon barrier, it does not need to take place over the period of time specified in footnote 2. However, it should be reasonably representative of long-term radon releases. The details concerning conditions for flux measurements in 40 CFR part 61 are contained in the description of Method 115 in appendix B and address such matters as the weather conditions at the time measurements are performed. Method 115 is specifically identified in this standard as acceptable and, if used, the conditions embodied in the description in appendix B of 40 CFR part 61 would apply. Because Method 115 is also a standard for the adequacy of other verification methods in Criterion 6, alternative methods must be approved by the Commission as being at least as effective as Method 115. Similar considerations to those embodied in Method 115 concerning the representiveness of the measurement results of the long term radon releases will be made in judging alternative methods. Details of conditions for measurement need not be specified in this rule.

Modifying footnote 2 substantively, as was suggested by the commenters, would be outside the scope of this rulemaking. Footnote 2 is consistent with 40 CFR part 192, subpart D, which contains the same footnote (in the comparable design standard, 40 CFR 192.32(b)(1)(ii)). The footnote was not intended to and does not require long-term monitoring. The Commission agrees that long-term monitoring would be contrary to the settlement agreement.

Comment. One commenter argued that the existing requirement to reduce gamma exposure to background levels should be eliminated or applied only at the site boundary. This commenter stated that this requirement appears to be a misinterpretation of the intent of 40 CFR part 192, subpart A. This commenter also said that the radon cover will attenuate gamma radiation to near background levels in most cases; and that in an unusual case, adding to the cover to control gamma exposure levels could be unnecessarily expensive, as access is restricted. The commenter believed that, as a minimum, the Commission should specify a limit based on acceptable risk to the maximum-exposed individual that can be supported by a cost-benefit analysis.

Response. The criterion on gamma exposure levels is not based on 40 CFR part 192 nor any other EPA regulation. It has been in appendix A to part 40 since it was originally added to part 40 on October 3, 1980 (45 FR 65521). This aspect of Criterion 6 is outside the scope of this rulemaking. However, if the cost of meeting any criterion in appendix A is excessive in a specific case due to unique conditions, the licensee may request an alternative approach in accordance with the Introduction to appendix A.

Criterion 6A, Paragraph (1)—Requirement for Timeliness

Comment. Two commenters were concerned that the parenthetical "(including factors beyond the control of the licensee)" was not included in the standard following, "as expeditiously as practicable considering technological feasibility" as in 40 CFR 192.32(a)(3)(i) even though it is contained in the definition of *as expeditiously as practicable considering technological feasibility*. They claimed that this could lead to misinterpretation that the standard deletes this essential concept.

Response. A parenthetical statement noting that the term *as expeditiously as practicable considering technological feasibility* is specifically defined in the Introduction and includes "factors beyond the control of the licensee" has been added.

Comment. Some of the commenters opposed the establishment of separate milestone deadlines for dewatering and recontouring, saying that the settlement agreement and 40 CFR part 192 specify only three required milestones including just one for interim stabilization. Dewatering and recontouring are part of interim stabilization. These commenters said that this was also inconsistent with the practice with existing licenses. The EPA noted that it agreed with NRC's statement in the preamble of its proposed rule that the concept of milestones could not be omitted.

Response. The final rule has been changed to specifically require the establishment of deadlines for only three milestones: Wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. The Commission, however, retains the authority to require the establishment of additional milestones determined to be "key" to the completion of the final radon barrier in an individual case (note the words "but not limited to" in the definition of *reclamation plan*). This is consistent with 40 CFR part 192, subpart D, and with the settlement agreement. The Commission has no intent at this time to change the milestones for which deadlines have already been approved in individual licensing actions.

Comment. The EPA noted that it understands that emplacement of the final radon barrier is a requisite milestone but was concerned that it could be interpreted otherwise, and suggested clarification. The EPA also noted that it understands "deadlines" to mean dates by which actions must be completed and "established as a condition of an individual license" to mean incorporation of a condition into a license by the Commission. However, the EPA was concerned that paragraph (1) of Criterion 6A may be ambiguous and provided specific suggested edits.

Response. Paragraph (1) of Criterion 6A has been modified slightly to address EPA's concerns, although not exactly as suggested. The Commission believes it is clear that completion of the final radon barrier is a requisite milestone, that "deadlines" means dates by which actions must be completed, and that deadlines are to be established on the basis that the barrier is to be completed as expeditiously as practicable considering technological feasibility. The Commission also believes that its regulations are less subject to misinterpretation if there is consistency of style and terminology.

Comment. Two commenters were concerned about the NRC extending the

scope of the timeliness requirement from that of 40 CFR part 192, subpart D, stating that the "as expeditiously as practicable considering technological feasibility" requirement should not be extended to erosion protection. They contended that this is a term of art limited to radon emissions, that EPA used this term to eliminate the cost-balancing standards of the AEA from radon control measures, and that applying it to erosion protection would constrain the use of AEA cost considerations. They also noted that NRC has adequate authority under other aspects of its UMTRCA program to deal with concern for degradation of the barrier and stated that NRC should handle this on a site-specific basis through license amendment.

Response. The final rule has been modified so that the terminology "as expeditiously as practicable considering technological feasibility" is used only for emplacement of the final radon barrier. A general timeliness standard for completing erosion protection features is retained. Thus, it is clear that the licensee must complete these actions in a timely way and that the NRC has the authority to take action if necessary in this regard. However, the restrictive cost considerations specified for the completion of the final radon barrier do not apply to decisions concerning the timeliness of completion of erosion protection features. Instead, the more flexible, general cost considerations of the AEA (Section 84a(1)) apply.

Comment. The same commenters sought clarification of NRC's intent in extending reclamation plans to cover groundwater protection. They asked whether the NRC could prevent licensees from continuing surface reclamation until groundwater issues are resolved, stating that this was not past practice. However, they also wanted the Commission to confirm that groundwater concerns could constitute a legitimate cause for delay.

Response. It is important for all aspects of reclamation to be addressed in one plan so that potential interactions of various activities can be accounted for and that reclamation can be planned for overall efficiency. Nonetheless, all aspects of a reclamation plan would not necessarily be approved at the same time. Past licensing practice has not necessarily required all details of reclamation planning to be in one document; however, approvals of activities have included consideration of impacts to other aspects of reclamation. The NRC would not necessarily prevent licensees from continuing surface reclamation until groundwater issues are resolved. However, the words "the need for consistency with mandatory requirements of other regulatory programs" in the definition of "as expeditiously as practicable considering technological feasibility" make it clear that groundwater concerns could constitute a legitimate cause for delay. Whether or not a groundwater issue would be considered a legitimate cause for delay of radon control measures under paragraph (1) of Criterion 6A would depend on the nature of the interaction of the various reclamation activities in a particular case.

Criterion 6A, Paragraph (2)—Special Criteria for Approval of Delays

Comment. Two commenters stated that paragraph (2) of Criterion 6A does not fully implement the settlement agreement. They stated that the settlement agreement and 40 CFR 192.32(a)(3)(iii) include delay of interim milestones for reason of cost not just the dates for completion of the final radon barrier. These same commenters were concerned that it was not clear from paragraph (2) of Criterion 6A that deadlines for milestones could also be extended because of factors beyond the control of the licensee and also expressed strong agreement with the statement that there is "no need for complex justifications for delaying completion of reclamation" if the licensee demonstrates that the site meets 20 pCi/m^{2}s prior to final closure. These two commenters also stated that the intent of the settlement agreement is that interim milestones may be changed without meeting 20 pCi/m^{2}s, if there is no delay in final closure date. On this subject, the EPA specifically supported paragraph (2) of Criterion 6A as drafted. The EPA also specifically confirmed our interpretation of its amendments to 40 CFR part 192 in this regard and clarified that there may be other instances under which NRC may reconsider a date established for completion of a milestone. The EPA also stated in its comments that the alternative interpretation of its proposed amendments suggested in the Commission's preamble to its proposed rule (that meeting the 20 pCi/m^{2}s "flux standard" might be required in all cases) was incorrect.

Response. The Commission does not agree that the words "or relevant milestone" in section III.2.j of the settlement agreement and 40 CFR 192.32(a)(3)(iii) should be interpreted to mean that these paragraphs address delay of interim milestones for reason of cost. Also, approvals of extensions of interim milestones without meeting 20 pCi/m^{2}s are not necessarily limited to cases where there is no delay in final closure date.

Paragraph (2) of Criterion 6A and 40 CFR 192.32(a)(3)(ii) and (iii) set forth specific criteria for extensions of deadlines under certain circumstances These provisions do not cover all circumstances under which extensions may be approved. This interpretation was confirmed by EPA in the preamble of its final rule and in its comments submitted on NRC's proposed rule. All other approvals of extensions must be made under paragraph (1) of Criterion 6A through applying all of the concepts involved in the requirement for completion of the final radon barrier "as expeditiously as practicable considering technological feasibility" (including within its definition "factors beyond the control of the licensee"). This was stressed in EPA's final rule notice of November 15, 1993, at 58 FR 60351. In response to a commenter that noted that NRC or an Agreement State may extend the date for emplacement of the radon barrier based on "factors beyond the control of the licensee" as that term is implicit in the definition of "as expeditiously as possible," EPA stated in part that "there is no bar to NRC or an Agreement State reconsidering a prior decision establishing a date for emplacement of the radon barrier that meets the standard of 'as expeditiously as possible.' Such reconsideration could, for example, be based on the existence of factors beyond the control of the licensee, or on a change in any of the various factors that must be considered in establishing a date that meets the 'as expeditiously as practicable' standard of § 192.32(a)(3)(i). However, EPA stresses that such a change in circumstances would not automatically lead to an extension. It would be incumbent on NRC or an Agreement State to evaluate all of the factors relevant under § 192.32(a)(3)(i) before it could change a previously established milestone or date for the emplacement of the final barrier, and any new date would have to meet the standard set out in § 192.32(a)(3)(i)." The comparable standard in this NRC rule is set out in paragraph (1) of Criterion 6A.

Criterion 6A, Paragraph (3)—Continuing Disposal During Closure

Comment. Some commenters noted that Criterion 6A, paragraph 3, as proposed, was inconsistent with the final EPA rule. Some also suggested that it was inconsistent with the settlement agreement, could lead to premature closure, and would require radon monitoring during closure. One

commenter said that "during closure activities" does not include the period after emplacement of the final radon barrier according to the EPA rule and the settlement agreement, and that the intent should be that "once the final radon barrier has been placed over the impoundment, excluding the area receiving byproduct material, the 'closure process' ceases." Two of the commenters specifically agreed with the interpretation that "during closure activities" could include the period after emplacement of the final radon barrier and wanted the NRC to confirm this so that similar materials would still be allowed at that time. These two commenters did not want paragraph (3) of Criterion 6A to require an opportunity for public participation in approving acceptance of byproduct material "during closure." The EPA submitted suggested revisions to make final paragraph (3) of Criterion 6A consistent with the final amendments in 40 CFR 192.32(a)(3)(iv) and (v).

Response. EPA, in its proposed revision of 40 CFR part 192, subpart D, combined the provisions of sections III.2.c (i) and (ii) of the settlement agreement in one paragraph. In so doing, EPA, apparently inadvertently, differed somewhat from the settlement agreement but modified the final rule so that it is now consistent with the settlement agreement. The Commission must conform appendix A to 40 CFR part 192, as adopted, and has thus revised its final rule accordingly. The differences from the proposed rule are that (1) materials similar to byproduct material will not be approved for continued disposal after the verification of radon flux levels and (2) an opportunity for public participation will not specifically be provided in the case of continued disposal during closure prior to this point in time. Note, however, opportunity for public participation exists in any case under 10 CFR part 2, subpart L. The exact words suggested in EPA's comments have not been used but the revisions are substantively the same. The reasons for differing are the same as when the proposed rule was drafted: (1) the term "closure" in appendix A has a broader meaning than the scope of EPA's rule, and (2) the final radon barrier is not absolutely complete while disposal is continuing even though it may be adequate to demonstrate that average radon release levels meet the 20 pCi/m^2s "flux standard."

Miscellaneous comments

Comment. One State commenter strongly recommended that NRC offer guidance (not necessarily in the rule) on paragraph (3) of Criterion 6A on what materials are appropriately similar. The commenter suggested specification of limits to the range of variation of a critical property or concentration or activity.

Response. Guidance on considerations for the approval of disposal of non-11e(2) materials in tailings impoundments was published May 13, 1992 (57 FR 20525). This notice also presented a staff analysis on which the guidance is based and requested public comment to be considered in a decision on whether the guidance should be revised.

Comment. Two commenters stated, for the record, that they agreed with NRC that the implementation details of EPA's 40 CFR part 192, subpart D, are a special case and go beyond "generally applicable standards," and that these provisions should not set a precedent with regard to what constitutes a generally applicable standard. They contended that certain aspects of subpart D exceed EPA's statutory authority.

Response. The Commission noted in the preamble of the proposed rule that the nature of the revisions to 40 CFR part 192, subpart D, were influenced by the settlement agreement, that the settlement agreement included considerable detail concerning the specifics of the regulations that were to be developed, and that apparently as a result of this, 40 CFR part 192, subpart D, includes numerous details of implementation. The Commission also stated its view, which it still holds, that the inclusion of these implementation details is a special case because of the settlement agreement and does not establish any precedent with regard to what constitutes a generally applicable standard. With regard to the question of the limits of EPA's statutory authority, any challenge to EPA's authority to issue the November 15, 1993, final amendments to 40 CFR part 192 is outside the scope of this conforming action.

Comment. The AMC stated that even if the Commission makes this rule a Division 2 matter of compatibility, AMC will return to litigation if an Agreement State adopts more stringent provisions.

Response. UMTRCA provides the States an option for alternative, more stringent standards. The settlement agreement cannot eliminate this option. However, notice for comment and approval by NRC is required and AMC can raise appropriate issues at that time should a State propose more stringent standards. The Division 2 matter of compatibility is maintained.

Comment. The AMC contended that some statements in the preamble to the proposed rule were in error or in need of clarification. Among these contentions were that the summary of bases for AMC's challenge to subpart T implied that the limited bases mentioned were all inclusive.

Response. The primary bases for the various litigants' challenges were mentioned in a brief historical summary that was not presented as a complete background. The EPA's various notices are referenced in the background section of this notice for more details concerning subpart T and the related litigation.

Comment. AMC also stated that NRC had implied that EPA could not rescind subpart T if the planned rulemakings were not completed, arguing that EPA has adequate bases to rescind absent these rulemakings.

Response. NRC did not mean to imply that EPA could not rescind subpart T absent the planned rulemakings. However, EPA had made statements that it would not rescind subpart T unless comparable provisions were added to 40 CFR part 192 and 10 CFR part 40.

Comment. The AMC also stated that the timeliness of decommissioning rule should not have been suggested as in any way relevant and requested that NRC note that Chairman Selin is on record suggesting that a blanket exemption of uranium recovery facilities may make sense.

Response. Final action on the proposed NRC rule to require timeliness in decommissioning (January 13, 1993; 58 FR 4099) would be expected to impact the timing of decommissioning of the mill, not necessarily the timing of the impoundment going from operational status to closure. ("Closure" in appendix A does include both decommissioning of the mill and reclamation of the tailings and/or waste disposal areas.) If subpart T is rescinded, there will be no regulatory requirement for the tailings impoundment to change from operational to non-operational status within any specified time after the mill ceases operation. The definition of "operational" in subpart T would have restricted the continued use of the impoundment for extended periods after the associated mill was decommissioned.

No comments were received on the regulatory analysis or the environmental assessment and finding of no significant impact.

Conclusion

As indicated in the responses to the comments, the Commission has decided

to adopt the rule as proposed with minor modifications, which consist of revisions to conform to the final effective amendments to 40 CFR part 192 and clarifications.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This final rule requires that enforceable dates be established for certain interim milestones and completion of the final radon barrier on non-operational mill tailings piles through an approved reclamation plan and that a determination of the radon flux levels be made to verify compliance with the existing design standard for the final radon barrier. It is intended to better assure that the final radon barrier is completed in a timely manner and is adequately constructed to comply with the applicable design standard. Thus, it provides an additional assurance that public health and the environment are adequately protected. Because the final rule is not expected to change the basic procedures or construction of the radon barrier, there should be no adverse environmental impacts. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Catherine R. Mattsen, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Phone: (301) 415–6264.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0020.

Public reporting burden for this collection of information is estimated to average 156 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0020), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–6264.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are only 19 NRC uranium mill licensees. Almost all of these mills are owned by large corporations. Although a few of the mills are partly-owned by companies that might qualify as small businesses under the Small Business Administration size standards, the Regulatory Flexibility Act incorporates the definition of small business presented in the Small Business Act. Under this definition, a small business is one that is independently owned and operated and is not dominant in its field. Because these mills are not independently owned, they do not qualify as small entities.

List of Subjects in 10 CFR part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 40.

PART 40—LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In appendix A, add the definitions of *as expeditiously as practicable considering technological feasibility, available technology, factors beyond the control of the licensee, final radon barrier, milestone, operation,* and *reclamation plan* to the Introduction in alphabetical order; revise Criterion 6; and add Criterion 6A to read as follows:

Appendix A to Part 40—Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content

Introduction

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As expeditiously as practicable considering technological feasibility, for the purposes of Criterion 6A, means as quickly as possible considering: the physical characteristics of the tailings and the site; the limits of *available technology*; the need for consistency with mandatory requirements of other regulatory programs; and *factors beyond the control of the licensee*. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term *available technology*.

Available technology means technologies and methods for emplacing a final radon barrier on uranium mill tailings piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (such as, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils, etc.), provided there is reasonable

progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which cost shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

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Factors beyond the control of the licensee means factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with paragraph (1) of Criterion 6A. These factors may include, but are not limited to—

(1) Physical conditions at the site;

(2) Inclement weather or climatic conditions;

(3) An act of God;

(4) An act of war;

(5) A judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(6) Labor disturbances;

(7) Any modifications, cessation or delay ordered by State, Federal, or local agencies;

(8) Delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(9) An act or omission of any third party over whom the licensee has no control.

Final radon barrier means the earthen cover (or approved alternative cover) over tailings or waste constructed to comply with Criterion 6 of this appendix (excluding erosion protection features).

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Milestone means an action or event that is required to occur by an enforceable date.

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Operation means that a uranium or thorium mill tailings pile or impoundment is being used for the continued placement of byproduct material or is in standby status for such placement. A pile or impoundment is in operation from the day that byproduct material is first placed in the pile or impoundment until the day final closure begins.

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Reclamation plan, for the purposes of Criterion 6A, means the plan detailing activities to accomplish reclamation of the tailings or waste disposal area in accordance with the technical criteria of this appendix. The reclamation plan must include a schedule for reclamation milestones that are key to the completion of the final radon barrier including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. (Reclamation of tailings must also be addressed in the closure plan; the detailed reclamation plan may be incorporated into the closure plan.)

* * * * *

Criterion 6 (1) In disposing of waste byproduct material, licensees shall place an earthen cover (or approved alternative) over tailings or wastes at the end of milling operations and shall close the waste disposal area in accordance with a design [1] which provides reasonable assurance of control of radiological hazards to (i) be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years, and (ii) limit releases of radon-222 from uranium byproduct materials, and radon-220 from thorium byproduct materials, to the atmosphere so as not to exceed an average [2] release rate of 20 picocuries per square meter per second (pCi/m^2s) to the extent practicable throughout the effective design life determined pursuant to (1)(i) of this Criterion. In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. If non-soil materials are proposed as cover materials, it must be demonstrated that these materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term intervals.

(2) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers or other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20 pCi/m^2s averaged over the entire pile or impoundment using the procedures described in 40 CFR part 61, appendix B, Method 115, or another method of verification approved by the Commission as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(3) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, the verification of radon-222 release rates required in paragraph (2) of this criterion must be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(4) Within ninety days of the completion of all testing and analysis relevant to the required verification in paragraphs (2) and (3) of this criterion, the uranium mill licensee shall report to the Commission the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20 pCi/m^2s when averaged over the entire pile or impoundment. The licensee shall maintain records until termination of the license documenting the source of input parameters including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to DOE or a State for long-term care if requested.

(5) Near surface cover materials (i.e., within the top three meters) may not include waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(6) The design requirements in this criterion for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which, as a result of byproduct material, does not exceed the background level by more than: (i) 5 picocuries per gram (pCi/g) of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface, and (ii) 15 pCi/g of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface.

(7) The licensee shall also address the nonradiological hazards associated with the wastes in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to the ground or surface waters or to the atmosphere.

Criterion 6A (1) For impoundments containing uranium byproduct materials, the final radon barrier must be completed *as expeditiously as practicable considering technological feasibility* after the pile or impoundment ceases operation in accordance with a written, Commission-approved reclamation plan. (The term *as expeditiously as practicable considering technological feasibility* as specifically

[1] In the case of thorium byproduct materials, the standard applies only to design. Monitoring for radon emissions from thorium byproduct materials after installation of an appropriately designed cover is not required.

[2] This average applies to the entire surface of each disposal area over a period of a least one year, but a period short compared to 100 years. Radon will come from both byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from byproduct materials to the atmosphere.

defined in the Introduction of this appendix includes factors beyond the control of the licensee.) Deadlines for completion of the final radon barrier and, if applicable, the following interim milestones must be established as a condition of the individual license: windblown tailings retrieval and placement on the pile and interim stabilization (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the tailings must also be completed in a timely manner in accordance with a written, Commission-approved reclamation plan.

(2) The Commission may approve a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the Commission finds that the licensee has adequately demonstrated in the manner required in paragraph (2) of Criterion 6 that releases of radon-222 do not exceed an average of 20 pCi/m²s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m²s, a verification of radon levels, as required by paragraph (2) of Criterion 6, must be made annually during the period of delay. In addition, once the Commission has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the Commission may extend that date based on cost if, after providing an opportunity for public participation, the Commission finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of *available technology*, and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(3) The Commission may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources, during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. The verification required in paragraph (2) of Criterion 6 may be completed with a portion of the impoundment being used for further disposal if the Commission makes a final finding that the impoundment will continue to achieve a level of radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. In this case, after the final radon barrier is complete except for the continuing disposal area, (a) only byproduct material will be authorized for disposal, (b) the disposal will be limited to the specified existing disposal area, and (c) this authorization will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with paragraph (1) of Criterion 6; however, these actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

Dated at Rockville, Maryland, this 24th day of May, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–13248 Filed 5–31–94; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Surety Bond Guaranty Assistance Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is adopting as final a size standard for the Surety Bond Guaranty Program of $5.0 million in average annual receipts for firms in the construction and services industries. This size standard is being adopted in order to take into consideration the effect of inflation since 1978 on the current size standard and to expand eligibility for SBA surety guarantees to firms in the construction and services industries above $3.5 million that are experiencing difficulties in obtaining surety bonding in the private market.

DATES: Effective July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, Tel: (202) 205–6618.

SUPPLEMENTARY INFORMATION: The SBA has administered a program of contract surety bond guarantee assistance for small businesses since 1971. The SBA guarantee enables participating surety companies to furnish surety bonds on behalf of small contractors that would be unable to obtain bonding on reasonable terms and conditions without an SBA guarantee. The SBA guarantees the surety company against a percentage of loss it may incur under an eligible contractor's bond.

This final rule will increase the surety bond guarantee size standard to $5.0 million in average annual receipts from $3.5 million for firms in the construction and services industries which apply for such guarantees. This adopted size standard is lower than the $6 million size standard the SBA had proposed on August 27, 1993 (58 FR 45300). As stated in the proposed rule, the SBA believes the current $3.5 million size standard, established in 1978 (43 FR 21689), should be increased for three reasons: (1) to account for the effects of inflation since 1978, (2) to bring the surety size standard closer to the size standards established for other program purposes for the construction industries ($7 million for special trades and $17 million for general and heavy construction), and (3) to extend assistance to firms above $3.5 million who otherwise could not obtain surety bonds on reasonable terms and conditions. Further consideration of the proposed size standard by the SBA in light of comments received to the proposed size standard has led to the conclusion that a size standard of $5 million is more appropriate for purposes of the surety bond guaranty program.

The SBA received a total of thirty-eight comments in response to the August 27, 1993 proposed rule. The comments received show approximately half in favor and half opposed to the proposed increase to $6.0 million. Twenty of the thirty-eight comments supported the proposed rule. The affirming comments, fourteen from surety companies and surety associations and six from contractors and contractor associations, agreed that inflation over the past 15 years has reduced the availability of surety bonds for small contractors by not being eligible for an SBA guaranteed surety bond due to their business size. These commenters agreed that the Surety Bond Guaranty size standard should be revised to $6.0 million based on inflation.

The SBA received eighteen comments opposing the proposed increase to $6.0 million in annual receipts. All eighteen comments were from surety companies and surety associations (SBA's partners in the surety bonding process). These comments disagreed with the need for the proposed rule and expressed concern about its impact on the Surety Guaranty Program.

All eighteen of the respondents commenting negatively on the proposed Surety Bond Guaranty size standard disagreed with the Agency position that $6 million in revenues should define a small business in the construction and service industries, and contended that the size standard should remain at the current level of $3.5 million. The commenters argued that, based on a recent study by the National Association of Surety Bond Producers, surety bonds are readily available for small firms with less than $2.0 million in revenues. The commenters emphasized that if the purpose of the SBA surety bond program is to assist small businesses in obtaining bonds, the current market availability of surety bonds is such that

assistance is not necessary. Therefore, they claimed that the SBA need not increase the size standard. Furthermore, several of the comments indicated that 97.4 percent of all construction enterprises meet the existing $3.5 million size standard. These commenters felt that the proposed rule would make the Surety Bond Guaranty size standard so large that it would include large businesses and, therefore, diminish the benefit to small businesses. According to these commenters, this action would defeat the original purpose of support for small contractors.

The SBA is aware that many firms with revenues between $3.5 million and $6 million have no difficulty obtaining bonds. Nonetheless, there exists a segment of firms over $3.5 million in revenues that are not able to obtain a surety bond on reasonable terms and conditions without an SBA guarantee. These firms are denied bonding because they are viewed by a private surety as presenting too great a risk. These firms may lack a track record because of their infrequency of seeking bonding or they may have been in business for a relatively short period of time. However, with an SBA guarantee, the risk is reduced to a level where the surety will issue a bond. The SBA believes the Surety Bond Guaranty Program should also be available to these firms so long as they meet other program and bonding criteria. It should be emphasized that many of these firms were at one time small businesses eligible for a surety bond guaranty, but inflation over the years has effectively increased their nominal size to a level exceeding the current size standard without a corresponding growth in real terms relative to other businesses.

The SBA agrees that the vast majority of construction firms are already included under the existing size standard. The SBA estimates that approximately 95 percent of existing companies fall within the existing standard. However, the more significant statistic is that these construction firms account for only about 40 percent of the total construction receipts. An increase in the size standard will continue to define as a small business, firms whose total combined receipts represent less than half of total construction receipts.

After considering the arguments presented by the public comments received opposing an increase in the current size standard, the SBA continues to believe that an increase in the Surety Bond Guaranty size standard is appropriate. It is being increased, however, to $5 million in annual receipts rather than the proposed $6 million size standard. The SBA is now persuaded, based on the negative comments to the proposal, that $5 million is a more appropriate size standard than $6 million for purposes of this surety bond guaranty program.

As a lower but needed increase to the surety guarantee size standard, the level of $5 million is being adopted. The SBA believes an increase in the size standard to $5 million is appropriate for several reasons. First, this increase makes the surety guarantee bond size standard consistent with increases recently adopted by the SBA for other program purposes in industries having a $3.5 million size standard (59 FR 16513). Under that action, size standards were adjusted for inflation occurring between the third quarter of 1982 through the fourth quarter of 1993. At the time of the last general inflationary adjustment effective in 1984, SBA made no adjustment to the surety bond guaranty program size standard of $3.5 million, even though that standard was established in 1978. The SBA believed at that time that the existing surety size standard continued to be appropriate for the Surety Bond Guaranty Program, but the effect of another ten years of inflation has now significantly eroded the base of firms eligible for the program. Although the $5 million size standard does not represent a full inflationary adjustment since 1978, it does take into account most of the effects of inflation, while still retaining a size standard at an acceptable level. Second, the $5.0 million level is, with few exceptions, the lowest size standard established by the SBA for nonmanufacturing industries, including the services industries to which the surety guarantee size standard also applies. Third, two major associations representing a large number of contractors and specialty sureties recommended an alternative size standard of $5 million to account for inflation and to meet the surety bonding needs of small "hard to place," minority and emerging contractors. The SBA believes the $5 million size standard is needed to assist such firms toward participation in the standard surety market by enabling them to remain eligible for SBA surety guarantees for an additional period of business growth, which can be critical to a firm's economic strength.

SBA considered carefully the nature and extent of the opposition to an increase to $6 million contained in the comments, and has concluded that its objectives in adjusting for inflation, achieving consistency with its overall system of size standards, and improving availability of program benefits for particularly vulnerable firms can be adequately met by raising the standard to only $5 million. Additionally, SBA now believes that a $6 million standard for this program would have unacceptable adverse consequences in terms of diminishing a market that a significant portion of the surety industry relies upon, and in terms of the willingness of all sureties to utilize the SBA guaranty rather than simply denying a bond to a contractor.

Some negative comments received on the proposed size standard pointed out that expanding the size standard would provide additional demand on the program. Some expressed fear that as larger companies participate in the program, the agency's limited resources would ultimately be unavailable to those small contractors that most need the assistance. This concern is underscored by the view that construction firms with receipts over $3.5 million have ample access to standard surety markets.

The SBA analysis of the Surety Bond Guaranty Program does indicate that the revised size standards will increase the demand on the Program. The SBA estimates that this additional demand could be as much as $200 million. However, a review of the program usage for the last three years indicates that the Program has been operating well below its appropriated limit. Therefore, the SBA concluded that the increased demand based on a $5.0 million Surety Bond Guaranty size standard could be accommodated with the existing funding levels appropriated by the Congress.

A final issue raised by several negative commenters expressed the concern that increasing the size standard would, of necessity, increase the government's potential for loss. These comments pointed out that contractors with receipts of $3.5 million to $6.0 million tend to perform larger jobs requiring more sophisticated levels of management control. These larger companies sometimes experience declines in bonding credit where management talents are not proven. The insurers point out that increasing the size standard would demand more oversight on the part of the SBA to ensure that larger contractors have the management expertise to perform these large contracts. They argue that in the absence of this additional oversight, the potential for government loss would be unduly increased.

The SBA recognizes that there is a valid concern when the potential for greater loss to the government is increased. The SBA notes that currently most of the contractors requiring

assistance in obtaining surety bonds have annual receipts of less than $2 million, and that the average surety bond is a little greater than $100,000. The Agency believes that the increase in the Surety Bond Guaranty size standard would not demand more oversight on the part of the SBA to ensure that larger contractors have the management expertise to perform. Because SBA is the guarantor to the participating sureties, SBA expects participating sureties to adhere to the SBA and industry general principles and practices used in evaluating credit, capacity, and the surety business. Prudent underwriting performed by the surety prior to obtaining SBA guarantee provides a reasonable expectation that the principal will perform according to the covenants and conditions of the contract. In addition, the terms and conditions of the surety bond are reasonable in light of the shared risks involved and the extent of the surety/SBA participation and monitoring of contract performance.

The SBA believes that the $5 million size standard will accomplish the purposes stated in the proposed rule for increasing the size standard. Those reasons were to take into consideration, as appropriate, inflation on the eligibility of firms for the Surety Bond Guaranty Program, to bring the Surety Bond Guaranty size standards closer to the size standards used in the construction industries for SBA's procurement and loan programs, and to extend assistance to contracting firms above $3.5 million in size who otherwise could not obtain surety bonds on reasonable terms and conditions without an SBA guarantee.

Compliance With Regulatory Flexibility Act, Executive Orders 12612, 12778, and 12866, and the Paperwork Reduction Act

General

SBA considers that this final rule will impact, in terms of eligibility, on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and will have a significant economic impact on a substantial number of small entities for purposes of this Act. Eligible contractors remit to the SBA a guarantee fee of $6 per $1,000 of the awarded contract price. The amount estimated below in (1) would represent an impact upon newly eligible contractors of approximately $1.1 million, at the estimated participation level. However, since the contemplated economic impact in terms of the amount of SBA guarantee utilization is approximately $200 million [see (1), below], it constitutes a significant rule for the purpose of E.O. 12866. Immediately below, the SBA has set forth a summary regulatory impact analysis and a final regulatory flexibility analysis of this rule.

(1) Description of Entities to Which the Rule Applies

SBA estimates that 11,500 additional firms (or an additional 2.2 percent), out of a total of 529,000 firms in the construction industries, will gain small business status for the Surety Bond Guarantee Program by adopting this final rule. There were approximately 11,500 firms in the construction industries with between $3.5 and $5.0 million in annual sales according to a special tabulation prepared by the Census Bureau for the SBA using 1990 data. These 11,500 firms accounted for approximately $44 billion in sales (8.5 percent of total construction receipts). With the adoption of this rule, they become eligible for SBA's surety bond assistance, provided they meet the other program requirements.

While an estimated 11,500 firms will be newly eligible as a result of this rule, the number of additional firms actually receiving assistance will be much fewer. The SBA estimates that 104 additional firms will receive assistance in an average year. This estimate is based on the fact that less than one percent (4,532 in FY 1991) of the 503,000 construction firms that are currently eligible now receive SBA guaranteed surety bonds, and it also assumes that a similar percentage of the newly eligible firms in the $3.5 million to $5.0 million size range would receive SBA guaranteed surety bonds.

SBA estimates of $200 million in additional guarantees will occur based on its experience with those firms that in the past have received SBA guaranteed bonds. SBA has observed that these users have obtained SBA guarantees on contract bonds representing approximately 61 percent of their gross revenue. Construction firms in the $3.5 to $5.0 million sales range generate nearly $44 billion in annual sales, or an average of $3.85 million per firm ($44 billion÷11,500 firms). One hundred and four of those newly eligible construction firms (less than 1 percent) are projected to utilize the SBA Surety Bond Guarantee Program. These firms collectively generate $400 million in sales. However, since approximately 61 percent of participating firms' sales are guaranteed under SBA's Surety Bond Program, roughly $244 million in additional SBA guaranteed contract surety bonding will be covered, or about $200 million in additional government commitments (see Table, below).

Construction firms in $3.5–$50 million range			Total receipts of firms receiving bonds (b)×(c)	Total value of bonding affected by the guarantee (d)×61%	Total government exposure (e)×82%
Total	Total to receive SBA surety guarantees (a)×0.91%	Average receipts per firm			
(a)	(b)	(c)	(d)	(e)	(f)
11,477	104 firms	$3.85 million	$400.4 million	$244.2 million	$200.3 million.

The adopted standard, however, does not impose a regulatory burden on these newly eligible firms because it does not regulate or control behavior.

(2) Description of Potential Benefits of the Rule

The benefit of this rule for the government is that the resulting additional competition from contracting firms that are newly eligible to bid on and perform contracts under the adopted size standard should result in lower costs to the Federal government and to other public and private contracting bodies for construction and service contracts. Since 1971, through and including fiscal year 1992, it is estimated that the Surety Bond Guarantee Program has saved the public sector over $1.2 billion. The savings is the computation between the lowest bid coming from the Surety Bond Guaranty Program participant and the next higher bidder. The premise is that the cost of the procurement has been reduced because the small contractor (i.e., the

lowest bidder), would not have been awarded the job had the contractor not been a participant in the Surety Bond Guarantee Program. The savings to the public sector at the local, city, state and federal levels will also include amounts these entities would have had to pay for the higher bidder's surety bond protection if the Surety Bond Guarantee Program were not in existence. Private sector savings are also believed to be significant, but not measurable. In addition, the firms that will now be considered small for purposes of surety bond assistance will benefit through the receipt of such assistance in further developing their business objectives.

(3) Description of Potential Costs of the Rule

This change in size standards as it impacts on government should not add a major element of cost to the government and, in fact, as described above in (2), may reduce the cost to a procuring Federal or other public agency as a result of additional competition for contracts. The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefits from the Rule

From the above discussion, SBA believes that, because the potential costs of this rule are minimal, the potential net benefits are clear. By increasing the size standard to $5.0 million, a number of businesses in the $3.5 to $5.0 million range that presently have difficulty obtaining surety bonding will now be eligible for SBA surety bond guarantee assistance. As a result, competition will be similarly increased, and hence reduce the overall costs to both public and private procuring bodies.

(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule

SBA has provided above in the supplementary information a description of the reasons why this action is being taken and a statement of the reasons for and objectives of this rule.

(6) Legal Basis for the Rule

The legal basis for the rule is Sections 3(a), 5(b)(6), and 15(i) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(7) Federal Rules

There are no Federal rules that duplicate, overlap or conflict with this rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Rule

The changes to the current size standard set forth in this rule attempt to establish the most appropriate definition of small businesses eligible for SBA's Surety Bond Guarantee Program. The SBA considered a $6.0 million Surety Bond Guaranty size standard as well as a $5.0 million Surety Bond Guaranty size standard, but decided that $5.0 million was the best alternative for the reasons set forth in the supplementary information.

SBA certifies that the rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The SBA further certifies that this rule will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., Chapter 35.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small Business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

2. Section 121.802, is amended by revising paragraph (a)(3) to read as follows:

§ 121.802 Establishment of the size standard.

(a) * * *

(3) *For purposes of surety bond guarantee assistance,*

(i) Any construction (general or special trade) concern is small if its annual receipts average for its preceding three completed fiscal years does not exceed $5.0 million.

(ii) Any concern performing a contract for services (including, but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is small if its annual receipts average for its preceding three completed fiscal years does not exceed $5.0 million.

(iii) For other surety bond guarantee assistance, an applicant must meet the size standard set forth in § 121.601 for the primary industry (as defined in § 121.802(b)) in which the applicant, including its affiliates, is engaged.

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Dated: May 5, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–13239 Filed 5–31–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–81, Special Conditions No. 25–ANM–84]

Special Conditions: Extended Range Operation of Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for approval of the Boeing Model 777 airplane for Extended Range Operation with Two-engine Airplanes (ETOPS) without the prerequisite service experience currently required for ETOPS approval. The manufacturer has requested that the Model 777 airplane be found to be acceptable for ETOPS operation at the time of type certification. Extended range operation of twin engine airplanes is not envisioned by the airworthiness standards for transport category airplanes, and has been determined to constitute a novel of unusual feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards for transport category airplanes.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Steven P. Clark, FAA, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2679.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1990, the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207, applied for a type certificate for the new Model 777 airplane. The Model 777 is a long range, transport category airplane powered by two Pratt & Whitney PW4000 series, Rolls-Royce Trent 800 series, or General Electric GE90 series engines. The overall length of the Model 777 is 209 feet, the height is 61 feet, and the wingspan is 198 feet. The airplane has a seating capacity, in a typical three class configuration of 305 to 328 passengers, or 375 to 400 passengers in a two class configuration. The Model 777 has a maximum takeoff weight of 535,000 lbs., a maximum landing weight of 445,000 lbs., a maximum operating altitude of 43,100 ft., and a range of 4,200 nautical miles in a two class configuration or 6,600 nautical miles in a three class configuration.

Type Certification Basis

Under the provisions of § 21.17, Boeing must show that the Model 777 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–71. Boeing has also elected to comply with most of part 25 as amended by Amendment 25–77. The type certification basis for Model 777 is therefore part 25 through Amendment 25–77, except for § 25.571(e)(1), which remains at Amendment 25–71 level; and parts 34 and 36, each as amended at the time of certification. Boeing may also elect to comply with subsequent part 25 requirements to facilitate operators' compliance with corresponding part 121 requirements. The certification basis also includes other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 777 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.17(a)(2).

Model 777 Design Features

The structure of the Model 777 is generally of conventional design and construction, but with considerable use of composite materials. Elements of the primary structure (the fin and horizontal tail) are constructed of composites, as are some elements of secondary structure, including the elevators, rudders, flaps, spoilers, ailerons, engine cowls, and main deck floor beams.

The Model 777 uses a combination of multiple computer channels and redundant sensors that channel command signals to various control surface actuators in response to programmed control laws. This control architecture, referred to as fly-by-wire (FBW), provide closed loop command to move servo-actuators for the elevators, ailerons, rudder, spoilers, horizontal stabilizer, slats and flaps, and engine power levers. In the unlikely event of simultaneous failure of all digital computers or signaling, a direct control path from the pilot's controllers to the surface actuators is provided through simple analog circuitry.

Hydraulic power for the flight control system is provided by three independent hydraulic systems. Functions are shared among these systems to ensure airplane control in the event of loss of one or two systems. The three systems are pressurized by variable displacement pumps. The left and right hydraulic systems each have one pump driven by the engine accessory gearboxes. In addition, the left and right systems each have one electrically driven demand pump. The center system can be pressurized by two electrically driven hydraulic pumps. This system also has two air driven demand pumps, which use air from the airplane pneumatic system. A ram air turbine (RAT) is also available to provide hydraulic power for the primary flight controls served by the center system.

Normal electrical power is supplied by two integrated drive generators, one on each engine. An electrical generator powered by an auxiliary power unit (APU) is also available. Backup electrical power is available to selected airplane alternating current (AC) busses from two variable speed, constant frequency generators, one of which is mounted on each engine. The main direct current (DC) system can also receive power from the backup generators. Primary power for the FBW system is provided by dedicated permanent magnet generators in each of the two backup generator units. The FBW system can alternately receive power from the main DC system or the standby DC system. The standby DC system is powered by a RAT-driven AC generator, which can provide a source of standby electrical power that is not time limited. The RAT is deployed automatically upon loss of all normal and backup AC power sources. A manual deploy feature is available to the flightcrew should the RAT fail to deploy automatically.

The engine control system consists of dual channel, full authority, digital engine controls (FADEC) mounted on the fan case of each engine. The (FADEC's are interfaced with the various airplane systems to provide redundant control of the engines through a "hard-wired" throttle angle resolver system. In addition, the throttles move in proportion to commanded changes in engine power, and in the event of a total failure of the engine indicating and crew alerting system (EICAS), analog rotor speeds are available to determine engine power levels. Each FADEC provides gas generator control, engine limit protection, power management, input to the thrust reverser system, and engine parameter inputs for the flight deck displays.

Control inputs are made through conventional flight deck control wheels, columns, and rudder pedals. The flight instruments are displayed on six liquid crystal flat panel displays. Two flat panel displays are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two flat panel displays are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The type design of the Model 777 contains novel or unusual design features not envisioned by the applicable part 25 airworthiness standards, including extended range operation with two-engine airplanes and therefore special conditions are considered necessary.

Discussion

All two-engine airplanes operating under part 121 of the FAR are required to comply with § 121.161, which states, in pertinent part, that "Unless authorized by the Administrator * * * no certificate holder may operate two-engine or three-engine airplanes * * * over a route that contains a point farther than one hour flying time * * * from an adequate airport." Advisory Circular (AC) 120–42A, Extended Range Operation With Two-Engine Airplanes (ETOPS), provides an acceptable means for obtaining FAA approval for two-engine airplanes to operate over a route that contains a point farther than one hour flying time from an adequate airport. The two basic objectives of this Advisory Circular are to establish that the airplane and its supporting systems are suitable for the extended range mission and that the maintenance and

procedures to be employed in conducting ETOPS operations are adequate. This is accomplished by acquiring a substantial amount of service experience during non-ETOPS operation and then extensively evaluating this experience in the areas of systems reliability, maintenance tasks, and operating procedures. When it is determined that the appropriate reliabilities and capabilities have been achieved, the airplane is found eligible to be considered for use in ETOPS operation by an airline.

Boeing has proposed that the Model 777 be approved for ETOPS operation simultaneously with the issuance of the basic type certificate. Procedures do not exist at this time for a finding of this type. Because the timing of the proposed ETOPS type design approval for the Model 777 airplane precludes use of the guidance given in AC 120–42A regarding the accumulation of service experience, an alternative method must be devised that will provide an adequate level of inherent airplane reliability for the ETOPS mission under consideration for approval. It is important to note that the requirements for certification of the airplane regarding the design's suitability for ETOPS operation, as described in these special conditions, relate to type certification approval only. Advisory Circular 120–42A contains guidance regarding operational and maintenance practices criteria that must be met by the operator before ETOPS operations can be conducted. It is incumbent upon the operator to apply for operational approval in accordance with the guidance contained in AC 120–42A. Satisfaction of the requirements of these special conditions does not constitute operational approval.

Existing practices to achieve airplane certification safety objectives have involved definition of performance requirements, incorporation of safety margins, and prediction of failure probabilities through analysis and test. However, historical evidence, in general, indicates that a period of actual revenue service experience is necessary to identify and resolve problems not observed during the normal certification process. Successful achievement of this experience has been a prerequisite for granting ETOPS type design approval for a specific airplane engine combination. However, several recent airplane engine combinations incorporating new or substantially modified propulsion systems have demonstrated a high level of reliability consistent with ETOPS operation upon entry into revenue service. In addition, this high level of reliability was demonstrated by the small number of problems encountered during basic certification activity. These recent successful airplane and engine development and certification programs led the FAA to consider it feasible that the proposed development and certification activities of the Model 777 engine and airplane have the potential of providing a relatively "mature" product at the time of entry into revenue service. Certification criteria for early ETOPS type design approval of the Model 777 airplane is largely dependent upon a process that requires demonstration of appropriate levels of reliability. This process is designed to result in a level of airplane reliability that is equivalent to the level of reliability previously found to be acceptable based upon service experience. Since the early ETOPS development process must have a means of measuring success, the certification requirements in these special conditions focus on defining a measurement process, as well as providing a feedback loop to quickly resolve problems that may occur.

Existing ETOPS airplane/engine assessments conducted in accordance with AC 120–42A focus on two main objectives: (1) preclude any failure or malfunction that could result in diversion from intended flight; and (2) protect the safety of the airplane and occupants during the diversion. A diversion is precluded by ensuring high reliability of the propulsion system and of all other systems important to ETOPS, and resolution of all problems that compromise the safety of ETOPS flight. Safety during the diversion is protected by high reliability of the propulsion system and of those systems important to the diversion, and resolution of all problems that compromise the safety of the diversion. The early ETOPS approval criteria maintain this two-fold safety concept.

The major elements of the early ETOPS type design approval process defined in these special conditions include an ETOPS type design assessment, additional analysis requirements, additional test requirements, including 1000 flights on a complete airplane that simulate actual airline operations, a problem tracking system, and a reliability assessment that will be carried out by an FAA Reliability Assessment Board. The Reliability Assessment Board will consist of members from a broad spectrum of FAA offices, including FAA airplane and engine certification offices, FAA aircraft evaluation groups for both the engines and airplane, FAA maintenance and operational approval offices, and FAA headquarters. The Reliability Assessment Board will have a function similar to that currently carried out by the Propulsion System Reliability Assessment Board, as defined in AC 120–42A, except that the Reliability Assessment Board will have the responsibility to review all of the relevant airplane systems in addition to the propulsion system.

Design requirements and relevant service experience assessments are required as part of the ETOPS type design assessment in order to define appropriate design, test, analysis, or other manufacturing, maintenance, or operational features necessary to comply with the applicable airworthiness requirements, as well as to achieve the two-fold ETOPS objectives (i.e., *preclude* and *protect* the diversion).

These special conditions require the frequency and type of failures or malfunctions that occur during the airplane flight test program, and the additional 1000-flight ETOPS test, to be consistent with the frequency and type of failures or malfunctions that might occur on certified 180-minute ETOPS airplanes. The ETOPS Reliability Assessment Board will be responsible for evaluating these problems and their solutions, and ultimately formulating a recommendation to the Manager, Transport Airplane Directorate, regarding the adequacy of the 777 type design for 180-minute ETOPS operation.

This determination will be based on a review of the circumstances surrounding each failure or malfunction, the effectiveness of the proposed corrective action, and the potential consequences of the event on the continued safe operation of the airplane. In addition, corrective actions must be identified and implemented prior to ETOPS approval for all problems identified during the test program that could affect the safety of ETOPS operations. These corrective actions must be substantiated to be effective in eliminating both the specific problem and any similar problems elsewhere in the design. These criteria will continue to apply a "fix all problems" approach that is also the basis for all ETOPS approvals made under AC 120–42A. In the event that a problem is discovered after entry into passenger service that could compromise the safety of the ETOPS mission, the FAA will, at its option, use the Airworthiness Directive (AD) process, as provided by part 39 of the FAR, to require corrective action.

Since the granting of a finding of ETOPS suitability concurrently with the issuance of the airplane type certificate

is not envisioned by part 25 of the FAR, and since there is no appropriate guidance material available for this project, the FAA has determined that this method of finding ETOPS suitability is a "novel and unusual" feature within the meaning of § 21.16, and that therefore special conditions are required.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–93–3–NM for extended range operation of the Boeing Model 777 series airplanes was published in the **Federal Register** on May 5, 1993 (58 FR 26710).

Seven commenters responded to the proposed special conditions. Some of the comments were of an editorial or clarifying nature and have been incorporated where appropriate. A discussion of the remainder of the comments follows.

General Comments

Two commenters are opposed to granting 180-minute ETOPS approval at type certification without some kind of in-service experience.

The first commenter does not recommend any specific service experience requirement. This commenter does, however, recognize that the special conditions require some in-service experience to be simulated prior to certification. This commenter's "bottom line" is that this "equivalent in-service experience" must be a suitable substitute for "actual" in-service experience. The second commenter opposed to 180-minute ETOPS approval at type certification states that 120-minute ETOPS approval could be granted if all aspects of the special conditions approval plan have been completed. This commenter suggests that 180-minute ETOPS approval should be granted only after the accumulation of 20,000 engine hours for derivative technology powerplants, and 50,000 engine hours for new technology powerplants. It appears that the commenter's rationale for this position results from trying to balance the benefits of the lessons learned analyses, test programs, and problem detection and resolution programs with the limitations of those programs.

The FAA disagrees with the two commenters' position that some in-service experience should be required for 180-minute ETOPS approval at type certification. These special conditions consist of five main elements that provide adequate compensation for the service experience requirements previously used to establish 180-minute ETOPS eligibility. No single element is sufficient by itself, but together, the five elements provide an acceptable substitute for actual airline service experience. Any limitations of specific special condition elements were taken into account in the development of these special conditions. A general description of the five elements follows:

First Element: Design for Reliability. Paragraph (c)(1) requires that the propulsion system be designed to preclude failures and malfunctions that could result in an engine inflight shutdown. Propulsion systems on previous airplanes were designed and certified to be "fail-safe," in compliance with § 25.901 of part 25; in other words, any single failure, or probable combination of failures, would not jeopardize continued safe flight and landing of the airplane. Because safe flight following an engine shutdown is required by part 25, preventing engine inflight shutdowns has not been a major design objective on previous airplane designs. The additional design requirement in these special conditions to preclude failures and malfunctions that could result in an engine inflight shutdown has an enormous effect on propulsion system reliability in that normal design decisions must now consider whether a failure or malfunction might result in an engine inflight shutdown.

Second Element: Lessons Learned. Paragraph (c)(2) requires the airplane to be designed to prevent problems that have resulted in inflight shutdowns or diversions on previous airplanes (lessons learned). This process focuses on eliminating specific known failure causes from the new airplane design to allow some margin for unforeseen failure causes without having a detrimental effect on overall airplane and propulsion system reliability.

Third Element: Test Requirements. Testing required by paragraph (c)(4) must prove the effectiveness of design features incorporated into the new airplane to prevent problems that have resulted in inflight shutdowns or diversion on previous airplanes. This validates that the specific lessons learned fixes work. The extensive validation testing of the Model 777 required by paragraph (e) of these special conditions, including the 3000-cycle engine test and 1000-cycle airplane test, is designed to discover basic design flaws to a much greater extent than has ever been undertaken in any previous airplane development program. This includes testing to substantiate the suitability of any technology new to the applicant. The environmental conditions (hot and cold temperatures, high vibration, etc.) to which the engines and airplane will be exposed during this testing will allow the FAA the opportunity to observe the integrity of the airplane design under conditions that have taken a fleet of airplanes years to accumulate. Ninety-nine percent of problems resulting in inflight shutdowns have occurred within 3,000 cycles on airplanes that have been evaluated under the provisions of AC 120–42A. Based on this, the FAA has determined that, after completing the airplane and engine testing defined in these special conditions, sufficient experience will have been gained to reveal virtually all potential causes of inflight shutdowns.

Fourth Element: Demonstrated Reliability. Paragraph (h)(1) requires that, for the engine and airplane systems, the number and types of failures that occur during the airplane flight test program and the 1000 flight cycle ETOPS test must be consistent with the number and types of failures or malfunctions that would be expected to occur on presently certified 180-minute ETOPS airplanes. This requirement gives the FAA assurance that the overall design maturity is at a level expected of current in-service ETOPS airplanes.

Fifth Element: Problem Tracking System. Paragraph (f) requires that problems that could impact the safety of ETOPS operations occurring during airplane development and certification testing must have proven fixes incorporated into the design before the airplane may be approved for ETOPS operations. All such problems occurring after the airplane begins ETOPS operations must be promptly reported in order that the FAA may require appropriate corrective actions. This requirement ensures that the risk of additional occurrences of any unforeseen failures that could affect the safety of ETOPS operations is low.

The second commenter opposed to 180-minute ETOPS approval without some in-service experience also states that any deficiency in compliance with the approval plan should result in some lesser level of approval from that sought. This position is consistent with these special conditions. Paragraph (h)(2) specifies that if the corrective action for unplanned engine shutdown or loss of thrust, or any problem that jeopardizes the safety of an airplane diversion, occurring during airplane flight testing, requires a major system redesign, this would be cause for delayed ETOPS type design approval, or approval for reduced single engine diversion time.

The same commenter also suggests changes to several paragraphs of these

special conditions. The FAA has reviewed these suggested changes and considers that they are equivalent to the FAA wording and do not clarify the requirements. Therefore, they have not been adopted.

A third commenter does not directly oppose the concept of ETOPS approval at the time of airplane type certification, but suggests that the special conditions should depart from the existing AC 120–42A policy only where warranted by the experience of previous ETOPS programs. Starting with this premise, the commenter then identifies specific problem areas with the proposed special conditions.

First, the commenter questions the FAA's assessment that several airplane engine combinations incorporating new or substantially modified propulsion systems have demonstrated a high level of reliability consistent with ETOPS operation upon entry into revenue service. The commenter states that there is no single example of a completely new product (airplane and engine) that achieved stable reliability consistent with 180-minute ETOPS at entry into service, and that only those products with a high level of similarity to previous designs actually achieved this level of reliability.

The FAA disagrees with this commenter's distinction between "new" and "derivative" engines. There has been much discussion within the industry about gaining some service experience credit for derivative engines versus totally new designs in the application of the service experience criteria of AC 120–42A. However, the industry has never been able to agree on a standard by which to differentiate between derivative and new engine designs. In a sense, every engine to be developed since the first turbine engines were introduced are derivatives of previous designs. Each new engine type has benefited from the engine manufacturer's experiences with earlier models. Successful design features are kept and improved upon while unsuccessful ones are taken out of new designs. As a result, the FAA is not depending on whether the engines are, or are not, derivative in applying the requirements of these special conditions. The requirements apply equally in either case.

The FAA's assessment was based on a review of new propulsion system installations since the beginning of ETOPS operations in 1985. As an example, the only completely new two-engine airplane now in ETOPS service to be certified since ETOPS operations began is the Airbus A320. A review of the propulsion system reliability of the CFM56–5 series engine installation on the A320, as measured by a 13-month rolling average of the inflight shutdown (IFSD) rate, indicates an IFSD rate of 0.14/1000 engine hours four months after airplane entry into service. The IFSD rate, 0.02 for 180-minute ETOPS operations as defined in AC 120–42A, is not achieved until 16 months after entry into service.

At first glance, it appears that the A320 airplane did not exhibit an acceptable ETOPS propulsion system reliability until a substantial amount of service experience had been accumulated. A closer look at the data, however, reveals that there were only two inflight shutdowns in the first two years of revenue service. By the time the first inflight shutdown dropped out of the 12-month rolling average IFSD rate, the accumulation of engine fleet operating hours had reduced the rate to below the 0.02 standard for 180-minute ETOPS operation. The rate has been stable below that mark ever since. This clearly indicates that the A320 airplane with CFM56–5 engines achieved the high standard of propulsion system reliability at the time of type certification that led the FAA to consider defining a process that would have demonstrated the attributes of a relatively mature product at the time of entry into revenue service. The A–320 airplane achieved this high level of reliability even without the five-element certification program to ensure reliability that is required by these special conditions.

The same commenter also questions the FAA's statement in the proposed special conditions that a high standard of propulsion system reliability on several recently certified airplane engine combinations was evidenced during basic certification by a small number of problems encountered. The commenter states that there is no clear relationship between the number of problems that may be encountered during certification tests and the reliability level for ETOPS in such areas as engine IFSD rates, electronic generator failure rates, and failure rates of other ETOPS significant systems and components. The commenter goes on to state that the reliability levels required for ETOPS are too high for direct statistical demonstration during a test program with a sufficient level of confidence.

The FAA agrees with this commenter's assessment of the statistical confidence achieved by certification testing alone. The FAA did not intend to imply that a small number of problems occurring during type certification in any way demonstrates a statistically significant sample from which to base a failure rate calculation with a high degree of confidence. The correlation referred to by the FAA is that, relative to other airplane programs, the occurrence of a higher number of basic design problems during type certification testing generally has resulted in a higher number of problems occurring after the airplane entered service. Those airplanes with the best propulsion system reliability after entry into service have also, in general, encountered fewer design problems during the type certification program.

Even without the statistical confidence the commenter is referring to, experience has also shown that, in general, predictions of mature component reliability made in analyses for showing compliance with the safety assessment requirements § 25.1309 of the FAR have been conservative when compared with the actual achieved reliability in service. In most cases, the types of problems that prevent a system or component from achieving the predicated, mature level of reliability have been basic design or manufacturing deficiencies that could have been detected if extensive enough testing had been accomplished during development and certification prior to entry into service. Random type failures have not been a major contributor to unreliability. Therefore, the FAA is confident that a design will achieve a high level of reliability based on development and certification test results, provided the testing is thorough in evaluating all potential failure sources. The special conditions' relevant experience, analysis, and test requirements define the methods that must be used to accomplish a thorough evaluation of failure sources.

The same commenter states that the quantitative objectives for engine inflight shutdown rate from AC 120–42A do not appear in the special conditions. The commenter recommends that these objectives be retained and compliance shown using a rational method that provides a sufficient level of confidence.

As stated above, the FAA does not consider the testing to be accomplished during the certification program to provide a statistically significant sample from which to calculate a failure rate with a high degree of confidence. Based on this assessment, a rational method for calculating an inflight shutdown rate that provides a sufficient level of confidence does not appear to be achievable. As discussed above, experience has shown that failure rate calculations can provide misleading information when used for testing and

as a performance indicator of a limited number of units. As designed, the special conditions provide for assessment of demonstrated reliability in conjunction with oversight of corrective action, as well as overall performance, to make the eligibility assessment. This more comprehensive approach is more meaningful as an overall safety assessment process and permits the applicant to correct any discrepancy, rather than just delay the program. Therefore, the FAA did not include a quantitative inflight shutdown rate requirement in the special conditions. Specific evaluation of each problem and corresponding corrective action by the Reliability Assessment Board will provide confidence that appropriate corrective action is taken for each problem uncovered during testing.

Another commenter is concerned that a significant increase in drag would occur during a single engine diversion with a failed engine that has a locked rotor compared to a windmilling engine, due to a further reduction of mass flow through the inlet. This commenter suggests that ETOPS operational stability and control and extended range performance be based on wind tunnel test data, obtained at high Reynolds number, over the complete engine-inoperative flight envelope, with locked engine rotor airflow accurately represented.

The FAA considered the effects of a locked engine rotor on a single engine diversion during the development of the existing approval criteria defined in Advisory Circular 120–42A. The AC lists several factors that must be considered when planning how much fuel is required to dispatch an airplane for ETOPS operations. These include current forecast winds and meteorological conditions along the expected flight path, operation of ice protection systems and performance loss due to ice accretion on the unprotected surfaces of the airplane, operation of auxiliary power units, loss of airplane pressurization, an approach followed by a missed approach and subsequent approach and landing, navigational accuracy, and air traffic control constraints. Additional contingency fuel reserves are added to account for errors in wind forecasts, and deterioration of cruise fuel mileage from that provided the performance planning data. The FAA considered the addition of a "locked rotor" condition to be overly conservative and that any increase in drag would be adequately covered by existing fuel reserve requirements for ETOPS operations. Any effect that a locked engine rotor may have on airplane stability and control is a basic airplane airworthiness issue, and is covered as part of the basic 777 airplane certification program. Therefore, the FAA has concluded that a locked engine rotor is being adequately addressed without the need to change the ETOPS special conditions.

One commenter states that the special conditions do not address the conditions for approval of future design variants (e.g., higher thrust ratings or major engineering design changes that result in new engine model designations). This commenter expects the requirements to be different for later design changes in terms of test and assessment methods. While the FAA agrees that the test and assessment methods will be different for later design changes, the FAA does not agree that it is necessary to define specific requirements for future design variants. These special conditions address the initial certification of an airplane for ETOPS operations without the prerequisite service experience defined in Advisory Circular 120–42A. Upon issuance, these special conditions become a part of the airplane type certification basis for ETOPS type design approval. Future changes in design must meet the applicable requirements of these special conditions. However, the scope of specific test conditions and assessment methods used for particular design changes may differ from the initial ETOPS assessment program. This would depend on the degree of commonality with the existing approved design and how much credit for service experience the new design may be given. The methods to be used to show compliance with the special conditions requirements will be approved as part of the certification process. This process will be similar to what is currently done for existing approved ETOPS airplanes to determine if service experience is necessary before a design change becomes eligible for ETOPS operations.

This same commenter is concerned about the process to control and administer the airplane configuration, maintenance, and operational procedures pertinent to the ETOPS approval. This commenter is concerned about a statement at the end of the discussion section of the notice that appears to imply that the ETOPS configuration, maintenance, and procedures (CMP) document revision process is replaced by the airworthiness directive (AD) process. The FAA does not agree. The CMP document is a product of the ETOPS approval process defined in AC 120–42A. It defines the airplane configuration and any maintenance or operational procedures, beyond the baseline airplane definition, that are necessary to safely operate an airplane in an ETOPS operation. The need for the CMP document originated when airplanes approved under the AC guidance were not originally certified in consideration of the ETOPS mission. With a new airplane designed and certified in accordance with these special conditions, it is expected that a CMP document would contain very few items, since it is the intent of the manufacturer to build only ETOPS eligible airplanes. However, it is possible that the Reliability Assessment Board may require interim problem corrective actions to be incorporated as a condition for ETOPS approval, until final corrective actions become available several months after the airplane enters service. These conditional configuration requirements would need to be defined in a CMP document. In response to problems occurring after the airplane enters service, additional items may be added to the CMP in order to define an airplane configuration that may be used by 777 ETOPS operators to maintain acceptable system reliability in accordance with the existing CMP revision process identified in paragraphs 8g and 8h of AC 120–42A. The CMP document does not replace the AD process referred to by the commenter. Any problems occurring in service that would significantly affect the safety of an ETOPS operation will result in an AD being issued. The AD may reference a CMP document revision that defines the required configuration, but it does not have to.

Engine Assessment

One commenter recommends that the procedures for an engine condition monitoring program, required by paragraph (b)(2), should consider 200 minutes operation at maximum continuous thrust, followed by 5 minutes at inflight takeoff or go-around thrust. The commenter's rationale for this recommendation is that guidance for the maximum thrust required for a single engine diversion should be specified and that a realistic diversion thrust requirement should be padded by 20 minutes above the specified maximum diversion time. The FAA does not agree. Traditional engine condition monitoring programs are designed to determine if maximum takeoff thrust can be achieved. The intent of the validated condition monitoring program required by paragraph (b)(2) is to provide a means to determine when an engine is no longer capable of achieving maximum continuous thrust within approved engine limits. The duration that the

thrust would be available is not a consideration in this requirement, only that adequate thrust would be available. Based on current experience with engine deterioration rates, the engine certification requirements contained in part 33 of the FAR demonstrate that maximum continuous thrust will be available for any conceivable diversion time. It is not intended that the condition monitoring program identified in paragraph (b)(2) be able to predict impending failure conditions. Therefore, paragraph (b)(2) is adopted as proposed.

Design Requirements Assessment

One commenter states that paragraph (c)(1) of the special conditions only refers to the design requirements of part 25 and "does not call up the design requirements in AC 120–42A, paragraphs 8b(7), (8), (9), (10), and (11)." The FAA infers from this comment that the commenter desires that the AC paragraphs noted above be incorporated in the special conditions. The FAA agrees that the AC criteria are important; however, the advisory circular provides policy guidance for obtaining ETOPS approval for already certified two-engine airplanes. The design criteria referred to by the commenter were developed to allow approval of airplanes for which ETOPS types of operations were not considered when they were originally certified to part 25 airworthiness standards. With one exception, existing part 25 airworthiness standards are sufficient to properly certify a new two-engine airplane for ETOPS operation, as long as the ETOPS mission is considered in applying these requirements for all anticipated dispatch configurations. The purpose for the design requirements assessment of paragraph (c)(1) of these special conditions is to define the specific methods that will be used to show compliance with the part 25 airworthiness requirements when considering the ETOPS mission. These methods may include additional design features, analyses, tests, or a combination of the three. Depending on the system design, the specific design criteria called out in AC 120–42A may not be necessary or appropriate on a new airplane design.

The one exception to the airworthiness standards contained in part 25 that is necessary in order to certify an ETOPS suitable airplane is a requirement to design the airplane to preclude failures or malfunctions that could result in an engine inflight shutdown. Existing propulsion system installation requirements are based on the "fail-safe" concept. In other words, continued safe flight and landing are assured after any single propulsion system failure. Propulsion system reliability is not a major design consideration in existing airworthiness standards because failures must be shown to be "safe." ETOPS criteria are intended not only to ensure continued safe operation after an engine inflight shutdown, but also to prevent the failure condition that resulted in the shutdown. This additional requirement to prevent engine inflight shutdowns was included in paragraph (c)(1) of these special conditions. Based on these considerations, the special conditions are adopted as proposed.

The commenter also refers to several new design features that were considered during the development of the early ETOPS special condition, and questions why they were not included in the final proposal. Examples given include a 22,000 foot single engine cruise altitude, and a specific list of electrical services to be powered in the backup electrical configuration. As stated above, the FAA has determined that the existing airworthiness standards defined in part 25 are sufficient to properly certify a new two-engine airplane for ETOPS operation, as long as the ETOPS operational mission is considered in finding compliance. The FAA has also determined that including specific design requirements such as the two examples cited above may be too restrictive in defining what the applicant could do to comply with the safety objectives of part 25. This might result in a design requirement being imposed that is inappropriate because of a change in the airplane design that was not considered in the development of that requirement. However, as part of the requirements assessment, paragraph (c)(3) of the special conditions requires the applicant to consider the types of design features that the commenter is referring to, and to list those specific design features that are included in the airplane design to accommodate the ETOPS mission. The FAA therefore does not consider it necessary to revise the special conditions.

Another commenter states that the design feature consideration for fuel quantity indication to the flight crew in paragraph (c)(3)(i)(C) should include alerts for abnormal fuel management or transfer between tanks in addition to the other listed considerations. The FAA agrees with this comment and has revised paragraph (c)(3)(i)(C) accordingly.

Relevant Experience Assessment

One commenter recommends that paragraph (c)(2) clearly indicate that the relevant experience assessment shall include a demonstration of the applicability of the past experience to the new design, at the appropriate system, sub-system, or component level. The commenter suggests that this demonstration may be based on an engineering comparison at the appropriate level, but shall also be backed by comparison testing where the design differences are significant. The commenter supports this comment with the statement that there is substantial evidence that beyond a certain level of difference between the product that produced the past experience and the new product, the "lessons learned" assessment process ceases to be fully effective.

The FAA agrees that beyond a certain level of commonality, past experience may not be relevant to the new design. This is particularly true where a specific design feature that contributed to problems in previous airplanes is not a part of the new airplane design. However, the FAA does not concur that a change in the special conditions is necessary to achieve the results desired by the commenter. The demonstration of the applicability of past experience to the new design is inherent in the relevant experience assessment. Paragraph (c)(2) of the special conditions requires that corrective actions taken to preclude similar problems from occurring on the new airplane must be identified. Removal from the design of a system, sub-system, or component that has had problems in the past may be an acceptable corrective action, as long as it precludes similar problems from occurring. In addition, paragraph (c)(4) requires the applicant to define specific new or enhanced tests that will be used to assure engine and airplane system design integrity. In complying with this requirement, the tests derived from the relevant experience assessment will be used to substantiate that effective corrective action has been taken for each source of past problems.

This commenter also states that where new technology is introduced, the lessons learned assessment becomes impractical, as there is no previous experience with this technology. While the FAA agrees that there will be no previous experience with a new technology, there may still be applicable relevant experience. For example, an applicant's previous experience with new technology introductions may lead to changes in manufacturing and quality control processes. Further, lessons learned of general applicability can be introduced into the new technology design, such as a general design practice

to prevent cross-connector installation. The FAA has determined that the existing special conditions requirements meet the intent of the commenter's recommendation; therefore, the commenter's specific recommended change has not been adopted.

The same commenter also states that the special conditions should clearly indicate how much direct service experience shall be required in the case of a completely new design utilizing technology new to the manufacturer, for which no basis of relevant experience exists. The FAA does not concur. As stated above, there may be applicable relevant experience even for a completely new design incorporating new technology. In addition, relevant experience is only one aspect of these special conditions. It is not the only mechanism by which the airplane would be assessed for ETOPS approval. Among the other requirements, paragraph (e)(4) requires the applicant to conduct tests to substantiate the suitability of new technology. The commenter's recommended change therefore has not been adopted.

Additional ETOPS Test Requirements

One commenter recommends that the configuration requirements of paragraph (e)(1) also apply to the testing defined in paragraph (c)(4). The commenter's rationale for this recommendation is that the merits of incorporating sufficient component interfacing to simulate actual airplane installation interactions should justify expanding this requirement to other critical ETOPS systems not specifically enumerated in paragraph (e). The FAA appreciates the concerns expressed by the commenter, but does not agree that this recommendation is practicable. The scope of the testing covered under paragraph (c)(4) is such that many of the new or enhanced tests may be done with prototype hardware at the bench or component level early in the development program when sufficient interfacing system hardware is not available. In accordance with paragraph (c)(4), the applicant must define each test that will be used to assure design integrity. The enhanced testing defined by this paragraph will include the configuration proposed for certification and sufficient interfacing system hardware and software to simulate the actual airplane installation when it is necessary to accomplish this goal. As for other critical ETOPS systems not specifically identified in paragraph (e), the 3000-cycle engine and auxiliary power unit tests and 1000-cycle airplane test will provide an adequate opportunity to discover design problems with these systems.

1000-Cycle Airplane Test

One commenter questions the requirement to install either the 3000-cycle test engine or another high-cycle engine for part of the 1000-flight-cycle airplane test by stating that the rationale for the requirement is unclear. This commenter considers that a complete strip and inspection of the high-cycle engines to identify incipient problems is a more effective way of establishing early ETOPS suitability, than by inclusion in the flight program. This commenter goes on to say that history has shown that new problems are more likely to be exhibited by lower life engines rather than by mature engines, and the relevance of potentially non-representative high life failures is not immediately obvious.

The FAA does not concur with the commenter's assessment that any failures on the 3000-cycle engine during the 1000-cycle airplane test would be a non-representative high life failure. The 3000-cycle engine is representative of a high-time engine that would exist if the AC 120–42A criteria for operating experience for 180-minute ETOPS approval were considered. The 3000-cycle ground test will not subject the engine and engine-mounted airplane equipment to representative altitude conditions that the FAA is concerned may impact overall reliability. The reason for including the 3000-cycle test engine and its associated propulsion system equipment, or another suitable high-cycle engine and propulsion system, on the 1000-cycle airplane test vehicle is to expose an "aged" engine to altitude effects not possible to achieve on a ground test stand. Flight time with this aged engine will give the FAA additional confidence that the results achieved during the ground cyclic testing are representative of the actual airplane environment that is used to assess propulsion system reliability for ETOPS type design approval using the AC 120–42A criteria.

This same commenter expresses concern that a complete teardown and inspection of the high time engine will not be possible if it is installed on the 1000-cycle test airplane. The FAA does not agree. A complete teardown and inspection is planned for every engine and all the engine-mounted airplane equipment subjected to the 3000-cycle test. A teardown inspection is required in order for the Reliability Assessment Board to assess the design suitability for ETOPS approval in accordance with paragraph (g) of these special conditions. It was this concern for obtaining meaningful teardown results from the 3000-cycle test engine that prompted the FAA to allow another suitable high-cycle engine to be installed on the 1000-cycle test airplane. In addition, an airworthiness inspection will be performed on the high-time engine prior to its installation on the airplane in order to ensure that the engine complies with the maintenance manual acceptance limits for continued operational service. Any problems found during the airworthiness inspection will be reported in accordance with the problem tracking system requirements, and necessary repairs will be made prior to the engine's installation on the 1000-cycle test airplane.

One commenter recommends that "actual airline operation," as used in paragraph (e)(7), "be defined such that five percent of the 1000 flight cycles should be at altitudes and of duration typical of actual ETOPS operations to ensure no adverse impact on any aircraft systems and engines due to extended cold soaking, etc." The FAA agrees with the commenter's assessment of the need for high altitude, long duration flight cycles. However, the FAA does not concur with the commenter's suggested change. The mix of flight cycles to be flown during the 1000 cycle test is based on an assessment of flight operating conditions that have led to the types of problems that have occurred in service on those airplane engine combinations that currently have 180-minute ETOPS approval. The number of high altitude, long duration flight cycles that will be flown for each of the engine types to be certified on the 777 airplane is a result of this assessment combined with additional flight cycles that are necessary to validate airline operational readiness. The FAA considers that the change proposed by the commenter would unduly restrict the FAA in requiring development of an appropriate test plan for the 1000 cycle test.

Another commenter recommends that the "1000 cycle test should be done using published maintenance manual criteria in lieu of unique engineering allowances." The FAA concurs with this comment. It has always been the FAA's intent that the 1000-cycle airplane would be operated and maintained using the recommended operations and maintenance manual procedures. This is to validate that operating and maintenance procedures to be used during airline operations are correct and will not lead to errors that may result in engine inflight shutdowns or airplane diversions. Paragraph (e)(7) has been amended to make this clarification. In addition, the paragraph

has been reorganized to more clearly state the requirements.

Problem Tracking System

One commenter recommends that any problem reported under the problem tracking system must be under control within a maximum of 30 days. The FAA does not concur that the addition of a time limit is necessary or appropriate. The proposed special conditions did not specify a particular time interval by which all problems must be "under control." The intent of the problem tracking system is to provide a means by which the FAA will be promptly notified of problems occurring on the design so that the FAA Reliability Assessment Board can ensure that appropriate timely resolutions are implemented. Depending on the severity of the problem, a more immediate response than 30 days may be appropriate. For less severe problems, a slower response may be allowable. In each case, the FAA Reliability Assessment Board will determine the appropriate time interval for resolution of all ETOPS significant problems identified by the problem tracking system. Defining a specific time interval for problem resolution is too restrictive and, therefore, the FAA has not adopted the commenter's proposal in the final special conditions.

Reliability Assessment Board

One commenter is concerned that the proposed FAA Reliability Assessment Board (RAB) might be over-represented by FAA engine specialists. Specifically, the commenter would like the special conditions to include references to systems, avionics, and flight control representatives, as well as field inspectors, to help ensure a balanced board makeup. The FAA does not concur that identifying specific system specialists is appropriate. The purpose of the RAB is to address the suitability of the entire airplane for ETOPS and not just the propulsion system, as was the case with the Propulsion System Reliability Assessment Board defined in AC 120–42A. As stated in the preamble to the notice of these special conditions, the board will consist of members from a broad spectrum of offices, including FAA airplane and engine certification offices, FAA aircraft evaluation groups for both the engines and airplane, FAA maintenance and operational approval offices, and FAA headquarters. In addition to the Seattle Aircraft Certification Office (Seattle ACO), the following offices have been requested to support the RAB:

Los Angeles Aircraft Certification Office
Engine Certification Office
Flight Standards Air Transportation Division
Flight Standards Aircraft Maintenance Division
Flight Standards Technical Programs Division
Seattle Aircraft Evaluation Group
Boston Aircraft Evaluation Group
United Airlines FAA Certificate Management Office
(Pratt & Whitney engine installation only)

These special conditions define specific findings that the RAB must make in order to determine that the 777 airplane is suitable for 180-minute ETOPS operations. It is implicit in each of these findings that FAA technical specialists be involved in the decision process. This is in keeping with existing type certification practice. Therefore, naming specific system specialties for RAB membership is not necessary.

Reliability Demonstration Acceptance Criteria

One commenter states that proposed paragraph (h)(1) implies a direct relationship between the type and frequency of engine and systems events occurring during the test program and the demonstrated reliability of existing approved 180-minute ETOPS airplanes. This commenter goes on to state that this paragraph could be interpreted as a statement that a sample of 1000 flights is enough to produce a statistical demonstration of reliability, and recommends adding wording to the effect that "flight test and laboratory test * * * are not used to produce directly a measure of the reliability." The FAA infers from this statement that the commenter does not consider the reliability demonstration acceptance criteria of paragraph (h)(1) to provide a statistically meaningful assessment of airplane reliability.

While the FAA agrees that the airplane flight test program and the 1000-flight-cycle ETOPS test referred to in paragraph (h)(1) will not form a statistically significant sample from which to produce a direct measurement of reliability, a statistical calculation of reliability is not the intent of the requirement. As stated earlier, the occurrence of a relatively high number of basic design problems during type certification testing generally has resulted in a higher number of problems occurring after the airplane enters service. Those airplanes with the best propulsion system reliability after entry into service have also, in general, encountered relatively few design problems during the type certification program. Paragraph (h)(1), then, provides a measurement of design maturity based on the experience from past certification programs. The standard used to judge this maturity is the type and frequency of failures occurring on already certified 180-minute ETOPS airplanes. This is not to say that it is necessary to do a direct comparison of failure rates system by system. In gross terms, the FAA is expecting the 777 flight test airplanes to experience the same kinds of problems at about the same frequency that are occurring on ETOPS airplanes in revenue service. These special conditions define the standard by which the suitability of the 777 airplane will be assessed for ETOPS approval. The FAA does not consider it necessary to state that the testing does not produce a direct measure of reliability.

Demonstration of Compliance

One commenter recommends adding a new paragraph (i)(8) that would read as follows: "The accelerated engine cyclic endurance test program of paragraph (f)(5) must be in place." The commenter's rationale for this recommendation is that is it necessary to require timely program startup and to ensure that the test engine cycles remain well ahead of high-cycle revenue fleet engines. The FAA agrees with this comment and has added a new paragraph (i)(7) to the special conditions. Previously designated paragraph (i)(7) has been redesignated as paragraph (i)(8).

Miscellaneous Comments

One commenter notes that in the second sentence of paragraph (e)(6) the word "administration" appears to be a typographical error that should read "demonstration." The commenter is correct and the final special conditions are corrected as noted.

Some comments were received concerning compliance methods, although these commenters did not recommend any changes to the special condition requirements. These special conditions address the regulatory standards to be applied in obtaining Early ETOPS approval. The means by which compliance is demonstrated is not specifically addressed in this action. The specific methods that Boeing will use to demonstrate compliance with these special conditions will be approved as part of the normal certification process. This will be accomplished by FAA approval of the ETOPS type design assessment plan, required by paragraph (a) of these special conditions.

One comment concerns the process for an airline to receive early ETOPS operational approval. Operational approval is not addressed by these special conditions. As stated earlier,

Advisory Circular 120–42A contains guidance regarding operational and maintenance practices criteria that must be met by the operator before ETOPS operations can be conducted. Satisfaction of the requirements of these special conditions does not constitute operational approval.

With the exception of the revisions noted above, the special conditions for extended range operation of the Boeing Model 777 airplane are adopted as proposed.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Boeing Model 777 airplane:

In addition to the airworthiness requirements of part 25 of the Federal Aviation Regulations (FAR), the Model 777 airplane must comply with the following requirements in order to be eligible for Extended Range Operation with Two-Engine Airplanes (ETOPS) without the requisite operating experience specified in Advisory Circular (AC) 120–42A:

(a) *Introduction.* An approved ETOPS Type Design Assessment Plan covering the engine and each applicable airplane system must be established. The specific methods that will be used to substantiate compliance with the requirements of these special conditions must be defined in the plan. Specific systems that will undergo the complete analysis, testing, and development program tracking defined in paragraph (c) of these special conditions must be identified. Other airplane systems that may contribute to the overall safety of an ETOPS operation, but that do not warrant the rigorous type design requirements and relevant experience assessments defined in paragraph (c) of these special conditions, must be identified and agreed to by the FAA. Compliance must be shown for these other systems with all provisions of these special conditions, except paragraph (c). In showing compliance with these special conditions, tests and analyses conducted to substantiate compliance with the basic airworthiness standards of part 25 may be referenced, if applicable.

(b) *Engine Assessment.*

(1) The ETOPS eligibility of the engine must be determined specifically for the airplane installation for which early ETOPS type design approval is requested.

(2) Procedures for an engine condition monitoring program must be defined and validated at the time of ETOPS type design approval. The engine condition monitoring program must be able to predict when an engine is no longer capable of providing, within certified engine operating limits, the maximum thrust required for a single engine diversion.

(c) *ETOPS Type Design Assessment.*

(1) *Design requirements Assessment.* Part 25 of the FAR, including applicable amendments, defines most of the requirements necessary to design an airplane that is suitable for ETOPS operation, as long as the ETOPS mission is considered in applying these requirements for all anticipated dispatch configurations. In addition to these requirements, the propulsion system must be designed to preclude failures or malfunctions that could result in an engine inflight shutdown. The applicant must identify and list methods of compliance for each of the applicable ETOPS requirements, including those specific part 25 requirements for which methods of compliance relative to the ETOPS mission are different from those traditionally used for two-engine airplanes. Paragraph (c)(3) of these special conditions lists certain design feature categories that may be affected by a consideration of the ETOPS mission in the design of these systems. The effects of the applicable ETOPS requirements on the design of any of those design feature categories listed in paragraph (c)(3) must be specifically addressed by this assessment.

(2) *Relevant Experience Assessment.* For each system covered by the ETOPS Type Design Assessment, there must be an assessment of the relevant design, manufacturing, and operational problems experienced on previous airplanes built by the applicant. The assessment must include the applicable relevant service experience of vendor supplied systems or, to the extent possible, the service experience of components on aircraft built by other manufacturers. Specific corrective actions taken to preclude similar problems from occurring on the new airplane must be identified.

(3) *Design Features.*

(i) The applicant must define any design features implemented to comply with the design requirements listed in paragraph (c)(1). Consideration of the following design feature categories must be specifically addressed:

(A) Airplane capabilities and capacities of the ETOPS mission;

(B) Fuel system integrity, including consideration of uncontained main engine rotor burst and fuel availability as affected by cross-feed capability and electrical power to pumps and other components;

(C) Fuel quantity indication to the flightcrew, including alerts that consider the fuel required to complete the mission, abnormal fuel management or transfer between tanks, and possible fuel leaks between the tanks and the main engines;

(D) Communication systems for the ETOPS environment;

(E) Navigation systems for the ETOPS environment;

(F) Minimum single engine cruise altitude capability; and

(G) Failure tolerant designs of cockpit indicating systems or avionics systems to prevent unnecessary airplane diversions.

(ii) The applicant must define the specific design features used to address problems identified in the relevant service experience assessment of paragraph (c)(2).

(4) *Test Features.* The applicant must define specific new tests, or enhanced tests, that will be used to assure engine and airplane system design integrity. These test features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(5) *Analysis Features.* The applicant must define specific new analyses, or enhanced analyses, that will be used to assure engine and airplane system design integrity. These analysis features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(6) *Manufacturing, Maintenance, or Operational (Other) Features.* The applicant must define specific new, or enhanced, manufacturing processes or procedures, and maintenance or operational procedures that are being implemented to assure engine and airplane system integrity. These "other" features may be derived from the requirements assessment of paragraph (c)(1) of this section and the relevant service experience assessment of paragraph (c)(2).

(d) *Additional EOPS Analysis Requirements.*

(1) *Performance and Failure Analyses.* Engine and airplane performance and failure analyses required for certification must be expanded to consider ETOPS mission requirements, including exposure times associated with a 180-minute single-engine diversion and a subsequent 15-minute hold in the terminal airspace at the diversion airport. Consideration must be given to crew workload and operational implications of continued operation with failure effects for an extended period of time. The rationale and all assumptions used in the analyses must be documented, justified, and validated, including maintenance interval and maintainability assumptions.

(2) *Maintenance and Flight Operations Evaluation.* The Type Design Assessment Plan must contain a program to systematically detect and correct problems occurring as a result of improper execution of maintenance or flight operations. Corrective actions for any problems found must be identified and implemented through the Problem Tracking and Resolution System required by paragraph (f).

(3) *Manufacturing Variability.* The Type Design Assessment Plan must contain a program to minimize potential manufacturing problems. The plan should address early validation of tooling and procedures, as well as any related problems, as identified in paragraph (c)(2). Corrective actions for problems that impact the safe

operation of the airplane must be identified and implemented through the problem tracking and resolution system required by paragraph (f).

(e) *Additional ETOPS Test Requirements.* As part of, or in addition to, the testing identified in paragraph (c)(4), the following specific test requirements apply:

(1) *Configuration Requirements.* All testing defined in paragraph (e) must be conducted with the configuration proposed for certification, and must include sufficient interfacing system hardware and software to simulate the actual airplane installation.

(2) *Completion of Applicable Failure Analyses.* Failure analyses required for ETOPS type design approval must be submitted to the FAA prior to the start of the testing defined in paragraph (e).

(3) *Vibration Testing.* Vibration testing must be conducted on the complete installed engine configuration to demonstrate that no damaging resonances exist within the operating envelope of the engine that could lead to component, part, or fluid line failures. The complete installed engine configuration includes the engine, nacelle, engine mounted components, and engine mounting structure up the strut to wing interface.

(4) *New Technology Demonstration Testing.* Testing must be conducted to substantiate the suitability of any technology new to the applicant, including substantially new manufacturing techniques.

(5) *Auxiliary Power Unit Demonstration Test.* If requesting credit for APU backup electrical power generation, one auxiliary power unit (APU), of the type to be certificated with the airplane, must complete 3000 equivalent airplane operational cycles.

(6) *Engine Demonstration Test.* One engine of each type to be certificated with the airplane must complete 3000 equivalent airplane operational cycles. The engine must be configured with a complete airplane nacelle package for this demonstration, including engine-mounted-equipment.

(7) *Airplane Demonstration Test.* For each engine type to be certificated with the airplane, one complete airplane must complete at least 1000 flight-cycles simulating an actual airline operation.

(i) The airplane must be exposed to representative environmental variations within the normal expected airplane operational envelope during the 1000 cycles.

(ii) The 3000-cycle test engine and propulsion system specified in paragraph (e)(6) above, or another suitable high-cycle test engine and propulsion system acceptable to the Administrator, must be installed on the airplane for a minimum of 500 cycles during this demonstration.

(iii) The 1000-cycle test airplane must be operated and maintained using the recommended operations and maintenance manual procedures.

(f) *Problem Tracking System.* An FAA-approved problem tracking system must be established to address problems encountered on the engine and airplane systems that could affect the safety of ETOPS operations.

(1) The system must contain a means for the prompt identification of those problems that could impact the safety of ETOPS operations in order that they may be resolved in a timely manner.

(2) The system must contain the process for the timely notification to the responsible FAA office of all relevant problems encountered, and corrective actions deemed necessary, in a manner that allows for appropriate FAA review of all planned corrective actions.

(3) The system must be in effect during the phases of airplane development that will be used to assess early ETOPS eligibility, and for at least the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. For the revenue service period, this system must define the sources and content of in-service data that will be made available to the manufacturers in support of the problem tracking system. The content of the data provided must include, as a minimum, the data necessary to evaluate the specific cause of all service incidents reportable under § 21.3(c) of part 21, in addition to any other failure or malfunction that could prevent safe flight and landing of the airplane, or affect the ability of the crew to cope with adverse operating conditions.

(4) Corrective actions for all problems discovered during the development and certification test program that could affect the safety of ETOPS operations, or the intended function of systems whose use is relied upon to accomplish the ETOPS mission, must be identified and implemented in accordance with paragraph (g)(2). If, during the certification program, it is discovered that a fault has developed that requires significant rework of manufacturing, maintenance, and/or operational procedures, the FAA will review the ETOPS suitability of the affected system and interfacing hardware and identify any additional actions to be accomplished to substantiate the corrective actions.

(5) For each engine type to be certificated with the airplane, the system must include provisions for an accelerated engine cyclic endurance test program that will accumulate cycles on one representative production-equivalent propulsion system in advance of the high-cycle revenue fleet engine. This test program will assist the applicant and the FAA in identifying and correcting problems before they occur in revenue service. This program must be in place for, at a minimum, the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. The representative production-equivalent propulsion system may, at the manufacturer's discretion, be used for other fleet support activities.

(g) *Reliability Assessment Board.*

(1) An FAA Reliability Assessment Board will be formed to evaluate the suitability of the airplane for ETOPS approval and make a recommendation to the Manager, Transport Airplane Directorate, regarding the adequacy of the type design for 180-minute ETOPS operation. The purpose of this board will be:

(i) To periodically review the development and certification flight test program accomplishments from both type design and operational perspectives;

(ii) To ensure that all specific problems, as well as their implications on the effectiveness of the Early ETOPS process, are resolved; and

(iii) To assess the design suitability for ETOPS. The board will consider design, maintenance, manufacturing, and operational aspects of the type design when finding suitability for ETOPS approval.

(2) The FAA Reliability Assessment Board will review and evaluate the data from the problem tracking and resolution system to establish compliance with the requirements of paragraph (h). The board will evaluate the overall type design for ETOPS suitability as demonstrated in flight test, and the 1000-cycle ETOPS test, considering all resolutions of problems. The following suitability criteria will be applied:

(i) Sources of engine shutdown/thrust loss, engine anomalies, or airplane system problems that have a potential significant adverse effect on in-service safety will be resolved.

(ii) Resolutions are identified for all items in paragraph (i) with analysis and/or testing to show all resolutions are effective. These resolutions may be accomplished through one or more of the following categories:

Design change
Operating procedure revision
Maintenance procedure revision
Manufacturing change

(iii) The resolutions of paragraphs (i) and (ii) will be incorporated prior to entry into service.

(iv) The engine shutdown history of the test program indicates that the engine reliability of the configuration is suitable for the ETOPS approval being considered.

(v) Where interim resolutions having operational impact are defined, the cumulative effect must be determined to be acceptable.

(vi) System or component failures experienced during the program are consistent with the assumptions made in the failure analyses.

(h) *Reliability Demonstration Acceptance Criteria.*

(1) For the engine and airplane systems, the type and frequency of failures that occur during the airplane flight test program and the 1000-flight-cycle ETOPS test must be consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified 180-minute ETOPS airplanes. The failures to be considered are those associated with system components that conform to the type design requested for certification. The Reliability Assessment Board will determine compliance with this requirement based on an evaluation of the problem reporting system data, considering system redundancies, failure significance, problem resolution, and engineering judgment.

(2) Corrective action for any of the following classes of problems occurring during the testing identified in paragraph (h)(1) that requires a major system redesign would delay ETOPS type design approval, or result in approval of a reduced single-engine diversion time, unless corrective action has been substantiated to, and accepted by, the FAA Reliability Assessment Board:

(i) Any source of unplanned inflight shutdown or loss of thrust.

(ii) Any problem that jeopardizes the safety of an airplane diversion.

(3) The FAA Reliability Assessment Board must determine that the suitability criteria of paragraph (g)(2) have been met.

(i) *Demonstration of Compliance.* In order to be eligible for 180-minute ETOPS type design approval, the following conditions apply:

(1) The engine assessment has been completed and eligibility for ETOPS operation has been approved by the FAA Engine Certification Office.

(2) All design, manufacturing, maintenance, operational, and other features necessary to meet the ETOPS requirements of paragraph (c)(1), and to resolve the problems identified in paragraph (c)(2), have been successfully implemented.

(3) The identified test and analysis features in paragraph (c)(4) and (c)(5) have been shown to be effective in validating the successful implementation of the features in paragraph (i)(2).

(4) The additional analysis requirements of paragraph (d) have been completed and the results have been approved.

(5) The additional test requirements of paragraph (e) have been successfully completed.

(6) All significant problems identified in accordance with paragraph (f) have been resolved, and fixes substantiated to be effective have been implemented.

(7) The accelerated engine cyclic endurance test program of paragraph (f)(5) must be in place.

(8) Compliance with the reliability demonstration acceptance criteria of paragraph (h) has been found by the Reliability Assessment Board.

Issued in Renton, Washington, on May 18, 1994.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13072 Filed 5–31–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–17]

Modification of Class D Airspace; Renton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Renton, Washington, by amending the area's effective hours to coincide with the associated control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with the air traffic control tower is required.

DATES: *Effective date:* 0901 UTC, August 18, 1994. *Comment date:* Comments must be received on or before August 11, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manger, Air Traffic Division, Docket No. 94–ANM–17, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2007.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM–537, Federal Aviation Administration, Docket No. 94–ANM–17, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to delay the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Renton, Washington, by amending the area's effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with this air traffic control tower is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993; which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need of modify this Class D airspace area in order to promote the safe and efficient handling of air traffic in this area. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption Of The Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting

Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

ANM WA D Renton, WA [Revised]

Renton Municipal Airport, WA (lat. 47°29'35"N., long. 122°12'56"W.)
Seattle VORTAC (lat. 47°26'07"N., long. 122°18'35"W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Renton Municipal Airport, and within 1.3 miles each side of the Renton Municipal Airport 175° bearing extending from the airport to 5.9 miles south of the airport, excluding the airspace within a 4-mile radius of the Seattle VORTAC and within a 4-mile radius of the Renton Municipal Airport west of long. 122°13'37"W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on May 12, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 94-13067 Filed 5-31-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 232, 241, 242, and 244

[Docket No. R-94-1662; FR-3224-F-02]

RIN 2502-AF64

Effect of Acquisition of Title by Mortgagee or the Secretary on a Title Insurance Policy

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

ACTION: Final rule; confirmation of interim rule.

SUMMARY: This rule adopts as final an interim rule published on June 24, 1993 that removed a provision in current HUD regulations requiring that any title insurance policy obtained in connection with the insurance of multifamily mortgages must provide that, upon acquisition of title by the mortgagee or the Secretary, "it will become an owner's policy running to the mortgagee or the Secretary, as the case may be" and substitute the provision "it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be". The purpose of this rulemaking was to remove a regulatory restriction and to adopt in its place a more efficient procedure.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Gaines E. Hopkins, Managing Attorney, Multifamily Mortgage Division, Office of General Counsel, Room 9228, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-4090, TDD (202) 708-3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 207.36 of Title 24 of the Code of Federal Regulations requires a mortgagee to furnish a survey and a policy of title insurance or its equivalent as a prerequisite to the closing of an insured multifamily housing loan. Where a title policy is to be furnished, the regulation requires that the policy name the mortgagee and HUD as the insured and also provide that, upon acquisition of title by either the mortgagee or HUD, the policy will become an owner's policy running to either the mortgagee or HUD.

If a mortgage default occurs and a mortgagee elects to exercise its right to assign the mortgage to HUD, it must comply with 24 CFR 207.258(b)(4)(ii). This provision requires that all policies of title insurance or evidences of title submitted to HUD have the original title coverage extended to include the date of the assignment of the mortgage. If the mortgagee elects to foreclose on the mortgage itself, or if it accepts a deed-in-lieu of foreclosure from the mortgagor, the requirements set out in §§ 207.258(c)(8) and 207.258a apply. These sections provide that if title insurance was utilized at the time of endorsement, the mortgagee will be required to submit an *owner's* title policy in favor of HUD that is effective on the date that the project is conveyed to the Secretary. If, however, an abstract and attorney's opinion were originally accepted at the time of endorsement, they are again acceptable. It should be noted that the aforementioned regulations either are incorporated into, or have a counterpart in, all parts of Title 24 of the Code of Federal Regulations that are applicable to multifamily and health care mortgage insurance programs.

There are two basic title insurance policy formats, one for owners/mortgagors and a second for lenders/mortgagees. Each is used in both commercial and residential transactions. The standard title policies have been written and promulgated by the industry trade organization, American Land Title Association (ALTA), and are used in most jurisdictions. In jurisdictions that mandate a particular format, HUD has deferred to state law and accepted the state-mandated format. For the last two decades, HUD has accepted the 1970 ALTA format, and no other ALTA format under the aforesaid regulatory requirements, in those jurisdictions that do not otherwise require the use of a particular title policy.

Periodically, ALTA has revised its approved standard title policy to provide for what it perceives as changing legal and market conditions. At the request of ALTA, HUD has reviewed each new policy format to assess its positive or negative impact upon the specific title insurance needs of the Department. In 1987, ALTA published a new title policy that was reviewed and subsequently approved by HUD, but only upon the condition that, in multifamily and health care cases, title companies add an endorsement to the lender's policy providing that it will automatically "convert" to an owner's policy if HUD becomes the owner of the FHA-insured project as a result of foreclosure. The HUD Office of General Counsel expressed the opinion that a "conversion" endorsement is necessary to comply with the requirement in § 207.36(a)(1) "that upon acquisition of title by the mortgagee or the Secretary, [the title policy] will become an owner's policy * * *." This endorsement condition has been strongly resisted by ALTA and some of its individual corporate members, resulting in situations where it was only with considerable difficulty that title insurance was obtainable.

Title Industry Position

The title industry argues that a lender's policy cannot be "converted" to an owner's policy as HUD has requested and raises arguments relating to (1) distinctions between the two formats that bear directly upon the "value" of the coverage; (2) cost schedules that are on file with state insurance commissioners; (3) the unavailability of coverage to other mortgagees or private mortgage insurers; (4) the prior practice of FHA; (5) a different interpretation of the regulation; and (6) the opinion that either HUD or the lender should pay the entire cost of a new owner's policy. Inasmuch as HUD, by this rule, is removing the regulatory restriction, it is not necessary to set forth the relative

merits and demerits of this industry position.

Current HUD Procedure

At present, HUD acquires title to a project pursuant to one of several procedures. The most common procedure is for the mortgagee to assign the mortgage to HUD when there is a default. As part of the assignment process, the mortgagee is required, at its own expense, to extend the coverage of the original mortgagee policy to include the time period between the dates of original endorsement for insurance and the assignment. This is usually accomplished by a limited title search and a "date-down" endorsement of the existing title policy, but may also be done through the purchase of an entirely new lender's policy. After assignment of a mortgage, if the default continues, it is HUD's policy to employ an attorney who practices in the jurisdiction where the project is located to act as a commissioner or trustee in the foreclosure. It is the responsibility of the foreclosure commissioner to perform a limited title search covering the time period between the assignment of the mortgage to HUD and the institution of proceedings under the Federal Foreclosure Act. Even though no title policy is obtained by HUD as a result of the foreclosure commissioner's findings and report, HUD would have the power to bring a malpractice action against the licensed attorney who acted as the foreclosure commissioner if the work product were flawed.

A lender also may elect not to assign, but to institute foreclosure proceedings on its own or to take title from the mortgagor by a deed-in-lieu of foreclosure and to convey title directly to HUD. After the lender obtains title to the project by means of foreclosure or a deed-in-lieu, it is entitled to transfer title directly to HUD. If the lender chooses to proceed in this manner, § 207.258a requires that it purchase, at its own expense, an owner's title policy "effective on or after the date of the recording of the conveyance to the Commissioner."

It should also be noted that Section 207(k) of the National Housing Act and the implementing regulations also give HUD the option of either proceeding to foreclosure or taking a deed-in-lieu of foreclosure directly from the mortgagor, following the assignment of the project mortgage to the Secretary.

HUD Response

Title insurance is necessary in virtually all primary and secondary mortgage market transactions. Although individual title companies may still be willing to issue the 1970 ALTA lender's title policy on a case-by-case basis in those states where they are not forbidden by state regulation from doing so, the 1992 ALTA lender's policy format now represents the only title policy format that has the official approval of the title industry's trade association for use by title companies nationwide. The Department has determined that it is necessary to change its regulations so that the 1992 ALTA title policy format can be accepted by HUD for use in FHA-insured multifamily mortgage transactions.

Consequently, the Department's regulations are revised to remove the requirement that the Secretary, in every case, be issued an owner's title policy. HUD would retain the flexibility, however, to make such a determination on a case-by-case basis. Accordingly, in this rule HUD is revising 24 CFR 207.36(a)(1) and conforming other relevant sections by removing the phrase "it will become an owner's policy running to the mortgagee or the Secretary as the case may be," and substituting "it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be".

As a consequence of having removed the regulatory requirement in § 207.36 requiring the purchase of an owner's policy, HUD could either purchase an owner's title policy after acquisition of title, or HUD could choose to self-insure after acquisition of title. After this rule takes effect HUD will decide on a case-by-case basis either to purchase an owner's policy at its own expense, or to self-insure for the time period after acquisition of title.

II. Public Comment on Earlier Interim Rule

On June 24, 1993 (58 FR 34213), the Department published in the **Federal Register**, an interim rule. A request was made for comment by the public on this interim rule. One comment has been received. The commenter, a private individual, quotes the following paragraph from the Preamble to the interim rule and asks the following question:

"As a consequence of having removed the regulatory requirement in § 207.36 requiring the purchase of an owner's policy, HUD could either purchase an owner's title policy after acquisition of title, or HUD could choose to self-insure after acquisition of title. After this rule takes effect HUD will decide on a case-by-case basis either to purchase an owner's policy at its own expense, or to self-insure for the time period after acquisition of title."

"My question is where does HUD have the authority to purchase a title insurance policy from its own funds for its own protection? The long standing policy of the Federal Government, as enunciated frequently by the General Accounting Office, is that the Government is a self-insurer and will not purchase commercial insurance against loss or damage to its own property (presumably HUD inventory property is considered as Government property.) Does HUD have approval from the Comptroller to use Government funds to purchase title insurance to protect its ownership interest?"

HUD Response: It is true that the government is essentially a self-insurer in certain specific areas, primarily loss or damage to government property and the liability of government employees. But there are many situations in which the government buys or pays for insurance. Among the more well known examples are the Employee's Health Benefits Program and the Federal Group Life Insurance. Moreover, even the self-insurance requirement for loss to government property does not apply in all situations. For example, the rule does not apply to a wholly-owned government corporation (the Federal Housing Administration (FHA) is treated as a corportion for this purpose, even though it is not chartered as one, 53 Comp Gen 337 (1973)). Furthermore, the Comptroller General has indicated that property acquired by FHA in exchange for the payment of insurance benefits occupies a different status from government owned property and does not fall within the meaning of the policy of not carrying hazard insurance on property it owns. Finally, the Comptroller General has never even defined title insurance as insuring property loss and thus prohibited from purchase.

III. Findings and Certifications

Regulatory Agenda

This rule was listed as item 1598 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20450) under Office of Housing, in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Impact on Small Entities.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before its publication and, by approving it, certifies that this rule does not have a significant economic impact on a

substantial number of small entities. The rule effectively liberalizes title insurance requirements which must be met if a mortgage insurance claim is being made against HUD. Its impact on small entities will be minimal and any such impact will be beneficial.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule does not significantly change existing roles and relationships between federal, state and local governments in any of the programs to which it applies.

Impact on the Family

The General Counsel, as the Designated Official under Executive order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being.

Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and record-keeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—Housing and Community Development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and record- keeping requirements.

The Catalog of Federal Domestic Assistance Numbers are: 14.112, 14.126, 14.128, 14.129, 14.134, 14.135, 14.138, 14.139 and 14.155.

Accordingly, the Department adopts as final and without change, the interim rule published on June 24, 1993 (58 FR 34213) that amended 24 CFR parts 207, 213, 220, 221, 232, 241, 242 and 244.

Dated: May 23, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 94–13224 Filed 5–31–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with one required amendment, a proposed amendment to the Colorado permanent regulatory program (hereinafter referred to as the "Colorado program"), as administered by the Colorado Division of Minerals and Geology (Division) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to roads and support facilities; backfilling and grading; coal mine waste, coal processing waste, and noncoal waste disposal; mountaintop removal; and explosives. The amendment revises the Colorado program (1) to be consistent with SMCRA and the Federal regulations and (2) to improve operational efficiency.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Acting Director, Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Submission of Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Actions concerning program amendments taken subsequent to the approval of the Colorado program are found at 30 CFR 906.15, 906.16, and 906.30.

II. Submission of Proposed Amendment

By letter dated June 30, 1993, Colorado submitted to OSM a proposed amendment to the rules of the Colorado Mined Land Reclamation Board at 2 Code of Colorado Regulations (CCR) 407–2 (Administrative Record No. CO–552). Colorado submitted the proposed amendment in part at its own initiative and in part in response to certain issues identified in letters dated May 7, 1986, and March 22, 1990 (Administrative Record Nos. CO–282 and CO–496), that OSM sent to Colorado in accordance with 30 CFR 732.17(c).

In its June 30, 1993, amendment, Colorado proposed to revise the following provisions of 2 CFR 407–2: definitions for "road," "haul road," "access road," and "light-use road" at Rules 1.04(111) (a) through (c); permit application requirements for support facilities, stream fords used as temporary construction routes, and certification of plans and drawings for haul and access roads at Rules 2.05.3(3) (a) and (c) (vi) and (vii); reclamation plan requirements for all roads at Rule

2.05.4(2); permit application requirements for haul roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.1(1) (a), (b), (d), and (e), 4.03.1(2)(b), 4.03.1(3)(c) and (e)(ix), 4.03.1(6)(c), and 4.03.1(7)(a)(ix) and (b); permit application requirements for access roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.2(1) (a), (b), (e), and (f), 4.03.2(2)(b), 4.03.2(3)(c) and (e)(ix), 4.03.2(6) (a) and (c), and 4.03.2(7) (a)(ix) and (b); permit application requirements for light-use roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.3(1) (a) and (b), 4.03.3(2)(b), 4.03.3(3)(c), 4.03.3(6)(c), and 4.03.3(7)(i); performance standards for coal exploration in regard to roads at Rules 4.21.4(3)(b) (i) through (iii), 4.21.4(3)(c) (i) through (iii), and 4.21.4(3)(d) (i) and (ii); permit application requirements for the return of coal mine waste and coal processing waste to abandoned workings at Rules 2.05.3(9)(a) and 2.05.3(10) (a) through (e); performance standards for disposal of spoil in head-of-hollow fills and disposal of noncoal waste at Rules 4.09.3(2)(c) and 4.11.4(3); general backfilling and grading requirements for cut-and-fill terraces at Rules 4.14.2(2) and (2)(c); performance standards for mountaintop removal operations at Rules 4.26.2(2) and (2) (a) through (c); and performance standards for the use of explosives at Rules 4.08.4(10), 4.08.4(10) (a) through (c), and 4.08.6(1).

In addition to the above revisions, Colorado's amendment also contained a "Statement of Basis, Specific Statutory Authority, and Purpose." This statement provided Colorado's rationale for submitting the revisions proposed in the amendment. In particular, Colorado included a policy statement explaining what it would consider, on a case-by-case basis, in making a determination of the program's jurisdiction over public roads. These considerations included whether the road is constructed or improved by an operator, mining-related use, and degree of mining-related impacts to the road.

OSM published a notice in the July 21, 1993, **Federal Register** (58 FR 38989) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. CO–555). The public comment period ended August 20, 1993.

No substantive comments were received. The public hearing, scheduled for August 16, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns or requested clarification regarding Colorado's (1) criteria to be used for determining jurisdiction over public roads, specifically with regard to the concept of relative use proposed in the policy statement for Colorado's proposed definition for "road" at Rule 1.04(111); (2) regulation of road dust and dust occurring on other exposed surfaces proposed at rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b); (3) alternative design criteria for haul and access roads proposed at Rules 4.03.1(1)(e) and 4.03.2(1)(e); and (4) the use of the term "solid waste material" instead of the term "noncoal mine waste" proposed in the performance standards for disposal of noncoal waste at Rule 4.11.4(3). OSM notified Colorado of the concerns by letter dated September 30, 1993 (Administrative Record No. CO–575). Colorado responded in a letter dated November 3, 1993, by submitting additional explanatory information and a revised amendment for the concerns identified above (Administrative Record No. CO–587).

Based upon the additional explanatory information and revisions to the proposed program amendment submitted by Colorado, OSM announced the reopening of the public comment period in the December 6, 1993, **Federal Register** (58 FR 64210; Administrative Record No. CO–594). The public comment period ended on December 20, 1993.

By letter dated December 21, 1993, Colorado withdrew all State-initiated revisions proposed at 2 CFR 407–2 Rule 4.08.4(10)(c)(i) concerning the detonation of the maximum weight of explosives used in blasting (Administrative Record No. CO–597). In an existing part of this same rule, Colorado also corrected a typographical error. It revised the word "with" to be "within" in the sentence that requires that the maximum weight of explosives to be detonated "within" any 8-millisecond period be determined by the formula $W=(D/D_s)^2$.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Colorado on June 30, 1993, as revised on November 3 and December 21, 1993.

1. Substantive Revisions to Colorado's Rules That Are Substantively Identical to the Corresponding Federal Regulations

Colorado proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses).

Rule 2.05.3(c)(vii) concerning the review and certification of haul and access road plans and drawings by a qualified, registered professional engineer (30 CFR 780.37(b) and 784.24(b));

Rules 4.03.1(1)(d) [haul roads] and 4.03.2(1)(f) [access roads] concerning the certification of design and construction or reconstruction of roads by a qualified, registered professional engineer (30 CFR 816.151(a) and 817.151(a));

Rules 4.03.1(2)(b) [haul roads], 4.03.2(2)(b) [access roads], and 4.03.3(2)(b) [light-use roads] concerning roads located in intermittent or perennial streams (30 CFR 816.150(d)(1) and 817.150(d)(1));

Rules 4.03.1(6)(c) [haul roads], 4.03.2(6)(c) [access roads], and 4.03.3(6)(c) [light-use roads] concerning roads damaged by a catastrophic event (30 CFR 816.150(e)(2) and 817.150(e)(2));

Rules 4.03.1(7) (a)(ix) and (b) [haul roads], 4.03.2(7) (a)(ix) and (b) [access roads], and 4.03.3(7)(i) [light-use roads] concerning removal of road-surfacing materials that are incompatible with the postmining land use (30 CFR 816.150(f)(3) and 817.150(f)(3));

Rules 4.08.4(10), (10) (a) and (b), and 4.08.6(1) concerning the use of explosives (30 CFR 816.67(d) (2), (3), and (5), 817.67(d) (2), (3), and (5), 816.67(e), and 817.67(e)); and

Rule 4.11.4(3) concerning the disposal of noncoal mine waste (30 CFR 816.89(c) and 817.89(c)).

Because these proposed Colorado rules are substantively identical to the corresponding Federal regulations, the Director finds that they are no less effective than the corresponding Federal regulations and approves them.

2. Rules 1.04(111) and (111) (a) through (c), Definitions of "Road," "Haul Road," "Access Road," and "Light-Use Road."

a. *Rule 1.04(111), Definition of "road" and policy statement for determining when a public road falls under the jurisdiction of Colorado's program.* Colorado proposed revisions to the definition of "road" at Rule 1.04(111) to exclude ramps and routes of travel

within or adjacent to the immediate mining pit area or within spoil or coal mine waste disposal areas, and to state that public roads may be excluded from this definition based on a case-by-case consideration of the impact of the mining use on the roadway.

With respect to Colorado's proposal to not regulate as "roads" ramps and routes of travel within or adjacent to the immediate mining pit area or within spoil or coal mine waste disposal areas, the corresponding Federal definition of "road" at 30 CFR 701.5 includes an identical provision.

With respect to Colorado's proposal to not regulate as "roads" certain public roads based upon a case-by-case consideration of the impact of mining use on the roadway, Colorado proposed an implementing policy. In the November 3, 1993, "Statement of Basis, Specific Statutory Authority, and Purpose," submitted as a part of Colorado's amendment, Colorado identified the criteria it will use in determining whether a public road falls under the jurisdiction of its regulatory program. These criteria are:

a. Public roads will fall under the jurisdiction of the regulations if such roads are constructed or improved by the operator, and if the primary purpose of such construction or improvement is to facilitate mine access or operations.

b. Public road segments, which provide access to the permit area, and either terminate at the permit boundary or are subject to controlled access by the permittee within the permit area, will fall under the jurisdiction of the Division unless the operator demonstrates that such mine related use of the road segment has a minor effect on the roadway and is a minor source of off-site impacts.

c. The jurisdictional status of road segments which do not fit into either of the categories described above will be determined on a case-by-case basis, with the primary consideration being the extent of mine related impacts. The road will not fall under the jurisdiction of the Division if mine related use has a minor effect on the roadway and is a minor source of off-site impacts.

The Federal definition of "road" at 30 CFR 701.5 does not address the regulation of public roads. However, as discussed below, this issue has been addressed by SMCRA, other OSM regulations, and Federal court decisions.

Section 506(a) of SMCRA provides in part that "* * * no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit * * *" (30 U.S.C. 1256(a)). The Federal regulations at 30 CFR 773.11(a) contain the same requirement.

Thus, under SMCRA and the corresponding Federal regulations, a permit is required before a person may engage in or carry out "surface coal mining operations." Among other things, such "operations" include certain roads. Specifically, under section 701(28)(B) of SMCRA, "surface coal mining operations" include "all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities [as are specified in paragraph (A) of this section] and for haulage" (30 U.S.C. 1291(28)(B)). The Federal regulations at 30 CFR 700.5, in paragraph (b) of the definition of "surface coal mining operations," contain the same requirement.

In the development of the Federal regulations, a significant issue has been the extent to which the term "roads" in the definition of "surface coal mining operations" applies to public roads. In paragraph (c) of the Federal definition of "affected area" at 30 CFR 701.5, OSM previously interpreted the term "affected area" as not applying to roads for which "there is substantial (more than incidental) public use" (48 FR 14814, 14819, 14822; April 5, 1983). However, that interpretation was successfully challenged in *In re: Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519, 1581–82 (D.D.C. 1985), *modified sub nom., National Wildlife Federation* v. *Hodel*, 839 F.2d 694 (D.C. Cir. 1988). The court (in *In re: Permanent*) accepted the Secretary's premise that not every road when used to some degree for coal haulage or mine access falls within the definition of "surface coal mining operations." The court then noted that, presumably, when hauling or access are among many uses made of a road, such as an interstate highway, the effect from the mining use is relatively minor, and thus the road need not be included as part of the surface coal mining operation. However, the court held that the Federal definition of "affected area" went beyond what is called for in section 701(28) in exempting essentially all public roads without regard to the degree of effect that mining use has on the road. Therefore, the court ruled that roads experiencing substantial public use may also need to be included in the affected area on a case-by-case basis, based on the extent of mining-related use.

Pursuant to the court's order in *In re: Permanent*, OSM modified its interpretation of the extent to which SMCRA applied to public roads. Specifically, OSM suspended the regulatory definition of "affected area" "to the extent that it excludes public roads which are included in the definition of 'surface coal mining operations'." (51 FR 41952, 41953; November 20, 1986). OSM said that "[t]he suspension will have the effect of including in the 'affected area' all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the regulated activities or for haulage" (51 FR 41953).

In the preamble to the final rule establishing performance standards for roads associated with surface coal mining operations (the November 8, 1988, roads rule), OSM said that SMCRA jurisdiction over mine roads is best determined on a case-by-case basis and did not adopt a comment that "public roads be excluded from applicability of the performance standards" (53 FR 45190, 45192). Thus, in determining which mining-related roads are subject to regulation, OSM currently relies on the applicable language of the Federal definitions of "surface coal mining operations" at section 701(28) of SMCRA and the Federal regulations at 30 CFR 700.5. This may require, in appropriate circumstances, that OSM and State regulatory authorities issue, and surface coal mine operators obtain, permits for certain public roads.

Colorado's proposed revision of the definition of "road" requires that "the impact of mining use on the roadway" be a determining factor as to whether a public road is regulated under its program. This proposed revision of the definition is consistent with the court's interpretation of the definition of "affected area" at 30 CFR 701.5 in *In re: Permanent* and the preamble of the November 8, 1988, roads rule which require that, in determining whether a public road should be regulated, the degree of effect of mining use on the public road be considered.

Criterion "a" of Colorado's policy statement requires that a public road be regulated if it is constructed or improved by the operator and if the primary purpose of such construction or improvement is to facilitate mine access or operations. The Federal definitions of "surface coal mining operations" at section 701(28)(B) of SMCRA and 30 CFR 700.5 include "all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage." In effect, the Federal definitions and criterion "a" both require that a determination be made regarding the purpose of the construction or improvement of a public road. If the purpose of construction or improvement is to facilitate activities that fall under the definition of "surface coal mining operations," then the road

must be regulated. Therefore, criterion "a" is consistent with the Federal definitions of "surface coal mining operations" at section 710(28)(B) of SMCRA and 30 CFR 700.5.

Criterion "b" of Colorado's policy statement requires regulation of public road segments used to provide access to the permit area that either terminate at the permit boundary or are subject to controlled access by the permittee within the permit area, unless the operator demonstrates that mine-related use has a minor effect on the roadway and is a minor source of off-site impacts. With respect to the first part of criterion "b" that requires that a public road be regulated if it provides access to the permit area, criterion "b" is consistent with the Federal definitions of "surface coal mining operations" at section 701(28)(B) of SMCRA and 30 CFR 700.5, which include the use of existing roads to gain access to minesites. With respect to the second part of criterion "b" that a public road used to provide access to a permit area be regulated unless the operator demonstrates that mine-related use has a minor effect on the roadway and is a minor source of off-site impacts, criterion "b" is consistent with the court's interpretation of the Federal definition of "affected area" at 30 CFR 701.5 in In re: Permanent and the preamble of the November 8, 1988, roads rule, which require that, in determining whether a public road should be regulated, the degree of effect of mining use on the public road be considered.

Criterion "c" of Colorado's policy statement requires that all other instances of the jurisdictional status of road segments be determined on a case-by-case basis, with the primary consideration being the extent of mine-related impacts. Criterion "c" is consistent with the proposed revision of Colorado's definition of "road" at Rule 1.04(111), the court's interpretation of the Federal definition of "affected area" at 30 CFR 701.5 in In re: Permanent, and the preamble to the November 8, 1988, roads rule, all of which require a case-by-case consideration of the impact of mining-related use on a public road.

In summary, Colorado's proposed definition of "road" and the implementing policy statement provide for a determination of the jurisdictional reach of its approved program into the public road system and take into consideration the purpose and the impact of mining-related use as factors in determining whether a road is subject to the requirement for a permit. Colorado's proposal for this determination of jurisdiction over public roads is consistent with that contemplated by the Federal regulations.

For the reasons discussed above, the Director finds that Colorado's proposed definition of "road" at Rule 1.04(111), as supplemented by criteria "a," "b," and "c" in its November 3, 1993, "Statement of Basis, Specific Statutory Authority, and Purpose" for determining when a public road would fall under the jurisdiction of its program, is (1) no less effective than the Federal definitions of "affected area" and "road" at 30 CFR 701.5 and "surface coal mining operations" at 30 CFR 700.5 and (2) no less stringent than the Federal definition of "surface coal mining operations" at section 701(28)(B) of SMCRA. For these reasons, the Director approves the proposed definition of "road" at Rule 1.04(111) and the November 3, 1993, policy statement criteria "a," "b," and "c" that supplement it.

b. *Rules 1.04(111) (a) through (c), Definitions of "haul road," "access road," and "light-use road".* Colorado proposed revisions to the roads classification criteria in the definitions of "haul road" and "access road" at Rules 1.04(111)(a) and 1.04(111)(b) to indicate that any road used to transport spoil or coal mine waste would, depending upon other unchanged criteria in these definitions, either be classified as a haul road or access road. Colorado also proposed a revision to the roads classification criteria in the definition of "light-use road" at Rule 1.04(111)(c) to indicate that light-use roads could not be used for the transportation of spoil and coal mine waste.

The Federal regulations at 30 CFR 816.150(a)(2) and 817.150(a)(2) state, in part, that any road that is used for transporting coal or spoil is a primary road. The Federal regulations at 30 CFR 816.150(a)(3) and 817.150(a)(3) state that any road not classified as a primary road is an ancillary road. In Colorado's road classification system, "haul road" and "access road" correspond to the Federal "primary road," and "light-use road" corresponds to the Federal "ancillary road."

Colorado's proposal at Rules 1.04(111) (a) and (b) to regulate roads on which spoil or coal mine waste are transported as haul roads or access roads is consistent with the transportation uses specified for primary roads at 30 CFR 816.150(a)(2) and 817.150(a)(2). Colorado's proposal to exclude the transportation of spoil or coal mine waste as a use for a light-use road is consistent with the transportation uses allowed for ancillary roads at 30 CFR 816.150(a)(3) and 817.150(a)(3).

The Director finds that Colorado's proposed revisions to "haul road" and "access road" at Rules 1.04(111) (a) and (b) are no less effective than the criteria for primary roads at 30 CFR 816.150(a)(2) and 817.150(a)(2) and its proposed revisions to "light-use road" at Rule 1.04(111)(c) are no less effective than the criteria for ancillary roads at 30 CFR 816.150(a)(3) and 817.150(a)(3). The Director approves the proposed revisions to the definitions of "haul road," "access road," and "light-use road" at Rules 1.04(111) (a) through (c).

3. Rules 2.05.3(3)(a) and (3)(c)(vi) and Rules 2.05.4(2) and (2)(c), Permit Application Requirements for Support Facilities and Roads.

a. *Rule 2.05.3(3)(a), Maps, plans, and drawings for support facilities.* Colorado proposed revisions to Rule 2.05.3(3)(a) to require that the operation plan in a permit application contain (1) a description, plans, and drawings for, among other things, other support facilities including those listed in the support facilities performance standards at Rule 4.04 and (2) a map, cross sections, design drawings, and specifications sufficient to demonstrate compliance with Rule 4.04.

The Federal regulations at 30 CFR 780.38 and 784.30 require that the operation plan include (1) a description, plans, and drawings for each support facility and (2) a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with the support facilities performance standards at 30 CFR 816.181.

Colorado's referenced Rule 4.04 corresponds to the Federal referenced rules at 30 CFR 816.181 and 817.181. Because Colorado's proposed revisions include the same requirements as the counterpart Federal regulations, Colorado's proposed revisions to Rule 2.05.3(3)(a) are no less effective than the Federal regulations at 30 CFR 780.38 and 784.30. The Director approves proposed Rule 2.05.3(3)(a).

b. *Rule 2.05.3(3)(c)(vi), Drawings and specifications for stream fords used as temporary construction routes.* Colorado proposed to add Rule 2.05.3(3)(c)(vi) to require that the operation plan in a permit application contain drawings and specifications for any stream fords proposed for use as temporary construction routes.

The Federal regulations at 30 CFR 780.37(a)(3) and 784.24(a)(3) require that the permit application include the drawings and specifications of each proposed ford of perennial or intermittent streams, as necessary for approval of the road by the regulatory

authority in accordance with 30 CFR 816.151(c)(2) and 817.151(c)(2). These referenced regulations prohibit fords of perennial and intermittent streams by primary roads unless they are approved by the regulatory authority as temporary routes during periods of construction.

Colorado's proposed Rule 2.05.3(3)(c)(vi) differs from the corresponding Federal regulations at 30 CFR 780.37(a)(3), 784.24(a)(3), 816.151(c)(2), and 817.151(c)(2) in that it does not specify that it applies to just perennial and intermittent streams and to just haul and access roads, which correspond to the Federal primary roads. Therefore, Colorado's proposed rule (1) applies not only to perennial and intermittent streams (which it defines at Rules 1.04(84) and (69)), but also ephemeral streams (which it defines at Rule 1.04(42)) and (2) applies not only to haul and access roads, but also light-use roads. Because the proposed rule requires stream ford drawings and specifications for ephemeral streams and light-use roads, it provides a greater level of protection than the Federal regulations for ephemeral streams forded by haul and access roads, and perennial, intermittent, and ephemeral streams that are forded by light-use roads. For these reasons, Colorado's proposed Rule 2.05.3(3)(c)(vi) is no less effective than the Federal regulations at 30 CFR 780.37(a)(3), 784.24(a)(3), 816.151(c)(2), and 817.151(c)(2). The Director approves proposed Rule 2.05.3(3)(c)(vi).

c. *Rules 2.05.4(2) and (2)(c), Information on and a backfilling and grading plan for road reclamation.* Colorado proposed revisions at Rules 2.05.4(2) and (2)(c) to require that the reclamation plan in a permit application include (1) information for any roads which are to be removed or modified for retention as part of the postmining land use and (2) a backfilling and grading plan for road removal or modification in accordance with the roads performance standards at Rule 4.03.

The Federal regulations at 30 CFR 780.37(a)(6) and 784.24(a)(6) require that the reclamation plan describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use. The Federal regulations at 30 CFR 780.18(b)(3) and 784.13(b)(3) require a plan for backfilling and grading showing the anticipated final surface configuration of the proposed permit area, which although not specifically, stated, would include areas where roads were removed or retained. Although the Federal regulations for backfilling and grading do not reference the roads regulations at 30 CFR 816.150, 816.151, 817.150, and 817.151, these roads regulations pertain to the construction of permanent roads as well as the reclamation of temporary roads. Colorado's proposed Rule 2.05.4(2)(c) includes a general reference to Rule 4.03 which is Colorado's counterpart to the Federal regulations at 30 CFR 816.150, 816.151, 817.150, and 817.151, thereby clearly linking the roads regulations to the backfilling and grading plan for road removal or modification.

Colorado's proposed revisions to Rules 2.05.4(2) and (2)(c) have the same or similar requirements that are no less effective than the requirements of the Federal regulations at 30 CFR 780.37(a)(6), 784.24(a)(6), 780.18(b)(3), and 784.13(b)(3). The Director approves proposed Rules 2.05.4(2) and (2)(c).

4. Rules 4.03.1(1) (a) and (b), 4.03.1(3) (c) and (e)(ix), 4.03.2(1) (a) and (b), 4.03.2(3) (c) and (e)(ix), 4.03.3(1) (a) and (b), and 4.03.3(3)(c), Performance Standards for Haul Roads, Access Roads, and Light-Use Roads

a. *Rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b), Control or prevention of erosion and siltation, air or water pollution, and dust control.* Colorado proposed Rules 4.03.1(1) (a) and (b) [haul roads] and 4.03.2(1) (a) and (b) [access roads] and 4.03.3(1) (a) and (b) [light-use roads] that set forth requirements concerning control or prevention of erosion and siltation, air or water pollution, and dust control. Specifically, Colorado requires, for haul, access, and light-use roads, that (1) construction, maintenance, and postmining conditions (of the roads) will control or prevent erosion and siltation, pollution of air or water, and damage to public or private property, and (2) prudent dust control practices shall be used as necessary to comply with Rule 4.17. Rule 4.17 requires that each person who conducts surface coal mining and reclamation operations shall stabilize and protect all surface areas, including spoil piles, to effectively control erosion and attendant air pollution and shall conduct such operations in such a manner so as to comply with all applicable State and Federal air quality statutes and regulations.

The corresponding Federal regulations at 30 CFR 816.150(b)(1) and 817.150(b)(1) require that roads be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to control or prevent erosion, siltation, and the air pollution attendant to erosion "including road dust as well as dust occurring on other exposed surfaces." The preamble to these regulations (53 FR 45201–45203, November 8, 1988) clarified that road dust and dust occurring on other exposed surfaces as a result of vehicular traffic must be regulated under SMCRA.

Colorado's proposed Rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b) do not include language similar to the phrase quoted above. However, in its November 3, 1993, response to OSM's September 30, 1993, issue letter, Colorado stated that it interprets paragraphs (a) and (b) of its proposed rules to require that road dust and dust occurring on other exposed surfaces, as a result of vehicular traffic on surface coal mining and reclamation operations, must be regulated under Colorado's program rather than under the Clean Air Act or corresponding State law.

Based on this interpretation, the Director finds that the revised requirements of proposed Rules 4.03.1(1) (a) and (b) [haul roads], 4.03.2(1) (a) and (b) [access roads], and 4.03.3(1) (a) and (b) [light-use roads] are no less effective than the requirements found in the Federal regulations at 30 CFR 816.150(b)(1) and 817.150(b)(1), as clarified by the preamble of November 8, 1988. The Director approves Colorado's proposed revisions to Rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b).

b. *Rules 4.03.1(1)(e) and 4.03.2(1)(e), Allowance for alternative design criteria and specifications for haul and access roads, with the exception that any alternative to the gradient specifications for embankment slopes must include a demonstration of compliance with a minimum static safety factor of 1.3.* Colorado's existing Rules 4.03.1(1)(e) [haul roads] and 4.03.2(1)(e) [access roads] allow Colorado to approve alternative design criteria and specifications for haul and access roads if an operator provides a demonstration by a qualified registered professional engineer that the roads will (1) be as environmentally sound as those roads that comply with the requirements of Rules 4.03.1 and 4.03.2 and (2) meet such other criteria as are necessary to achieve reclamation in accordance with the requirements of Rules 4.03.1 and 4.03.2. Colorado proposed to revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to add the provision that alternatives to the design criteria and specifications of Rules 4.03.1(3)(e) and 4.03.2(3)(e) [for haul and access road embankments] may be utilized only if appropriate engineering tests establish compliance with a minimum static safety factor of 1.3.

The Federal regulations at 30 CFR 816.151(b) and 817.151(b) require that each primary road embankment have a

minimum static safety factor of 1.3 or meet the requirements established under the Federal regulations at 30 CFR 780.37(c) and 784.24(c). These referenced regulations provide that a regulatory authority may establish engineering design standards for primary roads in lieu of requiring engineering tests to demonstrate compliance with the minimum safety factor of 1.3 for all embankments.

Colorado's existing road embankment provisions at Rules 4.03.1(3)(e) (i) through (xi) [haul roads] and 4.03.2(3)(e) (i) through (xi) [access roads] provide the engineering design standards that may be used in lieu of the minimum safety factor demonstration.

Because Colorado has proposed that exceptions to the design requirements for embankments specified in Rules 4.03.1(3)(e) and 4.03.2(3)(e) cannot be approved unless there is a demonstration of compliance with a minimum static safety factor of 1.3, Colorado's proposed revision of Rules 4.03.1(1)(e) and 4.03.2(1)(e) is consistent with and no less effective than the Federal regulations at 30 CFR 816.151(b), 817.151(b), 780.37(c), and 784.24(c).

During review of this proposed amendment, however, OSM discovered a problem in the existing Colorado Rules 4.03.1(1)(e) and 4.03.2(1)(e). The existing general variance at Rules 4.03.1(1)(e) and 4.03.2(1)(e), which (as explained below) applies to all of the requirements for haul and access roads in Rules 4.03.1 and 4.03.2, was approved by OSM on December 16, 1982, as part of Colorado's original program (47 FR 56350). At that time OSM had no road regulations and there is no counterpart to the general variance at Rules 4.03.1(1)(e) and 4.03.2(1)(e) in the existing Federal roads regulations.

The Federal regulations at 30 CFR 816.150(c) and 817.150(c) require that the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority. In accordance with 30 CFR 816.150(c) and 817.150(c), Colorado established, at Rules 4.03.1(3) and 4.03.2(3), design criteria and specifications that are not in the Federal program.

Because Colorado's Rules 4.03.1 and 4.03.2 include both the counterparts to the existing Federal regulations for roads and specific design criteria that have no counterpart in the Federal regulations, the scope of the existing variance at Colorado's Rules 4.03.1(1)(e) and 4.03.2(1)(e) is not clear. In its November 3, 1993, response to OSM's September 30, 1993, issue letter, Colorado stated that proposed rules 4.03.1(1)(e) and 4.03.2(1)(e).

> Would allow the Division to grant exemptions to all road design requirements, including the embankment design requirements of paragraphs 4.03.1(3)(e) and 4.03.2(3)(e). This is consistent with the Colorado regulations as currently promulgated. The change incorporated in the proposed rules is that the exemption as it applies to the embankment design requirements would be conditioned upon the 1.3 static safety factor demonstration.

To the extent that proposed rules 4.03.1(1)(e) and 4.03.2(1)(e) allow a variance from compliance with Colorado's counterparts to the Federal performance standards for all roads at 30 CFR 816.150 and 817.150, or the performance standards for primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e), proposed rules 4.03.1(1)(e) and 4.03.2(1)(e) are less effective than the Federal regulations at 30 CFR 816.150, 816.151, 817.150, and 817.151.

Based upon the above discussion, the Director approves the revisions proposed at Rules 4.03.1(1)(e) and 4.03.2(1)(e) only to the extent that the variance from compliance with design criteria for haul and access roads applies to the embankment design criteria in Colorado's Rules 4.03.1(3)(e) and 4.03.2(3)(e). In addition, the Director requires that Colorado further revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to clearly indicate that the variance from compliance with design criteria for roads may not be applied to Colorado's counterparts to the Federal regulations for all roads at 30 CFR 816.150 and 817.150, and primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e).

c. *Rules 4.03.1(3)(e)(ix) and 4.03.2(3)(e)(ix), Allowance for haul and access road embankments to exceed specified slope gradients if a demonstration has been made that a minimum static safety factor of 1.3 will be achieved.* Colorado proposed to revise Rules 4.03.1(3)(e)(ix) [haul roads] and 4.03.2(3)(e)(ix) [access roads] to clarify that if the slope gradients specified in Rules 4.03.1(3)(e)(ix) [haul roads] and 4.03.2(3)(e)(viii) [access roads] are exceeded on road embankments, a demonstration must be made that a minimum safety factor of 1.3, or higher if required by Colorado, will be achieved.

The Federal regulations at 30 CFR 816.151(b) and 817.151(b) require that each primary road embankment have a minimum static safety factor of 1.3 or meet the requirements established under the Federal regulations at 30 CFR 780.37(c) and 784.24(c). These referenced regulations provide that a regulatory authority may establish engineering design standards for primary roads in lieu of engineering tests to demonstrate compliance with the minimum safety factor of 1.3 for all embankments.

Colorado's proposed Rules 4.03.1(3)(e)(ix) and 4.03.2(3)(e)(ix) provide that a slope embankment must not be steeper than either 2h:1v, or, where embankment material is a minimum 85 percent rock, 1.3h:1v, unless an operator has demonstrated that a minimum safety factor of 1.3, or such higher factor as the Division may specify, will be achieved. In accordance with the Federal regulations at 30 CFR 816.151(b), 817.151(b), 780.37(c) and 784.24(c), OSM previously approved compliance with the design criteria for slope embankments (either 2h:1v or 1.3h:1v) in Rules 4.03.1(3)(e)(ix) and 4.03.2(3)(e)(ix) as no less effective than a demonstration of a static safety factor of 1.3. Although Colorado has proposed to allow operators to create slopes steeper than those provided for by the design criteria, Colorado has also required that a demonstration be made that the steeper slopes will meet a minimum static safety factor of 1.3. Therefore, Colorado's proposed Rules 4.03.1(3)(e)(ix) and 4.03.2(3)(e)(ix) are no less effective than the Federal regulations at 30 CFR 816.151(b). The Director approves the proposed rules.

d. *Rules 4.03.1(3)(c), 4.03.2(3)(c), and 4.03.3(3)(c), Road width.* Colorado proposed at Rules 4.03.1(3)(c) [haul roads], 4.03.2(3)(c) [access roads], and 4.03.3(3)(c) [light-use roads] to require that the width of a road be appropriate for the anticipated volume of traffic and the nature and speed of vehicles to be used. The Federal regulations at 30 CFR 816.150(c) and 817.150(c) require that the design and construction or reconstruction of roads shall, among other things, incorporate appropriate limits for width to ensure environmental protection appropriate for their planned duration and use.

Because Colorado's proposed rules for haul, access, and light-use roads require consideration of the anticipated volume of traffic and the nature and speed of vehicles to be used, the Director finds that proposed Rules 4.03.1(3)(c), 4.03.2(3)(c), and 4.03.3(3)(c) are no less effective than the Federal regulations at 30 CFR 816.150(c) and 817.150(c). The Director approves proposed Rules 4.03.1(3)(c), 4.03.2(3)(c), and 4.03.3(3)(c).

5. Rules 4.21.4(3) (b), (c), and (d), Performance Standards for Roads and Other Transportation Facilities Used in Coal Exploration.

Colorado proposed to (1) revise Rule 4.21.4(3)(b) and (2) delete Rules 4.21.4(3) (c) and (d) and in their place add Rules 4.21.4(3)(b) (i), (ii), and (iii). These rules pertain to roads and other transportation facilities used in coal exploration.

Based on the following discussions, the Director finds that Colorado's proposed revision of Rule 4.21.4(3)(b), addition of Rules 4.21.4(3)(b) (i), (ii), and (iii), and deletion of Rules 4.21.4(3) (c) and (d) are no less effective than the Federal definition of "substantially disturb" at 30 CFR 701.5 and the Federal regulations at 30 CFR 815.15(b), 816.180, 816.181, 816.150 (b) through (f), and 816.133(a) (1) and (2). The Director approves proposed Rules 4.21.4(3)(b), (b)(i), (ii), and (iii) and the deletion of Rules 4.21.4(3) (c) and (d).

a. *Rule 4.21.3(b), Compliance with the support facilities and light-use roads performance standards by new and significantly altered roads and other transportation facilities used in coal exploration.* At Rule 4.21.3(b), Colorado proposed that new and significantly altered existing roads and "other transportation facilities" that are used in coal exploration would be required to meet the applicable performance standards for support facilities at Rule 4.04 and the requirements for light-use roads at Rule 4.03.3.

With respect to the part of Rule 4.21.3(b) that references existing Rule 4.04 and addresses other transportation facilities, the Federal regulations at 30 CFR 815.15(b) require that transportation facilities other than roads, which are used for coal exploration that substantially disturbs the natural land surface, shall comply with the applicable provisions of 30 CFR 816.180 and 816.181, which pertain to the protection of utility installations and support facilities. Under the Federal regulations at 30 CFR 815.15(b), the term "other transportation facilities" means "any 'other transportation facility' used in the exploration operation besides roads" and includes facilities such as conveyor belts, aerial tramways, and serial railroad loops (48 FR 40622, 40632, September 8, 1983). Colorado's referenced existing Rule 4.04 is no less effective than 30 CFR 816.180 and 816.181, and the part of Rule 4.21.3(b) addressing other transportation facilities is no less effective than 30 CFR 815.15(b).

With respect to the part of proposed Rule 4.21.3(b) that references Rule 4.03.3 and addresses new roads and significantly altered existing roads, the Federal regulations at 30 CFR 815.15(b) require that roads, used for coal exploration that substantially disturbs the natural land surface, shall comply with the applicable provisions of 30 CFR 816.150 (b) through (f), which are the general performance standards that all roads (primary and ancillary) must meet. Colorado's referenced Rule 4.03.3 is no less effective than the Federal regulations at 30 CFR 816.150 (b) through (f) (see discussion of Colorado's proposed revisions to Rule 4.03.3 in finding No. 4).

At 30 CFR 701.5, OSM defines "substantially disturb," in part to mean, to significantly impact land or water resources by construction of roads or other access routes for the purposes of coal exploration. This definition and the regulations at 30 CFR 815.15(b), when considered together, require that coal exploration road construction that significantly impacts land or water resources must comply with 30 CFR 816.150 (b) through (f).

In proposing Rule 4.21.4(3)(b), Colorado stated in its November 3, 1993, "Statement of Basis, Specific Statutory Authority, and Purpose" that the construction of new coal exploration roads will always constitute "substantial disturbance" under the Colorado program. Colorado's resultant requirement at proposed Rule 4.21.4(3)(b) that all new coal exploration roads must comply with the light-use road requirements of Rule 4.03.3, is consistent with the definition of "substantially disturb" at 30 CFR 701.5, and is no less effective than 30 CFR 815.15(b) and 30 CFR 816.150 (b) through (f).

For that part of proposed Rule 4.21.4(3)(b) requiring that any existing road that is significantly altered for use in coal exploration must also comply with the light-use road requirements of Rule 4.03.3, Colorado proposed at Rule 2.21.4(3)(b) that

> [a] road is significantly altered if it is widened, if the route or gradient is altered, or if the road is otherwise upgraded. Routine maintenance or minor rehabilitation activities including blading and culvert replacement do not constitute significant alteration of an existing road.

In the preamble to its final rule Federal Register notice revising the Federal regulations governing roads, OSM stated, in response to a comment on the term "substantially disturbed," as defined in 30 CFR 701.5, that

> OSMRE [(OSM)] does not believe the routine maintenance of an existing road used for coal exploration is a substantial disturbance requiring the road to be reclaimed in accordance with the performance standards of section 515 of the Act [(SMCRA)]. To use an existing road that is in poor condition due to lack of maintenance, a coal exploration operator may need to blade the road surface, replace some culverts, or do other minor routine maintenance. Such routine maintenance of an existing road would not be considered substantial disturbance of the natural land surface that would require reclamation of the road.

(53 FR 45190, 45198, November 8, 1988).

Colorado's proposal at Rule 4.21.4(3)(b), which provides guidance for determining when a road is "significantly altered," is consistent with the above quoted preamble discussion. That part of proposed Rule 4.21.4(3)(b) requiring that any existing road that is significantly altered for use in coal exploration must also comply with the light-use road requirements of Rule 4.03.3 is consistent with and no less effective than the Federal definition of "substantially disturb" at 30 CFR 701.5, and the Federal regulations at 30 CFR 815.15(b), and 816.150 (b) through (f).

b. *Rule 4.21.3(b)(i), Compliance with all applicable Federal, State, and local requirements for existing roads other transportation facilities used for coal exploration.* At Rule 4.21.3(b)(i), Colorado proposed that existing roads and other transportation facilities used for coal exploration would have to meet "all applicable Federal, State, and local requirements." Although not explicitly stated, this rule applies to both insignificantly altered and significantly altered existing roads and other transportation facilities.

With respect to insignificantly altered, existing roads and other transportation facilities, the Federal regulations at 30 CFR 815.1 state that the 30 CFR Part 815 regulations do not address roads and other transportation facilities used for coal exploration that does not substantially disturb the natural land surface. With respect to significantly altered, existing roads and other transportation facilities, the Federal regulations at 30 CFR 815.15(b) do not require, as Colorado proposes, compliance with "all applicable Federal, State, and local requirements." Although Colorado does not specify what other Federal, State, and local requirements might apply, the proposed rule nevertheless offers a level of protection that is potentially greater than the Federal regulations that correspond to it. For this reason,

proposed Rule 4.21.3(b)(i) is no less effective than 30 CFR 815.15(b).

c. *Rule 4.21.3(b)(ii), Compliance with erosion control and hydrologic balance requirements for existing roads and other transportation facilities used for coal exploration that are significantly altered, or, such roads and facilities that are insignificantly altered but contribute additional suspended solids to streamflow and runoff.* At Rule 4.21.3(b)(ii), Colorado proposed that existing roads and other transportation facilities that are significantly altered, or, such roads and facilities that are insignificantly altered but contribute additional suspended solids to stream flow and runoff, would be regulated under Rule 4.21.4(7) of Colorado's program, which requires erosion control, prevention of additional contributions of suspended solids to the extent possible using the best technology currently available, and under Rule 4.05.3, which contains the performance standards for diversions and conveyance of overland flow and shallow ground-water flow, and ephemeral streams draining a watershed area less than 1 square mile.

i. *Significantly altered existing roads and other transportation facilities.* With respect to Colorado's proposal for significantly altered existing roads and other transportation facilities, the Federal regulations at 30 CFR 815.15(b) require that roads and other transportation facilities, used for coal exploration that substantially disturbs the natural land surface, shall comply with the applicable provisions of 30 CFR 816.180 and 816.181, which pertain to the protection of utility installations and support facilities, and with the applicable provisions of 30 CFR 816.150 (b) through (f), which are the general performance standards that all roads (primary and ancillary) must meet.

The Federal regulations at 30 CFR 816.181 (b)(1) and (2)(i), which are incorporated by reference into 30 CFR 815.15(b), respectively require that support facilities shall be located, maintained, and used in a manner that (1) prevents or controls erosion and siltation and water pollution and (2) to the extent possible using the best technology currently available, minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area and ensures that any such contributions shall not be in excess of limitations of State or Federal law. The Federal regulations at 30 CFR 816.150(b) (3), (4), and (5), which are also incorporated by reference in 30 CFR 815.15(b), require that each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to (1) control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area, (2) neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters, and (3) refrain from seriously altering the normal flow of water in streambeds or drainage channels.

Therefore, the part of proposed Rule 4.21.3(b)(ii) which concerns roads and other transportation facilities that are significantly altered, and which references Rules 4.21.4(7) and 4.05.3, is no less effective than the corresponding Federal regulations at 30 CFR 815.15(b) which incorporate by reference 30 CFR 816.181 (b)(1) and (2)(i) and 30 CFR 816.150(b) (3), (4), and (5).

ii. *Insignificantly altered existing roads and other transportation facilities that contribute additional suspended solids to streamflow and runoff.* With respect to Colorado's proposal at Rule 4.21.3(b)(ii) for insignificantly altered existing roads and other transportation facilities that contribute additional suspended solids to streamflow and runoff, Colorado recognizes that there may be a need to regulate the use of roads and other transportation facilities, even if insignificantly altered, for erosion control and protection of water quality.

The Federal regulations at 30 CFR 815.15(b) address the regulation of roads and other transportation facilities that substantially disturb the land without attempting to define how such a determination might be made. In the preamble to its final rule Federal Register notice revising the Federal regulations governing roads, OSM stated that

> A road must comply with the applicable provisions of 30 CFR 816.150 only to the extent that the coal exploration activities substantially disturb the land where the road is located * * *.

(53 FR 45190, 45198, November 8, 1988).

Colorado has, in effect, defined in proposed Rule 4.21.3(b)(ii) when "use" may constitute substantial disturbance and has required appropriate regulation under its program when such disturbance occurs. Therefore, Colorado's proposal at Rule 4.21.3(b)(ii) to regulate the use of insignificantly altered roads and transportation facilities for contribution of additional suspended solids to streamflow and runoff is consistent with this preamble discussion and no less effective than the requirements of 30 CFR 815.15(b) that incorporate by reference, as discussed above, the Federal regulations at 30 CFR 816.181 (b)(1) and (2)(i) and 30 CFR 816.150(b) (3), (4), and (5).

d. *Rule 4.21.3(b)(iii), Reclamation of existing roads used in coal exploration to a condition equal to or better than their pre-exploration condition.* At Rule 4.21.3(b)(iii), Colorado proposed that existing roads that will remain after exploration activities are completed shall be reclaimed to a condition equal to or better than their pre-exploration condition. Although not explicitly stated, this rule applies to both significantly altered and insignificantly altered existing roads. At Rule 4.21.3(b), Colorado proposed that new and significantly altered existing roads and "other transportation facilities" that are used in coal exploration would be required to meet the applicable performance standards for support facilities at Rule 4.04 and the requirements for light-use roads at Rule 4.03.3 (see discussion at finding No. 5a).

The Federal regulations at 30 CFR 815.15(b) require that roads, used for coal exploration that substantially disturb the natural land surface, shall comply with the applicable provisions of 30 CFR 816.150 (b) through (f), which are the general performance standards that all roads (primary and ancillary) must meet. The Federal regulations do not specifically address the retention of existing roads used for coal exploration. Colorado's proposal that existing roads used in coal exploration be reclaimed to a condition equal to or better than their pre-exploration condition is not inconsistent with the requirements of the Federal regulations. Because Colorado's proposed Rule 4.21.3(b) requires compliance with its counterparts to the Federal regulations at 30 CFR 816.150 (b) through (f) and 817.150 (b) through (f), Colorado's proposed Rule 4.21.3(b)(iii) is an additional requirement that provides a greater degree of environmental protection than do the Federal regulations. Therefore, Colorado's proposed Rule 4.21.3(b)(iii) is no less effective than the Federal regulations at 30 CFR 815.15(b).

6. Rule 2.05.3(9)(a), Disposal of Coal Mine Waste in Abandoned Mine Workings

Colorado proposed, at Rule 2.05.3(9)(a), to clarify that approvals from both the Division and the Mine Safety and Health Administration (MSHA) are required for disposal of "coal mine waste" in abandoned underground mine workings. Colorado also proposed to delete Rules 2.05.3(10)(a), (b), (c), (d), and (e) addressing disposal of "coal processing waste" in

underground mine workings. At Rule 1.04(22a), Colorado defines "coal mine waste" to mean "coal processing waste and underground development waste." Therefore, although Colorado proposes to delete Rule 2.05.3(10), it has incorporated the requirements of Rule 2.05.3(10), regarding the disposal of coal processing waste in abandoned underground mines, into proposed Rule 2.05.3(9)(a).

With one exception, the requirements of proposed Rule 2.05.3(9)(a) are substantively identical to the corresponding Federal regulation at 30 CFR 784.25(a), which sets forth the requirements for the return of coal processing waste to abandoned underground workings. The exception is that Colorado's proposed rule applies to "coal mine waste," which includes both "coal processing waste" and "underground development waste," while the Federal regulation at 30 CFR 784.25(a) applies only to "coal processing waste." The Federal regulation at 30 CFR 817.81(f), however, provides for the disposal of "coal mine waste" (which does include coal processing waste and underground development waste) in underground mine workings or excavations in accordance with a plan approved by the regulatory authority and MSHA under 30 CFR 784.25. In addition, Colorado's existing definitions of "coal mine waste," "coal processing waste," and "underground development waste" at Rules 1.04(22a), (24), and (143) are substantively identical to the Federal definitions of the same terms at 30 CFR 701.5.

Because 30 CFR 817.81(f) provides for the disposal of both "coal processing waste" and "underground development waste" in accordance with 30 CFR 784.25, the Director finds that Colorado's proposed revisions of Rule 2.05.3(9)(a) and its deletion of Rule 2.05.3(10) are no less effective than the Federal regulations at 30 CFR 784.25(a) and 817.81(f). The Director approves proposed Rule 2.05.3(9)(a) and the proposed deletion of Rule 2.05.3(10) (a), (b), (c), (d), and (e).

7. Rules 4.14.2 (2) and (2)(c), General Backfilling and Grading Requirements for Cut-and-Fill Terraces, and Rule 4.09.1(9), Specific Requirements for Cut-and-Fill Terraces on Excess Spoil Piles

Colorado proposed to revise Rule 4.14.2(2) to correct a typographical error and Rule 4.14.2(2)(c) (a general backfilling and grading requirement specific to terraces) to delete an exception that allowed, under certain circumstances, terrace outslopes with a slope steeper than 2h:1v (50 percent). Colorado retained at Rule 4.14.2(2)(c) the requirement that the slope of a terrace outslope shall not be steeper than 2h:1v. Colorado's existing Rule 4.09.1(9) (specific to excess spoil fills), among other things, states that terraces may be utilized to control erosion and enhance stability if approved by the Division and if consistent with Rule 4.14.2(2)(c).

Therefore, Colorado's existing Rule 4.09.1(9), by referencing the requirement for terraces at proposed Rule 4.14.2(2)(c), requires that the slope of the terrace outslope on excess spoil fills be no steeper than 2h:1v. Colorado proposed to revise Rule 4.14.2(2)(c) so that Rule 4.09.1(9) would be consistent with the requirement of the Federal regulations.

The Federal regulations at 30 CFR 816.71(e)(3) and 817.71(e)(3) are specific to excess spoil fills and require, among other things, that the grade of the outslope between terrace benches shall not be steeper than 2h:1v. Colorado's existing Rule 4.09.1(9), which incorporates by reference the requirement at proposed Rule 4.14.2(2)(c) that terrace bench outslopes be no steeper than 2h:1v, is consistent with the Federal regulations at 30 CFR 816.71(e)(3) and 817.71(e)(3).

The general backfilling and grading requirements for terraces in the Federal regulations at 30 CFR 816.102(g)(1) and 817.102(g)(1) provide for the use of cut-and-fill terraces if (1) the terraces are needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes and (2) the terraces are compatible with the approved postmining land use. Although these Federal regulations do not include specific design requirements for cut-and-fill terraces, Colorado's design specification regarding the slope of terrace outslopes at proposed Rule 4.14.2(2)(c) is not inconsistent with the Federal regulations pertaining to terraces at 30 CFR 816.102(g)(1) and 817.102(g)(1).

Therefore, the Director finds that (1) proposed Rule 4.14.2(2)(c) is no less effective than 30 CFR 816.102(g)(1) and 817.102(g) (1) and (2) existing Rule 4.09.1(9), which references proposed Rules 4.14.2 (2) and (2)(c), is no less effective than the Federal regulations at 30 CFR 816.71(e)(3) and 817.71(e)(3). The Director approves proposed Rules 4.14.2 (2) and (2)(c).

8. Rule 4.26.2(2), Performance Standards for Stabilization of Mountaintop Removal Operations

Colorado proposed to revise Rule 4.26.2(2) to delete two provisions at Rules 4.26.2(2) (b) and (c) which provide the conditions under which outcrop coal barriers, used to stabilize mountaintop removal operations, may be removed. Outcrop coal barriers consist of the toe of the lowest coal seam and its associated overburden that are not disturbed by mining operations. An unrevised provision of Rule 4.26.2(2) requires that outcrop coal barriers must be of sufficient width to prevent slides and erosion. Rule 4.26.2(2)(b), proposed for deletion, allows the removal of the outcrop coal barrier adjacent to a head-of-hollow fill after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier. Rule 4.26.2(2)(c), also proposed for deletion, allows the removal of the outcrop coal barrier if the removal would not cause slides and erosion, and a minimum static safety factor of 1.5 would be attained. The requirements to prevent slides, control erosion, and attain a minimum static safety factor of 1.5 are required by existing Colorado Rules 4.26.2 (2) and (3) for regraded slopes constructed *with* outcrop coal barriers.

Rule 4.26.2(2)(b) is substantively identical to the corresponding Federal regulation at 30 CFR 824.11(a)(6)(ii) concerning mountaintop removal. Because, by deleting Rule 4.26.2(2)(b), Colorado would no longer allow such conditional removal of the outcrop coal barrier adjacent to a head-of-hollow fill, Colorado's proposed Rule 4.26.2(2) offers a greater degree of safety and environmental protection than the corresponding Federal regulation at 30 CFR 824.11(a)(6).

There is no Federal counterpart at 30 CFR 824.11(a)(6) to Rule 4.26.2(2)(c) allowing removal of an outcrop coal barrier if a minimum static safety factor of 1.5, required for regraded slopes, would be attained. Because, by deleting Rule 4.26.2(2)(c), Colorado would no longer allow removal of the outcrop coal barrier even if a static safety factor of 1.5 would be attained, Colorado's proposed Rule 4.26.2(2) is no less effective than the corresponding Federal regulations at (1) 30 CFR 824.11(a)(6) that requires the use of outcrop coal barriers to prevent slides and to control erosion and (2) 30 CFR 824.11(a)(7) that requires a static safety factor of 1.5 on regraded slopes constructed with a coal outcrop barrier.

For these reasons, the Director finds that Colorado's proposed Rule 4.26.2(2) is no less effective than the Federal regulations at 30 CFR 824.11(a)(6). The Director approves proposed Rule 4.26.2(2) and the proposed deletions of Rules 4.26.2(2) (b) and (c).

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comment on the proposed amendment and provided an opportunity for a public hearing. The scheduled public hearing was not held because no one requested an opportunity to testify. By letter dated August 19, 1993 (Administrative Record No. CO–563), a coal mining company made three comments on the proposed amendment that are discussed below.

The first comment concerned the disposal of noncoal mine waste and coal mine waste. The commenter noted that proposed Rule 4.11.4(3) would preclude the disposal of "noncoal mine waste" in a refuse pile or impoundment. The commenter was concerned that, without a definition of "noncoal mine waste," this term could be interpreted to include such material as spar rock and fallen roof (from underground mines), which are included within the definition of "coal mine waste" at Rule 1.04(22a). The effect of this interpretation, asserted the commenter, would be that these types of coal mine waste could not be disposed of in refuse piles or impoundments. The commenter requested that Colorado, at proposed Rule 4.11.4(3), concerning the disposal of noncoal mine waste, be required to "clarify that waste rock can be placed in a refuse pile."

It appears that the commenter was not aware of several of Colorado's existing rules. Rule 4.11.4(1), provides that the term "noncoal waste" includes, but is not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber, and other combustibles generated during surface or underground mining activities.

In addition, by definition at Rule 1.04(22a), "coal mine waste" includes underground development waste. Underground development waste includes waste rock such as spar rock and fallen roof about which the commenter is concerned. By definition at Rule 1.04(108a), "refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material. Rule 4.10 governs the disposal of coal mine waste in coal mine waste banks.

Because Colorado's Rule 4.11.4(1) clearly indicates that noncoal mine waste would not include waste rock and Rule 4.10 clearly regulates the disposal of waste rock, and would allow the disposal of spar rock and fallen roof in a coal mine waste bank, the Director is not requiring that Colorado further revise proposed Rule 4.11.4(3) in response to the commenter's request.

The second comment concerned the impact of catastrophic events on roadways. The commenter requested that Colorado be required, at Rules 4.03.1, 4.03.2, and 4.03.3 concerning performance standards for road, to add "landslides and mudslides" to the list of catastrophic events that can occur on a roadway. Colorado's proposed Rules 4.03.1(6)(c) [haul roads], 4.03.2(6)(c) [access roads], and 4.03.3(6)(c) [light-use roads] require that a road damaged by a catastrophic event, such as a flood or earthquake, be repaired as soon as is practicable after the damage has occurred. Because the examples of catastrophic events in the proposed rules are not exclusive of other types of catastrophic events, damage to roads from mudslides and landslides could be considered damage caused by a catastrophic event under Colorado's proposed rules. As discussed in finding No. 1, Colorado's performance standards concerning roads damaged by a catastrophic event at proposed Rules 4.03.1(6)(c), 4.03.2(6)(c), and 4.03.3(6)(c) are substantively identical to the Federal regulations at 30 CFR 816.150(e)(2) and 817.150(e)(2). Therefore, the Director is not requiring that Colorado further revise Rules 4.03.1, 4.03.2, and 4.03.3 in response to the commenter's request.

The third comment concerned the regulation of pioneer and construction roads. The commenter was concerned that Colorado's proposed definition of "road" at Rule 1.04(111) would require that pioneer and construction roads be regulated as light-use roads and requested that Colorado be required to retain the "exclusion for pioneer and construction roads" in its proposed definition of "road."

Colorado stated in its "Statement of Basis, Specific Statutory Authority and Purpose" that

> [T]he exclusion for pioneer or construction roadways was deleted because such roadways are part of the road construction process and as such they are subject to the general performance standards of rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b), depending on classification [as haul, access, or light-use roads]. Pioneer or construction roadways are not subject to the standards applicable to completed roadways.

Colorado's proposed rules would not, as the commenter suggested, require compliance of pioneer and construction roads with the performance standards for light-use roads. As explained by Colorado in its "Statement of Basis, Specific Statutory Authority and Purpose," proposed Rules 4.03.1(1) (a) and (b) [haul roads], 4.03.2(1) (a) and (b) [access roads], and 4.03.3(1) (a) and (b) [light-use roads] apply to pioneer and construction roads because they apply to the construction and maintenance of all roads. These proposed rules require that roads be constructed and maintained to prevent (1) erosion and siltation, pollution of air or water, and damage to public or private property, and (2) damage to fish, wildlife, and related environmental values, and contribution of suspended solids to streamflow or runoff outside the permit area in excess of limitations of State or Federal law. In addition, these rules require prudent dust control practices as necessary to comply with Rule 4.17 (which pertains to compliance with all applicable State and Federal air quality statutes and regulations). The requirement that pioneer and construction roads be regulated to the extent that they are constructed and maintained, but not retained as permanent roads, is implicit in the Federal definition of "road" at 30 CFR 701.5 and the Federal performance standards for all roads at 30 CFR 816.150 and 817.150.

As discussed in finding Nos. 2a and 4a respectively, Colorado's proposed definition of "road" at Rule 1.04 (111) and proposed performance standards for roads at Rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b), are no less effective than the Federal definition of "road" at 30 CFR 701.5 and the Federal performance standards for all roads at 30 CFR 816.150(b)(1) and 817.150(b)(1). Therefore, the Director is not requiring that Colorado further revise Rule 1.04(111) in response to the commenter's request.

2. Agency Comments

Pursuant to Section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), OSM solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the Colorado program.

By letter dated July 27, 1993 (Administrative Record No. CO–558), the U.S. Forest Service responded that it concurred with the proposed amendment.

By letters dated July 28 and December 9, 1993 (Administrative Record No. CO–556 and CO–598), EPA's Region VIII office responded that it had no comments on the proposed amendment.

By letter dated August 2, 1993 (Administrative Record No. CO–557), the U.S. Department of Agriculture, Soil

Conservation Service (SCS), responded that it had no specific comment on the proposed amendment.

By letter dated August 9, 1993 (Administrative Record No. CO–560), and by telephone conversation on December 1, 1993 (Administrative Record No. CO–592), the U.S. Fish and Wildlife Service responded that it had no comments.

By letter dated August 10, 1993 (Administrative Record No. CO–561), and by telephone conversation on December 1, 1993 (Administrative Record No. CO–591), the U.S. Bureau of Mines responded that it had no comments.

By letters dated August 16 and December 3, 1993 (Administrative Record Nos. CO–564 and CO–593), the U.S. Army Corps of Engineers responded that the proposed amendment was satisfactory.

By letter dated October 18, 1993 (Administrative Record No. CO–580), the Mine Safety and Health Administration (MSHA) responded that nothing in the proposed amendment was found that would "contravene requirements" of the Federal regulations. However, MSHA questioned whether, in certain instances, Colorado's proposed amendment included all of the Federal regulation requirements. MSHA's concerns are summarized below in paragraphs a through k. For the reasons discussed below, the Director is not requiring that Colorado further revise its rules in response to the comments.

(a.) *Requirements for "ancillary roads."* The commenter stated that Colorado uses the term "frequently [traveled]" in the definition of "access road" at proposed Rule 1.04(111)(b), while the Federal definition of "ancillary road" provides that such roads may not be frequently used. In addition, the commenter was concerned that the term "frequently" was not defined.

The commenter inappropriately compares Colorado's requirements for "access roads" with the Federal requirements for "ancillary roads." As previously explained under finding No. 2b, Colorado's definition of "access road" corresponds to the Federal definition of "primary road," not to the Federal definition of "ancillary road." The Federal definition of "primary road" at 30 CFR 816.150(a)(2)(ii) includes all roads frequently used for access or other purposes for a period in excess of 6 months * * *" Under the Federal definition at 30 CFR 816.150(a)(3), a road that does not meet the above requirements is classified as an "ancillary road." Therefore, a road which is used infrequently for period in excess of 6 months would be classified as an ancillary road under the Federal regulations.

Under Colorado's proposed Rule 1.04(111)(b), an "access road" is one "frequently traveled for purposes other than the transportation of coal, spoil, or coal mine waste * * *" The Federal regulations do not define the term "frequently" as used in the definition of "primary road." However, since Colorado's proposed definition of "access road" requires that a road be used frequently and does not include the temporal limitation of the Federal definition that the road be used frequently for 6 months, Colorado's proposed definition of "access road," if anything, provides a greater degree of environmental protection than the corresponding Federal definition of "primary road."

Thus, contrary to the commenter's implication, Colorado's proposed definition of "access road" is not inconsistent with the Federal regulations in requiring that such roads be "frequently used." Therefore, as discussed in finding No. 2b, Colorado's proposed definition of "access road" at Rule 1.04(111)(b) is no less effective than the corresponding Federal definition of "primary road" at 30 CFR 816.150(a)(2). In response to the commenter's concern that Colorado did not define the term "frequently," OSM cannot require Colorado to define a term that is used but not defined in the Federal program.

b. *Maps required for support facilities.* The commenter was concerned that Colorado's proposed Rule 2.05.3(3)(a), pertaining to permit application requirements for plans and drawings of mine support facilities, did not satisfy the requirements for mine maps at 30 CFR 77.1200. As discussed in finding No. 3a, the requirements of proposed Rule 2.05.3(3)(a) are substantively identical to and no less effective than the corresponding Federal regulations at 30 CFR 780.38 and 784.30. These Colorado rules, like the corresponding Federal regulations, do not require compliance with MSHA regulations at 30 CFR 77.120.

c. *Performance standards for roads.* The commenter stated that Colorado's proposed Rule 2.05.3(3)(c)(vii), concerning permit application requirements for plans and drawings of haul and access roads, must include the requirements for roads that are in the Federal regulations at 30 CFR 816.150(b). As discussed in finding No. 1, the requirements of proposed Rule 2.05.3(3)(c)(vii) are substantively identical to and no less effective than those of the corresponding Federal regulations at 30 CFR 780.37(b) and 784.24(b). Colorado's performance standards for roads corresponding to the requirements of 30 CFR 816.150(b) are found in Rules 4.03.1, 4.03.2, and 4.03.3.

d. *Prudent dust control measures for roads.* The commenter stated that Colorado's proposed Rules 4.03.1(1)(b) [haul roads], 4.03.2(1)(b) [access roads], and 4.03.3(1)(b) [light-use roads], concerning (among other things) prudent dust control measures for roads, must include the mandatory surface coal mine health standards for dust found at 30 CFR 77.1. As discussed in finding No. 4a, Colorado's proposed Rules 4.03.1(1)(b), 4.03.2(1)(b), and 4.03.3(1)(b) reference the requirements of Rule 4.17, which requires compliance "with all applicable State and Federal air quality statutes and regulations."

e. *Performance standards for primary roads.* The commenter stated that Colorado's proposed Rules 4.03.1(3)(c) [haul roads], 4.03.2(3)(c) [access roads], and 4.03.3(3)(c) [light-use roads], concerning road widths, must include the additional requirements that might arise in the Federal regulations at 30 CFR 816.151 (a) through (e). As discussed in finding No. 4d, Colorado's proposed Rules 4.03.1(3)(c), 4.03.2(3)(c), and 4.03.3(3)(c) are no less effective than the corresponding Federal regulations at 30 CFR 816.150(c) and 817.150(c), which are general performance standards for all roads. The requirements of 30 CFR 816.151 (a) through (e) are specific to primary roads. Colorado's Rules 4.03.1 and 4.03.2 pertain to haul and access roads and correspond to primary roads as used in the Federal program. As discussed in finding Nos. 1 and 4, Colorado's proposed Rules 4.03.1 and 4.03.2, concerning performance standards for haul and access roads, are no less effective than the requirements found for primary roads at 30 CFR 816.151 (a) through (e).

f. *Disposal of road surfacing material.* The commenter stated that Colorado's proposed Rules 4.03.1(7)(ix) [haul roads], 4.03.2(7)(ix) [access roads], and 4.03.3(7)(i) [light-use roads], concerning removal of road-surfacing materials, must comply with 30 CFR 816.150(7)(e). There is no Federal regulation codified as 30 CFR 816.150(7)(e). As discussed in finding No. 1, Rules 4.03.1(7)(a)(ix) and (b), 4.03.2(7)(a)(ix) and (b), and 4.03.3(7)(i) are no less effective than the corresponding Federal regulations at 30 CFR 816.150(f)(3) and 817.150(f)(3).

g. *Road location.* The commenter stated that Colorado's proposed Rules 4.03.1(2)(b) [haul roads] and 4.03.2(2)(b)

[access roads], concerning roads located in intermittent or perennial streams, may be further restricted by 30 CFR 816.41 and 816.43 through 816.57, which provide for hydrologic balance, protection, and buffer zones for streams. As discussed in finding No. 1, Colorado's proposed Rules 4.03.1(2)(b) [haul roads], 4.03.2(2)(b) [access roads], and 4.03.3(2)(b) [light-use roads] are no less effective than the corresponding Federal regulations at 30 CFR 816.150(d)(1) and 817.150(d)(1). Colorado's existing Rules 4.05.1 through 4.05.18 address requirements that correspond to the requirements in the Federal regulations at 30 CFR 816.41, 817.41, 816.43 through 816.57, and 817.43 through 817.57.

h. *Roads used for coal exploration.* The commenter stated that Colorado's proposed Rules 4.21.4(3)(b) (i) through (iii), concerning roads used in exploration activities, must comply with the general requirements for roads at 30 CFR 816.150. Colorado's proposed Rules 4.21.4(3)(b) (i) through (iii) require that new and significantly altered existing roads meet the applicable performance standards for light-use roads at Rule 4.03.3. As discussed in finding No. 4, Colorado's provisions for light-use roads, as proposed at Rule 4.03.3, are no less effective than the Federal requirements for roads at 30 CFR 816.150 (b) through (f). Furthermore, as discussed in finding No. 5, Colorado's proposed Rules 4.21.4(3)(b) (i) through (iii) are consistent with and no less effective than the Federal regulations at 30 CFR 815.15(b), concerning roads used in coal exploration activities, as clarified by the preamble discussion to the Federal regulations.

i. *Disposal of noncoal mine waste.* The commenter stated that Colorado's proposed Rule 4.11.4(3), concerning restrictions on the disposal of noncoal mine waste, must meet the requirements of 30 CFR 816.89 (a) through (d). A Federal regulation codified as 30 CFR 816.89(d) does not exist. Colorado's existing Rules 4.11.4 (1) and (2), concerning disposal of noncoal mine waste, correspond to and are substantively identical to the Federal regulations at 30 CFR 816.89 (a) and (b) and 817.89 (a) and (b). As discussed in finding No. 1, Colorado's proposed Rule 4.11.4(3) is substantially identical to and no less effective than the requirements of the corresponding Federal regulations at 30 CFR 816.89(c) and 817.89(c).

j. *Use of explosives.* The commenter stated that Colorado's proposed Rule 4.08.4(10)(b)(ii), concerning the use of explosives, must meet the requirements of 30 CFR 816.67. As discussed in finding No. 1, Colorado's proposed Rules 4.08.4 (10), (10) (a) and (b), and 4.08.6(1) are substantively identical to and are no less effective than the requirements of the corresponding Federal regulations at 30 CFR 816.67(d) (2), (3), and (5), 817.67(d) (2), (3), and (5), 816.67(e), and 817.67(e).

k. *Blasting.* The commenter stated that Colorado's proposed Rule 4.08.4(10)(c)(i), concerning the detonation of the maximum weight of explosives used in blasting, must meet the requirements of 30 CFR 816.67(d)(3)(ii). By letter dated December 21, 1993, Colorado withdrew all State initiated revisions proposed at Rule 4.08.4(10)(c)(i) (Administrative Record No. CO–597).

3. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), the Director is required to solicit comments from SHPO and ACHP for all amendments that may have an effect on historic properties. By letter dated August 18, 1993 (Administrative Record No. CO–565), the SHPO responded that the amendment would have no effect on historic properties. The ACHP did not respond to OSM's request.

4. EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the changes that Colorado proposes to its rules revise air or water quality standards. Nevertheless, OSM requested EPA's concurrence on the proposed amendment (Administrative Record No. CO–588). By letter dated January 10, 1994 (Administrative Record No. CO–602), EPA concurred with the requirements of the proposed amendment.

V. Director's Decision

Based on the above finding Nos. 1 through 8, the Director approves Colorado's program amendment as submitted on June 30, 1993, and as revised on November 3 and December 21, 1993. The Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

As discussed in finding No. 4b, the Director is approving the revisions proposed at Rules 4.03.1(1)(e) and 4.03.2(1)(e) to the extent that the variance provided for at these rules applies only to the design requirements for embankments specified in Rules 4.03.1(3)(e) and 4.03.2(3)(e), when there is a demonstration of compliance with a minimum static safety factor of 1.3. In this respect, he finds that proposed Rules 4.03.1(1)(e) and 4.03.2(1)(e) are consistent with and no less effective than the Federal regulations at 30 CFR 816.151(b), 817.151(b), 780.37(c), and 784.24(c). However, the Director finds that proposed Rules 4.03.1(1)(e) and 4.03.2(1)(e), to the extent that they allow a variance from Colorado's counterparts to the Federal regulations at 30 CFR 816.150, 817.150, 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e), are less effective than the Federal regulations at 30 CFR 816.150, 816.151, 817.150, and 817.151. Therefore, he is requiring that Colorado further revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to clearly indicate that the variance from compliance with design criteria for roads may not be applied to Colorado's counterparts to the Federal regulations for all roads at 30 CFR 816.150 and 817.150, and primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e).

The Federal regulations at 30 CFR part 906 codifying decisions concerning the Colorado program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and

the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 25, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding paragraph (p) to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(p) The revisions to the following provisions of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on June 30, 1993, and as revised on November 3, and December 21, 1993, are approved on June 1, 1994. The amendment becomes effective upon State promulgation of the amendment in the same form as submitted to OSM.

Definitions of "road," "haul road," "access road," and "light-use road"—Rules 1.04(111) and (111)(a) through (c).

Permit application requirements for support facilities, stream fords used as temporary construction routes, and certification of plans and drawings for haul and access roads—Rules 2.05.3(3)(a) and (c)(vi) and (vii).

Reclamation plan requirements for all roads—Rule 2.05.4(2).

Permit application requirements for haul roads concerning general requirements, location, design and construction, maintenance, and reclamation—Rules 4.03.1(1)(a), (b), and (d), 4.03.1(2)(b), 4.03.1(3)(c) and (e)(ix), 4.03.1(6)(c), and 4.03.1(7)(a)(ix), and deletion of Rule 4.03.1(7)(b).

Permit application requirements for access roads concerning general requirements, location, design and construction, maintenance, and reclamation—Rules 4.03.2(1)(a), (b), and (f), 4.03.2(2)(b), 4.03.2(3)(c), and (e)(ix), 4.03.2(6)(a) and (c), and 4.03.2(7)(a)(ix), and deletion of Rule 4.03.2(7)(b).

Permit application requirements for haul and access roads concerning design and construction—Rules 4.03.1(1)(e) and 4.03.2(1)(e) are approved only to the extent that the variance provided for at these rules applies only to the design requirements for embankments specified in Rules 4.03.1(3)(e) and 4.03.2(3)(e), when there is a demonstration of compliance with a minimum static safety factor of 1.3.

Permit application requirements for light-use roads concerning general requirements, location, design and construction, maintenance, and reclamation—Rules 4.03.3(1)(a) and (b), 4.03.3(2)(b), 4.03.3(3)(c), 4.03.3(6)(c), and 4.03.3(7)(i).

Performance standards for roads and other transportation facilities used in coal exploration activities—Rules 4.21.4(3)(b)(i) through (iii), and deletion of Rules 4.21.4 (3)(c)(i) through (iii) and 4.21.4(3)(d)(i) and (ii).

Permit application requirements for the return of coal mine waste and coal processing waste to abandoned workings—Rules 2.05.3(9)(a) and deletion of Rules 2.05.3(10)(a) through (e).

Performance standards for disposal of spoil in head of hollow fills and disposal of noncoal waste—Rules 4.09.3(2)(c) and 4.11.4(3).

General backfilling and grading requirements for cut-and-fill terraces—Rules 4.14.2(2) and (2)(c).

Performance standards for mountaintop removal operations—Rule 4.26.2(2) and deletion of Rules 4.26.2(2)(b) and (c).

Performance standards for the use of explosives—Rules 4.08.4(10), (10)(a) and (b), and 4.08.6(1).

Policy statements in the November 3, 1993, revised amendment's "Statement of Basis, Specific Statutory Authority and Purpose" concerning the jurisdiction of the Colorado program over (1) public roads for Rule 1.04(111) and (2) roads and other transportation facilities used in coal exploration activities for Rule 4.21.4(3)(b).

3. Section 906.16 is amended by adding paragraph (f) to read as follows:

§ 906.16 Required program amendments.

* * * * *

(f) By September 30, 1994, Colorado shall submit an amendment to revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to clearly indicate that the variance from compliance with design criteria for roads may not be applied to Colorado's counterparts to the Federal regulations for all roads at 30 CFR 816.150 and 817.150, and primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e).

[FR Doc. 94–13261 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN 1510–AA41

Rules and Procedures for Funds Transfers

AGENCY: Treasury, Fiscal, Financial Management Service.

ACTION: Final rule; amendment.

SUMMARY: This rule amends the regulations implementing the Cash Management Improvement Act of 1990 (CMIA), which governs the transfer of funds between the Federal Government and the States under Federal programs. It narrows the scope of CMIA implementation by excluding certain State-level entities that are fiscally or

legally independent of the central State authorities.

DATES: This rule is effective July 1, 1994, and is applicable July 1, 1994, or the first day of a State's 1995 fiscal year, whichever is later for a given State.

FOR FURTHER INFORMATION CONTACT: Gary Grippo, 202–874–6955.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is authorized by the Cash Management Improvement Act of 1990 (CMIA), Public Law 101–453, codified at 31 U.S.C. 3335, 6501, and 6503. The purpose of CMIA is to ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States.

On September 24, 1992, the Financial Management Service (FMS) issued regulations at 31 CFR part 205 to implement CMIA. 57 FR 44272, September 24, 1992. Subsequently, when the effective date of CMIA was delayed by the Cash Management Improvement Act Amendments of 1992, Public Law 102–589, the FMS revised the rules at 31 CFR part 205 to change the implementation date. 57 FR 60676, December 21, 1992. The regulations finally took effect on July 1, 1993, or the first day of a State's 1994 fiscal year, whichever was later for a given State.

The CMIA statute defines the term "State" to mean "a State of the United States, the District of Columbia, a territory or possession of the United States, and an *agency, instrumentality,* or fiscal agent of a State * * *" (31 U.S.C. 6501). [Emphasis added.] The implementing regulations refined this definition to specify the meaning of a State agency or instrumentality: "A State agency or instrumentality is any organization or component unit of the State reporting entity as defined by Generally Accepted Accounting Principles" (31 CFR 205.3). This regulatory definition, however, has caused problems for States and Federal agencies because it includes autonomous State-level entities that are legally or fiscally independent of the Governor, Treasurer, and Comptroller.

Accordingly, the purpose of this amendment to 31 CFR part 205 is to narrow the scope of CMIA implementation by excluding certain State-level entities that are fiscally or legally independent of the central State authorities. This amendment responds to the concerns of States, Federal agencies, and independent State-level entities, such as public benefit corporations and institutions of higher education.

Definition of State Agencies and Instrumentalities

The existing regulation defines a State agency or instrumentality to be any organization or component unit of the State reporting entity, as defined by Generally Accepted Accounting Principles (GAAP). This rulemaking narrows that definition to exclude: (1) Component units of a State, and (2) institutions of higher education, hospitals, and nonprofit organizations.

The existing definition causes problems for States because it includes entities that are legally independent of the State executive or fiscally independent of the State Treasurer and Comptroller. It therefore makes States responsible for organizations over which they have no control, financially or otherwise.

This rulemaking, accordingly, narrows the definition of State agencies and instrumentalities based on the principles of legal and fiscal control. First, it excludes component units of a State, such as public benefit corporations, which are by definition legally independent of the primary State government. The distinction between component units of a State and the primary State government is taken directly from GAAP, specifically Statement No. 14 of the Governmental Accounting Standards Board, "The Financial Reporting Entity."

Second, this rulemaking excludes certain entities that are likely to be fiscally independent, if not legally independent, by excluding institutions of higher education, hospitals, and nonprofit organizations. This exclusion is based on the dichotomy established by the Office of Management and Budget Circulars on grant administration. Circular A–102 applies to States per se, while Circular A–110 applies to institutions of higher education, hospitals, and nonprofit organizations.

Pass-throughs

Both changes to the definition of State agencies and instrumentalities exclude particular entities from the scope of CMIA, but do not necessarily exclude from CMIA all Federal funds that flow to those entities. That is, these changes should not be construed to exempt Federal funds that pass from a covered State entity to an entity that would be excluded by this rulemaking. For example, if a State Department of Education draws down Federal funds and then passes them on to a State institution of higher education, the funds would be subject to CMIA while they were in accounts of the State Department of Education.

Excluded Entities With Accounts in the Central State Treasury

Finally, clarification may be needed for cases where an excluded entity maintains its bank accounts in the central State treasury, which is part of the primary State government and therefore ostensibly subject to CMIA. As a general rule, accounts in the central State treasury against which an excluded entity disburses funds to program recipients or contractors would not be covered by CMIA. If, for example, a State university maintains an account in the State treasury, keeps Federal funds in it, and issues checks to students against it, the provisions of the CMIA regulation would not apply.

Rulemaking Analysis

E.O. 12866: It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

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

Notice and Comment

The FMS issues this final rule without prior notice and without a comment period, in accordance with 5 U.S.C. 553(b)(B). The FMS has determined that a notice of proposed rulemaking is unnecessary and contrary to the public interest.

The FMS makes these determinations based on meetings and correspondence with Federal agencies and States, which have urged the FMS to change the definition of State agencies and instrumentalities. Forty States expressed unanimous concern about the definition at four regional roundtable discussions. Twenty-six States indicated in survey responses that there were legal and practical impediments to complying with the regulation. Virtually all States and Federal agencies, moreover, have written to the FMS to voice concerns about the existing definition.

Prior notice-and-comment on this rulemaking is unnecessary because all affected parties support it. States, Federal agencies, and independent State-level entities without exception have urged the FMS to narrow the definition of State agencies and instrumentalities. Since this rulemaking responds to the universal position of all parties subject to the regulation, prior notice and a comment period are not necessary.

The determination that notice-and-comment is contrary to the public interest is based on the following considerations. First, the existing definition of State agencies and instrumentalities, if implemented, could result in serious damage to State governments and to independent State-level entities, such as public benefit corporations, public authorities, and public institutions of higher education. This definition would place Governors and other officials of the primary State government in positions of legal and financial responsibility for entities that are by law independent. States and independent State-level entities have appealed to the FMS that the implications of this definition are financially and legally untenable.

Second, the existing regulatory definition could threaten the stability of the CMIA program by forcing States into either default or noncompliance. A State is in default of CMIA when it does not enter into a Treasury-State Agreement with the FMS to implement CMIA. Some States have indicated that they can not execute an agreement under the existing regulation because they would be binding entities they do not control legally or fiscally. Other States may enter into agreements on behalf of such entities but can not ensure compliance with what has been negotiated. The potential for both default and noncompliance is considerable under the current regulation and could undermine the implementation of sound cash management practices required by CMIA.

Finally, the existing regulation would result in unnecessary costs to the Federal Government and potential financial harm to States. Under the current regulation, States would incur added costs to modify the unique accounting system of each independent State entity. A State covering six independent entities, for example, would have additional costs that are six times those incurred by the State to adapt the central State accounting system to implement CMIA. These duplicative costs must either be charged to the Federal Government, or absorbed by the States, with but marginal benefits to the CMIA program.

List of Subjects in 31 CFR Part 205

Grant programs, Grant administration, Intergovernmental relations, Electronic funds transfers.

Issuance

For the reasons set forth in the preamble, 31 CFR part 205 is amended by this final rule as follows.

PART 205—[AMENDED]

1. The authority citation for 31 CFR part 205 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

2. The definition of the term "State" in § 205.3 is revised to read as follows:

§ 205.3 Definitions.

* * * * *

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and an agency, instrumentality, or fiscal agent of a State so defined, but does not mean a local government or an Indian tribal government.

(1) A State agency or instrumentality is any organization of the primary government of the State financial reporting entity, as defined by Generally Accepted Accounting Principles, excluding institutions of higher education, hospitals, and nonprofit organizations.

(2) A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal program, excluding private nonprofit community organizations.

* * * * *

Dated: May 27, 1994.

Michael T. Smokovich,

Acting Commissioner.

[FR Doc. 94-13406 Filed 5-31-94; 8:45 am]

BILLING CODE 4810-35-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore 94-009]

RIN 2115-AA97

Safety Zone Regulation; Potomac River Festival Fireworks Display, Potomac River, Colonial Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a temporary safety zone for the Colonial Beach fireworks display at the Colonial Beach municipal pier on the Potomac River, Colonial Beach, VA. The event will consist of fireworks being launched out over the Potomac River from the Colonial Beach municipal pier. This safety zone is necessary to control spectator craft and to provide for the safety of life and property on U.S. navigable waters during this event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation will be effective from 8:30 p.m. until 10 p.m. July 4, 1994.

FOR FURTHER INFORMATION CONTACT: Timothy P. Ryan, Chief Warrant Officer, U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-2651.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The application to hold this event was not received at Marine Safety Office Baltimore until April 21, 1994 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The Town of Colonial Beach filed an application with the U.S. Coast Guard, Group Baltimore requesting a safety zone for the Potomac River Festival Fireworks Display to take place July 4, 1994. A safety zone has been determined to be necessary to control spectator craft during this event.

Discussion of Regulations

This regulation is necessary to ensure the safety of spectator craft, recreational vessels and to provide for the safety of life and property on U.S. navigable waters during the event. Since the main shipping channel of the Potomac River will not be closed during this event, vessel traffic should not be disrupted.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Timothy P. Ryan, Chief Warrant Officer, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Monica Lombardi, project attorney Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and

Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M1675.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Temporary section 165.T05–030 is added to read as follows:

§ 165.T05–030 Safety Zone: Potomac River Festival Fireworks Display, Potomac River, Colonial Beach, VA.

(a) *Location.* The following area is a safety zone: All waters within a 300 yard arc from the end of the Colonial Beach municipal pier located at:

Latitude	Longitude
38° 15′ 03″ N.	76° 57′ 35″ W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

(d) *Regulations.* (1) Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) *Effective date.* This section is effective from 8:30 p.m. to 10 p.m. July 4, 1994; unless terminated sooner by the Captain of the Port, Baltimore, Maryland.

Dated: May 12, 1994.

D.B. Crawford,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 94–13086 Filed 5–31–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Baltimore 94–006]

Safety Zone Regulation; Town of Colonial Beach Fireworks Display, Potomac River, Colonial Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a temporary safety zone for the Colonial Beach fireworks display at the Colonial Beach municipal pier on the Potomac River, Colonial Beach, VA. The event will consist of fireworks being launched out over the Potomac River from the Colonial Beach municipal pier. This safety zone is necessary to control spectator craft and to provide for the safety of life and property on U.S. navigable waters during this event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation will be effective from 8:30 p.m. until 10 p.m. June 11, 1994.

FOR FURTHER INFORMATION CONTACT: Timothy P. Ryan, Chief Warrant Officer, U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–2651.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The application to hold this event was not received at Marine Safety Office Baltimore until April 7, 1994 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The Town of Colonial Beach filed an application with the U.S. Coast Guard, Group Baltimore requesting a safety zone for the Colonial Beach Fireworks Display to take place June 11, 1994. A safety zone has been determined to be necessary to control spectator craft during this event.

Discussion of Regulations

This regulation is necessary to ensure the safety of spectator craft, recreational vessels and to provide for the safety of life and property on U.S. navigable waters during the event. Since the main shipping channel of the Potomac River will not be closed during this event, vessel traffic should not be disrupted.

This regulation is issued pursuant to 33 US.C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Timothy P. Ryan, Chief Warrant Officer, project officer for the Captain of the Port Baltimore, Maryland and Lieutenant Monica Lombardi, project attorney Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. In part 165 a temporary section 165.T05–029 is added to read as follows:

§ 165.T05–029 Safety Zone: Town of Colonial Beach Fireworks Display, Potomac River, Colonial Beach, VA.

(a) *Location.* The following area is a safety zone: All waters within a 300 yard arc from the end of the Colonial Beach municipal pier located at:

Latitude	Longitude
38°15'03" N.	76°57'35" W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

(d) *Regulations.*

(1) Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) *Effective Date.* This section is effective from 8:30 p.m. to 10 p.m. June 11, 1994; unless terminated sooner by the Captain of the Port, Baltimore, Maryland.

Dated: May 12, 1994.

D.B. Crawford,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 94–13085 Filed 5–31–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AG91

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: The Homeless Veterans Comprehensive Service Programs Act of 1992 authorizes the Department of Veterans Affairs to assist public or nonprofit private entities in establishing new programs to furnish supportive services and supportive housing for homeless veterans through grants. The Act authorizes VA to provide per diem payments, or in-kind assistance in lieu of per diem payments, to eligible entities that established programs after November 10, 1992 that provide supportive services or supportive housing for homeless veterans, or service centers providing supportive services. This rule contains criteria and requirements relating to the awarding of grants and relating to per diem payments. Accordingly, this rule is necessary so that grants can be awarded and per diem payments can be made.

DATES: Effective date is June 1, 1994. Comments must be received on or before August 1, 1994.

ADDRESSES: All comments concerning this interim final rule should be addressed to the Secretary of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection in room 170, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 10, 1994.

FOR FURTHER INFORMATION CONTACT: Lynn Bailey, Program Manager, VA Homeless Providers Grant and Per Diem Program; Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 535–7311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth a final interim rule to implement provisions of the "Homeless Veterans Comprehensive Service Programs Act of 1992" (Act).

Statistics indicate that on any given night, as many as 250,000 veterans are living on the streets or in shelters, and perhaps twice this number of veterans experience homelessness at some point during the course of a year. Many other veterans are considered "near homeless" or "at risk" because they are poor, suffer from various infirmities; or have no real home of their own, and live on a temporary basis with friends or relatives or in cheap hotels, often in substandard or overcrowded conditions.

The vast majority of homeless veterans are single; about two percent of all homeless veterans are female. About 40 percent of homeless veterans suffer from severe mental illness and (with considerable overlap) about half have alcohol or other drug abuse problems.

The Act authorizes the Department of Veterans Affairs (VA) to assist public or nonprofit private entities in establishing new programs to furnish supportive services or supportive housing for homeless veterans, or to establish service centers meeting the requirements described in § 17.724(k) of this part through grants of up to 65 percent of the cost of acquiring, renovating, altering or constructing facilities, and of the cost of purchasing vans. It also authorizes VA to provide per diem payments, or in-kind assistance in lieu of per diem payments, to eligible entities that established programs after November 10, 1992 that provide supportive services or supportive housing for homeless veterans, or function as service centers.

This interim rule contains criteria and requirements relating to the awarding of grants and contains criteria and requirements relating to per diem payments. Portions of these criteria and requirements restate statutory language. However, insofar as they establish regulatory material beyond the statutory language the regulatory material is designed to provide a mechanism for awarding grants and for allowing per diem payments to be made. The rule also sets forth the rates for services furnished to a homeless veteran. These rates are consistent with the amounts for similar services allowed under "Aid to States for Care of Veterans in State Homes" program (See 38 U.S.C. 1741).

In developing the criteria and requirements for inclusion in this rule, section 3(b) of the Act requires VA to consult with organizations with experience in the area of providing services to homeless veterans. On September 16, 1993 over 250 letters soliciting input into drafting rules for the program were mailed to known organizations that provide services to homeless veterans, national offices of veteran's service organizations, State and local departments of veterans affairs, and program coordinators of all centrally-funded VA homeless programs. The letter also sought additional names for the mailing list. As additional names were provided, copies of the September 16, 1993 letter were mailed to them.

On December 17, 1993 a meeting was held in Washington, DC with individuals and organizations with experience in providing services to homeless persons, including veteran service organizations and private nonprofit organizations. The purpose of the meeting was to discuss the draft rule. Changes resulting from that meeting included improving nine definitions; minor wording modifications to 12 paragraphs that clarified the meaning of the paragraphs; deletion of paragraphs on technical assistance, funding minimums, recovery periods, a requirement for "adequate" supportive services, and a requirement for due process when recipients terminate assistance to veterans; and changes to paragraphs on use of grant funds for permanent housing or operating leases, construction standards, requirements for environmental review, deobligation of funds, site control, insurance on vans, fees and/or rents charged to veterans in funded programs, and matching fund requirements.

Executive Order 12866

This rule has been reviewed as a "significant regulatory action" under E.O. 12866 by the Office of Management and Budget .

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, VA has found good cause to dispense with prior notice and comment on this interim final rule and to dispense with a 30-day delay of its effective date in light of the critical need to provide housing and other essentials to homeless veterans. Comments have been solicited for 60 days after publication of this document. VA may modify the rule in response to comments if appropriate.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects in 38 CFR Part 17

Community action programs, Community development, Homeless veterans, Government contracts, Grant programs—health, Grant programs—homeless veterans, Grant programs—housing and community development, Grant programs—social programs, Grant programs—transportation, Health, Health care, Health facilities, Housing, Intergovernmental relations, Low and moderate income housing, Manpower training programs, Mental health centers, Mental health programs, Motor carriers, Motor vehicles, Public housing, Rent subsidies, Supportive housing, Supportive services, Veterans, Vocational education, Vocational rehabilitation, Work incentive programs.

Approved: May 12, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, 38 U.S.C. 7721 note, unless otherwise noted.

2. Part 17 is amended by adding §§ 17.700 through 17.731 and an undesignated center heading preceding 17.700 to read as follows:

VA Homeless Providers Grant and Per Diem Program

Sec.

17.700 Purpose and scope.
17.701 Definitions.
17.702 Types and uses of assistance.
17.703 Grants for acquisition and rehabilitation.
17.704 Grants for new construction.
17.705 Grants for procurement of vans.
17.706 Matching requirements.
17.707 Limitations on use of assistance.
17.708 Notice of fund availability.
17.709 Grant award process.
17.710 Application requirements.
17.711 Ranking criteria for applications.
17.712 Selecting applications.
17.713 Obtaining additional information and awarding grants.
17.714 Environmental review requirements.
17.715 Aid for supportive services and supportive housing.
17.716 Eligibility to receive payments.
17.717 Requesting recognition.
17.718 Approval of annexes and new facilities.
17.719 Amount of aid payable.
17.720 Approval of eligibility.
17.721 Inspections.
17.722 Prerequisite for payment of aid.
17.723 Audit of recipients of aid.
17.724 General operation.
17.725 Outreach activities.
17.726 Resident rent.
17.727 Grant agreement.
17.728 Program changes.
17.729 Obligation and deobligation of funds.
17.730 Displacement, relocation, and acquisition.
17.731 Site control.

VA Homeless Providers Grant and Per Diem Program

§ 17.700 Purpose and scope.

(a) *General.* The VA Homeless Providers Grant and Per Diem Program is authorized by sections 3 and 4 of Pub. L. 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992. The VA Homeless Providers Grant

and Per Diem Program is designed to assist eligible entities in establishing new programs to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance to homeless veterans. Section 3 of the Act provides for grants to eligible entities of up to 65 percent of the estimated cost to construct, expand, remodel or alter existing buildings; to acquire facilities for use as service centers, transitional housing or other facilities to serve homeless veterans; or to procure vans to provide transportation for and support outreach to homeless veterans. A grant may not be used to support operational costs. In addition, § 4 of Pub. L. 102–590 authorizes VA to provide to a recipient of a grant under § 3 (or entity eligible for such a grant as described in § 17.715(a) of this part) per diem payments for homeless veterans whom VA has referred to that entity; or for whom VA has authorized the provision of services. In lieu of per diem payments, VA may provide in-kind assistance through services of VA employees and the use of other VA resources. This program does not provide for funding to construct, expand, remodel or acquire buildings located on VA-owned property, nor does it provide for funding to expand, remodel or acquire unutilized or underutilized VA structures made available to homeless providers under Title V of the Stewart B. McKinney Homeless Assistance Act.

(b) *Components.* (1) Grants may be used for the three components described in § 17.702:

(2) Grant recipients or eligible entities may apply for per diem payments or receive in-kind assistance through VA as described in § 17.715.

(3) Applicants may apply for a grant for more than one component described in § 17.702 and/or per diem payments.

§ 17.701 Definitions.

As used in this part:

Capital lease means a lease that satisfies one of the following criteria:

(1) The lease transfers ownership to the lessee at the expiration of the lease term.

(2) The lessor bears no risk.

(3) The term of the lease exceeds 75 percent of the economic life of the asset.

(4) The lease contains a bargain purchase option.

(5) The present value of lease payments is equal to or greater than 90 percent of the fair market value of the asset.

Eligible entity means a public or nonprofit private entity with the capacity to effectively administer a grant under this section; which has demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant; and which has agreed to, and has demonstrated the capacity to, meet the applicable criteria and requirements of the grant program.

Expansion of an existing building means an addition to an existing structure that does not increase the floor area by more than 100 percent.

Federally recognized Indian tribal government includes the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Homeless or homeless individual (1) includes:

(i) An individual who lacks a fixed, regular and adequate nighttime residence; and

(ii) An individual who has a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for persons intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law. An individual on probation, parole or under electronic custody is not considered "imprisoned or otherwise detained".

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

New program/new component of an existing program means a proposed program of supportive services, or a proposed addition of supportive services to an existing program, which services are not currently being provided by the entity proposing it, and for which there is a demonstrated need in the community served by that entity.

Nonprofit organization means a private organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of supportive housing and supportive services assistance.

Operating costs means expenses incurred in operating supportive housing, supportive services or service centers with respect to:

(1) Administration (including staff salaries; costs associated with accounting for the use of grant funds, preparing reports for submission to VA and obtaining program audits; and similar costs related to administering the grant after the award), maintenance, repair and security for the supportive housing;

(2) Van or building rent (except under capital leases), utilities, insurance, fuel, furnishings, and equipment;

(3) Conducting on-going assessments of supportive services provided for and needed by participants and the availability of such services;

(4) Relocation assistance under § 17.730 of this part, including payments and services; and

(5) Other costs associated with operating the supportive housing.

Outpatient health services means outpatient health care, outpatient mental health services, outpatient alcohol and/or substance abuse services, and case management.

Participant means a person who receives services provided at sites funded with assistance provided under this part.

Project means a structure or structures (or portion of such structure or structures) acquired, rehabilitated, or constructed with assistance provided under this part. A project may be used to provide supportive housing or supportive services in single room occupancy dwelling units which may or may not contain bathrooms or kitchen facilities and are appropriate for use as supportive housing.

Recipient means any governmental or nonprofit entity that receives assistance under this part.

Rehabilitation means the improvement or repair of an existing structure. Rehabilitation does not include minor or routine repairs.

Secretary means the Secretary of Veterans Affairs.

Seriously mentally ill means having a severe and persistent mental or emotional impairment that seriously limits a person's ability to live independently. This may include an impairment related to substance (alcohol and/or drug) abuse.

Service center means a project which provides the supportive services specified at § 17.724(k) to homeless veterans for a minimum of 40 hours per week over a minimum of five days per week as well as on an as-needed, unscheduled basis.

Single room occupancy (SRO) housing means a unit for occupancy by one person, which need not but may contain food preparation or sanitary facilities, or both.

Sponsor means a public or nonprofit organization which owns or leases dwelling units in buildings acquired and/or renovated with funds from this grant program, and which makes such units available to eligible homeless veterans.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Supportive housing means housing in conjunction with which supportive services are provided for homeless veterans where:

(1) The housing is safe and sanitary and meets any applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located, and the requirements of this part; and

(2) The housing is:

(i) Transitional housing; or

(ii) Is, or is a part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless veterans.

Supportive services (1) Means services, which may be designed by the recipient or program participants, that

(i) address the special needs of homeless veterans to be served by the project, and

(ii) provide appropriate services or assist such persons in obtaining appropriate services.

(2) Supportive services include:

(i) Outreach activities;

(ii) Providing food, nutritional counseling, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;

(iii) Establishing and operating child care services for dependents of homeless veterans;

(iv) Providing supervision and security arrangements necessary for the protection of residents of supportive housing and for homeless veterans using the housing or services;

(v) Providing assistance in obtaining permanent housing;

(vi) Providing education, employment counseling, job training, establishing and operating an employment assistance program;

(vii) Providing assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling, veterans' benefits, medical assistance, and income support assistance such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, Food Stamps, etc.; and

(viii) Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

(ix) Inpatient acute hospital care does not qualify as a supportive service.

Transitional housing means housing that will facilitate the movement of homeless veterans and their dependents to permanent housing within 24 months, or within a longer period as described in § 17.724(i) of this part.

Unit of general local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Veteran with disabilities means a veteran with a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions. This may include a disability related to substance (alcohol and/or drug) abuse. A veteran may be considered to have a disability regardless of whether VA has or has not awarded compensation or a pension for the disability.

§ 17.702 Types and uses of assistance.

(a) *Grant assistance.* Grant assistance is available to:

(1) Construct structures to establish new supportive housing facilities, new facilities to provide supportive services, or to establish service centers;

(2) Acquire, expand and remodel/alter structures to establish new supportive housing facilities, new facilities to provide supportive services, or to establish service centers; and

(3) Procure vans to provide transportation for the purpose of providing supportive services to homeless veterans.

(4) Applicants may apply for more than one type of assistance.

(b) *Limitation on non-veteran participants.* Up to 25 percent of services available in projects funded through this grant program may be provided to participants who are not receiving those services as veterans.

(c) *Structures used for multiple purposes.* Structures funded through this grant program that are used to provide supportive housing, supportive services, or used as service centers may also be used for other purposes, except that assistance under this part will be available only in proportion to the use of the structure for supportive housing, supportive services, or as a service center.

(d) *Maximum amount of grant.* The amount of a grant under this part may not exceed 65 percent of the cost of acquisition, rehabilitation, acquisition and rehabilitation, construction or procurement.

§ 17.703 Grants for acquisition and rehabilitation.

(a) *Use.* VA will grant funds to recipients to:

(1) Pay a portion of the cost of the acquisition of real property selected by the recipients for use in the provision of supportive housing or supportive services, or to establish service centers, including the repayment of any outstanding debt on a loan made to purchase property that has not been used previously for supportive housing, supportive services, or service centers; and

(2) Pay a portion of the cost of rehabilitation of structures, including cost-effective energy measures, selected by the recipients to provide supportive housing or supportive services or to establish service centers.

(b) If grant funds are proposed to be used for acquisition or rehabilitation, the applicant must demonstrate that the

costs associated with acquisition or rehabilitation are less than the costs associated with new construction.

§ 17.704 Grants for new construction.

(a) *Use.* VA will grant funds to recipients to pay a portion of the cost of new construction, including cost-effective energy measures and the cost of land associated with that construction, for use in the provision of supportive housing or supportive services, or for service centers. If grant funds are proposed to be used for new construction, the applicant must demonstrate that the costs associated with new construction are less than the costs associated with rehabilitation of an existing building, or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. The applicant must also demonstrate that new construction is less costly than acquisition of an existing building. For purposes of this cost comparison, costs associated with rehabilitation or new construction may include the cost of real property acquisition.

(b) *Demolition plan.* The cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project. If the applicant believes that this cost may be included in the cost of the construction project, a demolition plan should be submitted which includes the extent and cost of existing site features to be removed, stored, or relocated.

§ 17.705 Grants for procurement of vans.

(a) *Use.* VA will grant funds to recipients to pay a portion of the cost of procuring vans to provide transportation for and support outreach to homeless veterans.

(b) *Insurance.* Recipients of grants to procure vans who are nonprofit entities must insure vans to the same extent they would insure a van bought with their own funds.

(c) *Amount.* The estimated total costs of purchasing the van may include the purchase price, sales taxes, and title and licensing fees.

§ 17.706 Matching requirements.

(a) *General.* The recipient must, from sources other than grant funds received under this part, match the funds provided by VA to cover the percentage of the total cost of the acquisition, rehabilitation, construction or procurement not funded by the grant. This matching share shall constitute at least 35 percent of the total cost.

(b) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 17.707(a) of this part.

§ 17.707 Limitations on use of assistance.

(a) *Maintenance of effort.* No assistance provided under this part may be used to replace Federal, State or local funds previously used, or designated for use, to assist homeless veterans.

(b) *Primarily religious organizations.* VA will provide assistance to a recipient that is a primarily religious organization if the organization agrees to provide housing and supportive services in a manner that is free from religious influences and the organization complies with the following principles:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion;

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services.

§ 17.708 Notice of fund availability (NOFA).

When funds are made available for assistance, VA will publish a notice of fund availability in the **Federal Register**. The notice will:

(a) Give the location for obtaining application packages, which will provide specific application requirements and guidance;

(b) Specify the date, time, and place for submitting completed applications; and

(c) State the amount and status of funding available under the notice.

§ 17.709 Grant award process.

General. The grant award process for assistance under this part consists of the following:

(1) Reviewing applications for eligibility for assistance;

(2) Rating applications (see § 17.711 of this part);

(3) Selecting applications conditionally (see § 17.712 of this part);

(4) Obtaining additional information and awarding grants (see § 17.713 of this part).

§ 17.710 Application requirements.

(a) *General.* Applications for grants must be submitted in the form prescribed by VA in the application package, must meet the requirements of this part, and must be submitted within the time period established by VA in the notice of fund availability under § 17.708 of this part. The application packet includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the project by addressing items listed in § 17.711(c) of this part;

(2) Site description, design, and cost estimates;

(3) Documentation on eligibility to receive assistance under this part;

(4) Documentation on matching funds committed to the project;

(5) Documentation on operating budget and cost sharing;

(6) Documentation on supportive services committed to the project;

(7) Documentation on site control and appropriate zoning;

(8) Applicants who are States must submit any comments or recommendations by appropriate State (and areawide) clearinghouses pursuant to E.O. 12372;

(9) Reasonable assurances with respect to receipt of assistance under this part that:

(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be non-veterans; and that such services will meet standards prescribed by VA;

(ii) Title to such site or van will vest solely in the applicant;

(iii) Each recipient will keep those records and submit those reports as VA may reasonably require, within the timeframes required; and give VA, upon demand, access to the records upon which such information is based; and

(iv) Adequate financial support will be available for the purchase of the van or completion of the project, and for its maintenance, repair and operation.

(b) *Pre-award expenditures.* Costs incurred for a project after the date the Department of Veterans Affairs notifies an applicant that the project is feasible for VA participation are allowable costs if the application is approved and the grant is awarded. These pre-award expenditures include architectural and engineering fees. Such notification occurs when VA requests information for the second submission portion of the application.

§ 17.711 Rating criteria for applications.

(a) *General.* Applications will be assigned a rating score and placed in

ranked order, based upon the criteria listed in paragraphs (b) through (d) of this section.

(b) *Threshold review.* Applicants will undergo a threshold review prior to rating and ranking, to ensure they meet the following:

(1) *Form, time and adequacy.* Applications must be filed in the form prescribed by VA in the application process and within the time established in the NOFA.

(2) *Applicant eligibility.* The applicant and project sponsor, if relevant, must be eligible to apply for the specific program.

(3) *Eligible population to be served.* The population proposed to be served must be homeless veterans and meet other eligibility requirements of the specific program.

(4) *Eligible activities.* The activities for which assistance is requested must be eligible for funding under this part.

(5) *Outstanding audit findings.* No organization that receives assistance may have an outstanding obligation to VA that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit is overdue or unsatisfactory.

(c) *Rating and ranking of first submission.* Applicants that pass the threshold review will then be rated using the eight selection criteria listed below. Applicants must receive at least 600 points (out of a possible 1,200) and must receive points under criteria 1, 2, 3, 4, and 8. Applicants that are applying as an innovative supportive housing project must achieve points under the "innovative quality of the proposal" criterion.

(1) Quality of the project—300 points
(2) Targeting to persons on streets and in shelters—150 points
(3) Ability of the applicant to develop and operate a project—200 points
(4) Need for the type of project proposed in the area to be served—150 points
(5) Innovative quality of the proposal—50 points
(6) Leveraging—50 points
(7) Cost effectiveness—100 points
(8) Coordination with other programs—200 points

(d) *Selection criteria*—(1) *Quality of the project.* VA will award up to 300 points based on the extent to which the application presents a clear, well-conceived and thorough plan for assisting homeless veterans achieve residential stability, increased skills and/or income, and more influence over decisions that affect their lives. Higher ratings will be assigned to those applications that clearly describe:

(i) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;

(ii) How program participants will increase their skill level and/or income, including how available supportive services will help participants reach this goal;

(iii) How program participants will be involved in making project decisions that affect their lives, including how they will be involved in selecting supportive services, establishing individual goals and developing plans to achieve these goals so that they achieve greater self determination;

(iv) How permanent affordable housing will be identified and made available to participants upon leaving the transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;

(v) How the service needs of participants will be assessed on an ongoing basis;

(vi) How the proposed housing, if any, will be managed and operated;

(vii) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities and services;

(viii) How and when the progress of participants toward meeting their individual goals will be monitored and evaluated;

(ix) How and when the effectiveness of the overall project in achieving its goals will be evaluated and how program modifications will be made based on those evaluations; and

(x) How the proposed project will be implemented in a timely fashion.

(2) *Targeting to persons on streets and in shelters.* VA will award up to 150 points based on:

(i) The extent to which the project will serve homeless veterans living in places not ordinarily meant for human habitation (*e.g.*, streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(ii) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(3) *Ability of applicant to develop and operate a project.* VA will award up to 200 points based on the extent to which those who will be involved in carrying out the project have experience in activities similar to those proposed in the application. Rating will be assigned based on the extent to which the application demonstrates experience in the following areas:

(i) Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;

(ii) Assessing the housing and relevant supportive service needs of homeless veterans;

(iii) Accessing housing and relevant supportive service resources;

(iv) If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;

(v) If applicable, administering a rental assistance program;

(vi) Providing supportive services for homeless veterans;

(vii) Monitoring and evaluating the progress of persons toward meeting their individual goals; and

(viii) Evaluating the overall effectiveness of a program and using evaluation results to make program improvements.

(4) *Need.* VA will award up to 150 points based on the applicant's demonstrated understanding of the needs of the specific homeless veteran population proposed to be served. Ratings will be made based on the extent to which applicants demonstrate:

(i) Substantial unmet needs, particularly among the target population who are living in places not ordinarily meant for human habitation (*e.g.*, streets) and in emergency shelters, based on reliable data from surveys of homeless populations, a Comprehensive Housing Affordability Strategy (CHAS), or other reports or data gathering mechanisms that directly support claims made;

(ii) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(5) *Innovative quality of the proposal.* Applicants who have indicated in their application that they are applying under the innovative supportive housing component must receive points under this criterion to be eligible for award. VA will award up to 50 points based on the innovative quality of the proposal, when compared to other applications and projects, in terms of:

(i) Helping homeless veterans or homeless veterans with disabilities to be served to reach residential stability, increase their skill level and/or income and increase the influence they have over decisions that affect their lives; and

(ii) A clear link between the innovation(s) and its proposed effect(s); and

(iii) Its ability to be used as a model for other projects.

(6) *Leveraging.* VA will award up to 50 points based on the extent to which resources from other public and private sources, including cash and the value of third party contributions, have been

committed to support the project at the time of application.

(Note: Any applicant who wishes to receive points under this criterion must submit documentation of leveraged resources which meets the requirements stated in the application. This is optional; applicants who cannot, or choose not to, provide firm documentation of resources as part of the application will forego any points for leveraging.)

(7) *Cost effectiveness.* VA will award up to 100 points for cost effectiveness. Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high cost areas. Cost effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(8) *Coordination with other programs.* VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include shelter, transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other programs relevant to the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area.

(i) Higher points will be given to those applicants that can demonstrate that:

(A) They are part of an ongoing community-wide planning process which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;

(B) They have consulted directly with other providers regarding coordination of services for project participants. VA will award up to 50 points of the 200 points for this criterion based on the extent to which commitments to provide supportive services are available at the time of application. Applicants who wish to receive points under this optional criterion must submit documentation of supportive service resources.

§ 17.712 Selecting applications.

(a) *General.* The highest-ranked applications will be conditionally selected in accordance with their ranked order, as determined under § 17.711 of this part. Each will be requested, as necessary, to provide additional project information, as described in § 17.713 of this part, as a prerequisite to a grant award from VA.

(b) *Ties between applicants.* In the event of a tie between applicants, VA will use the selection criterion in § 17.711(d)(4) of this part, need for the type of project proposed in the area to be served, to determine which application should be selected for potential funding.

(c) *Procedural error.* If an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if there is no material change in the information that resulted in its selection. A new application will not be required for this purpose.

§ 17.713 Obtaining additional information and awarding grants.

(a) *Additional information.* Applicants who have been conditionally selected will be requested by VA to submit additional project information, as described in the second submission of the application, which may include:

(1) Documentation to show that the project is feasible;

(2) Documentation showing the sources of funding for the project and firm financing commitments for the match described in § 17.706 of this part;

(3) Documentation showing site control, as described in § 17.731 of this part;

(4) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as described in § 17.714 of this part;

(5) A site survey performed by a licensed land surveyor. A description of the site shall be submitted noting the general characteristics of the site. This should include soil reports and specifications, easements, main roadway approaches, surrounding land uses, availability of electricity, water and sewer lines, and orientation. The description should also include a map locating the existing and/or new buildings, major roads, and public services in the geographic area. Additional site plans should show all site work including property lines, existing and new topography, building locations, utility data, and proposed grades, roads, parking areas, walks, landscaping, and site amenities.

(6) Design development (35 percent) drawings. (i) The applicant shall provide to VA one set of sepias and two sets of prints, rolled individually per set, to expedite the review process. The drawing shall indicate the designation of all spaces, size of the areas and rooms and indicate in outline the fixed and moveable equipment and furniture. The drawings shall be drawn at ⅛" or ¼" scale. Bedroom and toilet layouts, showing clearances and Uniform Federal Accessibility Standards requirements, should be shown at ¼" scale. The total floor and room areas shall be shown in the drawings. The drawings shall include:

(A) A plan of any proposed demolition work;

(B) A plan of each floor. For renovations, the existing conditions and extent of new work should be clearly delineated;

(C) Elevations;

(D) Sections and typical details;

(E) Roof plan;

(F) Fire protection plans; and

(G) Technical engineering plans, including structural, mechanical, plumbing, and electrical drawings.

(ii) If the project involves acquisition, remodeling, or renovation, the applicant should include the current as-built site plan, floor plans and building sections which show the present status of the building and a description of the buildings current use and type of construction.

(7) Design development outline specifications. The applicant shall provide eight copies of outline specifications which shall include a general description of the project, site, architectural, structural, electrical and mechanical systems such as elevators, air conditioning, heating, plumbing, lighting, power, and interior finishes (floor coverings, acoustical material, and wall and ceiling finishes).

(8) Design development cost estimates. The applicant shall provide three copies of cost estimates showing the estimated cost of the buildings or structures to be acquired or constructed in the project. Cost estimates should list the cost of construction, contract contingency, fixed equipment not included in the contract, movable equipment, architect's fees and construction supervision and inspection.

(9) A design development conference. After VA reviews design development documents, a design development conference may be recommended in order to provide applicants and their architects an opportunity to learn VA procedures and requirements for the project and to discuss VA review comments.

(10) Such other documentation as specified by VA in writing to the

applicant, that confirms or clarifies information provided in the application.

(b) *Receipt of additional information.* The required additional information must be received in acceptable form within the timeframe established by VA in a notice of fund availability published in the Federal Register. VA reserves the right to remove any proposed project from further consideration for grant assistance if the required additional project information is not received in acceptable form by the established deadline.

(c) *Grant award.* Following receipt of the additional information in acceptable form (and, where applicable, provided that the environmental review described in § 17.714 indicates that the proposed project is environmentally acceptable to VA), to the extent funds are available VA will approve the application and send a grant agreement for execution to the applicant.

§ 17.714 Environmental review requirements.

(a) *Generally.* Project selection is subject to completion of an environmental review of the proposed site, and the project may be modified or the site rejected as a result of that review. The environmental effects must be assessed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) (NEPA) as implemented pursuant to the Council on Environmental Quality's applicable regulations (40 CFR parts 1500–1508) and VA's applicable implementing regulations (38 CFR part 26).

(b) *Responsibility for review.* (1) VA will perform the environmental review, in accordance with part 26 of this title, for conditionally selected applications received directly from private nonprofit organizations and governmental entities with special or limited purpose powers. VA is not permitted to approve such applications prior to its completion of this review. Because of time constraints, any application subject to environmental review by VA that requires an Environmental Impact Statement (EIS) (generally, an application that VA determines would result in a major Federal action significantly affecting the quality of the human environment in accordance with the environmental assessment procedures at (38 CFR part 26) will not be eligible for assistance under this part.

(2) Applicants that are States, metropolitan cities, urban counties, Indian tribes, or other governmental entities with general purpose powers shall include environmental documentation for the project by submitting information establishing a Categorical Exclusion (CE), a proposed Environmental Assessment (EA), or a proposed Environmental Impact Statement (EIS). The environmental documentation will require approval by VA before final award of a construction or acquisition grant under this part. (See 38 CFR 26.6 for compliance requirements.) If the proposed actions involving construction or acquisition do not individually or cumulatively have a significant effect on the human environment, the applicant shall submit a letter noting a CE. If construction outside the walls of an existing structure will involve more than 75,000 gross square feet (GSF), the application shall include an EA to determine if an EIS is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act of 1969. When the application submission requires an EA, the State shall briefly describe the possible beneficial and/or harmful effect which the project may have on the following impact categories:

(i) Transportation;
(ii) Air quality;
(iii) Noise;
(iv) Solid waste;
(v) Utilities;
(vi) Geology (soils/hydrology/flood plains);
(vii) Water quality;
(viii) Land use;
(ix) Vegetation, wildlife, aquatic, and ecology/wetlands;
(x) Economic activities;
(xi) Cultural resources;
(xii) Aesthetics;
(xiii) Residential population;
(xiv) Community services and facilities;
(xv) Community plans and projects; and
(xvi) Other.

(3) If an adverse environmental impact is anticipated, the action to be taken to minimize the impact should be explained in the EA. An entity covered by this section that believes that it does not have the legal capacity to carry out the responsibilities required by 38 CFR Part 26 should contact the VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

§ 17.715 Aid for supportive services and supportive housing.

(a) *Per diem payments.* Aid in the form of per diem payments may be paid to a recipient of a grant under this part, or to an entity eligible for such a grant, that after November 10, 1992 establishes a program for providing supportive services or supportive housing to homeless veterans, or a service center, if:

(1) VA referred the homeless veteran to a recipient of a grant under this part (or entity eligible for such a grant as described in § 17.715(a) of this part); or

(2) VA authorized the provision of supportive services or supportive housing for the homeless veteran.

(b) *In-kind assistance.* In lieu of per diem payments under this section, VA may, with approval of the grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part), provide in-kind assistance through the services of VA employees and the use of other VA resources, to a grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part).

§ 17.716 Eligibility to receive payments.

An entity must be formally recognized by VA as eligible to receive payments under this section before payments can be made for the care of homeless veterans, except that payments may be made on behalf of a veteran up to three days prior to this recognition. An entity may be recognized if:

(a) It is an entity receiving a grant, or eligible to receive a grant under this part,

(b) At least 75 percent of persons who are receiving supportive services or supportive housing from the entity are veterans who may be included in the computation of the amount of aid payable from the Department of Veterans Affairs, and

(c) The supportive services or supportive housing program for which per diem payments is requested was established after November 10, 1992.

§ 17.717 Requesting recognition.

Requests for recognition of eligibility may be addressed to the VA Homeless Providers Grant and Per Diem Program; Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

§ 17.718 Approval of annexes and new facilities.

Separate applications for recognition must be filed for any annex, branch, enlargement, expansion, or relocation of the site of service provision of an eligible entity's facility which is not on the same or contiguous grounds on which the parent facility is located. When an eligible entity establishes sites which have not been inspected and approved by VA, a request for separate approval of such sites must be made.

The prohibitions in § 17.720 are also applicable to applications for aid on behalf of any veteran cared for in a new annex, branch or enlarged, expanded or relocated facility.

§ 17.719 Amount of aid payable.

(a) *Maximum amount payable.* The amount of per diem payments made under paragraphs (1) and (2) of this section for services rendered to a veteran shall not exceed one-half of the cost to the grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part) of providing such services.

(1) The maximum per diem amount payable for supportive housing is $30.00.

(2) The per diem amount payable for supportive services not provided in conjunction with supportive housing is $1.10 for each half hour during which supportive services are provided. The maximum per diem amount payable for supportive services not in conjunction with supportive housing is $17.60 per day.

(b) *Limitation on per diem payments.* Per diem payments may be paid for a veteran under paragraph (a)(1) or (a)(2) of this section, but not under both paragraphs (a)(1) and (a)(2).

(c) *Limitation on duration of per diem payments.* VA must periodically review and approve, or terminate approval for, continued per diem payments for each veteran. Such review shall occur at least once every three months.

§ 17.720 Approval of eligibility.

(a) *Eligibility determinations.* A grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part) will receive per diem payments or in-kind assistance from VA only for the care of veterans whose separate eligibility has been determined by VA, and only where VA has referred the veteran under § 17.715(a)(1) or has authorized the provision of supportive housing or supportive services under § 17.715(a)(2) of this part. A veteran does not have to be eligible for VA medical care in order for the Department to make per diem payments for that veteran.

(1) VA shall determine the eligibility of each veteran referred to a grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part) prior to making such referral.

(2) To obtain such determination for veterans not referred by VA, the grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part) will complete a VA application for medical benefits for each veteran and submit it to the VA medical care facility office of jurisdiction for determination of eligibility.

(b) *Retroactive payments.* Per diem payments may be paid retroactively for services provided not more than three days before VA approval is given where VA authorized the provision of services pursuant to § 17.715(a)(2).

§ 17.721 Inspections.

The Secretary may inspect any facility of an entity eligible for per diem payments under this section at such times as are deemed necessary. Such inspections shall be concerned with the physical plant; records relating to admissions, discharges and occupancy; fiscal records; and all other areas of interest necessary to a determination of compliance with applicable laws and regulations relating to the payment of Federal aid. The authority to inspect carries with it no authority over the management or control of any entity eligible for per diem payments under this section.

§ 17.722 Prerequisite for payment of aid.

No aid may be paid to eligible entities unless they meet the requirement and standards described in §§ 17.724 through 17.726 of this part.

§ 17.723 Audit of recipients of aid.

(a) *State and local government entities.* State, local and Indian tribal governments that receive $25,000 or more in assistance under this part shall have an audit made in accordance with the requirements of 38 CFR part 41.

(b) *Nonprofit entities.* Nonprofit entities receiving assistance under this part shall be subject to the audit requirements contained in OMB Circular A–133.

§ 17.724 General operation.

(a) *State and local requirements.* Each recipient of assistance under this part must provide housing or services that are in compliance with all applicable State and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the housing or services.

(b) *Habitability standards.* Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:

(1) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements.

(2) *Access.* Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire. Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required by § 502 of the Americans with Disabilities Act, referred to as the Architectural Barriers Act. Waiver of the standards of the Architectural Barriers Act requires approval of the Administrator of the General Services Administration.

(i) The Architectural Barriers Act requires that Federal and Federally-assisted buildings, the intended use for which either will require that such building be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, be accessible to the disabled. This requirement applies to buildings to be constructed or altered by or on behalf of the United States, and to buildings to be leased in whole or in part by the United States (42 U.S.C. 4151).

(ii) Accessibility guidelines for buildings and facilities are set forth in 36 CFR part 1191.

(3) *Space and security.* Each resident must be afforded appropriate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep that is in compliance with local codes and regulations.

(4) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(5) *Water supply.* The water supply must be free from contamination.

(6) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and

equipment to store, prepare, and serve food in a sanitary manner.

(10) *Sanitary condition.* The housing and any equipment must be maintained in a sanitary manner.

(c) *Meals.* Each recipient of assistance under this part who provides supportive housing for homeless veterans with disabilities must provide meals or meal preparation facilities for residents.

(d) *Ongoing assessment of supportive services.* Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the residents of the project and the availability of such services, and make adjustments as appropriate.

(e) *Residential supervision.* Each recipient of assistance under this part must provide residential supervision necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment or volunteer services of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(f) *Participation of homeless veterans.* (1) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement may be waived if an applicant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.

(2) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project. Programs that do not involve homeless or formerly homeless veterans in such capacities may become ineligible to receive per diem payments. This requirement is waived if a recipient is unable to meet it and presents an explanation for VA approval

(g) *Accounting systems.* Each recipient shall establish procedures for fiscal control and fund accounting to ensure proper disbursement and accounting of assistance received under this part.

(h) *Confidentiality.* (1) Each recipient that provides family violence prevention or treatment services must develop and implement procedures to ensure:

(i) The confidentiality of records pertaining to any individual provided services; and

(ii) That the address or location of any project assisted will not be made public by the recipient and its staff, except with written authorization of the person or persons responsible for the operation of the project.

(2) Each recipient of assistance under this part must maintain the confidentiality of records kept on homeless veterans receiving services.

(i) *Limitation of stay in transitional housing.* A homeless veteran may remain in transitional housing for a period longer than 24 months, if permanent housing for the veteran has not been located or if the veteran requires additional time to prepare for independent living. However, VA may discontinue assistance for a transitional housing project if more than half of the homeless veterans remain in that project longer than 24 months.

(j) *Outpatient health services.* VA may disapprove use of outpatient health services provided through the recipient if VA determines that such services are of unacceptable quality. VA will not pay per diems for veterans who receive services from providers who VA has found to be of unacceptable quality.

(k) *Service center requirements.* A service center for homeless veterans shall provide services to homeless veterans for a minimum of 40 hours per week over a minimum of five days per week, as well as on an as-needed, unscheduled basis. In addition:

(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;

(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;

(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area;

(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.

§ 17.725 Outreach activities.

Recipients must use their best efforts to ensure that eligible hard-to-reach persons are served in the facility funded under this part. Recipients are expected to make sustained efforts to engage eligible persons so that they may be brought into the program. Outreach should be directed primarily toward eligible persons who have a nighttime residence that is an emergency shelter or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., persons living in cars, streets and parks).

§ 17.726 Resident rent.

(a) *Calculation of resident rent.* Each resident of supportive housing may be required to pay as rent an amount determined by the recipient which may not exceed the highest of:

(1) 30 percent of the resident's monthly adjusted income (adjustment factors include the number of relatives in the family residing with the veteran, medical expenses, and child care expenses);

(2) 10 percent of his or her family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(b) *Use of rent.* Resident rent may be used in the operation of the project or may be reserved, in whole or in part, to assist residents of transitional housing in moving to permanent housing.

(c) *Fees.* In addition to resident rent, recipients may charge residents reasonable fees for services not paid with VA per diem funds or provided to the service provider by in-kind assistance through the services of VA employees and the use of other VA resources.

§ 17.727 Grant agreement.

(a) *General.* The duty to provide supportive housing or supportive services, or to establish a service center in accordance with the requirements of this part will be incorporated in a grant agreement executed by VA and the recipient.

(b) *Enforcement.* VA will enforce the obligations in the grant agreement

through such action as may be appropriate, including repayment of funds that have already been disbursed to the recipient.

§ 17.728 Program changes.

(a) *VA approval.* (1) A recipient may not make any significant changes to an approved program without prior VA approval. Significant changes include, but are not limited to, a change in the recipient, a change in the project site, additions or deletions in the types of activities listed in § 17.702 of this part approved for the program, certain shifts of funds from one approved type of activity to another, and a change in the category of participants to be served.

(i) Recipients of grants exceeding $100,000 for nonconstruction projects who are State or local governments must receive prior VA approval for cumulative transfers among direct cost categories which exceed or are expected to exceed ten percent of the current total approved budget.

(ii) Recipients of grants for projects involving both construction and nonconstruction who are State or local governments must receive prior VA approval for any budget revision which would transfer funds between nonconstruction and construction categories.

(iii) Recipients of grants exceeding $100,000 who are nonprofit entities must receive prior VA approval for cumulative transfers among direct cost categories or programs, functions and activities which exceed or are expected to exceed ten percent of the total budget as last approved by VA.

(2) Approval for changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

(b) *Documentation of other changes.* Any changes to an approved program that do not require prior VA approval must be fully documented in the recipient's records.

§ 17.729 Obligation and deobligation of funds.

(a) *Obligation of funds.* When VA and the applicant execute a grant agreement, funds are obligated to cover the amount of the approved assistance under §§ 17.702 through 17.707 of this part. The recipient will be expected to carry out the supportive housing or supportive services activities as proposed in the application.

(b) *Increases.* After the initial obligation of funds, VA will not make revisions to increase the amount obligated.

(c) *Deobligation.* (1) VA may deobligate all or parts of grants awarded under this part:

(i) If the actual total cost of acquisition, rehabilitation, acquisition and rehabilitation, or new construction of facilities, or the cost of procurement of a van, is less than the total cost anticipated in the application, or

(ii) Where a recipient materially fails to comply with the terms and conditions of an award under this part.

(2) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed. Such sanctions may include, among other remedies: temporarily withholding cash payments pending correction of a deficiency, denying the use of grant or matching funds for all or part of the cost of an activity not in compliance, wholly or partly suspending an award, and withholding further awards to the recipient.

(3) Where a recipient has no control over causes for delays in implementing a project, any delays due to causes beyond a recipient's control may, with VA approval, suspend the running of any period in which the recipient must implement a program or risk deobligation of funds or other VA remedies.

(4) VA may:

(i) Readvertise in a notice of fund availability under § 17.708 of this part, the availability of funds awarded that were deobligated in the same fiscal year as obligated; or

(ii) Award funds deobligated in the same fiscal year as obligated to applications previously submitted in response to the most recently published notice of fund availability, and in accordance with §§ 17.708 through 17.714 of this part; or

(iii) If legally authorized, award amounts deobligated in a fiscal year later than the fiscal year in which they were obligated to applications previously submitted in response to the most recently published notice of fund availability, and in accordance with §§ 17.708 through 17.714 of this part.

§ 17.730 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with other goals and objectives of this part, recipients must take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of supportive housing, supportive services, or service centers assisted under this part. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in the purchases.

(b) *Relocation assistance for displaced persons.* A displaced person must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

(c) *Certification.* The recipient must certify that it will comply with the URA, and must ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with these provisions.

(d) *Cost of relocation assistance.* The cost of required relocation assistance is not an eligible project cost, in that such costs are operational costs. Such costs must be paid for with local public funds or funds available from other sources.

(e) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and VA, or selection of the project site, if later.

§ 17.731 Site control.

(a) *Site control.* (1) Where grant funds will be used for acquisition, rehabilitation, or new construction to provide supportive housing or supportive services, or to establish service centers, except where an applicant will provide services at sites not operated by the applicant, an applicant must demonstrate site control (e.g., through a deed, capital lease, executed contract of sale) before VA will execute a grant agreement.

(2) If such site control is not demonstrated within one year after initial notification of the award of assistance under this part, the grant will be deobligated as provided in paragraph (c) of this section.

(b) *Site change.* (1) A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements for suitable sites under this part.

(2) If the acquisition, rehabilitation, acquisition and rehabilitation, or new construction costs of the substitute site are greater than the amount of the grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to VA that it

is able to provide for the difference in costs, VA may deobligate the award of assistance.

(c) *Failure to obtain site control within one year.* VA will deobligate any award for assistance under this part or pursue other remedies described in § 17.729(c) of this part if the recipient is not in control of a suitable site before the expiration of one year after initial notification of an award.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[NV–960–4370–02–241A ; Circular No. 2655]

RIN 1004–AB84

Protection, Management, and Control of Wild Free-Roaming Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to the protection, management, and control of wild free-roaming horses and burros by revising the definition of wild horses and burros to exclude foals born to wild horses and burros after approval of a Private Maintenance and Care Agreement. This clarification is necessary to avoid the extreme administrative difficulties that would be associated with locating, identifying, and caring for widely dispersed animals in the possession of private individuals.

EFFECTIVE DATE: July 1, 1994.

ADDRESSES: Suggestions or inquiries should be sent to: Wild Horse and Burro National Program Office (NV–960), Bureau of Land Management, P.O. Box 12000, Reno, NV, 89520–0006.

FOR FURTHER INFORMATION CONTACT: Bruce Dawson, (702) 785–6583.

SUPPLEMENTARY INFORMATION: The regulations on the protection, management, and control of wild free-roaming horses and burros are presently silent regarding the ownership of foals born to mares and jennies under the maintenance and care of an adopter but for which no title has been issued. Although the Bureau of Land Management (BLM) has treated these foals as the private property of the adopter of the parent female, there has been no clear statement in regulation of this policy. Therefore, this amendment to 43 CFR 4700.0–5(l) is intended to clarify the ownership of these foals by explicitly excluding them from the definition of wild horses and burros.

Foals born to adopted wild horses and burros must be treated as private property to avoid the tremendous administrative difficulties and expense that would otherwise result. Titling of wild horses and burros is not mandatory and for various reasons many adopters do not apply for title. The BLM presently maintains records on about 11,000 untitled female wild horses and burros that are of reproductive age. If foals born to these animals were treated as wild, the BLM would need to locate, freeze mark, and catalog each animal, as well as enter into new Private Maintenance and Care Agreements, and collect adoption fees for each foal. In addition, if the offspring of the adopted mares and jennies were to be considered wild, subsequent generations would also have wild status until titles were issued.

A proposed rule addressing these concerns was published in the **Federal Register** on October 1, 1993 (58 FR 51297). One intradepartmental comment was received. It suggested that in amending the definition of wild horses and burros as it pertains to the status of foals, the rule should also address the status of foals born in BLM facilities, after mothers have been removed from public lands but before the mothers are placed in the care of the adopter. Language has been incorporated into this final rule to clarify that such foals would be considered to be wild horses or burros.

The principal author of this final rule is Vern Schulze of the Wild Horse and Burro National Program Office, BLM Nevada State Office, with the assistance of Heather Thomas of the Division of Legislation and Regulatory Management, BLM Washington Office.

The BLM has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) is required. The BLM prepared an environmental assessment and a finding of no significant impact for the proposed action.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the rule would not have a significant economic impact on a substantial number of small entities. The rule does not impose direct or indirect costs on small business, organizations, or small governmental jurisdictions. No direct or indirect benefits are quantifiable for small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule will not cause a taking of private property.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* However, the collections of information contained in Group 4700 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, and Wildlife.

For the reasons set out in the preamble and under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is now amended as follows:

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for 43 CFR part 4700 is revised to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315 and 1740.

2. Section 4700.0–5 is amended by revising paragraph (l) to read as follows:

§ 4700.0–5 Definitions.

* * * * *

(l) *Wild horses and burros* means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, that have been removed from these lands by the authorized officer, or that have been born of wild horses or burros in authorized BLM facilities, but have not lost their status under section 3 of the Act. Foals born to a wild horse or burro after approval of a Private Maintenance and Care Agreement are not wild horses or burros. Such foals are the property of the adopter of the parent mare or jenny. Where it appears in this part the term

wild horses and burros is deemed to include the term *free-roaming.*

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-13207 Filed 5-31-94; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

RIN 0905-AC52

Health and Human Services Policy for Protection of Human Subjects Research

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is amending its Human Subjects Protection regulations to rescind the provision requiring prior review and advice from an Ethical Advisory Board for research applications and proposals involving in vitro fertilization (IVF) of human ova as a prerequisite to funding by HHS and its components. The provision was nullified by the National Institutes of Health Revitalization Act of 1993. The regulations are being amended to reflect this statutory nullification. Institutional Review Board (IRB) review and approval of applications and proposals involving in vitro fertilization (IVF) of human ova continues to be required in accordance with other provisions of the Human Subjects Protection regulations. Furthermore, the Secretary may still exercise the option of seeking advice from an Ethical Advisory Board on ethical issues, including IVF, raised by research applications and proposals.

EFFECTIVE DATE: This amendment is effective on June 1, 1994.

FOR FURTHER INFORMATION CONTACT: F. William Dommel, Jr., J.D., Office of Protection from Research Risks (OPRR), National Institutes of Health, Building 31, room 5B63, 9000 Rockville Pike, Bethesda, Maryland 20892-001, telephone (301) 496-7005 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: HHS is amending its Human Subjects Protection regulations at 45 CFR part 46, subpart B, by rescinding paragraph (d) of section 204 of the regulations. This provision of the regulations was nullified by section 121(c) of the NIH Revitalization Act of 1993, Public Law 103-43, enacted on June 10, 1993, and therefore no longer has any legal effect. HHS is rescinding paragraph (d) of section 204 now so that the regulations will accurately reflect the statutory nullification of the requirement for Ethical Advisory Board review of research involving the in vitro fertilization of human ova, as a prerequisite for funding by HHS and its components.

Notice, public comment, and delayed effective date have been waived for this amendment based on a finding of good cause. These procedures for ensuring public participation in the rulemaking process and time for compliance are unnecessary because the substantive change has already been made by Public Law 103-43. Furthermore, it is a change that relieves a restriction on the funding of research by HHS and its components.

Regulatory Impact Statement

The Secretary has examined this final rule in accordance with the requirements in Executive Order 12866, Regulatory Planning and Review, and has determined that it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order No. 12866. Therefore, it does not require: (1) An assessment of benefits anticipated from the action; (2) an assessment of costs anticipated from the action; or (3) an assessment of costs and benefits of potentially effective and reasonably feasible alternatives to the proposed regulations.

Regulatory Flexibility Act

The Secretary certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), is not required.

Paperwork Reduction Act of 1980

This final rule does not contain any information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance (CFDA) numbered program affected by this final rule is: 93.891

List of Subjects in 45 CFR Part 46

Health, Human research subjects.

Dated: January 31, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: April 7, 1994.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, subpart B of part 46, title 45 of the Code of Federal Regulations is amended as set forth below.

PART 46—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for part 46 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 289.

§ 46.204 [Amended]

2. Paragraph (d) of § 46.204 is removed.

[FR Doc. 94-13273 Filed 5-31-94; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 940253-4151; I.D. 021494C]

RIN 0648-AG20

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

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

ACTION: Final rule.

SUMMARY: NMFS announces the approval of Amendment 2 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (BSAI). NMFS issues final regulations removing existing regulations that superseded State of Alaska (State) regulations that established Norton Sound as a superexclusive registration area in the exclusive economic zone (EEZ) of the BSAI. This action is necessary for

effective management of the fishery having the smallest biomass and guideline harvest level (GHL) in the BSAI crab fisheries. This action is intended to promote management and conservation of crab and other fishery resources and to further the goals and objectives contained in the FMP for the Commercial King and Tanner Crab Fisheries of the BSAI.

EFFECTIVE DATE: June 27, 1994.

ADDRESSES: Copies of Amendment 2 and the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Kim J. Spitler, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The commercial king and Tanner crab fisheries in the EEZ of the BSAI are managed under the FMP. This FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with oversight by the Council and the Secretary of Commerce (Secretary), defers management of the crab resources in the BSAI to the State. The FMP was approved by the Secretary and implemented on June 2, 1989. At times, regulations implementing the FMP must be amended to resolve problems pertaining to management of the BSAI crab fisheries.

The FMP contains three categories of management measures: (1) Specific Federal management measures that require an FMP amendment to change; (2) framework type management measures, with criteria set out in the FMP that the State must follow when implementing changes in State regulations; and (3) measures that are neither rigidly specified nor frameworked in the FMP, and that may be freely adopted or modified by the State, subject to an appeals process or other Federal laws. Registration areas are listed as a category 2 measure. Section 8.2.8 of the FMP specifies that king crab registration areas may be designated as either exclusive or nonexclusive. Designation of a registration area as superexclusive would require an FMP amendment and incorporation into the FMP as a category 1 management measure.

At its January 1994 meeting, the Council adopted Amendment 2 to the FMP and requested that NMFS prepare a rulemaking to implement the amendment. Amendment 2 establishes the Norton Sound Section of the Northern District of the BSAI king crab fishery as a superexclusive registration area.

A notice of availability of Amendment 2 was published in the **Federal Register** on February 23, 1994 (59 FR 8595), and invited comments on the amendment through April 25, 1994. A proposed rule to implement Amendment 2 was published in the **Federal Register** March 4, 1994 (59 FR 10365). Comments on the proposed rule were invited through April 14, 1994. One letter, containing 14 comments on Amendment 2 and the proposed rule, was received. These comments are summarized in the Response to Comments section, below.

Amendment 2 was approved by NMFS on May 18, 1994, under section 304(b) of the Magnuson Act. Under the amendment, the operator of any vessel registered in the Norton Sound Section of the Northern District of the BSAI king crab fishery superexclusive area cannot register the vessel in any other EEZ area of the BSAI during that registration year. Upon reviewing the reasons for Amendment 2, and the comments on the proposed rule to implement it, NMFS has determined that this final rule is necessary for fishery conservation and management. The final rule removes existing regulations at 50 CFR 671.20, which supersede existing State regulations designating Norton Sound as a superexclusive registration area.

The intent of this measure, implemented under Amendment 2, is to allow for a slower-paced fishery, full attainment of guideline harvest levels, longer seasons, and reduced administrative and enforcement costs. This measure also will provide for consistency between the FMP and State regulations governing the BSAI crab fishery. Further explanation of, and reasons for, this measure is contained in the preamble to the proposed rule (59 FR 10365, March 4, 1994).

Comments and Responses

One letter of comments from the Alaska Crab Coalition was received within the comment period. The comments were opposed to Amendment 2. A summary of comments and NMFS' response follow:

Comment 1. At the December 1993 Council meeting, the Scientific and Statistical Committee (SSC) commented that the EA prepared for Amendment 2 required considerably more development with respect to the costs and productivity rates of the larger and smaller vessels. The SSC further stated that data sources needed to be more fully described.

Response. The initial draft EA/RIR/IRFA was revised to address comments made by the SSC. A revised version was subsequently reviewed by the SSC. At the January 1994 Council meeting, the SSC reported that the analysts had addressed the issues identified in December by conducting additional analyses that examined, over a range of possible values, the sensitivity of the results to the assumed operating costs and productivity rates, including the scenario where small and large vessels are assumed to have similar soak times for pots and to experience similar ex-vessel prices. In addition, the analysts provided a more detailed discussion of management and enforcement costs under the different alternatives. NMFS has determined that the specific issues raised by the SSC in its review of the initial EA/RIR/IRFA (December 14, 1993) have been adequately addressed in the EA/RIR/IRFA that was made available for public comment in January 1994.

Comment 2. The proposed amendment is not consistent with national standard 1 of the Magnuson Act in that it would not contribute to the long-term avoidance of overfishing. The procedures used to establish and enforce the GHL in the Norton Sound summer king crab fishery remain unchanged by Amendment 2. This refutes the claim in the EA that Amendment 2 would contribute to the avoidance of overfishing. Moreover, Amendment 2 encourages, and does not constrain, the development of new, small-boat capacity in the fishery. This could readily result in overcapitalization and a consequent future risk of fishing pressures, leading to overfishing.

The proposed amendment will not contribute to the attainment of optimum yield (OY) as claimed by the EA, which cites the substantial underharvest that occurred in 1992. The underharvest resulted from failure to provide for adequate management during the course of the 1992 opening. This was evidenced by a management decision to set the 1992 closure date in advance of the opening.

Response. Amendment 2 is consistent with national standard 1. It is not necessary to change the procedure used to establish a GHL to contribute to the avoidance of overfishing. The FMP authorizes the State to make inseason adjustments to GHLs after consideration of appropriate factors and to the extent

that inseason data are available. Some of these factors include the effect of overall fishing effort within the registration area, catch per unit of effort and rate of harvest, and timeliness and accuracy of catch reporting. The dispersion of effort predicted to occur in a superexclusive registration area can slow the pace of the fishery and reduce the necessity for conservative management measures (e.g., premature fishery closures) that sometimes are necessary to reduce the potential for overharvest of the GHL. Inseason data are more readily available and utilized in a slower-paced fishery. A critical aspect of national standard 1 is consideration of the rate of fishing mortality and its effect on the long-term capacity of the stock to produce maximum sustainable yield. Dispersing the fishing effort in a geographic region such as Norton Sound effectively slows the rate of fishing mortality.

The redistribution of fishing effort in Norton Sound that will result from superexclusive registration status does not involve vessels newly constructed solely for Norton Sound. New entrants are using existing and historical gear. Many had been idle due to failures in salmon and herring fisheries. Any potential increase in capacity in this small fishery would be limited by the Council's proposed vessel moratorium which, if approved, would limit the entry of new vessels over 32 ft (10 m) into the groundfish, crab, and halibut fisheries off Alaska. The proposed moratorium is intended as an interim management measure to curtail increases in fishing capacity until a comprehensive management plan for the groundfish and crab fisheries can be prepared and implemented.

National standard 1 requires appropriate consideration of pertinent social, economic, and ecological factors in the attainment of OY. Because of temporal variability in these factors, GHLs are adjusted annually, based upon current evaluations of the biological and socioeconomic components. The use of superexclusive registration area status as a management tool will address socioeconomic factors identified in the EA.

NMFS disagrees that the pre-announced 1992 fishery closure was an indication of mismanagement by the State of Alaska. Pre-announced closures have been used historically in some fisheries that experience pulse-type fishing patterns as a result of excessive effort, such as the halibut and black cod fisheries. For example, in 1992, the Norton Sound crab fishery experienced the second highest recorded number of pots ever fished and was conducted in a pulse-type fashion.

Comment 3. It is predicted that only small harvesting vessels and no catcher/processors would participate in the Norton Sound fishery if it is a superexclusive registration area. With no observer coverage, an essential management tool for effective fisheries management would be lost.

Response. Nothing in the amendment prohibits catcher/processors from participating in the Norton Sound king crab fishery if they so choose. NMFS has received information from the industry indicating that one floating processor may participate in the 1994 fishery. Observer information would be available for catcher vessels delivering to this processor. Even if no floating processor participated, management data would still be available.

In a crab fishery conducted predominantly by small catcher vessels, information necessary for effective fishery management is acquired by the Alaska Department of Fish and Game (ADF&G) staff monitoring shoreside deliveries. One reason the crab observer program was initiated was to enforce regulations on catcher/processors and floating processor vessels regarding the taking of sublegal and female crab. Compliance with these size and sex regulations on catcher vessels is enforced by shoreside ADF&G staff present at the time of delivery.

Comment 4. Amendment 2 is not consistent with national standard 2 of the Magnuson Act in that there has not been a good-faith effort to assemble and supply the best scientific information available. The assertion that data on 1993 participants are unavailable is highly implausible. The central reliance on a model is a fundamental defect of the EA, given the lack of revenue and cost data.

Response. Amendment 2 is based upon the best scientific information available and is consistent with national standard 2. The EA examined the seasonal fishing activities for Norton Sound crab vessels participating in other fisheries. The data for participation in other 1993 fisheries by vessels participating in the 1993 Norton Sound king crab fishery were not available at the time the EA was prepared, due to ongoing fishing seasons, the volume of incoming fish tickets, and the time necessary for fish ticket data entry and audit. Currently, most of these data still are not available. Preliminary review of the available 1993 fish ticket data indicates that only two of the 14 vessels registered in the Norton Sound king crab fishery participated in other BSAI king crab fisheries. If these operators choose to register in Norton Sound in the future, they would not be able to register their vessels in other BSAI king crab registration areas during that registration year.

NMFS disagrees that the EA displays a central reliance on a model. Models are only as good as the assumptions and input variables used. Model results are best used to gauge the relative effects of alternative management measures, rather than the actual quantitative impacts. This was the manner in which the model was used to analyze the economic effects of the Norton Sound superexclusive registration area on the participating fleet.

Comment 5. Notably absent from the EA is any serious discussion of the effect of Amendment 2 on crab fisheries, other than that in Norton Sound. The EA fails to address the effect of increased effort and the subsequent economic impact of additional vessels operating in the other crab fisheries as a result of large vessels that would no longer operate in Norton Sound.

Furthermore, the EA overwhelmingly is concerned with the economic benefits that allegedly will accrue to the local community from the adoption of Amendment 2. Amendment 2 would impose hardships on those who effectively are excluded from the Norton Sound summer crab fishery. The EA is superficial and legally insufficient in its treatment of this impact.

Response. The EA is legally sufficient. The vessel operators that choose not to register in the superexclusive Norton Sound fishery will not create an additional effort in other crab fisheries; they already participate in these other fisheries. Therefore, their decision not to register in Norton Sound would not indicate an increase in effort in these fisheries. Norton Sound crab accounts for a relatively small percentage of their total harvest, so the impacts of obtaining an equivalent harvest from other BSAI crab fisheries would be relatively insignificant in such fisheries.

A management objective of the crab FMP is to maximize the economic and social benefits to the Nation over time, including the economic stability of coastal communities. When selecting management measures, the impact of management alternatives on the distribution of benefits among members of the harvesting, processing and consumer communities must be considered. As indicated in the RIR, the economic impacts on the Norton Sound region from participation by small vessels and a longer season are relatively much greater than the economic impacts on crab communities such as Dutch Harbor, Bellingham, and Seattle. The 1993 Norton Sound crab

fishery resulted in the greatest revenues of any fishery in the Norton Sound region that year, and a local fresh crab market was established.

Conversely, the large vessels that participate in the Norton Sound fishery obtain only a small percentage of their annual crab landings from this fishery. The Norton Sound fishery accounts for less than 1 percent of the total poundage of the entire BSAI crab fishery (the January draft EA reflects a typographical error; it indicates that Norton Sound accounts for less than 5 percent, not 1; see final EA at page 3–13). The primary fisheries for these vessels are Tanner crab and Bristol Bay red king crab. The hardship experienced by the operators of the large vessels was relatively less given that Norton Sound crab contributed no more than 0.7 percent to any of the 26 catcher/processor and catcher vessels' yearly crab landings for 1992 and no more than 1.6 percent of the total landings for any of the catcher/processors in 1990. Neither individual vessels nor participants in the pre–1993 fleet were dependent on this fishery in terms of year-to-year participation or landings within any one year.

Comment 6. Amendment 2 is not consistent with national standard 3 of the Magnuson Act in that it does not manage the Norton Sound summer king crab fishery in close coordination with other king crab fisheries. For instance, the implication in the EA that Amendment 2 coordinates with Adak brown crab fisheries is false, because no relationship exists between the vessels used in Norton Sound and those used in the Adak brown king crab fisheries.

Response. Amendment 2 is consistent with national standard 3. No direct relationship exists between the operators of vessels using single pot gear in the Norton Sound red king crab fishery and those using longline pot gear in the Adak brown king crab fishery. However, a relationship does exist between the Norton Sound and Adak red king crab fisheries, because single pot gear is used in both and the fisheries could be conducted by the same vessels.

Alternative 3 of the EA considered the option of creating an exclusive, rather than a superexclusive, registration area in Norton Sound. Exclusive registration in Norton Sound would require vessels to register in Norton Sound, but would also allow vessels registered in nonexclusive areas to register and participate in the Norton Sound fishery. An exclusive registration area would not remedy the situation of excessive vessel effort harvesting the small quota in a very short time. Therefore, unless the Adak red king crab fishery also was made exclusive, there would be no means of forestalling participation by much of that fleet in Norton Sound. The Council viewed Alternative 3 as more restrictive on the entire fleet than Alternative 2 because it would further limit their registration options. The Council and Secretary considered the close coordination that exists among the Norton Sound fishery and the other BSAI crab fisheries in developing the superexclusive area for Norton Sound.

Comment 7. Amendment 2 is not consistent with national standard 4 of the Magnuson Act in that it incorporates, or relies upon, a discriminatory state law or regulation. The precise effect of Amendment 2 is to advantage local Alaskan residents at the expense of non-Alaskans in the Norton Sound summer king crab fishery.

It is not necessary to allocate the Norton Sound summer king crab. Favoritism shown to Alaskan residents may lead to less responsible management through more leniency in the regulatory and enforcement processes. In fact, State management of the 1993 Norton Sound crab fishery relaxed time and area restrictions to allow local residents access to areas that have been closed for 5 years due to conservation problems.

Response. Amendment 2 is consistent with national standard 4. NMFS is not aware of any discriminatory State law or regulation incorporated in Amendment 2 that suggests a preference for Alaska residents in the management of the fisheries. The commenter did not cite the alleged discriminatory statute. The amendment does not prohibit any vessel in the fleet, regardless of where it is registered, from electing to fish in the Norton Sound superexclusive registration area or elsewhere in any year. Any vessel, including an Alaska-registered vessel, permitted to participate in the Norton Sound king crab fishery may not fish for king crab in any other BSAI registration area. Vessels from outside Alaska may operate in exclusive and nonexclusive areas, in only nonexclusive areas, or in the Norton Sound superexclusive area.

The designation of Norton Sound as a superexclusive registration area is not primarily an allocative measure. Title 50 CFR 602.14(c)(1) states that an allocation or assignment of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Many management measures have indirect allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of national standard 4. Allocations of fishing privileges include individual vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen. While the designation of Norton Sound as a superexclusive registration area is not primarily allocative, it does have allocative effects that are incidental to the primary conservation purpose of the amendment. NMFS expects operators of large vessels will be discouraged from participating in the Norton Sound fishery, because the resource base is relatively small and it is not economically feasible for large vessels to operate in Norton Sound. Therefore, NMFS did consider the three criteria outlined in 50 CFR 602.14(c)(3)(i) through (iii).

The amendment is fair and equitable. The 1993 GHL accounted for less than 1 percent of the total available harvest in all of the BSAI crab fisheries. There is crab available elsewhere for harvest by a vessel not registered in Norton Sound.

The amendment is consistent with 50 CFR 602.14(c)(3)(ii) in that it promotes conservation by encouraging a rational, more easily managed use of the resource. See NMFS' response to Comment 2. In the past 10 fishery seasons, the resource was overharvested 5 times, substantially underharvested once, and the fishery did not open in 1991 due to excessive effort present and concern over possible damage to the resource (see EA, Table 12). Designating Norton Sound as a superexclusive area is expected to dissuade the operators of large vessels from coming in and taking the crab quickly and risking overharvest, provide for better monitoring of the GHL with a small boat fishery, and promote OY by not leaving available crab on the grounds.

The amendment avoids the acquisition of excessive shares of fishing privileges by any one person or entity. The purpose of superexclusive registration is not to distribute fishing shares. Many factors can limit a vessel's fishing capacity. In Norton Sound, individual vessels are limited by size and by the number of pots deployed. Current regulations limit the number of pots to 40 on vessels 125 ft (38 m) or less. These restrictions effectively prevent any one vessel from harvesting an inordinate amount of the available GHL.

In anticipation of a longer season as a result of lowered pot limits and reduced effort, State management

adjusted the opening date of the 1993 Norton Sound king crab fishery from August 1 to July 1. The intent of this action was to decrease the likelihood of the fishery being conducted in September when the crab are molting and mating. The 15 nautical mile closure line was reduced to 5 miles on July 15 by emergency order based on daily catch reports that indicated a poor catch rate. The poor catch rate was thought to be caused by the early timing of the fishery, in that the seasonal offshore migration of the crab had not yet occurred. The closure was reduced to allow for the efficient harvest of red king crab. The risk of handling sublegal crab and the associated mortality was considered prior to this decision being made. The fewer pots on the grounds and the ability of fishermen to rapidly move off small crab effectively lessened such a risk.

In 1982 the Alaska Board of Fisheries implemented a 15 nautical mile closure in the Norton Sound summer king crab fishery for purposes of biological conservation. Under appropriate circumstances, this closure could be reduced by ADF&G to allow the king crab fishery to obtain efficiently the allowable harvest of red king crab. Large and small vessels in the fleet benefitted from closure reductions that occurred in 1982 and 1985. The commenter's misperception of "leniency" shown toward local residents is erroneous. First, the "lenient" management approach deemed incompatible with basic conservation objectives by the commenter may better be described as a more rational, easily managed approach that was possible under the conditions present in 1993 and that successfully promoted conservation of the resource. Second, only four of the 14 vessels in 1993 were local. Relaxation of time and area restrictions also benefitted the other 10 vessels.

Comment 8. The problems of deadloss and handling mortality that allegedly exist under the status quo would not be effectively addressed by Amendment 2 and would predictably continue under the amendment.

Response. NMFS disagrees. Problems of deadloss and handling mortality would be addressed effectively in the Norton Sound fishery as a result of its superexclusive status. Norton Sound is unique among the BSAI crab fisheries in that the spring Yukon River run-off and concurrent ice melt creates a freshwater lens that can contribute substantially to deadloss and handling mortality. Larger vessels with live tanks require circulating water; this is a problem in Norton Sound because introduced freshwater can cause increased mortality of the live crab held in tanks. Smaller vessels typically do not have live tanks; therefore, the freshwater lens does not impact crab onboard. Evidence indicates that pulse-type fishing patterns typical of fisheries of short duration result in decreased pot soak times and more frequent pot pulls. Handling mortality of female and sublegal crab subsequently increases. Fisheries of longer duration, such as that expected through superexclusive registration, effectively increase soak time of pots. This allows smaller sublegal crab the opportunity to escape and reduces handling mortality.

Comment 9. Amendment 2 is not consistent with national standard 5 of the Magnuson Act in that it offers no prospect of long-term, increased efficiency in the Norton Sound summer king crab fishery, and would, instead, lead to decreased efficiency in the other crab fisheries. The operators of displaced vessels will respond by concentrating their efforts more intensively in the other, already overcapitalized, crab fisheries.

Response. NMFS disagrees. The amendment is consistent with national standard 5. See NMFS' responses to Comments 2 and 5.

Comment 10. The sole purpose of Amendment 2 is economic allocation, thus it is not consistent with national standard 5 of the Magnuson Act. A factual basis for a claim of an advantage to be gained for management of the fishery under Amendment 2 is lacking. Social claims that are cast in terms of benefits to local Alaskan communities are unsubstantiated.

Response. NMFS disagrees. The sole purpose of the amendment is not allocative. NMFS acknowledges that the amendment may have some indirect allocative effects and this is addressed in the response to Comment 7. Claims of advantages to management and of social benefits to local communities are clearly evident from the 1993 fishery, which was essentially managed as if it were superexclusive.

Comment 11. Amendment 2 is not consistent with national standard 6 of the Magnuson Act in that it does not allow for, or respond to, variations and contingencies in the Norton Sound summer king crab fishery. Amendment 2 encourages unconstrained building of new capacity for the fishery and does not address the prospect of overcapacity. It does not provide any advantage over the status quo management for contending with the likely influx of excessive capacity or the probable periodic decline of the resource base.

Response. NMFS disagrees. The amendment is consistent with national standard 6. Title 50 CFR 602.16(b) provides that fisheries exhibit unique uncertainties and that the particular management regime chosen must be flexible enough to allow timely response to resource, industry, national, and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies. The likelihood of a timely response, continual inseason data acquisition, and management flexibility is greatly enhanced when the duration of the fishery is extended, as can be expected with a superexclusive registration status. The amendment does not encourage unconstrained capacity. See NMFS' responses to Comments 2 and 5.

Comment 12. Amendment 2 is not consistent with national standard 7 of the Magnuson Act in that a predicted increase in the length of the fishery and the associated reporting period will increase management and enforcement costs, rather than minimize them.

Response. The amendment is consistent with national standard 7. Costs to manage the fishery likely will be less under the superexclusive regime. Based on a review of the EA, the SSC concurred in this finding in its January report to the Council. The single greatest enforcement cost for a crab fishery is aerial surveys. When a fishery experiences a lengthened season, reduced effort, and a fleet dependent on daily shoreside deliveries, the need for aerial surveys is drastically reduced, if not eliminated. These same conditions also allow area managers to more easily administer the crab fishery along with other fishery duties. Therefore, in terms of management and enforcement costs, it is essentially more cost-effective to manage a relatively longer fishery than a very short one that requires labor-intensive aerial surveys.

Comment 13. The Magnuson Act allows for establishment of a system for limiting access to a fishery in order to achieve optimum yield. Amendment 2 cannot be characterized as being a measure calculated to achieve OY. Further, the EA does not genuinely take into account the full range of requisite considerations that must be considered when limiting access to a fishery.

Response. NMFS disagrees. The amendment can be characterized as a measure calculated to achieve OY. See NMFS' response to Comment 2. The amendment is not a form of limited

access. As described at 50 CFR 602.15(c), a system for limiting access is a type of allocation of fishing privileges which attempts to limit units of effort in a fishery. Typically, the number of units of effort has been predetermined and those participating in the fishery must satisfy certain established criteria. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas. There is no limit on the amount of effort that can occur in the fishery. Therefore, the amendment is not a form of limited access. A vessel operator need only register for the area in which he wishes to fish. Registration requirements are used to: (1) Make better preseason estimates of fishing effort and the rate at which resources will be harvested in each area so that the inseason monitoring of the fishery may be planned; and (2) limit the ability of vessels to fish in multiple areas, so that fishing effort is dispersed, while still allowing the majority of the fleet the opportunity to harvest the majority of the crab.

Comment 14. There is no evidence that vessel safety will improve under Amendment 2. It is more likely that a deterioration of safety will occur as more small vessels operate over longer periods of time in the open waters of the Northern Bering Sea fishery. The EA notes that weather conditions can create real safety problems for small vessels.

Response. NMFS believes that vessel safety considerations would not be exacerbated if longer periods of time were available to fish. Similar to the halibut fishery, which historically is conducted derby-style, a longer time period to harvest the available quota would allow vessel operators to remain shoreside during dangerous weather conditions.

Classification

NMFS prepared a FRFA, a copy of which is available from the Council (see ADDRESSES).

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

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: May 25, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 671 is amended as follows:

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for part 671 continues to read as follows:

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

2. Section 671.20 is removed and reserved.

[FR Doc. 94–13303 Filed 5–26–94; 3:13p.m.]

BILLING CODE 3510–22–F

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50 CFR Part 676

[Docket No. 940103–4154; I.D. 122893B]

RIN 0648–AG21

Limited Access Management of Federal Fisheries In and Off of Alaska; Determinations and Appeals

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the determinations and appeals procedures for the limited access management of Federal fisheries in and off of Alaska. This action is necessary to establish who may appeal initial administrative determinations; establish what must be included in appeals; establish procedures regarding acceptance of appeals; establish the authority of, and a procedure for disqualifying, appellate officers; establish evidentiary procedures and the hearing process; establish procedures for post-hearing decisions; and establish appeals procedures to the Director, Alaska Region, NMFS (Regional Director). The intended effect of this action is to provide an orderly process for appeals from initial administrative determinations made by NMFS management staff and from decisions issued by appellate officers under the Individual Fishing Quota (IFQ) program.

EFFECTIVE DATE: July 1, 1994.

ADDRESSES: Copies of this action, and the final environmental impact statement/supplementary environmental impact statement (FEIS/SEIS) for halibut and sablefish IFQ programs, respectively, may be obtained from the North Pacific Fishery Management Council (Council), P.O. Box 103136, Anchorage, AK 99510.

Appeals must be mailed to NMFS, Restricted Access Management, P.O. Box 21668, Juneau, AK 99802–1668, or delivered to NMFS, Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: John Lepore, Fisheries Regulations Specialist, Alaska Region, NMFS, at 907–586–7228.

Supplementary Information:

Background

This action implements the determinations and appeals process for the IFQ program, a regulatory regime intended by the Council to promote the conservation and management of halibut and sablefish resources, and to further the objectives of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Northern Pacific Halibut Act (Halibut Act).

Beginning in 1995, the Alaskan fisheries using fixed gear for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) in the areas defined in 50 CFR 676.10(b) and (c) will be managed in accordance with the IFQ regulations codified at 50 CFR part 676. Further information on the implementation of this program, and the rationale in support of it, is contained in the preamble to the final rule establishing the IFQ limited access program published on November 9, 1993 (58 FR 59375).

This action provides procedures for appeals for determinations under 50 CFR part 676. Persons may appeal initial administrative determinations made by NMFS management staff and appellate officers' decisions. These two levels of appeal will provide any person whose interests are directly and adversely affected by a determination or decision, a reasonable opportunity to present objections and be heard.

The proposed rule for this action was published on February 9, 1994 (59 FR 5979), and the public comment period ended on March 28, 1994. No public comment was received on the proposed rule.

Initial Administrative Determinations

Initial administrative determinations are the findings of NMFS staff on eligibility for, and the transfer and use of, quota share (QS) and IFQ under the IFQ program. Initial administrative determinations are made after evaluating all evidence provided by applicants, comparing that evidence with the data on the official record, and making a determination based on that comparison. Initial administrative determinations become final agency actions within 90 days unless appealed under the procedure described below.

Examples of initial administrative determinations are: (1) Whether applicants have submitted sufficient documentation to demonstrate they are qualified persons, or their successors-in-

interest, as defined in 50 CFR 676.20(a)(1); (2) whether to grant initial QS allocations based on the documentation provided in applications; (3) whether documentation submitted with applications, or documentation requested by NMFS staff, support the claims made for initial QS allocations; and (4) whether to grant initial QS allocations based on specific vessel categories and fishery statistical areas.

NMFS staff may request additional documentation from applicants to support their applications. Applicants will have 90 days to respond to these requests. Requests for additional documentation provide applicants with an opportunity to submit additional documentation for claims not consistent with data contained in NMFS files. Requests for additional documentation cannot be the subject of administrative appeals. Appealable determinations will not occur until: (1) Applicants respond to the request by providing additional information within the time period; (2) applicants waive the right to respond to the request for additional evidence, and instead request that a determination be made on the application in its current form; or (3) applicants do not respond within the time period.

Appeals

Persons whose interests are directly and adversely affected by initial administrative determinations or appellate officers' decisions can appeal those determinations or decisions. This action provides a two-tier appeals process (i.e., appeal of an initial administrative determination to an appellate officer and appeal of an appellate officer's decision to the Regional Director). This process provides applicants with a reasonable opportunity to be heard concerning agency actions.

Appeals must be in writing. The writing requirement protects the applicant (now appellant) by providing a written record of the issues appealed and ensuring that the appeal becomes part of the record. Appeals must also be in original form; NMFS will not accept appeals sent by electronic transmission (telefacsimile). Appeals may be either mailed or personally delivered to NMFS. Appeals submitted by mail may be sent certified, return receipt requested, to provide the appellant with evidence of mailing the appeal in case it becomes lost or destroyed.

Addresses of record will be established from the addresses used by persons on their first correspondence (see **ADDRESSES**). For most persons, this first correspondence will be their request for an application for QS allocation. Any changes to the address of record must be promptly provided to NMFS in writing. Notification of address changes to NMFS is the responsibility of the applicants, since they are in the best position to have knowledge of such changes. Supplying address changes ensures that NMFS has an accurate and current address for correspondence.

Eligibility to appeal begins on either the date initial determinations are made or on the date decisions are issued. Appeals must be filed with NMFS within 90 days of the date an initial administrative determination is made or within 45 days of the date an appellate officer's decision is issued.

Appellants are required to submit a full written statement in support of the appeal, including a concise statement of the reasons why the initial administrative determination has a direct and adverse effect on the appellant and should be reversed or modified. The appellate officer may request additional information from the appellant to resolve the appeal. Appeals merely challenging the IFQ regulations will not be accepted.

In addition to the written statement of appeal, an appellant may request, in writing, a hearing on one or more issues material to the appeal. A request for a hearing must be accompanied by a concise statement raising a genuine and substantial issue of adjudicative fact for resolution and listing available and specifically identified reliable evidence upon which the factual issue can be resolved. A hearing will not be held on issues of policy or law, or upon the basis of mere allegations, denials, or general descriptions of positions and contentions.

The appellant could, and is encouraged to, supply evidence supporting the statement of appeal and request for a hearing. Providing a complete and timely appeal with sufficient evidence increases the potential that the appellate officer can make a decision in the appellant's favor without further proceedings. If the appeal is incomplete, untimely, or not sufficiently supported, the appellate officer will deny the appeal, a decision that can be appealed to the Regional Director.

Hearings

Written or oral hearings can be held to resolve genuine and substantial issues of adjudicative fact. The decision of whether to hold a written or oral hearing will be solely within the appellate officer's discretion and cannot be appealed to the Regional Director.

The appellate officer can order written hearings on a determination that the issues presented in an appeal are resolvable by allowing the appellant an opportunity to respond through written submissions. The written hearing process is the preferred method of resolving issues, unless the appellate officer determines that an oral hearing is necessary. The appellate officer can decide to order an oral hearing on one or more issues after beginning the written hearing process.

On ordering a written hearing, the appellate officer will provide the appellant with notice that a written hearing is ordered, provide the appellant with a statement of issues to be determined, and provide the appellant with 30 days to file a written response. The written response can include affidavits from the appellant or other witnesses. The statement of issues will provide the appellant with information concerning the issues to be determined by the appellate officer. This statement will help focus the appellant on pertinent, rather than extraneous, issues.

The appellate officer will order an oral hearing on a determination that an oral hearing would be necessary to resolve one or more issues presented in the appeal. On ordering an oral hearing, the appellate officer will provide the appellant with notice that an oral hearing is ordered, provide the appellant with a statement of issues to be determined by the hearing process, and provide the appellant with notice, at least 30 days in advance, of the place, date, and time of the oral hearing. Hearings will be held in Juneau, AK at the prescribed date and time, unless the appellate officer determines, based upon good cause shown, that a different place, date, or time would better serve the interests of justice. The appellate officer will have authority to conduct hearings in an orderly manner as described in § 676.25(i).

This action also allows appellate officers to order pre-hearing conferences. The pre-hearing conference can be used to simplify the issues, obtain stipulations and admissions of facts, and discuss the possibility of settlement without further proceedings. The formal rules of evidence will not apply.

Appellate officers will withdraw from an appeal at any time they deem themselves disqualified. This may occur because of financial connection to the case, *ex parte* communications, or some other personal bias. In addition, appellants can request withdrawal of the appellate officer. An appellate officer may withdraw upon the

appellant's motion if made prior to the issuance of a decision and the appellant demonstrates personal bias or other basis for disqualification. An appellate officer's denial of a motion to withdraw will be part of the record.

At the conclusion of the hearing, whether oral or written, the appellate officer will close the record and issue a decision. The appellate officer's decision will be based solely on the record of the proceedings. This ensures that the appellant will have the opportunity to review all information used in the decision-making process. This requirement also establishes a record for review on appeal to the Regional Director.

Appeal to the Regional Director

An appellant whose interests are directly and adversely affected by an appellate officer's decision will have an opportunity to appeal that decision to the Regional Director. A written appeal to the Regional Director must be filed within 45 days of the issuance of the appellate officer's decision. If the appellate officer's decision is not appealed within this 45-day period, it becomes effective and is considered a final agency action. An appeal to the Regional Director must clearly and concisely state the reasons why the appellate officer's decision has a direct and adverse effect on the appellant and why it should be modified, reversed, or remanded.

The Regional Director will resolve the appeal based solely on the record. Another hearing at this stage of the process is unnecessary, because all evidence and testimony for the proper disposition of issues should have been presented to the appellate officer and will be in the record. The appellate officer's decision will be affirmed by either the Regional Director's denying the appeal or the Regional Director's preparing an order affirming the appellate officer's decision. The Regional Director can deny appeals that were submitted beyond the 45-day period or appeals that did not articulate sufficient basis to modify, remand, or reverse the appellate officer's decision. The Regional Director can also order that an appellate officer's decision be modified or reversed, or remanded to an appellate officer for further proceedings consistent with the Regional Director's decision. In all cases, the Regional Director will issue a written decision explaining the reasons for the determination. Unless a remand is ordered, a decision by the Regional Director is a final agency action subject to judicial review.

Classification

A regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) was prepared for the IFQ limited access program for which these determinations and appeals regulations are a part. The Final Environmental Impact Statement for Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area, and for Amendment 20 to the FMP for Groundfish of the Gulf of Alaska, the document that contains the RIR/FRFA, is available (see **ADDRESSES**).

This final rule contains a collection of information requirement subject to the Paperwork Reduction Act. The estimated response time for the collection of information required to file an appeal to a QS application is 4 hours. The collection of information has been approved by the Office of Management and Budget, OMB control numbers 0648–0272 (IFQs for Pacific halibut and Sablefish in the Alaska Fisheries) and 0648–0269 (Western Alaska CDQ Program).

This final rule has been determined to be not significant for purposes of Equal Opportunity 12866.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: May 25, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 676.25, the text is added to read as follows:

§ 676.25 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations and appellate officers' decisions made under this part.

(b) *Who may appeal.* Any person whose interest is directly and adversely affected by either an initial administrative determination or an appellate officer's decision may file a written appeal. For purposes of this section, such persons will be referred to as "applicant" or "appellant".

(c) *Submission of appeals.* Appeals must be in writing and must be submitted in original form to NMFS, P.O. Box 21668, Juneau, AK 99802; or to NMFS, 709 W. 9th, Room 413, Juneau, AK 99801. Appeals transmitted by electronic means will not be accepted.

(d) *Time periods for appeals and date of filing.* (1) Appeals must be filed within the following time periods:

(i) Appeals from initial administrative determinations must be filed within 90 days of the date the determination was made; and

(ii) Appeals from appellate officers' decisions must be filed within 45 days of the date the decision was issued.

(2) The time periods within which appeals must be filed begin to run on the date of issuance of the initial administrative determination or appellate officer's decision that gives rise to the appeal. Saturdays, Sundays, and Federal holidays will not be included in computing such time periods, which conclude at the close of business of the final enumerated day, except that when such time periods conclude on a Saturday, Sunday, or Federal holiday, such periods will be extended to the close of business on the next business day.

(3) For purposes of this section, the date of filing is the date the appeal is received by NMFS.

(4) All other time periods established under this section will be computed in a manner consistent with the provisions of paragraphs (d)(2) and (3) of this section.

(e) *Address of record.* NMFS will establish as the address of record the address used by the applicant in initial correspondence to NMFS, Restricted Access Management, after the application period has begun. Notices of all actions affecting the applicant after establishing an address of record will be mailed to that address unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notice is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(f) *Statement of reasons for appeals from initial determinations.* Applicants must timely submit a full written statement in support of the appeal, including a concise statement of the reasons why the initial administrative determination has a direct and adverse effect on the applicant and should be reversed or modified. If the applicant requests a hearing on any issue presented in the appeal, such request for hearing must be accompanied by a

concise written statement raising genuine and substantial issues of adjudicative fact for resolution and a list of available and specifically identified reliable evidence upon which the factual issues can be resolved. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(g) *Decision Whether to Order a Hearing.* The appellate officer will review the applicant's appeal and request for hearing and, at his/her sole discretion, proceed as follows:

(1) Deny the appeal. A decision to deny the appeal may be appealed to the Regional Director as provided in paragraph (o) of this section;

(2) Issue a decision on the merits of the appeal if the record contains sufficient information on which to reach final judgment. A decision on the merits of the appeal may be appealed to the Regional Director as provided in paragraph (o) of this section; or

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following:

(i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law;

(ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions;

(iii) The evidence described in the request for hearing, if established at hearing, would be adequate to justify resolution of the factual issue in the way sought by the applicant. A hearing will not be ordered if the evidence described is insufficient to justify the factual determination sought, even if accurate; and

(iv) Resolution of the factual issue in the way sought by the applicant is adequate to justify the action requested. A hearing will not be ordered on factual issues that are not determinative with respect to the action requested.

(h) *Types of Hearings.* If the appellate officer determines that a hearing should be held to resolve one or more genuine and substantial issues of adjudicative fact, he/she may order:

(1) A written hearing, as provided in paragraph (m) of this section; or

(2) An oral hearing, as provided in paragraph (n) of this section.

(i) *Authority of the Appellate Officer.* The appellate officer is vested with general authority to conduct all hearings in an orderly manner, including the authority to:

(1) Administer oaths;

(2) Call and question witnesses; and

(3) Issue a written decision based on the record.

(j) *Evidence.* All evidence that is relevant, material, reliable, and probative may be included in the record. Formal rules of evidence do not apply to hearings conducted under this section.

(k) *Appellate Officers' Decisions.* The appellate officer will close the record and issue a decision after he/she determines that there is sufficient information on the record of the proceedings and all procedural requirements have been met. The decision must be based solely on the record of the proceedings. Appellate officers' decisions will become effective 45 days after the date the decision is issued, unless appellant files a timely appeal to the Regional Director in accordance with paragraphs (o)(1) and (2) of this section, or the Regional Director orders review of the appellate officer's decision in accordance with paragraph (o)(4) of this section.

(l) *Disqualification of an Appellate Officer.* (1) The appellate officer will withdraw from an appeal at any time he/she deems himself/herself disqualified.

(2) The appellate officer may withdraw from an appeal on an appellant's motion if:

(i) The motion is entered prior to the appellate officer's issuance of a decision; and

(ii) The appellant demonstrates that the appellate officer has a personal bias or any other basis for disqualification.

(3) If the appellate officer denies a motion to withdraw, he/she will so rule on the record.

(m) *Written Hearing.* (1) An appellate officer may order a written hearing under paragraph (h)(1) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can be resolved by allowing the appellant to present written materials to support his/her position.

(2) After ordering a written hearing, the appellate officer will:

(i) Provide the appellant with notice that a written hearing has been ordered;

(ii) Provide the appellant with a statement of issues to be determined at hearing; and

(iii) Provide the appellant with 30 days to file a written response. The appellant may also provide documentary evidence to support his/her position. The period to file a written response may be extended at the sole discretion of the appellate officer if the appellant shows good cause for the extension.

(3) The appellate officer may, after reviewing the appellant's written response and documentary evidence:

(i) Order that an oral hearing be held, as provided in paragraph (h)(2) of this section, to resolve issues that can not be resolved through the written hearing process;

(ii) Request supplementary evidence from the appellant before closing the record; or

(iii) Close the record.

(4) The appellate officer will close the record and issue a decision after he/she determines there is sufficient information on the record. This decision will be considered final for purposes of appeal to the Regional Director as provided in paragraph (o) of this section.

(n) *Oral hearing.* (1) The appellate officer may order an oral hearing under paragraphs (h)(2) and (m)(3)(i) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can best be resolved through the oral hearing process.

(2) After ordering an oral hearing, the appellate officer will:

(i) Provide the appellant with notice that an oral hearing has been ordered;

(ii) Provide the appellant with a statement of issues to be determined at hearing; and

(iii) Provide the appellant with notice, at least 30 days in advance, of the place, date, and time of the oral hearing. Oral hearings will be held in Juneau, AK at the prescribed date and time, unless the appellate officer determines, based upon good cause shown, that a different place, date, or time will better serve the interests of justice. A continuance of the oral hearing may be ordered at the sole discretion of the appellate officer if the appellant shows good cause for the continuance.

(3) The appellate officer may, either at his/her own discretion or on the motion of the appellant, order a pre-hearing conference, either in person or telephonically, to consider:

(i) The simplification of issues;

(ii) The possibility of obtaining stipulations, admissions of facts, and agreements to the introduction of documents;

(iii) The possibility of settlement or other means to facilitate resolution of the case; and

(iv) Such other matters as may aid in the disposition of the proceedings.

(4) The appellate officer must provide the appellant with notice of a pre-

hearing conference, if one is ordered, at least 30 days in advance of the conference. All action taken at the pre-hearing conference will be made part of the record.

(5) At the beginning of the oral hearing, the appellate officer may first seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he/she may wish to have evidence presented. Issues to be resolved at the hearing will be limited to those identified by the appellate officer as provided in paragraph (g)(3) of this section. The appellant will then be given an opportunity to present his/her case.

(6) During the oral hearing, the appellant has the right to present reliable and material oral or documentary evidence and to conduct such cross-examination as may be required in the interests of justice.

(7) After the conclusion of the oral hearing the appellant may be given time by the appellate officer to submit any supplementary information that may assist in the resolution of the case.

(8) The appellate officer will close the record and issue a decision on the appeal after he/she determines there is sufficient information on the record. This decision will be considered final for purposes of appeal to the Regional Director as provided in paragraph (o) of this section.

(o) *Appeals to the Regional Director.* An appellant may appeal an appellate officer's decision to the Regional Director. All such appeals must be filed with the Regional Director within the time period established in paragraph (d)(1)(ii) of this section.

(1) An appeal to the Regional Director of an appellate officer's decision must be accompanied by a full written statement in support of the appeal, including a concise statement of the reasons why the appellate officer's decision has a direct and adverse effect on the appellant and should be modified, reversed, or remanded.

(2) The Regional Director may order a review of the appellate officer's decision and may issue a decision on review that modifies or reverses the appellate officer's decision, or remands that decision to the appellate officer for further proceedings consistent with the decision on review. The Regional Director's decision will be based solely on the record as developed by the appellate officer.

(3) If the Regional Director denies the appeal, the appellate officer's decision is affirmed, and the action is a final agency action subject to judicial review under 5 U.S.C. 704.

(4) Within 45 days of the date the appellate officer's decision is issued, the Regional Director may, at his/her own discretion, order review of any appellate officer's decision. If the Regional Director orders review of an appellate officer's decision, the Regional Director must notify the appellant and prepare an order that affirms, modifies, reverses, or remands the decision to the appellate officer for further proceedings consistent with the decision on review. If the appellate officer's decision is modified or reversed, the Regional Director must issue a written decision explaining the reasons for his/her determination. Unless a remand is ordered, the Regional Director's decision is a final agency action subject to judicial review under 5 U.S.C. 704.

[FR Doc. 94-13222 Filed 5-31-94; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register
Vol. 59, No. 104
Wednesday, June 1, 1994

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

Foreign Agricultural Service

7 CFR Part 1530

Sugar Import Licensing

AGENCY: Foreign Agricultural Service, Agriculture.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This document announces a 35-day extension of time, until July 8, 1994, for comments on the advance notice of proposed rulemaking for revising the regulations and other program provisions for the sugar import licensing programs published in the **Federal Register** on May 4, 1994 (59 FR 23017).

DATES: All comments on the advance notice of proposed rulemaking must be submitted on or before July 8, 1994 in order to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to the Team Leader, Import Quota Programs, Foreign Agriculture Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT:

Fred R. Kessel, (202) 720–5676.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS) is requesting suggestions for revising the regulations and other program provisions for the sugar import licensing programs in order to improve program efficiency and compliance as well as to carry out relevant provisions of the North American Free Trade Agreement (NAFTA). Notice is hereby given that the period of time for submitting comments on the advance notice of proposed rulemaking published on May 4, 1994 (59 FR 23017) is extended to July 8, 1994.

Signed at Washington, DC, on May 26, 1994.

Richard B. Schroeter,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–13288 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–20313, File No. S7–15–94]

RIN 3235–AF97

Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and request for comment.

SUMMARY: The Commission is proposing a new rule under the Investment Company Act of 1940 to permit registered management investment companies to use futures commission merchants and commodity clearing organizations as custodians of their assets in connection with futures contracts and commodity options regulated under the Commodity Exchange Act. Currently, investment companies generally must maintain special accounts with their custodian banks for these transactions. The proposed rule would enable investment companies to effect their commodity trades in the same manner as other market participants under conditions designed to ensure the safekeeping of investment company assets.

DATES: Comments must be received on or before August 1, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–15–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Kentzman, Special Counsel, or Diane C. Blizzard, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 17f–6 [17 CFR 270.17f–6] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act"). The new rule would permit registered management investment companies to maintain their assets with certain futures commission merchants ("FCMs") and commodity clearing organizations in connection with futures contracts and commodity options regulated under the Commodity Exchange Act [7 U.S.C. 1–25] ("CEA"). The proposed rule would not affect the extent to which investment companies may engage in commodity trading.

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I. Introduction and Executive Summary

Over the last several years, investment company participation in the commodity market has increased.[1]

[1] Section 18 of the Act significantly restricts how investment companies, particularly open-end funds, may use leverage. 15 U.S.C. 80a–18. Although section 18 does not expressly address commodity transactions, the Commission has concluded that section 18 governs trading practices that have the potential for leveraging an investment company's assets. Securities Trading Practices of

Investment companies, for example, use commodity investments to hedge their portfolios from declines in securities prices, changes in interest rates, or foreign currency fluctuations.[2] Alternatively, investment companies enter into commodity transactions to adjust the percentage of their portfolios held in cash, long-term debt, and stocks without having to buy or sell the actual assets.[3]

To enter into a futures contract or write a commodity option, investors deposit a specified amount of assets or cash as initial margin.[4] The FCM then clears the transaction by posting margin either directly with a clearing organization (which matches the opposite side of the trade) or with one or more other FCMs that will effect the transaction through the clearing organization. Once a position is established, it is marked to market at least daily to reflect gains and losses in the position's value. Gains on commodity transactions are available for payment on the next business day.

Commodity investors other than investment companies generally initiate trades by posting margin directly with an FCM. Section 17(f) of the Act and related rules, however, currently do not permit FCMs to maintain custody of investment company assets.[5] FCM custody also presents certain risks because, in FCM bankruptcy proceedings, margin entrusted to an FCM's safekeeping may not be returned in full.[6]

Under no-action positions of the Division of Investment Management (the "Division"), investment companies must maintain their initial margin deposits in special accounts with a third party custodian bank.[7] Because investment company margin is held by a third party, FCMs must advance their own funds to cover investment company margin obligations with the clearinghouse or other FCM that will be used to effect the transaction.

Some have suggested that third party custodial accounts create systemic liquidity risks by diverting otherwise available FCM capital from the marketplace.[8] In addition, the CFTC staff has stated that third party accounts would not provide any special protection for investment company assets in the event of an FCM's bankruptcy.[9]

To address potential liquidity risks and the uncertain status of third party accounts in FCM bankruptcy proceedings, the Commission is proposing rule 17f–6. The proposal would permit FCM and clearinghouse custody of investment company margin, subject to conditions designed to ensure the safekeeping of investment company assets.

Under proposed rule 17f–6, investment companies could deposit initial margin with FCMs in amounts necessary to effect their futures contracts and commodity options.[10] FCMs also would be permitted to hold *de minimis* amounts of gain on commodity transactions; gains exceeding this threshold would have to be paid to the fund on the day after receipt by the FCM.[11]

To protect against the risks of FCM insolvency, rule 17f–6 would require FCMs holding investment company assets, including any FCMs used for clearing purposes, to have at least $20 million in adjusted net capital in excess of the minimum capital requirements established by the Commodity Futures Trading Commission ("CFTC"). As an additional measure of financial strength, the ratio of an FCM's adjusted net capital to the CFTC required minimum would have to equal or exceed 250 percent.[12]

The proposal also would require a written contract between the investment company and the FCM to contain certain provisions. Among other things, FCMs could transfer investment company assets for clearing purposes only to another FCM that satisfies the requirements of the rule (other than the requirement of a contract with the investment company), a bank, or a clearing organization.[13]

The board of directors would be responsible for selecting FCMs and monitoring the custodial arrangements. The board could delegate these responsibilities to the company's investment adviser or officers under the board's general oversight and certain procedural requirements.[14]

Finally, FCM custody would be permitted for foreign-related transactions traded on domestic contract markets, even if the margin is held overseas. FCM custody would not be allowed for foreign exchange-traded transactions, since margin for these trades does not enjoy the full protections of the CEA and CFTC rules.[15]

II. Background

A. Settlement of Futures Contracts and Commodity Options

Under the CEA and CFTC rules, trading of futures contracts and commodity options generally must take

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Registered Investment Companies: General Statement of Policy, Investment Company Act Release No. 10666 (Apr. 18, 1979), 44 FR 25128. These transactions have been interpreted to include commodity investments. *See, e.g.*, Dreyfus Strategic Investing and Dreyfus Strategic Income (pub. avail. June 22, 1987). To avoid section 18's reach, investment companies must fully collateralize their commodity obligations by establishing a segregated account consisting of high-grade liquid assets. *Id.* Proposed rule 17f–6 does not address section 18 considerations or related restrictions attending commodity investments, and thus does not affect the extent to which investment companies may engage in these transactions.

Investment companies and their sponsors also may be subject to regulation as commodity pool operators under the CEA and Commodity Futures Trading Commission ("CFTC") rules, although most seek and qualify for exemption. *See* CEA section 1a(4), 7 U.S.C. 1a(4) (defining commodity pool operator); CFTC regulation 4.5, 17 CFR 4.5 (excluding certain institutional investors, including registered investment companies, and their principals and employees from the definition of commodity pool operator, subject to certain conditions).

[2] Commodity investments include futures contracts and options on futures contracts and physical commodities. A futures contract generally is a bilateral agreement providing for the purchase or sale of a specified commodity at a stated time in the future for a fixed price. Robert E. Fink & Robert B. Feduniak, Futures Trading 10 (1988) [hereinafter Fink & Feduniak]. A commodity option gives its holder the right, for a specified period of time, to either buy (in the case of a call option) or sell (in the case of a put option) the subject of the option at a predetermined price. The writer (seller) of an option is obligated to sell or buy the specified commodity at the election of the option holder. 1 Philip M. Johnson & Thomas L. Hazen, Commodities Regulation § 1.07 (2d ed. Supp. 1991) [hereinafter Johnson & Hazen].

[3] In this case, the investment would be used as a substitute for paying cash in the stock and bond markets. Taking a position in a futures contract, for example, may be quicker and cheaper than buying and selling the instruments subject to the contract due to lower brokerage and transaction costs.

[4] *See* "Background—Settlement of Futures Contracts and Commodity Options."

[5] 15 U.S.C. 80a–17(f), 17 CFR 270.17f–1 to 270.17f–5. *See* "Background—FCM and Clearinghouse Custody under the Act." *See also infra* note 28 (regarding the Department of Labor's position, which has not been adopted by the Division of Investment Management, that margin is not an asset for purposes of the custody requirements and certain other fiduciary provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") [29 U.S.C. 1001–1461]).

[6] *See infra* notes 65–66 and accompanying text. *See also* "Background—Settlement of Futures Contracts and Commodity Options—FCM Insolvency Risks and the Settlement Process." As indicated *infra* at note 49, although the potential for loss exists, actual customer losses from FCM insolvencies are rare.

[7] *See* "Background—FCM and Clearinghouse Custody under the Act."

[8] *See* "Background—Problems with Current Custody Arrangements."

[9] *Id.*

[10] *See* "Discussion—Investment Company Margin—Initial Margin."

[11] *See* "Discussion—Investment Company Margin—Margin Gain."

[12] *See* "Discussion—FCMs Eligible to Hold Investment Company Assets" and "—Additional FCMs Used for Clearing Purposes."

[13] *See* "Discussion—Contract Requirements."

[14] *See* "Discussion—Responsibilities of the Board of Directors and Delegation."

[15] *See* "Discussion—Foreign-Related Commodity Transactions."

place on a designated contract market (an "exchange").[16] An FCM executing trades on an exchange must be a member of that exchange; nonmembers trade by entering orders through an exchange member.[17] All transactions are cleared through a clearing organization, which matches trades on behalf of the exchange, and acts as guarantor of the opposite side of each transaction accepted for settlement.[18] To clear transactions with a clearing organization, an FCM must be both an exchange member and a member of the clearing organization.[19] Non-clearing member FCMs must execute their transactions through a clearing member.[20]

Depending on an FCM's qualifications as an exchange or clearinghouse member, settlement of a commodity transaction may involve multiple FCMs. When one FCM acts on behalf of another, its "customer" is the FCM on whose behalf the order is effected, not that FCM's underlying customers. Similarly, clearinghouses consider FCM clearing members as their customers for purposes of settling trades.

1. Futures Contracts

Investors entering into futures contracts deposit a specified amount of assets or cash as initial margin.[21] Initial margin is intended to secure the obligations of the contracting parties as well as to protect those involved in the settlement process.[22] Initial margin is not considered to be part of the contract purchase price, and is returned upon the contract's termination unless it is used to cover a loss in the contract position.[23] Initial margin in futures transactions thus differs from securities margin, which represents a partial payment for securities purchased by the broker on its customer's behalf.[24]

Minimum initial margin requirements are set by the exchange on which the contract is designated to trade, although FCMs may impose higher requirements.[25] Clearing organizations also impose their own margin requirements for clearing members, which typically are less than exchange-established initial margin minimums.[26] Initial margin levels may be increased or reduced throughout the life of a contract.[27]

Customers other than investment companies generally post initial margin directly with an FCM when they initiate trades.[28] If the FCM is a clearing member, it must then satisfy clearinghouse margin requirements. The FCM typically deposits all or a portion of the customer's assets directly in a commingled account established by the clearinghouse for margin deposits and accruals on the FCM's customer positions.[29] Any funds remaining in the FCM's possession are deposited in a commingled customer bank account maintained by the FCM.[30] While section 4d(2) of the CEA permits the commingling of customer funds at both the clearinghouse and FCM levels, it requires FCMs to segregate customer assets from the FCM's own funds, including those used for its own trading, and prohibits the use of one customer's funds to carry another's trades.[31]

If an FCM is not a clearing member, the same procedures and requirements apply, except that the non-member FCM must post margin with the clearing member, which in turn must satisfy clearinghouse requirements.[32] FCM custody of customer margin in this case thus involves both the non-member and clearing member FCM.[33]

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[16] *See* CFTC regulation 1.3(h), 17 CFR 1.3(h) (defining contract market).

[17] Fink & Feduniak, *supra* note 2, at 88.

[18] *See* CFTC regulation 1.3(d), 17 CFR 1.3(d) (defining clearing organization). Some clearinghouses are organized as separate entities from the exchange, while others are departments within the exchange. Fink & Feduniak, *supra* note 2, at 154. *See generally* 1 Thomas A. Russo, Regulation of the Commodities Futures and Options Markets § 2.01 (1983 & Supp. 1992) [hereinafter Russo] ("Upon accepting trades for clearance, commodity exchange clearing houses interpose themselves as principals between the parties, becoming the 'seller to every buyer and the buyer to every seller' and thus 'a party to every trade.' ") (citations omitted).

[19] *See* CFTC regulation 1.3(c), 17 CFR 1.3(c) (defining clearing member). Exchange membership is a prerequisite to clearing membership. *See* 1 Johnson & Hazen, *supra* note 2, § 2.49.

[20] Fink & Feduniak, *supra* note 2, at 154.

[21] *See* Jerry W. Markham, *Federal Regulation of Margin in the Commodity Futures Industry—History and Theory*, 64 Temple L. Rev. 59, n.12 (1991) (initial margin for futures contracts often is five to ten percent of the value of the commodity subject to delivery under the contract). *See also* 1 Johnson & Hazen, *supra* note 2, § 2.43 (Supp. 1991) (describing recent developments in the computation of margin, including "cross margining" involving coordination of margin levels for certain commodity and stock option positions).

See generally 1 Russo, *supra* note 18, § 1.20 ("Each of the exchanges has its own rules as to the types of assets, and as to the percentage of the fair market value of those assets (sometimes referred to as a *haircut*), which may be accepted in satisfaction of margin requirements.") (emphasis in original).

[22] *See* 1 Johnson & Hazen, *supra* note 2, § 1.10 ("margins serve not only to protect the parties against default, but the carrying brokers and clearing house as well").

[23] *Id.* § 1.10. *See* 2 *id.* §§ 3.76, 3.79.

[24] 1 *Id.* § 1.10.

[25] 1 Russo, *supra* note 18, § 2.03. An FCM, for example, may increase margin requirements based on experience with a customer or the customer's financial resources. Division of Trading and Markets, CFTC, Follow-up Report on Financial Oversight of Stock Index Futures Markets During October 1987 at 28–29 (Jan. 6, 1988) [hereinafter CFTC October 1987 Follow-up Report].

[26] 1 Johnson & Hazen, *supra* note 2, § 1.10. Margin deposited to satisfy clearinghouse requirements is known as "original" margin. *Id.* Original margin requirements typically vary for different clearing members depending, for example, on each member's trading volume. 1 Russo, *supra* note 18, § 2.03. Under net clearing systems in effect at most exchanges, clearing members are not required to post original margin for offsetting customer positions. *Id.* § 2.06.

[27] 1 Johnson & Hazen, *supra* note 2, § 1.10 ("Commodity margins often vary depending on the stage of the transaction, the nature of the trading involved, and the volatility of market prices."); Markham, *supra* note 21, at 132 & n.513 (1991) (the Chicago Board of Trade changed margin levels over 200 times in 1987, often on a daily basis).

[28] Investment company third party custodial arrangements are discussed below under "FCM and Clearinghouse Custody Under the Act." Some pension accounts also may use third party arrangements for their initial margin deposits, although they are not required to do so under the ERISA. The Department of Labor has held that, for purposes of the custody requirements and certain other fiduciary provisions of ERISA, margin deposited by a pension plan with an FCM does not constitute an asset of the plan; rather, the plan's assets are deemed to be the rights embodied in the futures contract. Op. No. 82–49A (Office of Pension and Welfare Benefits Program, U.S. Dept. of Labor 1982). The Division has not adopted this approach.

[29] 2 Johnson & Hazen, *supra* note 2, § 3.69 Clearing members maintain a proprietary account with the clearinghouse for their own trades, which must be kept separate from customer assets. 1 Russo, *supra* note 18, § 2.02. Accounts at the clearinghouse level are maintained by banks that have been approved by the clearinghouse as original margin depositories. *Id.* § 2.03.

An FCM may use its own assets to satisfy a customer's margin obligations, pending receipt of the required margin from the customer. CFTC regulation 1.23, 17 CFR 1.23. Exchange rules generally require FCMs to receive customer margin within a reasonable time after an order is accepted. *See* 1 Russo, *supra* note 18, § 1.20. Under CEA section 4d(2) and the special provisions of the Bankruptcy Code and CFTC rules that govern FCM liquidations, margin in the clearinghouse customer account is considered customer property, whether the margin represents actual customer assets or the FCM's own funds. 7 U.S.C. 6d(2); 11 U.S.C. 761–766; 17 CFR 190.01 to .10.

[30] 1 Johnson & Hazen, *supra* note 2, § 3.69. *See also* CFTC regulations 1.25, 1.29, 17 CFR 1.25, 1.29 (permitting FCMs to invest customer assets in their possession in certain United States government obligations and retain the interest thereon, unless the customer specifically arranges to receive the interest payments).

[31] *See also* CFTC regulations 1.20–.30, 17 CFR 1.20–.30 (implementing the requirements of section 4d(2)). The FCM at all times must have sufficient funds in segregation representing customer margin received or required to be paid. *Id.*

[32] *See* 2 Johnson & Hazen, *supra* note 2, § 3.76 ("customer funds routinely travel from the originating FCM to other FCMs, such as clearing member firms of a contract market, and to the clearing agencies of the contract market"). If the FCM originating the trade effects the transaction through an exchange member that is not a clearing member, the exchange member FCM would be an additional party in the settlement chain.

[33] Under CFTC regulation 1.58, clearing member FCMs that carry customer positions on behalf of non-members must collect margin on a gross basis (*i.e.*, based on the individual transactions of the non-member FCM's customers without regard to offsetting positions between such customers). 17 CFR 1.58. *See* Gross Margining of Omnibus Accounts, [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,296 at 25,507 n.8 (Dec. 29, 196

Once a contract position is established, variation margin is credited or assessed at least daily to reflect changes in the contract's value.[34] In contrast to initial margin, variation margin represents the system of marking to market the contract's value.[35] Through this system, losses on one side of a contract position are matched with and paid as profits to the other side of the transaction.[36]

At the end of each trading day, the clearing organization credits gains and debits losses on all contract positions in the clearing member's customer account.[37] Before the opening of the exchange on the next business day, the clearing member FCM must satisfy any variation margin call reflecting a net loss in contract positions and similarly is entitled to collect any net gain.[38]

The member FCM must reconcile its customers' positions by crediting gains and debiting losses on a customer-by-customer basis.[39] An FCM will require the customer to post additional funds to cover any losses that reduce the customer's margin below a specified "maintenance" level set by the exchange. The customer then will make a margin payment, or meet a "margin call," to restore its account to the initial margin level.[40] Whether gains on contract positions are collected by the customer immediately or held by the FCM depends on the customer's arrangements with the FCM.[41]

If a non-member FCM executes trades through a clearing member, variation margin payments are transferred between the clearing member and the originating FCM. The originating FCM then reconciles the individual contract positions of its customers.[42]

2. Commodity Options

Initial and variation margin for commodity options serve the same function as margin for futures contracts.[43] Unlike the parties to a futures contract, however, only the writer (seller) of an option is subject to margin requirements; the option holder (purchaser) pays the writer a one-time premium as compensation in full for its right to compel the writer's performance.[44] In addition, the writer's variation margin payments attributable to losses in its position, known as mark-to-market payments in the options context, are not available for collection by the option holder.[45] During the life of an option, the writer's mark-to-market payments are transferred to and held by all FCMs in the settlement chain and, ultimately, the clearing organization in the same way as initial margin deposits.

3. FCM Insolvency Risks and the Settlement Process

FCMs are financially responsible for the trade obligations of their customers.[46] If a clearing member FCM becomes insolvent and cannot cover the obligations of a defaulting customer, the FCM's non-defaulting customers may be affected.[47] The clearinghouse has the right to satisfy an outstanding margin call from the assets securing all of the member's customer trades at the clearinghouse level, which will create a shortfall in the clearinghouse account.[48] Exchanges and other parties may contribute additional funds to prevent customer loss.[49] Absent this voluntary action, however, a shortfall in the clearinghouse account will be borne by the member's non-defaulting customers.[50] Because a member's customers may include other FCMs, losses at the clearinghouse level may affect other FCMs and customer margin in their safekeeping.

(indicating that this approach transfers customer margin from non-member FCMs to the "stronger hands" of clearing members). Gross margining between clearing and non-clearing member FCMs contrasts with net margining, discussed *supra* note 26, between clearing organizations and their members.

[34] Some exchanges regularly make intraday variation margin calls and others may do so in response to market volatility. *See, e.g.*, CFTC October 1987 Follow-up Report, *supra* note 25, at 26; 1 Johnson & Hazen, *supra* note 2, § 2.50.

[35] 1 Russo, *supra* note 18, § 2.04. As a result of its function, variation margin, unlike initial margin, may be satisfied only in cash. Fink & Feduniak, *supra* note 2, at 146 ("If losing positions were permitted to be marked to market with Treasury securities, letters of credit, and so on, then clearinghouses and FCMs would face the impossible task of converting various and sundry types of collateral into the correct amounts of cash for potential withdrawal by customers with margin excesses."). *See supra* note 21.

[36] *See* CFTC October 1987 Follow-up Report, *supra* note 25, at 19 ("The daily settlement of profits and losses through the system of daily variation collections and payments reflects the 'zero sum' nature of the futures system in which profits and losses are exactly equivalent.").

[37] 1 Russo, *supra* note 18, § 2.04.

[38] *Id.*; CFTC October 1987 Follow-up Report, *supra* note 25, at 25–26.

[39] 1 Russo, *supra* note 18, § 2.04. *See* CFTC regulation 1.32, 17 CFR 1.32 (requiring daily computation of customer accounts).

[40] 1 Russo, *supra* note 18, § 1.20; 1 Johnson & Hazen, *supra* note 18, § 1.10.

[41] *See, e.g.*, CFTC Financial and Segregation Interpretation No. 10, *Treatment of Funds Deposited in Safekeeping Accounts*, 1 Comm. Fut. L. Rep. (CCH) ¶ 7120 at 7128 n.15 (CFTC Division of Trading and Markets May 23, 1984) [hereinafter CFTC Interpretation No. 10].

[42] 1 Russo, *supra* note 18, § 2.04. If a non-exchange member FCM executes trades through an exchange member that is not a clearing member, variation margin transfers would occur between these two FCMs as well.

[43] *See supra* notes 22 & 35 and accompanying text.

[44] 1 Johnson & Hazen, *supra* note 2, § 1.07. Initial margin for commodity options may be based on the premium paid for the option and the initial margin requirements applicable to the underlying futures contract. *See, e.g.*, Goldman Sachs & Co. (pub. avail. May 2, 1988). Initial margin also may be determined by reference to the aggregate risk of the option and underlying futures contract. *See, e.g.*, 1 Johnson & Hazen, *supra* note 2, § 2.43 (Supp. 1991). The premium collected from the buyer is passed through the clearinghouse to the writer's FCM, which credits the writer's account for the premium received.

[45] The writer of an option is responsible for changes in the value of the position only if the option is exercised by the holder or closed out by the writer through an offsetting position. 1 Johnson & Hazen, *supra* note 2, §§ 1.31, 1.07. For this reason, unlike margin payments on futures contracts (as discussed *supra* note 35), payments for losses on option positions may be made in cash or other assets. *See, e.g.*, Goldman Sachs & Co., *supra* note 44 (option mark-to-market payments may be made in securities, such as U.S. Treasury obligations, or letters of credit). In the event of later gains, the writer would be entitled to collect the gain from previously made margin payments. *See* Markham, *supra* note 21, at 116.

[46] *See* CEA section 4d(2); 1 Johnson & Hazen, *supra* note 2, § 1.10.

[47] An FCM's insolvency may result from its obligation to cover the trades of a defaulting customer or for other unrelated reasons. *See, e.g.*, Andrea M. Corcoran & Susan C. Ervin, *Maintenance of Market Strategies in Futures Broker Insolvencies: Futures Position Transfers From Troubled Firms*, Wash. & Lee L. Rev. 852–70 (1987) [hereinafter Corcoran & Ervin] (the inability of certain customers to satisfy trade obligations of approximately $14 million caused the 1985 Volume Investors Corporation insolvency, which placed other customers at risk); CFTC News Release 3663–93 (May 24, 1993) (CFTC administrative complaints allege that Stotler and Company's insolvency followed improper conduct by its officers, accountants, and the Chicago Board of Trade including, among other things, overstating the firm's net capital).

[48] *See* CFTC Interpretative Statement No. 85–3, *Use of Segregated Funds by Clearing Organizations Upon Defaults by Member Firms*, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,703 at 30,988 (CFTC Office of the General Counsel Aug. 12, 1985). While the CFTC staff has considered the rights of clearing organizations in these circumstances, an FCM's right to use another FCM's customer margin has not been determined. For example, it has not been established whether a clearing member FCM would be entitled to customer margin deposited by a non-member FCM in the event the non-member was unable to satisfy its customers' obligations. *See* Corcoran & Ervin, *supra* note 47, at nn.92, 95.

[49] *See generally* National Futures Association, Customer Account Protection Study 13 (Nov. 20, 1986) [hereinafter NFA Account Protection Study] (FCM insolvency losses from 1938 through 1985 totalled less than $10 million); Corcoran & Ervin, *supra* note 47, at 873 ("customer losses have been forestalled * * *, in significant measure, by the voluntary contributions of futures exchanges to the compensation of customers of failed clearing members.").

[50] *See infra* notes 65–66 and accompanying text regarding the treatment of customer margin in FCM bankruptcy proceedings.

B. FCM and Clearinghouse Custody Under the Act

Section 17(f) of the Act and the rules thereunder govern the safekeeping of investment company assets.[51] Under section 17(f), investment companies generally may maintain their assets only in the custody of a bank, a member of a national securities exchange, or a national securities depository.[52] FCMs and commodity clearing organizations do not fit within one of the statutory categories.[53]

Under Division no-action positions, investment companies deposit initial margin in special accounts with their custodian banks.[54] Although a third party account may be maintained in the name of an FCM, the FCM may withdraw funds from the account only if the investment company does not make a variation margin payment.[55] As a consequence, FCMs must advance their own funds to cover investment company margin obligations with the clearinghouse or other FCM that is used to effect the transaction.[56]

No-action letters and exemptive orders permit FCMs to retain custody of investment company gains on commodity positions in limited circumstances.[57] Under no-action positions, FCMs may hold margin gain overnight or over a weekend in recognition of the fact that, while positions are settled at the close of each day's trading, margin gain is not available to the FCM's customers until the following business day.[58] The Division has reasoned that such custody is incidental to the commodity investment and not of sufficient duration to trigger the requirements of section 17(f).[59] Exemptive orders permit FCMs to hold *de minimis* amounts of margin gain (e.g., $50,000) so that funds may avoid having to make daily withdrawals when only small amounts of margin accrue.[60]

C. Problems With Current Custody Arrangements

Commenters have criticized third party custodial accounts on several grounds. Some have asserted that current arrangements create systemic liquidity risks by diverting otherwise available FCM capital from the marketplace.[61] These risks may become acute in times of market volatility when liquidity may be most critical. Initial margin requirements typically rise during these periods, resulting in additional drains on FCM resources.[62] According to the 1988 Brady Report, third party custodial accounts may have been a source of liquidity stress in the clearing and credit systems during the October 1987 market break.[63]

Commenters also have contended that third party arrangements are unnecessary because they are unlikely to provide any special protection to investment company assets in FCM bankruptcy proceedings.[64] Special provisions of the Bankruptcy Code and related CFTC rules govern FCM liquidations.[65] Under these provisions, FCM customers generally have priority over other creditors' claims. All customer assets, even if specifically identifiable to one customer, are subject to disposition based on each customer's *pro rata* share of the available customer property.[66] The CFTC staff has stated that funds in a third party custodial

[51] The legislative history of section 17(f) indicates that Congress intended the assets of investment companies to be kept by a financially secure entity that has sufficient safeguards against misappropriation. *Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 264 (1940).

[52] *See also* rule 17f-1 (governing custody of investment company assets by members of a national securities exchange) and rule 17f-4 (governing custody by national securities depositories). Under section 17(f) and rule 17f-2, investment companies also may maintain custody of their own assets.

[53] While certain FCMs also may be members of a national securities exchange, these FCMs cannot rely on rule 17f-1. This is because, in accepting margin deposits, the FCM would be acting in its capacity as a futures broker, and not as a securities broker as contemplated under rule 17f-1. In any event, rule 17f-1 is rarely used today because of its segregation and earmarking requirements. Thomas P. Lemke, *Investment Company Act of 1940*, in 4 Securities Law Techniques Transactions Litigation (A.A. Sommer, ed.) § 83.07, at 83-181 (Oct. 1993).

[54] *See, e.g.*, Prudential Bache IncomeVertible Plus Fund, Inc. (pub. avail. Nov. 20, 1985). *See also* VALIC Timed Opportunity Fund, Inc., Investment Company Act Release Nos. 13891 (Apr. 17, 1984), 49 FR 17639 (Notice of Application), and 13943 (May 16, 1984), 30 SEC Docket 845 (Order).

In 1981, the CFTC considered third party arrangements as a way to address customer losses associated with FCM insolvency. Although the CFTC rejected this approach, it noted that to make segregation requirements completely effective, "access to customer money by the FCM would have to be totally prohibited. A third party trustee would have to accept and hold all customer funds and commingling of any kind would have to be prohibited." Gross Margining of Omnibus Accounts, *supra* note 33, at 25,504.

[55] *See, e.g.*, Pension Hedge Fund, Inc. (pub. avail. Jan. 20, 1984). *See also* CFTC Interpretation No. 10, *supra* note 41, and CFTC Interpretative Letter No. 85-6 *(Safekeeping Accounts)*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,579 at 30,495 (CFTC Division of Trading and Markets Apr. 19, 1985) (both concerning CFTC staff requirements attending the use of third party custodial accounts).

[56] *See, e.g.*, Letter of William J. Brodsky, President and Chief Executive Officer, Chicago Mercantile Exchange ("CME"), to Jonathan G. Katz, Secretary, SEC 4 (Oct. 12, 1990), File No. S7-11-90 (responding to the Commission's request for comments on the reform of investment company regulation in connection with the Division's 1992 report, Protecting Investors: A Half Century of Investment Company Regulation) [hereinafter CME Letter]. The CME Letter was resubmitted to the Commission last year in connection with other rule proposals. Letter of Carl A. Royal, Senior Vice President and General Counsel, CME, to Jonathan G. Katz, Secretary, SEC (Mar. 16, 1993), File No. S7-41-92.

[57] Gains on commodity positions are paid directly by an FCM to the investment company without flowing through or being held in the third party account. Goldman, Sachs & Company, *supra* note 44. Variation margin payments owed by an investment company due to declines in its position are liabilities of the company, and not fund assets under section 17(f). Montgomery Street Income Securities, Inc. (pub. avail. Apr. 11, 1983). Investment companies satisfy their variation margin obligations by paying the required amounts directly to FCMs. *See id.*

[58] *See supra* notes 37 & 38 and accompanying text.

[59] Montgomery Street Income Securities, *supra* note 57. *See also* Putnam Option Income Trust II (pub. avail. Sept. 23, 1985) (futures contracts); Goldman, Sachs & Company, *supra* note 44 (written options).

[60] *See, e.g.*, Drexel Bond-Debenture Trading Fund, Investment Company Act Release Nos. 13861 (Apr. 2, 1984), 49 FR 13934 (Notice of Application), and 13916 (May 1, 1984), 30 SEC Docket 671 (Order). *See also* Carnegie Government Securities Trust, Investment Company Act Release Nos. 15272 (Aug. 22, 1986), 51 FR 30927 (Notice of Application), and 15317 (Sept. 18, 1986), 36 SEC Docket 1044 (Order) (permitting up to $50,000 in margin gain to be maintained with any one FCM and limiting margin gain held by all FCMs to the greater of $100,000 or 1/8 of one percent of the fund's net assets).

[61] *See, e.g.*, Letter from Peter Karpen, First Boston Corporation, Steven Keltz, Shearson Lehman Brothers Inc., Anthony J. Leitner, Goldman, Sachs & Co., and John T. Shinkle, Saloman Brothers Inc., to Marianne K. Smythe, Director, Division of Investment Management, SEC 1-4 (Sept. 17, 1991) [hereinafter Joint FCM Letter] (observing that a survey of 12 FCMs revealed that as much as $2 billion may be maintained in third party custodial accounts, and suggesting by way of a conservative estimate that FCMs advance as much as 50% of initial margin deposited by investment companies).

Commenters also point out that FCMs incur financing and potential opportunity costs as a result of using their own assets to meet investment company margin requirements. *See, e.g.*, Letter from Barbara Wierzynski, General Counsel, Futures Industry Association Inc., to Elizabeth Krentzman, Division of Investment Management, SEC (Oct. 11, 1993) (securities deposited by FCMs on behalf of investment companies may not be pledged by the FCM to raise cash for other purposes). *See also* Letter from Thomas A. Russo, Cadwalader, Wickersham & Taft, to Mary Podesta, Chief Counsel, Division of Investment Management, SEC 13 (Sept. 23, 1988) [hereinafter Russo Letter II] (financing costs may cause FCMs to increase commission rates or limit the number and size of investment company accounts, forcing funds to trade through less well-capitalized FCMs).

[62] CFTC October 1987 Follow-up Report, *supra* note 25, at 65.

[63] Report of the Presidential Task Force on Market Mechanisms (1988) VI-73 to -74 (discussing statements of certain CME members).

[64] *See, e.g.*, Joint FCM Letter, *supra* note, at 4-6.

[65] 11 U.S.C. 761-766; 17 CFR 190.01 to .10. The CFTC bankruptcy regulations were adopted pursuant to CEA section 20, 7 U.S.C. 24.

[66] *See* United States Bankruptcy Code sections 766(d), (h). The claims of customers engaging in certain foreign-related commodity transactions may be subordinated in bankruptcy to the claims of other customers. *See infra* notes 148-151 and accompanying text.

account will be subject to the same *pro rata* treatment as all other customer assets.[67]

No court has examined the status of these accounts in bankruptcy. Commenters maintain that the issue inevitably will be litigated, which may carry its own adverse consequences.[68] In addition to freezing investment company assets during the pendency of the action, third party accounts may impede the transfer of investment company accounts to a financially strong FCM, subjecting the fund to possible losses.[69]

The Commission believes liquidity concerns and the absence of clear bankruptcy protection for third party accounts warrant proposing new rule 17f–6. The Commission, however, requests comment on these and any other factors concerning current investment company arrangements.[70]

III. Discussion

Proposed rule 17f–6 would allow FCM and clearinghouse custody of investment company margin, subject to conditions designed to ensure the safekeeping of investment company assets.[71] The proposal would govern initial margin deposits and FCM custody of margin gain, establish certain objective qualifications for FCMs that hold investment company assets, and require a written contract between the FCM and investment company to contain certain provisions. The board of directors would be responsible for selecting FCMs and monitoring the custodial arrangements, although the board could delegate its responsibilities to the investment company's investment adviser or officers. The rule's provisions (other than the requirement of a contract with the investment company) would apply to any FCM used to clear the fund's commodity transactions. FCM custody would be permitted in connection with foreign-related commodity transactions traded on domestic exchanges. It could not be used, however, for foreign-exchange traded transactions since margin for those trades does not enjoy the full protections of the CEA and CFTC rules.

Proposed rule 17f–6 would not be mandatory, and investment companies could use third party custodial accounts for their margin deposits.[72] Because of the uncertain status of third party accounts in FCM bankruptcy proceedings, investment companies using these accounts should satisfy themselves of the financial strength of the FCMs that carry their trades.[73] The Commission requests comment on whether investment companies should be permitted to continue to use third party arrangements if the proposed rule is adopted.

A. Investment Company Margin

Rule 17f–6 would permit investment companies to maintain margin with FCMs in connection with futures contracts and commodity options traded on a designated contract market.[74] This provision is intended to establish the parameters of fund transactions involving FCM custody and to ensure that margin underlying those transactions has the full protections of the CEA and CFTC rules.[75] Because only United States commodity exchanges may be designated contract markets, investment company margin deposits involving FCM custody would be limited to domestically traded transactions.[76]

1. Initial Margin

Under proposed paragraph (a), investment companies may place and maintain initial margin with FCMs in amounts necessary to effect their commodity trades.[77] This provision is intended to tie FCM custody of investment company assets to margin levels associated with specific transactions. Investment companies would be permitted to use FCM custody for margins established by exchanges as well as any additional requirements imposed by FCMs.

The Commission considered limiting FCM custody to exchange-established

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[67] CFTC Interpretation No. 10, *supra* note 41, at 7129. The CFTC staff reasons that the Bankruptcy Code provisions were intended "to promote equitable treatment of customers and to provide for an across-the-board application of pro rata distribution to all customer commodity accounts whether or not the funds related to such accounts were maintained with separate depositories or otherwise were specifically identifiable." *Id. See also* Interpretative Letter No. 90–1 *(Safekeeping and Third-Party Custodial Accounts)* [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,579 at 36,505 (CFTC Division of Trading and Markets Jan. 19, 1990) (reaffirming this position).

[68] *See, e.g.*, Letter from Thomas A. Russo, Cadwalader, Wickersham & Taft, to Mary Podesta, Chief Counsel, Division of Investment Management, SEC 3–4 (Apr. 8, 1988) [hereinafter Russo Letter I]. *See also* CFTC Interpretation No. 10, *supra* note 41, at 7129 (if presented with the issue, the CFTC staff intends to strongly recommend that the CFTC take appropriate action "to ensure that all customers, including institutional customers, are treated equally" in FCM bankruptcy proceedings).

[69] Russo Letter I, *supra* note 68, at 4; Joint FCM Letter, *supra* note 61, at 5 ("even if such customers ultimately recover the entire equity in their account following liquidation, they will lose money as the result of prices realized on forced liquidations or they will lose the protection of hedges until they can replace the positions at a new firm."). *See generally* Corcoran & Ervin, *supra* note 47, at 872 (discussing the Bankruptcy Code's strong preference for immediate transfer of customer accounts to ensure daily payment of margin obligations and to minimize the possibility of margin default).

[70] Some commenters, for example, have identified certain operational difficulties associated with third party arrangements. *See, e.g.*, CME Letter, *supra* note 56, at 4 (third party accounts may take up to several weeks to establish and are expensive and complex to maintain). Other commenters have suggested certain benefits associated with their use. *See, e.g.*, Leslie L. Ogg, Remarks at the Meeting of the Financial Products Advisory Committee, CFTC 54 (July 23, 1992) (noting that tax-exempt funds avoid earning taxable income (excluding any gains realized on contract positions) by maintaining their tax-exempt securities in third party custodial accounts).

[71] The Commission is not proposing to amend rule 7d–1 with respect to the use of proposed rule 17f–6 by investment companies organized under Canadian law and other foreign jurisdictions. 17 CFR 270.7d–1. Rule 7d–1 governs applications by Canadian funds seeking to obtain exemptive orders under section 7(d). 15 U.S.C. 7(d). Although rule 7d–1 by its terms only applies to Canadian investment companies, funds organized in other jurisdictions have agreed to comply with its conditions as a prerequisite to receiving a section 7(d) order. *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 193 n.23 (1992) [hereinafter Protecting Investors report]. Considerable time has passed since rule 7d–1 was last used. *Id.* Should an investment company seek relief pursuant to rule 7d–1 in the future, the Commission would consider any request to rely on proposed rule 17f–6, as it may be adopted, at that time.

[72] Investment companies also could continue to initiate their trades through introducing brokers, which do not take custody of customer margin. *See* CEA section 1(a)(14), 7 U.S.C. 1(a)(14) (defining introducing broker). When, however, an introducing broker is used and margin is placed in the custody of an FCM, the proposed rule would apply with respect to the FCM holding investment company assets.

[73] *See supra* notes 65–69 and accompanying text.

[74] *See* proposed subparagraph (d)(2) (defining exchange-traded futures contracts and commodity options). Fund investments for which FCM custody would be permitted include futures contracts, options on futures contracts, and options on physical commodities. *Id.* The Commission understands that options on physical commodities currently are not traded on any exchange, although CFTC rules would permit their trading. *See* CFTC regulation 33.7, 17 CFR 33.7. As discussed *supra* at note 57, since margin payments resulting from losses on commodity positions are not fund assets subject to section 17(f), the proposed rule would not govern these payments.

[75] *See, e.g.*, CEA section 4 (requiring the keeping of books and records); CEA section 4b (prohibiting fraudulent transactions); CEA section 4d (requiring segregation of customer funds and other safekeeping measures); CFTC regulation 1.10, 17 CFR 1.10 (financial reporting obligations); CFTC regulations 1.20 to .30 (safekeeping of customer funds); CFTC regulation 3.10, 17 CFR 3.10 (registration of FCMs).

[76] *See* CEA sections 4(a) and (b). Margin deposits in connection with foreign-related investments are discussed under "Foreign-Related Commodity Transactions" below.

[77] References to initial margin include maintenance margin deposited throughout the life of the transaction. Rule 17f–6 would not limit the types of assets that investment companies may use to satisfy margin requirements. In addition, in accordance with exchange rules, discounts may be applied to investment company securities posted as margin. *See supra* note 21.

margin requirements.[78] While this approach would address concerns that FCMs might hold more investment company assets than are technically necessary to enter into commodity transactions, it also could interfere with normal commodity settlement procedures.[79] In addition, investment companies should be able to bargain effectively with FCMs so that custody of fund assets is appropriately circumscribed. The Commission, however, requests comment on the proposed approach and whether any restrictions are necessary to address an FCM's discretion to increase exchange-established margin levels.

In addition, exchange rules and FCMs may restrict the types of assets that may be used to satisfy margin requirements.[80] When an investor does not have the assets required, the FCM may loan the investor cash or other acceptable assets to meet margin requirements upon taking possession of other assets as collateral for the loan.[81] The Commission requests comment on whether investment companies should be permitted to engage in these transactions and what, if any, additional protections should apply.[82]

2. Margin Gain

Paragraph (b) of proposed rule 17f–6 would permit FCMs to hold *de minimis* amounts of investment company margin gain. The Commission generally would expect that margin gain maintained with any one FCM would not exceed $50,000.[83] Consistent with current no-action positions and the commodity settlement process, margin gain exceeding *de minimis* amounts could be held by the FCM until the next business day following receipt.

The CFTC staff has suggested that margin gain should be collected daily to avoid possible losses resulting from the *pro rata* treatment accorded customer assets in FCM bankruptcy proceedings.[84] Exemptive applications, however, suggest funds may benefit from leaving small amounts of margin gain in FCM custody.[85] The Commission requests comment on whether FCMs should be permitted to hold margin gain beyond the next business day following receipt and, if so, whether the holding of such gain should be subject to a $50,000 or other *de minimis* limitation.[86] The Commission also requests comment on whether it would be appropriate for the rule to include, for example, a specific dollar limitation instead of the proposed *de minimis* standard.

B. FCMs Eligible to Hold Investment Company Assets[87]

FCMs maintaining custody of investment company margin would have to be registered under the CEA, and thus would be subject to CEA and CFTC regulation.[88] The proposal would not require FCMs to be members of a commodity exchange or clearing organization.

An exchange or clearing membership requirement might provide additional investor protections.[89] It also could reduce risks by limiting the number of FCMs involved in the settlement of investment company transactions.[90] Imposing either requirement, however, might restrict unnecessarily the number of FCMs eligible to hold investment company margin and force investment companies to use different FCMs for the various exchanges on which trading is conducted.[91] The Commission requests comment on the appropriateness of an exchange or clearing membership requirement.[92]

Under CFTC regulations, FCMs generally must maintain adjusted net capital equal to or exceeding the greatest of (i) $50,000,[93] (ii) four percent of customer funds maintained in safekeeping,[94] or (iii) for FCMs that are also registered securities broker-dealers, the net capital required by rule 15c3–1(a) under the Securities Exchange Act of 1934 [17 CFR 15c3–1(a)].[95] FCMs

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[78] *See* Russo Letter II, *supra* note 61, at 4 (recommending such a limitation).

[79] *See supra* notes 25 & 27 and accompanying text.

[80] 1 Russo, *supra* note 18, §§ 1.20, 4.28.

[81] *Id.* § 4.28. *See* CFTC regulation 1.30 (regarding FCM loans).

[82] *See, e.g.*, Inv. Co. Act Rel. 10666, *supra* note 1, 82 (requiring, among other things, the use of segregated accounts to fully collateralize investment company reverse repurchase agreements).

[83] The *de minimis* limitation would apply on a per FCM basis. This contrasts with certain exemptive orders which also limited the amount of margin gain held by all FCMs through which trades are effected. *See, e.g.*, Carnegie Government Securities Trust, *supra* note 60.

[84] CFTC Interpretation No. 10, *supra* note 41, at 7128 n.15. The risk of loss should be minimized by the proposed *de minimis* margin gain limitation and FCM capitalization requirements. *See* subparagraph (a)(1)(i) of the proposed rule (regarding the proposed FCM capitalization requirements), discussed under "FCMs Eligible to Hold Investment Company Assets" below.

[85] *See, e.g.*, Carnegie Government Securities Trust, *supra* note 60 (indicating that the fund's custodian imposed a $25 charge for each transfer of margin gain to the fund's account).

[86] The Commission, for example, considered whether to interpret the *de minimis* limitation based on the facts and circumstances of the fund involved. For example, $100,000 in margin gain could be considered *de minimis* for funds that are more actively engaged in commodity trading. The Commission also considered using a percentage limitation, which would take into account the size of the fund. Given the CFTC staff's position regarding daily collections of margin gain, however, the $50,000 level seems prudent.

[87] In addition to the objective requirements discussed in this section, the board of directors (or its delegate) would be required to determine that maintaining the fund's assets with a particular FCM is in the best interests of the investment company and its shareholders. *See* proposed subparagraph (a)(2), discussed under "Responsibilities of the Board of Directors and Delegation" below.

As discussed below under "Additional FCMs Used for Clearing Purposes," where the FCM accepting the investment company's trade orders uses one or more FCMs to clear the fund's transactions, each other FCM would be subject to the rule's requirements (other than the requirement of a contract with the investment company).

[88] Proposed subparagraph (d)(1) (defining futures commission merchant). *See* CFTC regulation 1.3(p), 17 CFR 1.3(p) (FCMs include any entity that solicits or accepts trade orders and also accepts customer assets to margin trades); CEA section 4d(1) (requiring FCM registration).

The CFTC has delegated its responsibility for processing FCM registrations to the National Futures Association ("NFA"). CFTC regulation 3.10. The NFA currently is the only futures association registered under the CEA and has its own rules governing FCM operations. *See* CFTC regulation 170.15, 17 CFR 170.15 (requiring FCMs to be members of at least one registered futures association); NFA Manual, Registration Rules, Part 400 (providing for FCM training and proficiency testing); NFA Manual, Compliance Rules, Part 3 (FCM disciplinary actions). Subject to the minimum financial requirements established by the CFTC (discussed in the text below), the NFA and the individual exchanges share responsibility for imposing financial standards and auditing FCMs; the NFA is responsible for FCMs that are not members of an exchange, while the exchanges are responsible for their members. CFTC regulation 1.52, 17 CFR 1.52.

[89] Members of an exchange are subject to the rules of that exchange and clearing members typically are subject to additional clearing organization requirements. 1 Johnson & Hazen, *supra* note 2, §§ 2.53, 3.49 (exchange rules); 1 Russo, *supra* note 18, §§ 2.08, 4.33 (clearing organization requirements).

Prior to 1981, a number of failures occurred among non-member FCMs that were not subject to the additional regulation and oversight of an exchange. *See* Division of Trading and Markets, CFTC, Commodity Account Protection Study 30 (Nov. 20, 1988) [hereinafter CFTC Account Protection Study]. In 1981, the NFA was given additional powers to regulate non-member FCMs to fill this regulatory gap. 1 Johnson & Hazen, *supra* note 2, § 1.89.

[90] *See* "Background—FCM Insolvency Risks and the Settlement Process" above.

[91] Based on information provided by the CFTC staff, of 265 FCMs registered under the CEA as of December 31, 1993, 184 FCMs, or 69.4%, are members of at least one exchange; 134 FCMs, or 50.5%, are members of at least one clearing organization. 117 FCMs, or 44.2%, are members of more than one exchange, and 90 FCMs, or 34%, are members of more than one clearing organization.

[92] As discussed *infra* at note 144 and accompanying text, a clearing membership requirement would eliminate the need to evaluate additional FCMs in the settlement process, as currently required under the proposed rule.

[93] Under NFA rules, FCMs are required to maintain adjusted net capital of at least $250,000. NFA Manual, Financial Requirements, section 1.

[94] This requirement is based on the amount of customer funds required to be segregated under CEA section 4d(2) and CFTC rules thereunder.

[95] CFTC regulation 1.17, 17 CFR 1.17. An FCM whose adjusted net capital falls below the required minimum generally must cease doing business as

generally must notify the CFTC of potential capital impairment if the ratio of their total adjusted net capital to CFTC required minimums falls below 150%.[96]

Proposed subparagraph (a)(1)(i) would require an FCM to have at least $20 million in adjusted net capital in excess of the applicable CFTC minimum requirement.[97] In addition, the ratio of the FCM's adjusted net capital to the CFTC required minimum would have to equal or exceed 250%. These provisions seek to address FCM insolvency risks by establishing a cushion between the FCM's actual capital and minimum regulatory requirements.[98]

Because FCMs must compute their adjusted net capital to facilitate regulatory oversight, investment companies should be able to evaluate and monitor an FCM's compliance with the proposed requirements.[99] If the FCM's capital at any time falls below the proposed thresholds, the FCM no longer would be eligible to hold investment company assets, and the fund would be required to withdraw its assets from the FCM's safekeeping.[100]

The Commission requests comment on the proposed approach and the appropriateness of the proposed $20 million and 250% thresholds.[101] Specific comment is requested on the circumstances under which FCM capital may fluctuate below these levels and whether the proposed rule should incorporate a grace period or other mechanism to address such fluctuations. The Commission also requests comment on whether both requirements are necessary,[102] and on alternative capital requirements that would promote the safekeeping of investment company assets.[103]

Under proposed subparagraph (a)(2)(ii), FCMs holding investment company margin could not be affiliated persons of the company or affiliated persons of such persons.[104]

Although some investment companies may use affiliated FCMs to execute their trades,[105] custody by FCM affiliates raises additional investor protection concerns.[106] Investment companies wishing to execute their trades through affiliated FCMs may use third party custodial accounts for their margin deposits.

The Commission requests comment on whether the proposed approach would be unduly restrictive and whether there are alternative safeguards that would address investor protection concerns associated with these arrangements. For example, should the board of directors retain all responsibility for affiliated FCM custody arrangements, without being able to delegate FCM selection and monitoring responsibilities to the fund's adviser or officers?[107]

C. Contract Requirements

Subparagraph (a)(3) would require a written contract between the investment company and the FCM to contain certain provisions.[108] The contract would require the FCM to comply with the segregation requirements of section 4d(2) of the CEA and CFTC rules thereunder.[109] In addition, to facilitate the inspection of investment company assets, the FCM contract would have to provide that the FCM would furnish the Commission or its staff upon request with information concerning the FCM's custody of investment company margin.[110] The Commission requests comment on whether investment company contracts also should require FCMs to furnish information at the request of investment company accountants.[111]

The FCM would be permitted to transfer the investment company's assets for clearing purposes, consistent

an FCM and transfer all customer accounts to an FCM that meets CFTC requirements. CFTC regulation 1.17(a)(4).

After the 1985 insolvency of Volume Investors Corporation, the CFTC proposed, but never adopted, a risk-based approach to FCM capital requirements. *See, e.g.*, Minimum Financial and Related Requirements for FCMs, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,738 at 33,911 (CFTC July 29, 1987).

[96] CFTC regulation 1.12(b), 17 CFR 1.12(b).

[97] *See* proposed subparagraph (d)(3) (an FCM's adjusted net capital and required minimum adjusted net capital would be determined under CFTC regulation 1.17, which governs FCM minimum capital requirements). *See also* rule 17f–5 (generally requiring foreign banks holding investment company assets to have at least $200 million in shareholders' equity). Rule 17f–1, which governs custody of investment company assets by registered securities brokers, does not contain specific minimum capital requirements. As indicated *supra* at note 53, however, rule 17f–1 is rarely used, because it requires investment company assets to be individually segregated and marked as belonging to the fund.

[98] *See, e.g.*, Division of Trading and Markets, CFTC, Volume Investors Corporation 10 (July 1985) (Volume Investors Corporation reported excess adjusted net capital of $1.6 million and a ratio of 266% prior to its failure in March 1985); CFTC News Release No. 3663–93, *supra* note 47, at 2 (Stotler and Company claimed $9.5 million in excess capital on the eve of its failure in August 1990, but the CFTC later charged that its capital had fallen below the 150% ratio without the required notification more than six months before).

[99] FCMs, for example, must compute their adjusted net capital regularly to ensure compliance with the CFTC's notification requirement discussed *supra* at the text accompanying note 96. *See also* CFTC regulation 1.18, 17 CFR 1.18 (requiring FCMs to calculate their adjusted net capital as of the end of each month); CFTC regulation 1.10 (requiring FCMs to prepare and file periodic reports concerning their financial strength and operations). *See generally infra* note 128 (regarding the monitoring of FCM arrangements).

[100] *See* proposed subparagraph (a)(4), discussed under "Responsibilities of the Board of Directors and Delegation" below.

[101] Based on information provided by the CFTC staff, of 265 FCMs registered under the CEA as of December 31, 1993, 79 FCMs, or 29.8%, would satisfy the proposed excess capital and ratio requirements.

[102] Either requirement, standing alone, may not provide a complete picture of an FCM's financial strength. For example, without the proposed 250% ratio requirement, an FCM's capital may be sufficient to satisfy the proposed $20 million excess capital standard, but may fall below the CFTC 150% ratio signalling potential vulnerability.

[103] One commenter, for example, recommended a $10 million total (as opposed to excess) adjusted net capital requirement. Russo Letter II, *supra* note 61, at 2–3. This approach, however, may not reflect an FCM's financial strength. For example, depending of the amount of customer funds in safekeeping or the FCM's status as a registered broker-dealer, an FCM with $10 million in adjusted net capital may not satisfy applicable CFTC requirements.

[104] *See* section 2(a)(3) of the Act, 15 U.S.C. 80a–2(a)(3) (defining affiliated person).

[105] Several no-action letters concern commission payments to affiliated FCMs. *See, e.g.*, Prudential-Bache Government Plus Fund, Inc. (pub. avail. Sept. 3, 1985); Kidder, Peabody Government Income Fund, Inc. (pub. avail. Sept. 15, 1986).

[106] To guard against potential abuses resulting from control over fund assets by related persons, in other contexts rule 17f–2 has been read to require investment company affiliates to comply with its provisions or establish other appropriate safeguards. *See, e.g.*, Pegasus Income and Capital Fund, Inc. (pub. avail. Dec. 1, 1977) (custody by adviser-bank).

[107] *See* "Responsibilities of the Board of Directors and Delegation" below.

[108] The Commission understands that FCMs use standardized customer agreements, and that proposed subparagraph (a)(3) would require additional contract provisions for investment company clients.

[109] Proposed subparagraph (a)(3)(i). This provision is intended to ensure that investment company assets are not commingled with the FCM's own funds, and that the FCM could not assign, hypothecate, pledge or otherwise dispose of investment company margin except in connection with the fund's commodity transactions and as required by the exchanges and clearing organizations. See *supra* text accompanying note 31. *See also* Russo Letter II, *supra* note 61, at 2, 5–6.

Certain exchanges have applied to the CFTC for exemptions from section 4d(2) and other provisions of the CEA with respect to the trading of futures contracts and commodity options among institutional investors, including registered investment companies. Exemptions for Certain Exchange-Traded Futures and Options Contracts, 58 FR 43414 (Aug. 16, 1993). The Commission has urged the CFTC to disapprove these requests. Letter of Jonathan G. Katz, Secretary, SEC, to Jean A. Webb, Secretary, CFTC (Dec. 28, 1993).

[110] Proposed subparagraph (a)(3)(ii). See Russo Letter II, *supra* note 61, at 3 (recommending that the fund's commodity account and related assets be subject to Division inspection).

[111] *See* rule 17f–5(a)(1)(iii)(F) (imposing this requirement in connection with investment company foreign custody arrangements). The proposed rule also would not require the investment company's independent accountants to verify or otherwise examine the fund's margin held by the FCM. *See, e.g.*, rule 17f–2(f) (imposing such a requirement for self-custody arrangements).

with the commodity settlement process.[112] The FCM may deposit and maintain investment company margin with another FCM that meets the requirements of the rule (other than the requirement of a contract with the investment company),[113] a bank that satisfies section 26(a)(1),[114] or a clearing organization.[115] This provision is intended to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the safekeeping of investment company assets.

The proposed contract provisions would not require that FCMs maintain specific records or furnish investment companies with specific reports concerning their commodity accounts. Under CFTC rules, FCMs must maintain daily financial ledger records of all customer transactions.[116] In addition, FCMs must supply customers with prompt confirmations of their trades and monthly statements concerning their accounts.[117] The Commission requests comment on whether the proposed rule should impose any additional recordkeeping or reporting requirements.[118] For example, would the transmission of daily account reports facilitate an investment company's compliance with the proposed limitations on FCM custody of margin gain?[119]

Subparagraph (a)(3) also would not require FCMs to indemnify investment companies or insure their assets against non-trading margin losses.[120] It appears that indemnification provisions in favor of FCM customers are not included in customary FCM account agreements.[121] Private insurance may not be available or may be unduly expensive.[122] Comment is requested on the feasibility of an indemnification or insurance requirement and whether such a requirement would be appropriate.[123]

D. Responsibilities of the Board of Directors and Delegation[124]

Under subparagraph (a)(2), the investment company's board of directors would be required to find that maintaining the investment company's assets with the FCM is in the best interests of the company and its shareholders.[125] The board would consider the FCM's financial strength and its general reputation and standing in the financial community, the FCM's internal procedures and safeguards regarding custody of the fund's assets, and such other factors as the board deems relevant.[126] This requirement is intended to complement the objective criteria set forth in proposed subparagraph (a)(1) to ensure that all considerations pertinent to the safekeeping of investment company assets are evaluated prior to depositing margin with a particular FCM.

Factors not enumerated in the proposed rule that the board may deem relevant would depend on the facts and circumstances. The board, for example, may want to consider the FCM's status as an exchange or clearing member.[127]

Subparagraph (a)(4) would require the board to establish a monitoring system to ensure compliance with the requirements of the proposed rule. This provision would require the board to create a means of receiving sufficient and timely information to alert it to any material change in circumstance.[128] If the custodial arrangement no longer complies with the proposed rule, the investment company would be required to withdraw its assets promptly. The Commission generally would expect such a withdrawal to be made within five business days. The Commission requests comment on the appropriateness of this time period.[129]

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[112] Proposed subparagraph (a)(3)(iii). As discussed *supra* at note 29, if an FCM advances its own funds to satisfy margin requirements, those funds are considered under the CEA to be customer property. Proposed subparagraph (a)(3)(iii) thus would apply without regard to whether an FCM advances its own funds or transfers investment company assets to effect the company's commodity transactions.

[113] In addition, proposed subparagraph (a)(3)(iii) would require the FCM to obtain the agreement of each FCM used for clearing purposes to compiy with the segregation requirements of the CEA. *See* "Additional FCMs Used for Clearing Purposes" below.

[114] 15 U.S.C. 80a–26(a)(1). Section 26(a)(1) requires a bank to have at all times at least $500,000 in capital, surplus, and undivided profits. *See also* sections 17(f)(1) (investment company assets may be held by a bank meeting the requirements of section 26(a)(1)) and 2(a)(5), 15 U.S.C. 80a–2(a)(5) (defining bank).

[115] *See* proposed subparagraph (d)(4) (defining clearing organization in accordance with CFTC rule 1.3(q)).

[116] CFTC regulation 1.35, 17 CFR 1.35.

[117] CFTC regulation 1.33, 17 CFR 1.33.

[118] *See* Russo Letter II, *supra* note 61, at 4 (recommending that FCMs transmit daily transaction reports); rule 17f–5(a)(1)(iii)(D) and (F) (requiring records and periodic reports in connection with investment company foreign custody arrangements).

[119] *See* proposed paragraph (b), discussed under "Background—Investment Company Margin—Margin Gain" above.

[120] Indemnification could protect against the loss of investment company assets as a result of negligence or malfeasance. Third party insurance could protect against both impropriety and insolvency risks.

[121] The CFTC has established a customer reparations program that generally permits persons to seek redress with the CFTC for alleged violations of the CEA and CFTC regulations by registered FCMs. CEA section 14, 7 U.S.C. 18. Under this program, the CFTC may award damages without dollar limitation if it finds that a violation has occurred involving monetary injury. Damage awards are paid by the FCM against whom reparation is sought. *See id.*; CFTC regulations 12.1 [–.408], 17 CFR 12.1 [–.408].

[122] *See* CFTC Account Protection Study, *supra* note 89, at 63-66 (describing the experience of one commodity insurer organized in 1981, sold a year later, and no longer offering commodity coverage).

Unlike securities accounts of almost all broker-dealers registered with the Commission, FCM commodity accounts are not protected by the Securities Investor Protection Corporation ("SIPC") or mandatory insurance requirements. *See* Securities Investor Protection Act, 15 U.S.C. 78aaa–78lll (in the event of a member's financial failure, SIPC protects each securities customer for claims of up to $500,000 for cash and securities losses, with a $100,000 limit for cash losses); National Association of Securities Dealers, Inc. Rules of Fair Practice, Art. III, sec. 32 and Appendix C thereto (broker-dealer fidelity bonds). At the request of Congress and the CFTC, the CFTC staff and the NFA have studied these and other insurance mechanisms, and generally have concluded that insurance protection is neither necessary nor cost effective in the commodity context. *See, e.g.*, CFTC Account Protection Study, *supra* note 89; NFA Account Protection Study, *supra* note 49. Certain exchanges maintain trusts that could be used in the exchange's discretion to reimburse customer losses. Corcoran & Ervin, *supra* note 47, at nn.87 & 208.

[123] *See* rule 17f–5(a)(1)(iii)(A) (regarding indemnification and insurance for investment company foreign custody arrangements).

[124] As discussed below under "Additional FCMs Used for Clearing Purposes," where the FCM originating the trade uses one or more FCMs to clear the transaction, each other FCM would be subject to the rule's requirements (other than the requirement of a contract with the investment company).

[125] The rule would not require the investment company's contract with an FCM to be approved by the board. The board nonetheless may choose to review and approve the FCM contract in light of its fiduciary duties under state law. As discussed above, proposed subparagraph (a)(3) would mandate specific contract requirements.

[126] Proposed subparagraphs (a)(2)(i)–(iii). *See generally* Russo Letter II, *supra* note 61, at 4 (recommending similar factors to be considered by the board in selecting FCMs); Note 2 to rule 17f–5 (enumerating factors investment company boards should consider in selecting foreign custodians).

Under proposed subparagraph (a)(2)(i), the board would be required to consider the FCM's financial strength apart from the proposed capitalization requirements of subparagraph (a)(1)(i). The board, for example, may consider the FCM's financial history and any other lines of business undertaken by the FCM and its potential impact on the FCM's operations. *See also* Risk Assessment for Holding Company Systems, 59 FR 9689 (CFTC Mar. 1, 1993) (proposing rules to require FCM recordkeeping and reporting in connection with financial and operational risks presented by FCM affiliates).

[127] *See supra* "Background—Settlement of Futures Contracts and Commodity Options—FCM Insolvency Risks and the Settlement Process" and *infra* note 144.

[128] An investment company, for example, may arrange to receive regular reports of the FCM's financial condition. A fund also could require the FCM to notify it of changes, such as a drop in the FCM's adjusted net capital, that may affect the FCM's continued ability to meet the requirements of the rule. External sources, such as newspaper reports and other publications, may provide additional information.

[129] The Commission believes that five business days should be sufficient to withdraw margin deposits either by closing out existing positions or by transferring margin to an FCM that meets the requirements of the proposed rule. *Cf.* CFTC regulation 190.02(e) (requiring a trustee in FCM bankruptcy proceedings to transfer open customer

Under paragraph (c), the board could delegate its responsibilities for selecting and monitoring FCM arrangements to the investment company's adviser or officers, subject to the board's general oversight and certain conditions.[130] This approach is consistent with recommendations of the Division and rule amendments approved by the Commission to eliminate regulatory requirements that involve directors in detailed findings of fact that do not present serious conflicts of interest.[131]

Under proposed rule 17f–6, the board would be required to find that the delegation is in the best interests of the investment company and its shareholders.[132] In addition, the board would be required to adopt written guidelines and procedures governing the delegate's responsibilities, and make and approve changes to the guidelines and procedures as the board deems necessary.[133] The guidelines and procedures would require the delegate to notify the board of its selection of an FCM at or before the next regularly scheduled board meeting following the selection.[134] The delegate also would report any material changes in the investment company's custodial arrangements and the actions taken by the delegate with respect thereto.[135] Reports of material changes would be given to the board as soon as reasonably practicable, but in no event later than the next regularly scheduled meeting after the event triggering the board's involvement.[136]

Delegation would not relieve the board of ultimate responsibility for the fund's custodial arrangements. Notification of an FCM's selection and reports of material changes would keep the board generally apprised of the investment company's custodial arrangements and facilitate the board's oversight of the delegate's performance. Based on this information, the board may determine to make adjustments in the written guidelines and procedures governing the delegate's responsibilities or overrule the delegate's decision to use a particular FCM. In some instances, the board may determine to rescind the delegation.

The Commission requests comment on the role and responsibilities of investment company boards and their delegates under proposed rule 17f–6. The Commission also requests comment on whether the board should be permitted to delegate its responsibilities to any other party, such as the investment company's primary bank custodian or a fund administrator, and what, if any, additional protections would be necessary or appropriate.[137]

E. Additional FCMs Used for Clearing Purposes

When the FCM that executes the investment company's trades is not an exchange or clearinghouse member, investment company margin will be transferred to one or more FCMs for clearing purposes.[138] The proposed rule would apply to each subsequent FCM in the settlement chain, although a contract with the investment company would not be required.[139]

When a non-clearing member FCM, for example, transfers investment company margin to a clearing member, the member FCM also would have to satisfy the objective requirements of proposed subparagraph (a)(1),[140] and be selected by the board (or its delegate) in accordance with proposed subparagraph (a)(2).[141] Under its contract with the investment company, the non-member could place and maintain the company's assets only with a clearing member that meets these requirements.[142] The non-member FCM also would be contractually responsible for securing the clearing member's agreement to comply with the segregation requirements of the CEA. Although the proposed approach would place certain contractual responsibilities on the non-member FCM, the board of directors and its delegate (if any) would remain responsible for the continuing appropriateness of the custodial arrangement.[143]

The Commission believes the proposed approach is appropriate to protect investment company assets when more than one FCM is involved in the settlement process. The Commission requests comment on the proposed approach and any alternatives that would ensure the safekeeping of investment company margin.[144] Specific comment is requested on whether an FCM to which assets are transferred should be required to satisfy only the objective requirements of proposed subparagraph (a)(1).[145]

positions within four business days). Investment companies may wish to maintain alternative FCM arrangements to facilitate transfers of existing positions in the event of changed circumstances.

[130] The board would not be permitted to delegate certain responsibilities (*e.g.*, FCM selection), while retaining others (*e.g.*, monitoring).

[131] Protecting Investors report, *supra* note, 71 at 251–289; Exemption of Acquisitions of Securities Issued by Persons Engaged in Securities Related Businesses, Investment Company Act Release No. 19716 (Sept. 16, 1993) (eliminating the requirement in rule 12d3–1 [17 CFR 270.12d3–1] that directors determine the credit quality of debt securities of certain issuers involved in securities related activities). *See also* Letter from Matthew P. Fink, President, Investment Company Institute, to Marianne K. Smythe, Director, Division of Investment Management, SEC (Jan. 18, 1993) (recommending delegation of the board's responsibilities with respect to foreign custodian arrangements under rule 17f–5).

[132] Proposed subparagraph (c)(1).

[133] Proposed subparagraphs (c)(2) and (c)(3). The proposed approach is consistent with Investment Company Act rules 10f–3, 17a–7, and 17e–1. 17 CFR 270.10f–3, 17a–7, 17e–1. *See* Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Securities Act Release No. 7013 (Sept. 17, 1993), 58 FR 49919.

[134] The proposed notification of FCM selection also would extend to any other FCMs used for clearing purposes. *See* "additional FCMs Used for Clearing Purposes" below.

[135] A material change would include, but not be limited to, discontinuing the use of a particular FCM or an FCM's loss of exchange or clearinghouse membership. A material change also would include circumstances that may adversely affect the FCM's financial strength, such as a change in control as a result of the FCM's sale. If appropriate, the delegate would report its reasons for continuing to use the FCM.

[136] Proposed subparagraph (c)(2)(ii).

[137] Because FCM selection also would involve brokerage considerations (*e.g.*, prompt execution and commission rates), investment company officers and advisers may be in a better position to make these determinations. In addition, officers and advisers have fiduciary duties to investment companies under section 36. 15 U.S.C. 80a–35.

[138] *See supra* notes 17–20 and 32–33 and accompanying text. *See also supra* note .

[139] Commodity customers enter into contracts only with the FCM with which orders are placed; as discussed above under "background—Settlement of Futures Contracts and Commodity Options," when one FCM acts on behalf of another, its "customer" is the FCM on whose behalf the order is effected, not that FCM's underlying customer. Thus, requiring a contract between the investment company and other FCMs in the settlement process would not be consistent with normal FCM/customer relationships.

[140] See "FCMs Eligible to Hold Investment Company Assets" above.

[141] *See* "Responsibilities of the Board of Directors and Delegation" above. Under most circumstances, the board or its delegate would evaluate the use of one or more clearing members at the same time it selects the non-member FCM. Under proposed subparagraph (c)(2)(i), if the board has delegated its responsibilities, the delegate would be required to notify the board of the selection of each FCM used for clearing purposes at or before the next regularly scheduled board meeting.

[142] Proposed subparagraph (a)(3)(iv).

[143] *See* "Responsibilities of the Board of Directors and Delegation" above, discussing proposed subparagraph (a)(4).

[144] For example, the transfer of investment company assets from one FCM to another could be eliminated by restricting FCM custody to FCM clearing members. Such a requirement, however, would limit the number of FCMs eligible to hold investment company assets. *See supra* note 91 and accompanying text. Under the proposed rule, investment companies would have the option of determining whether to execute their trades directly through a clearing member FCM.

[145] For example, the rule could require the FCM originating the fund's trades to determine whether an FCM used for clearing purposes satisfies the objective requirements of proposed subparagraph (a)(1). While such an approach would be less burdensome for investment companies, it would eliminate consideration of subjective factors relevant to the safekeeping of investment company margin.

F. Foreign-Related Commodity Transactions

Certain futures contracts and options involving foreign commodities or linked to foreign markets are traded on domestic exchanges. These transactions include commodity contracts and options involving foreign currencies and certain commodity investments that are effected through electronic links between United States and foreign exchanges.[146] Proposed rule 17f–6 would permit FCM custody of investment company margin for these domestically traded transactions, even if the margin is held overseas.[147] Because the transactions are traded on or linked to United States contract markets, margin underlying the transactions enjoys the full protections of the CEA and CFTC rules.

The CFTC has identified certain risks associated with domestically traded transactions margined in foreign currencies or overseas.[148] The CFTC requires customers with these accounts to enter into subordination agreements.[149] For example, customers trading in the currency of one jurisdiction or posting margin in the same jurisdiction must agree that, if their FCM becomes insolvent and there is a margin shortfall, claims to margin securing their trades will be subordinated to the claims of other customers.[150] The subordination requirement is intended to tie the risks of a particular jurisdiction and currency to investors engaging in commodity transactions relative to that jurisdiction and currency.[151] Investment companies depositing margin for foreign-related transactions would be subject to this requirement.[152]

The Commission requests comment on the proposed approach and whether any additional safeguards are necessary to address margin underlying foreign-related transactions. For example, should these margin deposits be required to be held in the United States? The Commission also requests specific comment on the appropriateness of investment companies entering into the required subordination agreements.[153]

Proposed rule 17f–6 would not allow FCM custody in connection with commodity investments effected on foreign exchanges.[154] These transactions are governed by special regulations, which do not provide customer funds with the full protections of the CEA and CFTC rules.[155] Although the proposed approach should not affect significantly investment company participation in foreign futures and options transactions,[156] the Commission requests comment on the proposed approach and alternatives that would address safekeeping considerations. For example, would risks be diminished if FCMs maintained custody of investment company margin in the United States and advanced their own funds for foreign exchange-traded transactions?

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 17f–6. The analysis states that the proposed rule would permit registered management investment companies to use FCMs and commodity clearing organizations as custodians in connection with CEA-regulated commodity transactions under conditions designed to ensure the safekeeping of investment company assets. The analysis explains that the proposed rule would provide flexibility and investor protection in a way that should minimize any impact on, or cost to, small business. To obtain a copy of the Initial Regulatory Flexibility Analysis, write to Elizabeth Krentzman, Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Statutory Authority

The Commission is proposing rule 17f–6 pursuant to sections 6(c) and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 6(c), 37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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[146] *See* Laurie Morse, *CME to Relaunch Derivatives in French Francs*, Financial Times, Sept. 16, 1993, at 23 (CME commodity trading based on the French franc, Deutsche mark, British sterling, Swiss franc, Japanese yen, and Canadian dollar); *Futures Exchanges—Open all hours*, The Economist, Nov. 6, 1993, at 107 (describing the "Globe" and "Access" computer systems). Additional transactions include those that are cleared on domestic exchanges pursuant to CFTC-approved linkage agreements between United States and foreign exchanges. Current arrangements involve the Singapore Monetary Exchange and the Sidney Futures Exchange Limited, although the Commission understands that no trading presently is conducted under the Australian agreement. *See* CFTC Interpretative Letter No. 84–19, *Mutual Offset System's Customer Funds Treatment*, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,389 at 29,795 (CFTC Division of Trading and Markets Aug. 9, 1984); CFTC Interpretative Letter No. 86–26, *Treatment of Customer Funds Under Linkage Agreement Between Commodity Exchange, Inc. and the Sidney Future Exchange Limited*, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,359 at 32,989 (CFTC Division of Trading and Markets Nov. 17, 1986).

[147] As discussed above under "Investment Company Margin," although FCM custody would be limited to domestically traded transactions, the proposal would not require investment company assets to be held in the United States. By virtue of proposed paragraph (a)(3)(iii), however, margin posted overseas would have to be maintained by a foreign branch of a United States bank to meet the definition of bank in section 2(a)(5). *See* International Resources Fund, Inc., Investment Company Act Release No. 2866 (Apr. 17, 1959). The Commission understands that this requirement generally would be consistent with current practices. Margin held by foreign subsidiaries of United States banks or other foreign entities would raise additional issues. *See* rule 17f–5 (governing custody of investment company assets by foreign entities in connection with foreign securities investments).

[148] *See, e.g.*, CFTC Financial and Segregation Interpretation No. 12, *Deposit of Customer Funds in Foreign Depositories*, 1 Comm. Fut. L. Rep. (CCH) ¶ 7122 at 7129, 7130–31 (Nov. 16, 1988) [hereinafter CFTC Interpretation No. 12]. These risks include various "location" risks, such as the freezing and expropriation of margin deposits, and the risk of foreign currency fluctuations pending FCM insolvency proceedings. *Id.*

[149] *Id.* The CFTC currently is reviewing Interpretation No. 12 with a view toward possible refinements.

[150] *Id.*, at 7132–33. *See supra* notes 65–66—and accompanying text (regarding the treatment of margin funds in FCM bankruptcy proceedings).

[151] *See* CFTC Interpretation No. 12, *supra* note 148, at 1730.

[152] The fund's investment adviser would be expected to evaluate the risks associated with a particular foreign-related commodity transaction, such as the likelihood of expropriation or difficulties in converting foreign currencies to United States dollars, in connection with the adviser's decision to engage in that transaction on the fund's behalf. *But cf.* rule 17f–5, Note 1(d) & (e) (suggesting directors consider these risks in selecting foreign custodians). Foreign investment-related risks also would be disclosed, if material, in the fund's prospectus.

[153] Subordination would come into play only upon an FCM's insolvency, which other provisions of the proposed rule are intended to address.

[154] Proposed subparagraph (d)(2) (defining exchange-traded futures contracts and commodity options to include investments traded on or subject to the rules of any contract market designated under the CEA and CFTC rules). *See supra* note 76 and accompanying text (only United States exchanges may be designated as contract markets). Although comment is requested on this approach, investment companies may use third party custodial accounts for foreign exchange-traded investments. *See* Koenig Tax-Advantaged Liquidity Fund, Inc. (pub. avail. Mar. 21, 1985).

[155] *See* Foreign Futures and Foreign Options, 52 FR 28985 (Aug. 5, 1987) (recognizing "inherent limitations on [the CFTC's] ability to provide U.S. residents trading on foreign exchanges the identical protections available to U.S. residents trading on U.S. contract markets"). *See also* CFTC regulations 30.1 through 30.10, 17 CFR 30.1–.10 (governing the sale of foreign exchange-traded futures contracts and commodity options to United States investors).

[156] *See supra* notes 146–147 and accompanying text. It appears that most investment company foreign transactions are effected in the over-the-counter market where the posting of collateral generally is not required.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 et seq., 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. By adding § 270.17f–6 to read as follows:

§ 270.17f–6 Custody of investment company assets with futures commission merchants and commodity clearing organizations.

(a) A registered management investment company may place and maintain cash, securities, and similar investments with a futures commission merchant in amounts necessary to effect the company's transactions in exchange-traded futures contracts and commodity options, *provided that:*

(1) The futures commission merchant and each other futures commission merchant the futures commission merchant uses for purposes of clearing the company's transactions:

(i) Has adjusted net capital that is:

(A) At least $20,000,000 in excess of the futures commission merchant's required minimum adjusted net capital; and

(B) Equal to at least 250% of such required minimum adjusted net capital; and

(ii) Is not an affiliated person of the company or an affiliated person of such person.

(2) The board of directors of the company shall have determined that placing and maintaining the company's assets with the futures commission merchant and each other futures commission merchant used for clearing purposes is consistent with the best interests of the company and its shareholders, after considering:

(i) The financial strength of the futures commission merchant and its general reputation and standing within the financial community;

(ii) The futures commission merchant's internal procedures and safeguards regarding custody of the assets; and

(iii) Such other factors as the board deems relevant.

(3) The manner in which the futures commission merchant maintains the company's assets shall be governed by a written contract which provides that:

(i) The futures commission merchant shall comply with the segregation requirements of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)) and the rules thereunder (17 CFR chapter I);

(ii) The futures commission merchant shall promptly furnish copies of or extracts from the futures commission merchant's records or such other information pertaining to the company's assets as the Commission through its employees or agents may request; and

(iii) The futures commission merchant may place and maintain the company's assets for clearing purposes only with another futures commission merchant that meets the requirements of paragraphs (a)(1) and (2) of this section, a bank that meets the requirements of section 26(a)(1) of the Act (15 U.S.C. 26(a)(1)), or a clearing organization. Each futures commission merchant used for clearing purposes shall agree to comply with the segregation requirements of section 4d(2) of the Commodity Exchange Act and rules thereunder.

(4) The board of directors shall establish a system to monitor the custodial arrangement to ensure it meets the requirements of this section. If the custodial arrangement no longer meets the requirements of this section, the company shall promptly withdraw its assets from the futures commission merchant.

(b) Subject to the requirements of paragraph (a) of this section, any gains of the company on exchange-traded futures contracts and commodity options may be maintained with the futures commission merchant in *de minimis* amounts. Gains in excess of such amounts may be maintained by the futures commission merchant until the next business day following receipt.

(c) The board of directors may delegate to the company's investment adviser or officers its responsibilities under this section, *provided that:*

(1) The board determines that the delegation is consistent with the best interests of the company and its shareholders.

(2) The board adopts written guidelines and procedures under which the delegate shall act under this section, which shall include:

(i) Notifying the board of the selection of a futures commission merchant, including each other futures commission merchant used for clearing purposes, no later than the next regularly scheduled board meeting following such action; and

(ii) Reporting to the board any material change in the custodial arrangement and any action taken by the delegate with respect thereto as soon as is reasonably practicable under the circumstances, but not later than the next regularly scheduled board meeting.

(3) The board makes and approves such changes to the written guidelines and procedures required by paragraph (c)(2) of this section as the board deems necessary.

(d) For purposes of this section:

(1) Futures commission merchant is any person who is registered as a futures commission merchant under the Commodity Exchange Act (7 U.S.C. 1–25).

(2) Exchange-traded futures contracts and commodity options are commodity futures contracts, options on commodity futures contracts, and options on physical commodities conducted on or subject to the rules of any contract market designated for trading such transactions under the Commodity Exchange Act and the rules and regulations thereunder.

(3) Adjusted net capital and required minimum adjusted net capital shall be determined under rule 1.17 under the Commodity Exchange Act (17 CFR 1.17).

(4) Clearing organization has the meaning set forth in rule 1.3(d) under the Commodity Exchange Act (17 CFR 1.3(d)).

By the Commission.

Dated: May 24, 1994.

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM94–14–000]

Nuclear Plant Decommissioning Trust Fund Guidelines; Notice of Proposed Rulemaking

May 25, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to adopt rules setting forth the guidelines for the formation, organization, and purpose of nuclear plant decommissioning trust funds, and for nuclear plant decommissioning trust fund investments.

DATES: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by August 1, 1994. An original and 14 copies of reply comments must be filed with the Commission by August 30, 1994. All comments should reference Docket No. RM94–14–000.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Lynch (Legal Information), Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2128.

James K. Guest (Accounting Information), Deputy Chief Accountant, Office of Chief Accountant, Federal Energy Regulatory Commission, 810 First St. NE., Washington, DC 20426, (202) 219–2602.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of the document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

The Federal Energy Regulatory Commission is proposing to amend 18 CFR part 35 by adding a new subpart E, which would set forth the guidelines for the formation, organization, and purpose of nuclear plant decommissioning trust funds (Fund) by public utilities and for the investment of Fund assets.

II. Public Reporting Burden

The proposed rule, if adopted, would codify and clarify the Commission's guidelines regarding the organization and operation of Funds. The public reporting requirements for the information collection requirements contained in this rule are estimated to average 4 hours per response. The information will be submitted to the Commission on an annual basis. The number of respondents is estimated to be 72. The burden estimate includes the time required to implement the standards, search existing data sources, gather and maintain the data needed, and complete and review the information. The annual burden associated with this information requirement will be 288 hours.

Comments regarding these burden estimates or any other aspect of this information collection requirement, including suggestions for reducing this burden, should be filed at the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425], and sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

III. Background

In System Energy Resources, Inc. (System Energy I),[1] the Commission set forth the guidelines for public utilities to use when creating nuclear plant decommissioning funds and investing Fund assets. These guidelines, *inter alia*, were based on the then applicable Internal Revenue Service (IRS) standards for Fund investments, which imposed on Fund investments the same investment restrictions that the Internal Revenue Code (IRC) imposed on Black Lung Disability Trusts.[2] These investment restrictions limit investments to relatively conservative investments.

However, Section 1917 of the Energy Policy Act of 1992,[3] among other things, repealed the portion of section 468A(e)(4) of the IRC that restricted the types of assets in which a Fund could invest and still qualify for tax benefits. On December 30, 1992, the IRS amended its regulations to reflect the statutory change.

In response to section 1917 of the Energy Policy Act and the IRS's revised regulations, the Commission, in System Energy Resources, Inc. (System Energy II),[4] clarified its policy regarding permissible Fund investments. In that order, the Commission announced its policy to continue to restrict Fund investments to Black Lung assets. The Commission's order provided that:

> Except to the extent that a public utility can demonstrate in advance that a proposal [to deviate from the guidelines] offers equal or greater assurance of the availability of funds at the time of decommissioning and is at least as beneficial to consumers as the guidelines specified below, public utilities shall limit the investments in Nuclear Decommissioning Reserve Funds to: (1) public debt securities of the United States; (2) obligations of a State or local government which are not in default as to principal or interest; and (3) time or demand deposits in a bank, as defined in 26 U.S.C. 581 [5] or an insured credit union, within the meaning of 12 U.S.C. 1752(7), [6] located in the United States. [7]

Subsequently, Commonwealth Edison Company (Edison), the Arkansas Public Service Commission, the Louisiana Public Service Commission, and the Mississippi Public Service Commission (jointly, State Commissions), the City of New Orleans, Louisiana (New Orleans), Duke Power Company (Duke) (on its own behalf and with TU Electric Company, jointly, Duke/TU), the Edison Electric Institute (EEI), a group of investment advisory and trust companies (Investment/Trust Companies),[8] Maine Yankee Atomic Power Company (Maine Yankee), the National Association of Regulatory Utility Commissioners (NARUC), Oglethorpe Power Corporation, Old Dominion Electric Cooperative, the National Rural Electric Cooperative Association, and North Carolina Electric Membership Corporation (collectively, Cooperatives), System Energy Resources (System Energy), a group of electric

[1] 37 FERC ¶§ 61,261 (1986).

[2] 36 FERC at 61,726–728. IRC section 486A(e)(4) imposed investment restrictions on Fund investments by cross-referencing IRC section 501(c)21, which allows a deduction for a contribution only to those Black Lung Disability Trusts that meet certain investment restrictions.

[3] Pub. L. No. 102–486, 106 Stat. 2776, 3024–25 (1992); see 26 U.S.C. § 468A(e) (1988).

[4] 65 FERC ¶ 61,083 (1993).

[5] 26 U.S.C. 581 provides that the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

[6] 12 U.S.C. 1752(7) provides that the term "insured credit union" means any credit union the member accounts of which are insured in accordance with the provisions of subchapter II of this chapter.

[7] 65 FERC at 61,514.

[8] A list of the investment advisory and trust companies appears in Appendix A. Note: This Appendix will not appear in the Code of Federal Regulations.

utility companies (Utility Companies),[9] the Pennsylvania Public Utility Commission (Pennsylvania Commission) and the Department of Energy filed requests for rehearing of System Energy II.[10]

Companies, Cooperatives, the Department of Energy, Duke, Edison, Edison Electric, Investment/Trust Companies, NARUC, New Orleans, Pennsylvania Commission, State Commissions and the Utility Companies (collectively, Commenters) argue, among other things, that the Commission should vacate its order in System Energy II and adopt alternative standards for Fund investments. While the Department of Energy does not assert that the Black Lung guidelines for Fund investments are necessarily incorrect, it suggests that the Commission should have the benefit of a more extensive examination of this matter before it adopts a policy that may guide Fund investments for many years.[11]

IV. Criticisms of Black Lung Guidelines

Commenters recognize that the Commission's goal in System Energy II was to provide the greatest assurance possible that the necessary funds will be available at the time of decommissioning. But Commenters submit that the investment standards that the Commission set forth in System Energy II are inappropriate to this end. Their criticisms of the System Energy II guidelines have several principal themes with numerous variations. They argue that the guidelines: (a) Are not a guarantee against loss; (b) will result in increased risk that the returns will be insufficient to meet the decommissioning obligation; (c) will increase costs to customers to make up for what Commenters see as an unnecessary shortfall; (d) are inconsistent with the intention of Congress in removing the Black Lung restrictions on nuclear decommissioning trust funds from the IRC; and (e) will result in increased litigation and administrative costs.

Commenters maintain that restricting Fund investments to Black Lung assets will not necessarily minimize the risk that those funds will be lost. They state that many state and local obligations that are not in default (and so qualify as Black Lung assets) are, nevertheless, extremely risky.[12]

Commenters state that decommissioning is inflation-sensitive because it is a long-term obligation, and the decommissioning process is labor and energy intensive.[13] Commenters argue that Black Lung restrictions do not allow Funds to adjust for inflation and that imposition of these guidelines results in greater collections from ratepayers than would otherwise occur if Funds could acquire prudent investments providing greater yields.[14] Commenters urge the Commission to allow Funds to diversify beyond Black Lung assets; they argue that broader investment options will ensure that adequate funds will be available for decommissioning, while at the same time reducing the amount that public utilities must collect from their wholesale customers to meet the decommissioning liability.[15]

Commenters contend that the Commission's order restricting Fund investments to Black Lung assets is inconsistent with Congress' intent in removing Black Lung restrictions on Fund investments from the IRC.[16] Commenters also note that the Commission's Black Lung restrictions on Fund investments may be incompatible with state guidelines for that portion of Fund investments that is state-jurisdictional.[17] They fear that a discrepancy between Commission and state guidelines may result both in increased administrative costs (and reduced efficiency) and in increased litigation.[18]

V. Commenters' Recommendations

Commenters propose that the Commission withdraw the Black Lung guidelines and adopt one of several investment standards that would permit investment in a broader range of assets. Commenters suggest, for example, that the Commission adopt the prudent person standard that Congress has imposed for the investment of pension plan assets.[19] They argue that this standard is well-established and that investment advisors and other fiduciaries thoroughly understand its requirements. Most importantly, they submit, the prudent person standard permits an investment advisor or other fiduciary to tailor investments to general economic conditions, taking into account the remaining life of the plant before decommissioning.[20]

Commenters also suggest that, as an alternative to the prudent person standard, the Commission could either adopt the prudent investor standard,[21] or prescribe investment-grade limitations on investments in equities and corporate bonds and limit the portion of the Fund assets that a trustee may invest in particular classes of assets.[22] Duke/TU suggests that it may be appropriate for Funds to take additional risks in the early years in order to achieve higher returns, while investing more cautiously in the later years to ensure protection of principal.[23] New Orleans suggests that the Commission might apply to Funds the investment standards that it is adopting for Post-Employment Benefits Other Than Pensions.[24]

Commenters also suggest that, where the Commission-jurisdictional portion of a decommissioning trust fund is relatively small, the Commission could consider using state-imposed investment restrictions for the Commission-jurisdictional portion of the decommissioning trust fund.[25]

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[9] A list of the Utility Companies appears in Appendix B. Note: This Appendix will not appear in the Code of Federal Regulations.

[10] We will treat the requests for rehearing of System Energy II as comments in this proceeding. However, these parties may still file initial and reply comments, as provided below, if they wish to do so.

[11] Contemporaneously with this order we are issuing an order denying rehearing in System Energy II. However, we are commencing this Notice of Proposed Rulemaking to accord those guidelines further consideration. Utilities must continue to abide by the Black Lung guidelines pending completion of this rulemaking.

[12] Cooperatives Comments at 12; Duke Comments at 4, n.2; EEI Comments at 11; Investment/Trust Companies Comments at 14; Utility Companies Comments at 14.

[13] See, *e.g.* Cooperatives Comments at 11; Investment/Trust Companies Comments at 12; Utility Companies Comments at 12.

[14] See, *e.g.* Cooperatives Comments at 12.

[15] Cooperatives Comments at 13–14; Duke Comments at 4, n.2; EEI Comments at 7–9; Investment/Trust Companies Comments at 14–17; New Orleans Comments at 3–4; Utility Companies Comments at 14–17.

[16] Investment/Trust Companies Comments at 13; Utility Companies Comments at 13.

[17] EEI is aware of only one state that limits Fund investments to Black Lung assets. EEI Comments at 14.

[18] Investment/Trust Companies Comments at 7; Utility Companies Comments at 17.

[19] 29 U.S.C. 1104.

[20] Cooperatives Comments at 16–17; Investment/Trust Companies Comments at 18–19; Utility Companies Comments at 18–19.

[21] Cooperatives suggest this standard, which appears at section 227 Restatement (Third) of Trusts. See Restatement (Third) of Trusts section 227 (1992). Cooperatives state that the prudent investor standard highlights diversification as fundamental to risk management and would allow Fund trustees the flexibility to obtain the maximum return on ratepayer-contributed funds. Cooperatives Comments at 14–16.

[22] Cooperatives Comments at 17; Investment/Trust Companies Comments at 19–20; Utility Companies Comments at 19–20.

[23] Duke/TU Comments at 13; see EEI Comments at 10.

[24] New Orleans Comments at 5–6; see Post Employment Benefits Other Than Pensions, 61 FERC ¶ 61,330 (1992), *rehearing denied*, 65 FERC ¶ 61,035 (1993).

[25] Investment/Trust Companies Comments at 20; Utility Companies Comments at 20. Cooperatives state that the Commission "defers" to state regulation of securities issuances under section 204 of the Federal Power Act (FPA), and suggest that the Commission could also "defer" to state standards

Continued

VI. Alternative Proposed Guidelines

Based on the comments that it has accepted into this proceeding, and on the Commission's evaluation of this issue, the Commission is reconsidering its guidelines for Funds and for Fund investments. The Commission proposes to adopt, in proposed § 35.32, certain general guidelines for Funds[26] and, in proposed § 35.33, one of three alternative specific guidelines for Fund investments that appear in the proposed regulatory text.

The general guidelines will be in § 35.32. They will govern the organization and operation of the Fund. The general guidelines provide that the Fund must be an external trust fund and that the Trustee must be independent of the utility, have a net worth of at least $100 million, and exercise the care that a reasonable person would use in the same circumstances.[27] The general guidelines further provide that the Trustee must keep accurate and detailed records, and open the Fund to inspection and audit. The Trustee also must limit Fund investments to those that the Commission allows and must not invest in any securities of the utility that owns the plant, or in the utility's affiliates, associates, successors or assigns.

The Trustee may only use the Fund to decommission the nuclear power plant to which the Fund relates, and to pay any administrative or other expenses of the Fund. If Fund balances exceed the amount necessary for plant decommissioning, the utility will refund the excess to its customers in a manner that the Commission will determine. The utility must deposit in the Fund at least quarterly all monies that it collects in Commission-jurisdictional rates to fund decommissioning.

The general guidelines also provide that establishing a Fund does not relieve a utility of any obligation that it may have to decommission a nuclear power plant.

The specific guidelines will be in § 35.33. They will control what investments a Trustee may make. The Commission is considering three alternative specific guidelines for Fund investments: Alternative 1: No change (*i.e.*, continue using the Black Lung guidelines);[28] Alternative 2: The use of a reasonable person standard with no express limitations; or Alternative 3: The use of the reasonable person standard, but with express limitations on the quality of investments and the proportion of Fund assets that the trustee may invest in particular classes of assets over the life of the Fund.[29]

In deciding how Fund assets should be invested, the competing concerns are security on the one hand and maximizing return on the other hand. Alternative 1 is a continuation of the Black Lung guidelines. The Commission explained in both System Energy I and System Energy II that its overriding concern was that funds be available at the time decommissioning takes place. This concern prompted the Commission previously to rely upon the Black Lung guidelines as defining the limits of what were permissible investments. This concern is equally present today. Consequently, one of the options under consideration is the continuation of the Black Lung guidelines.

Alternative 2 envisions the use of a "reasonable person" standard—a standard that encompasses greater flexibility. In the context of a review of the prudence of a utility's decisionmaking, the Commission has explained this standard as follows:

> In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management * * * would have made, in good faith, under the same circumstances, and at the relevant point in time * * *. [O]ur task is to review the prudence of the utility's actions and the costs resulting therefrom based on the particular circumstances existing either at the time the challenged costs were actually incurred, or the time the utility became committed to incur those expenses.[30]

However, we recognize that what we are concerned with here is a different factual setting. Accordingly, in addition to requesting comments on Alternative 2 generally, the Commission also solicits comments on what should be the precise definition and content of this standard in this circumstance. Should the standard encompass the "prudent person" standard, which has long governed trust investment,[31] or should it, for example, embody the "prudent investor" standard, which Cooperatives have proposed?[32] The two standards are different. The prudent person standard focuses on each investment individually and also proscribes certain investments as too risky.[33] The prudent investor standard, in contrast, does not focus on any single investment but rather insists on an evaluation of the entire portfolio (and thus allows more risk).[34] The Commission also requests comments on the use of other standards to govern Fund investments.

Alternative 3 provides for a reasonable person standard, and also provides express guidelines on what Fund investments are and are not permissible. In this regard, the Commission solicits comments on Alternative 3 generally, and also both on the definition and content of the reasonable person standard in this circumstance[35] and, as noted *supra* note 29, on the particular express limitations on Fund investments.

Finally, the Commission also requests comments on two additional issues: (1) The treatment of monies collected in rates for decommissioning prior to the effective date of a final rule in this proceeding (and earnings on such contributions); and (2) whether, and under what circumstances, the Commission should allow state trust funds and standards to be employed for that portion of contributions and earnings that are related to Commission-jurisdictional service.

VII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[36] The Commission has categorically excluded certain actions from this requirement as

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of fiduciary care governing Fund investments. However, we note that the Commission does not "defer" to state regulation of securities issuances under section 204 of the FPA. Rather, the Commission does not have jurisdiction over issuances of securities or assumptions of liability of a public utility organized and operating in a state that regulates the public utility's issuances of securities or assumptions of liability. 16 U.S.C. 824c(f).

[26] These have long been established, although not codified in the Commission's regulations, and were not at issue in System Energy II. Compare 37 FERC at 61,726–28 with 65 FERC at 61,513–14.

[27] We note that we invite comments below on the meaning of the reasonable person standard under Alternatives 2 and 3; we likewise invite comments on its meaning in this more general context.

[28] Several parties have challenged the Commission's jurisdiction to continue to impose Black Lung guidelines for Fund investments. The Commission requests comments on this issue.

[29] In Alternative 3, the Commission proposes particular express limitations on Fund investments. The Commission invites comments not only on the concept of express limitations generally, but also on the particular express limitations proposed.

[30] New England Power Company, Opinion No. 231, 31 FERC ¶ 61,047 at 61,084 (1985).

[31] See Restatements (Second) of Trusts § 227 (1959).

[32] See Cooperatives Comments at 14–16.

[33] See Restatement (Second) of Trusts section 227 & comments a through o (1959).

[34] See Restatement (Third) of Trusts § 227 (1992).

[35] Because Alternative 3 contains express limitations on Fund investments while Alternative 2 does not, we invite comments on whether the definition and content of a reasonable person standard would be the same no matter which alternative is selected, or would they be different.

[36] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47987 (Dec. 17, 1987); FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (1987)(codified at 18 CFR Part 380).

not having a significant effect on the human environment—such as electric rate filings under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.[37] The proposed rule, regarding the collection and subsequent investment of monies to fund nuclear plant decommissioning, involves such matters. Accordingly, no environmental consideration is necessary.

VIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[38] requires rulemakings to either contain a description and analysis of the impact the proposed rule will have on small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. Most public utilities to which the proposed rule would apply do not fall within the definition of small entity.[39] Consequently, the Commission certifies that this proposed rule will not have "a significant economic impact on a substantial number of small entities."

IX. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[40] require that OMB approve certain information collection requirements imposed by an agency. The information collection requirements in this proposed rule are contained in FERC–516 "Electric Rate Filings" (1902–0096).

The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities pursuant to the Federal Power Act and the Energy Policy Act of 1992. The Commission's Office of Electric Power Regulation uses the data for determination of electric rate filings submitted by industry. The Office of the Chief Accountant uses the data to ensure that industry has followed the appropriate procedures for assumptions of obligation and also to ensure that jurisdictional companies comply with the Uniform System of Accounts.

Interested persons may send comments regarding collection of information to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, (202) 208–1415]; and to the Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

X. Public Comment Procedures

The Commission invites interested persons to submit written comments on the proposed guidelines. Parties must file with the Commission an original and 14 copies of their comments no later than August 1, 1994. Parties must file an original and 14 copies of reply comments with the Commission no later than August 30, 1994. Parties should submit their comments and reply comments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM94–14–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Section, Room 3408, at 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. 18 CFR Part 35 is amended by adding Subpart E—Regulations Governing Nuclear Plant Decommissioning Trust Funds, consisting of § 35.32 and one of three alternative proposed § 35.33, to read as follows:

Subpart E—Regulations Governing Nuclear Plant Decommissioning Trust Funds

Sec.

35.32 General provisions.

35.33 Specific provisions.

§ 35.32 General provisions.

(a) In order to provide funds for the decommissioning of a nuclear power plant, a public utility must establish, organize and maintain a nuclear plant decommissioning trust fund (Fund). The Fund must meet the following criteria:

(1) The Fund must be an external trust fund in the United States under the control of a Trustee (Trustee) that is independent of the utility, its subsidiaries, affiliates or associates.

(2) The Trustee must exercise the standard of care, whether in investing or otherwise, that a reasonable person would use in the same circumstances.

(3) The Trustee shall have a net worth of at least $100 million.

(4) The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and transactions of the Fund. All accounts, books and records relating to the Fund shall be open to inspection and audit at reasonable times by the utility or its designee or by the Commission or its designee. The utility or its designee must notify the Commission prior to performing any such inspection or audit. The Commission may direct the utility to conduct an audit or inspection.

(5) Absent the express authorization of the Commission, no part of the assets of the Fund may be used for, or diverted to, any purpose other than to fund the costs of decommissioning the nuclear power plant to which the Fund relates, and to pay administrative costs and other incidental expenses, including taxes, of the Fund.

(6) If the Fund balances exceed the amount actually expended for decommissioning after decommissioning has been completed, the utility shall refund the excess jurisdictional amount to jurisdictional ratepayers, in a manner to be determined by the Commission.

(7) The Trustee shall limit Fund investments to those investments that the Commission allows in the specific provisions of § 35.33. The Trustee shall not in any circumstance invest in any securities of the utility, its subsidiaries, affiliates, or associates or their successors or assigns.

(8) The Trustee shall maximize the after-tax earnings over the life of the Fund, giving consideration to liquidity, risk, diversification and other prudent investment objectives, consistent with sound business practices and subject to the specific provisions of § 35.33.

(9) Each utility shall seek to minimize the payment of taxes with respect to amounts collected for nuclear power plant decommissioning. In this regard, the utility shall develop, organize and maintain the Fund, when it is consistent with sound business practices to do so, to take maximum advantage of any tax deductions and credits.

(10) Each utility shall deposit in the Fund at least quarterly (or more often if the utility wishes to make deposits more often) all monies collected in

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[37] 18 CFR 380.4(a)(15).

[38] 5 U.S.C. 601–612.

[39] See 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation.

[40] 5 CFR 1320.13.

Commission-jurisdictional rates to fund nuclear power plant decommissioning.

(b) The establishment, organization, and maintenance of the Fund shall not relieve the utility or its subsidiaries, affiliates or associates of any obligations they may have as to the decommissioning of the nuclear power plant.

§ 35.33 Specific provisions.

Alternative 1:

(a) In addition to the general provisions of § 35.32, the Trustee must observe the following specific provisions of § 35.33(b).

(b) The Trustee may only use Fund assets to:

(1) Satisfy the liability of a utility for decommissioning costs of the nuclear power plant to which the Fund relates as provided by § 35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes of the Fund as provided by § 35.32; and

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2), the Trustee may only invest those assets in:

(i) Public debt securities of the United States;

(ii) Obligations of state or local governments that are not in default as to principal or interest; or

(iii) Time or demand deposits in a bank, as defined in 26 U.S.C. 581 or in an insured credit union, within the meaning of 12 U.S.C. 1752(7), located in the United States.

(c) The utility must submit to the Commission by June 30 of each year a copy of the financial report furnished to the utility by the Fund trustee that shows for the most recent 12-month period: (1) Fund assets and liabilities at the beginning of the period; (2) Activity of the Fund during the period, including contributions received, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including income taxes; and (3) Fund assets and liabilities at the end of the period. If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

Alternative 2:

(a) In addition to the general provisions of § 35.32, the Trustee must observe the following specific provisions of § 35.33(b).

(b) The Trustee may only use Fund assets to:

(1) Satisfy the liability of a utility for decommissioning costs of the nuclear power plant to which the Fund relates as provided by § 35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes of the Fund as provided by § 35.32; and

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2), the Trustee, when investing Fund assets, must exercise the same standard of care that a reasonable person would exercise in the same circumstances.

(c) The utility must submit to the Commission by June 30 of each year a copy of the financial report furnished to the utility by the Fund trustee that shows for the most recent 12-month period: (1) Fund assets and liabilities at the beginning of the period; (2) Activity of the Fund during the period, including contributions received, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including income taxes; and (3) Fund assets and liabilities at the end of the period. If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

Alternative 3:

(a) In addition to the general provisions of § 35.32, the Trustee must observe the following specific provisions of § 35.33(b).

(b) The Trustee may only use Fund assets to:

(1) Satisfy the liability of a public utility for decommissioning costs of the nuclear power plant to which the Fund relates as provided by § 35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes of the Fund as provided by § 35.32; and

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2), the Trustee, when investing Fund assets: (i) must exercise the same standard of care that a reasonable person would exercise in the same circumstances; and

(ii) must conform to the following guidelines:

(A) The Trustee must limit investment in equity securities to no more than a fixed percentage of Fund assets. As the nuclear power plant gets closer to the end of its licensed life, this percentage must decrease according to the following schedule:

(*1*) Commencement of operation until 15 years from end of license = 50 percent;

(*2*) 15 years from end of license to 10 years from end of license = 40 percent;

(*3*) 10 years from end of license to 5 years from end of license = 25 percent;

(*4*) 5 years from end of license to 2 years from end of license = 10 percent;

(*5*) 2 years from end of license to end of license = 0 percent.

(B) The Trustee must limit all investments, as follows:

(*1*) Common stocks must be listed on a principal exchange, and each company's common stock must have an aggregate market value of no less than $500 million and a rating of not lower than A− (Standard & Poors).

(*2*) Corporate, state, municipal, and local bonds must have a rating of not lower than Aa (Moody's) or A− (Standard & Poors).

(*3*) The Trustee may invest in cash equivalents, such as United States Treasury bills or high-grade commercial paper (*i.e.*, of not lower quality than A–2 (Standard & Poors) or P–2 (Moody's)).

(*4*) The Trustee may invest no more than 10 percent of the market value of the Fund in a single industry and no more than 2 percent of the market value of the Fund in a single company or its subsidiaries, affiliates or associates.

(c) The utility must submit to the Commission by June 30 of each year a copy of the financial report furnished to the utility by the Fund trustee that shows for the most recent 12-month period: (1) Fund assets and liabilities at the beginning of the period; (2) Activity of the Fund during the period, including contributions received, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including income taxes; and (3) Fund assets and liabilities at the end of the period. If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

[FR Doc. 94–13263 Filed 5–31–94; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional revisions pertaining to a previously proposed amendment to the Alabama Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Alabama Plan) under the Surface Mining Control and Reclamation act of 1977 (SMCRA). The additional revisions for Alabama's rules pertain to procedures for ranking and selecting and procedures for obtaining right-of-entry. Alabama has withdrawn its proposed change of date in its initial submission of October 1, 1993, in the emergency program section of the Plan.

This document sets forth the times and locations that the Alabama Plan and proposed changes will be available for public inspection, and the dates and times of the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on June 16, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSM Birmingham Field Office.

Jesse Jackson, Jr., Director, Birmingham Field Office, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209, Telephone: (205) 290–7287

Alabama Department of Industrial Relations, Abandoned Mine Lands Program, 649 Monroe Street, Montgomery, Alabama 36130, Telephone: (205) 242–8265.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, (205) 290–7283.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Alabama Program

Titlle IV of SMCRA Public Law 95–87, 30 U.S.C. 1202 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

The AML Reclamation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1997. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1997, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Alabama Plan on May 20, 1982. Information pertinent to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under **ADDRESSES**. Subsequent actions taken with regard to the Alabama Plan can be found at 30 CFR 901.25.

The Secretary has adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.13 in approving or disapproving an amendment or revision.

II. Submission of the Proposed Amendment

By letter dated October 1, 1993, Alabama submitted a reclamation plan amendment to OSM (Administrative Record No. AL–0504). This formal amendment request was preceded by a letter dated July 12, 1993, which requested that the Alabama Plan be updated by revision. OSM determined on September 17, 1993, that the proposed revision represented a major change in the scope of the AMLR program and would necessitate processing as a formal Plan amendment. The proposed amendment consisted of revised narratives to replace portions of three sections of the approved Alabama Plan as provided for by 30 CFR 884.13. Specifically, the Alabama Plan was revised to modify the eligibility date for AMLR reclamation from August 3, 1977, to November 5, 1990. This change was applicable to both nonemergency and emergency AMLR project sites and will allow reclamation of sites mined for coal after August 3, 1977.

OSM announced receipt of the proposed amendment in the October 21, 1993, **Federal Register** (58 FR 54313) and invited public comment on its adequacy. The public comment period ended on November 22, 1993.

During its review of the amendment, OSM identified concerns relating to: (a) the State's lack of specificity in proposing to extend eligibility to sites mined and abandoned prior to November 5, 1990, and (b) the State's plan to extend emergency eligibility to sites mined after August 3, 1977. OSM notified Alabama of the concerns by letter dated January 27, 1994 (Administrative Record No. AL–508). Alabama responded in a letter dated April 5, 1994 (Administrative Record No. AL–509), by submitting a revised amendment

Alabama proposes additional revisions to its procedures for ranking and selection by adding specific language describing those sites eligible for abandoned mine land reclamation. Alabama also proposes revisions to its procedures for obtaining right-of-entry by adding specific language describing those lands eligible for treatment under the AMLR Plan. Alabama is withdrawing its proposed change of date in the emergency program section of the AMLR Plan. It should also be noted that in its initial submission of October 1, 1993, Alabama included a copy of Senate Bill 162 which amended the statutory definition of "abandoned mine lands."

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Alabama program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h) and 30 CFR 884.14, OSM is seeking comments on whether the proposed amendment

satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State [or Tribal] submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface Mining, Underground mining.

Dated: May 25, 1994.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–13243 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–05–M

Minerals Management Service

30 CFR Chapter II

Meeting of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) is establishing a Federal Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Federal gas valuation pursuant to its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA. Once approved, the Committee's charter to conduct a negotiated rulemaking will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of section 9(a)(2) of the Federal Advisory Committee Act (FAA), 5 U.S.C. App. 2.

DATES: The Committee will have its first meeting on June 15 and 16, 1994 from 8 a.m. to 5 p.m. and on June 17, 1994, from 8 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the auditorium of building 85 on the Denver Federal Center, West Sixth Avenue and Kipling Street, Lakewood, Colorado.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3920, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3920, Denver, CO 80225–0165, telephone number (303) 275–7200, fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register.**

The meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address. Additional background information regarding the establishment and membership of this Committee will be released in the **Federal Register** announcing the approval of the charter.

Dated: May 26, 1994.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 94–13371 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Privacy Act; Implementation

AGENCY: Department of the Navy, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy has revised its Privacy Act Instruction.

This proposed rule re-establishes the Navy's Privacy Program and incorporates the changes made to the revised Instruction.

EFFECTIVE DATE: Comments must be received on or before August 1, 1994, to be considered by this agency.

ADDRESSES: Send comments to Mrs. Gwen Aitken, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwen Aitken at (703) 697–1459 or DSN 227–1459.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 701

Privacy.

Accordingly, 32 CFR part 701, subparts F and G are revised as follows:

PART 701 - AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart F - Department of the Navy Privacy Act Program

701.100 Purpose.
701.101 Applicability.
701.102 Definitions.
701.103 Policy.
701.104 Responsibility and authority.
701.105 Systems of records.
701.106 Safeguarding records in systems of records.
701.107 Criteria for creating, altering, amending, and deleting Privacy Act systems of records.
701.108 Collecting information about individuals.
701.109 Access to records.
701.110 Amendment of records.
701.111 Privacy Act appeals.
701.112 Disclosure of records.
701.113 Exemptions.
701.114 Enforcement actions.
701.115 Computer matching program.

Subpart G - Privacy Act Exemptions

701.116 Purpose.
701.117 Exemption for classified records.
701.118 Exemptions for specific Navy record systems.
701.119 Exemptions for specific Marine Corps records systems.

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

Subpart F–Department of the Navy Privacy Act Program

§ 701.100 Purpose.

This subpart F and subpart G of this part implement the Privacy Act (5 U.S.C. 552a), and DoD Directive 5400.11 [1], and DoD 5400.11–R [2], (see 32 CFR part 310) and provides Department of the Navy policies and procedures for:

(a) Governing the collection, safeguarding, maintenance, use, access, amendment, and dissemination of personal information kept by Department of the Navy in systems of records;

(b) Notifying individuals if any systems of records contain a record pertaining to them;

(c) Verifying the identity of individuals who request their records before the records are made available to them;

(d) Notifying the public of the existence and character of each system of records.

(e) Exempting systems of records from certain requirements of the Privacy Act; and

(f) Governing the Privacy Act rules of conduct for Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988.

§ 701.101 Applicability.

This subpart and subpart G of this part apply throughout the Department of the Navy. It is also applicable to contractors by contract or other legally binding action, whenever a Department of the Navy contract provides for the operation of a system of records or portion of a system of records to accomplish a Department of the Navy function. For the purposes of any criminal liabilities adjudged, any contractor or any employee of such contractor is considered to be an employee of Department of the Navy. In case of a conflict, this subpart and subpart G of this part take precedence over any existing Department of the Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act and implemented by Secretary of the Navy Instruction 5720.42E [3], "Department of the Navy Freedom of Information Act Program."

§ 701.102 Definitions.

For the purposes of this subpart and subpart G of this part, the following meanings apply.

(a) *Access.* The review or copying of a record or parts thereof contained in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act between or among Department of Defense (DoD) components, the Department of Defense is considered a single agency. For all other purposes, Department of the Navy is considered an agency within the meaning of Privacy Act.

(c) *Confidential source.* A person or organization who has furnished information to the Federal Government either under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 701.100.

[3] Copies available from Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

(d) *Defense Data Integrity Board.* Consists of members of the Defense Privacy Board, as outlined in DoD Directive 5400.11 and, in addition, the DoD Inspector General or the designee, when convened to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

(e) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review), to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(f) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals or survivors thereof, entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(g) *Individual.* A living citizen of the United States or alien lawfully admitted to the U.S. for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a deceased person under this instruction and the term "individual" does not embrace an individual acting in a non-personal capacity (for example, sole proprietorship or partnership).

(h) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(i) *Maintain.* Includes maintain, collect, use, or disseminate.

(j) *Member of the public.* Any individual or party acting in a private capacity.

(k) *Minor.* Under this subpart and subpart G of this part, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, nor married.

(l) *Official use.* Under this subpart and subpart G of this part, this term is used when Department of the Navy officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

(m) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(n) *Privacy Act (PA) request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

(o) *Record.* Any item, collection, or grouping of information about an individual that is maintained by a naval activity including, but not limited to, the individual's education, financial transactions, and medical, criminal, or employment history, and that contains the individual's name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

(p) *Review authority.* An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. The Secretary of the Navy has delegated his review authority to the Assistant Secretary of the Navy (Manpower and Reserve Affairs (ASN(M&RA)), the General Counsel (OGC), and the Judge Advocate General (NJAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

(q) *Risk assessment.* An analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility or center.

(r) *Routine use.* Disclosure of a record outside the Department of Defense for a purpose that is compatible with the purpose for which the record was collected and maintained by the Department of Defense. The routine use must have been included in the notice for the system of records published in the **Federal Register**.

(s) *Statistical record.* A record maintained only for statistical research, or reporting purposes, and not used in whole or in part in making any determination about a specific individual.

(t) *System manager.* An official who has overall responsibility for a system of records. He or she may serve at any level in Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

(u) *System of records.* A group of records under the control of a Department of the Navy activity from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register** and are also published in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 [4].

(v) *Word processing equipment.* Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

(w) *Word processing system.* A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator. The results are written or graphic presentations intended to communicate verbally or visually with another individual.

(x) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

§ 701.103 Policy.

It is the policy of Department of the Navy to:

(a) Ensure that all its personnel comply fully with 5 U.S.C. 552a, DoD Directive 5400.11 and DoD 5400.11–R, to protect individuals from unwarranted invasions of privacy. Individuals covered by this protection are living citizens of the U.S. or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor when acting on the individual's or minor's behalf, has the same rights as the individual or minor. (A member of the Armed Forces is not a minor for the purposes of this subpart and subpart G of this part).

(b) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law or E.O., and disclose this information only as authorized by 5 U.S.C. 552a and this subpart and subpart G of this part. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifiable or use of sampling of certain data for certain individuals only. Additionally, consideration is to be given to the length

[4] See footnote 3 to § 701.101.

of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(c) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(d) Let individuals have access to, and obtain copies of, all or portions of their records, subject to exemption procedures authorized by law and this subpart and subpart G of this part.

(e) Let individuals request amendment of their records when discrepancies proven to be erroneous, untimely, incomplete, or irrelevant are noted.

(f) Let individuals request an administrative review of decisions that deny them access, or refuse to amend their records.

(g) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(h) Maintain no records describing how an individual exercises his or her rights guaranteed by the First Amendment (freedom of religion, political beliefs, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(1) Expressly authorized by statute;

(2) Authorized by the individual;

(3) Within the scope of an authorized law enforcement activity; or

(4) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his or her record concerning religious preference, particularly that required in emergency situations.

(5) Maintain only systems of records which have been published in the **Federal Register**, in accordance with periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 and § 701.105. These OPNAVNOTEs 5211 provide a listing of all Department of the Navy Privacy Act systems of records and identify the Office of Personnel Management (OPM) government-wide systems containing information on Department of the Navy civilian employees, even though technically, Department of the Navy does not have cognizance over them. A Privacy Act systems notice outlines what kinds of information may be collected and maintained by naval activities. When collecting/maintaining information in a Privacy Act system of records, review the systems notice to ensure activity compliance is within the scope of the system. If you determine the systems notice does not meet your needs, contact the systems manager or Chief of Naval Operations (N09B30) with your concerns so that amendment of the system may be considered.

§ 701.104 Responsibility and authority.

(a) *Chief of Naval Operations (CNO).* CNO is designated as the official responsible for administering and supervising the execution of 5 U.S.C. 552a, DoD Directive 5400.11, and DoD 5400.11–R. CNO has designated the Assistant Vice Chief of Naval Operations (N09B30) as principal Privacy Act Coordinator for the Department of the Navy to:

(1) Set Department of the Navy policy on the provisions of the Privacy Act.

(2) Serve as principal advisor on all Privacy Act matters.

(3) Oversee the administration of the Privacy Act program, which includes preparing the Department of the Navy Privacy Act report for submission to Congress.

(4) Develop Navy-wide Privacy Act training program and serve as training-oversight manager.

(5) Conduct staff assistance visits within Department of the Navy to review compliance with 5 U.S.C. 552a and this subpart and subpart G of this part.

(6) Coordinate and prepare responses for Privacy Act requests received for Office of the Secretary of the Navy records.

(b) *Commandant of the Marine Corps (CMC).* CMC is responsible for administering and supervising the execution of this subpart and subpart G of this part within the Marine Corps. The Commandant has designated the Director, Manpower Management Information Systems Division (HQMC (Code MI)) as the Privacy Act coordinator for Headquarters, U.S. Marine Corps.

(c) *Privacy Act Coordinator.* Each addressee is responsible for implementing and administering a Privacy Act program under this subpart and subpart G of this part. Each addressee shall designate a Privacy Act Coordinator to:

(1) Serve as principal point of contact on Privacy Act matters.

(2) Provide training for activity/command personnel on the provisions of 5 U.S.C. 552a and this subpart and subpart G of this part.

(3) Issue implementing instruction which designates the activity's Privacy Act Coordinator, Privacy Act records disposition, Privacy Act processing procedures, identification of Privacy Act systems of records under their cognizance, and training aids for those personnel involved with systems of records.

(4) Review internal directives, practices, and procedures, including those having Privacy Act implications and where Privacy Act Statements (PASs) are needed.

(5) Compile input and submit consolidated Privacy Act report to Echelon 2 Privacy Act Coordinator, who, in turn, will provide consolidated report to CNO (N09B30).

(6) Maintain liaison with records management officials (i.e., maintenance and disposal procedures and standards, forms, and reports), as appropriate.

(7) Provide guidance on handling Privacy Act requests and scope of Privacy Act exemptions.

(8) Conduct staff assistance visits within command and lower echelon commands to ensure compliance with the Privacy Act.

(9) Echelon 2 Privacy Act Coordinators shall provide CNO (N09B30) with a complete listing of all Privacy Act Coordinators under their jurisdiction. Such information should include activity name and address, office code, name of Privacy Act Coordinator, commercial and DSN telephone number, and FAX number, if applicable.

(d) *Release authority.* Officials having cognizance over the requested subject matter are authorized to respond to requests for notification, access, and/or amendment of records. These officials could also be systems managers (see § 701.104(g)).

(e) *Denial authority.* Within the Department of the Navy, the following chief officials, their respective vice commanders, deputies, principal assistants, and those officials specifically designated by the chief official are authorized to deny requests, either in whole or in part, for notification, access and amendment, made under this subpart and subpart G of this part, when the records relate to matters within their respective areas of responsibility or chain of command:

(1) *Department of the Navy:* Civilian Executive Assistants; CNO; CMC; Chief of Naval Personnel; Commanders of the Naval Systems Commands, Office of Naval Intelligence, Naval Security Group Command, Naval Imaging Command, and Naval Computer and Telecommunications Command; Chief, Bureau of Medicine and Surgery; Auditor General of the Navy; Naval Inspector General; Director, Office of Civilian Personnel Management; Chief of Naval Education and Training;

Commander, Naval Reserve Force; Chief of Naval Research; Commander, Naval Oceanography Command; heads of Department of the Navy Staff Offices, Boards, and Councils; Flag Officers and General Officers. NJAG and his Deputy, and OGC and his Deputies are excluded from this grant of authorization. While NJAG and OGC are not denial authorities, they are authorized to further delegate the authority conferred here to other senior officers/officials within NJAG and OGC.

(2) *For the shore establishment:*

(i) All officers authorized under Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C)[5], to convene general courts-martial.

(ii) Commander, Naval Investigative Service Command.

(iii) Deputy Commander, Naval Legal Service Command.

(3) In the Operating Forces: All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ), or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C), to convene general courts-martial.

(f) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), is the Secretary's designee, and shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel (see § 701.111(c)(3)).

(2) The Judge Advocate General and General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of records for notification, access, or amendment of records, as set forth in § 701.111(c)(2) and (4).

(3) The authority of the Secretary of the Navy (SECNAV), as the head of an agency, to request records subject to the Privacy Act from an agency external to the Department of Defense for civil or criminal law enforcement purposes, under subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

(g) *Systems manager.* Systems managers, as designated in Department of the Navy's compilation of systems notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211[6], "Current Privacy Act Issuances") shall:

(1) Ensure the system has been published in the **Federal Register** and that any additions or significant changes are submitted to CNO (N09B30) for approval and publication. The systems of records should be maintained in accordance with the systems notices as published in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(2) Maintain accountability records of disclosures.

(h) *Department of the Navy employees.* Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. These include:

(1) Not disclosing any information contained in a system of records by any means of communication to any person or agency, except as authorized by this subpart and subpart G of this part.

(2) Not maintaining unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(3) Safeguarding the privacy of individuals and confidentiality of personal information contained in a system of records.

§ 701.105 Systems of records.

To be subject to this subpart and subpart G of this part, a "system of records" must consist of "records" that are retrieved by the name, or some other personal identifier, of an individual and be under the control of Department of the Navy.

(a) *Retrieval practices.* (1) Records in a group of records that are not retrieved by personal identifiers are not covered by this subpart and subpart G of this part, even if the records contain information about individuals and are under the control of Department of the Navy. The records must be retrieved by personal identifiers to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system notice must be submitted in accordance with § 701.107.

(3) If records in a system of records are rearranged so retrieval is no longer by personal identifiers, the records are no longer subject to this subpart and subpart G of this part and the records system notice should be deleted in accordance with § 701.107.

(b) *Recordkeeping standards.* A record maintained in a system of records subject to this subpart and subpart G of this part must meet the following criteria:

(1) Be accurate. All information in the record must be factually correct.

(2) Be relevant. All information contained in the record must be related to the individual who is the record subject and also must be related to a lawful purpose or mission of the Department of the Navy activity maintaining the record.

(3) Be timely. All information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) Be complete. It must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) Be necessary. All information in the record must be needed to accomplish a Department of the Navy mission or purpose established by Federal Law or E.O. of the President.

(c) *Authority to establish systems of records.* Identify the specific Federal statute or E.O. of the President that authorizes maintaining each system of records. When a naval activity uses its "internal housekeeping" statute, i.e., 5 U.S.C. 301, Departmental Regulations, the naval instruction that implements the statute should also be identified. A statute or E.O. authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(d) *Exercise of First Amendment rights.* (1) Do not maintain any records describing how an individual exercises rights guaranteed by the First Amendment of the U.S. Constitution unless expressly authorized by Federal law; the individual; or pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) *System manager's evaluations and reviews.* (1) Evaluate each new system of records. Before establishing a system of records, evaluate the information to be included and consider the following:

(i) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained (all information must be relevant to the purpose);

(ii) The specific impact on the purpose or mission if each category of information is not collected (all information must be necessary to accomplish a lawful purpose or mission.);

(iii) The ability to meet the informational needs without using

[5] Copies available from the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400.

[6] See footnote 3 to § 701.101.

[6] See footnote 3 to § 701.101.

personal identifiers (will anonymous statistical records meet the needs?);

(iv) The length of time each item of information must be kept;

(v) The methods of disposal;

(vi) The cost of maintaining the information; and

(vii) Whether a system already exists that serves the purpose of the new system.

(2) Evaluate and review all existing systems of records.

(i) When an alteration or amendment of an existing system is prepared pursuant to § 701.107(b) and (c), do the evaluation described in § 701.105(e).

(ii) Conduct the following reviews annually and be prepared to report, in accordance with § 701.104(c)(8), the results and corrective actions taken to resolve problems uncovered.

(A) Training practices to ensure all personnel are familiar with the requirements of 5 U.S.C. 552a, and DoD Directive 5400.11, "DoD Privacy Program", this subpart and subpart G of this part, and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices to ensure compliance with this subpart and subpart G of this part.

(C) Ongoing computer matching programs in which records from the system have been matched with non-DoD records to ensure that the requirements of § 701.115 have been met.

(D) Actions of Department of the Navy personnel that resulted in either Department of the Navy being found civilly liable or a person being found criminally liable under 5 U.S.C. 552a, to determine the extent of the problem and find the most effective way of preventing the problem from occurring in the future.

(E) Each system of records notice to ensure it accurately describes the system. Where major changes are needed, alter the system notice in accordance with § 701.107(b). If minor changes are needed, amend the system notice pursuant to § 701.107(c).

(iii) Every even-numbered year, review a random sample of Department of the Navy contracts that provide for the operation of a system of records to accomplish a Department of the Navy function, to ensure the wording of each contract complies with the provisions of 5 U.S.C. 552a and § 701.105(h).

(iv) Every three years, beginning in 1992, review the routine use disclosures associated with each system of records to ensure the recipient's use of the records continues to be compatible with the purpose for which the information was originally collected.

(v) Every three years, beginning in 1993, review each system of records for which exemption rules have been established to determine whether each exemption is still needed.

(vi) When directed, send the reports through proper channels to the CNO (N09B30).

(f) *Discontinued information requirements.* (1) Immediately stop collecting any category or item of information about individuals that is no longer justified, and when feasible, remove the information from existing records.

(2) Do not destroy records that must be kept in accordance with retention and disposal requirements established under SECNAVINST 5212.5[7], "Disposal of Navy and Marine Corps Records."

(g) *Review records before disclosing outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, take reasonable steps to ensure the record which is being disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

(h) *Federal government contractors—(1) Applicability to Federal government contractors*—(i) When a naval activity contracts for the operation of a system of records to accomplish its function, the activity must ensure compliance with this subpart and subpart G of this part and 5 U.S.C. 552a. For the purposes of the criminal penalties described in 5 U.S.C. 552a, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(ii) Consistent with Parts 24 and 52 of the Federal Acquisition Regulation (FAR), contracts for the operation of a system of records shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract the terms as prescribed by the FAR.

(iii) If the contractor must use records that are subject to this subpart and subpart G of this part to perform any part of a contract, the contractor activities are subject to this subpart and subpart G of this part.

(iv) This subpart and subpart G of this part do not apply to records of a contractor that are:

(A) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract;

(B) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the naval activity;

(C) Maintained as training records by an educational organization contracted by a naval activity to provide training when the records of the contract students are similar to and commingled with training records of other students, such as admission forms, transcripts, and academic counseling and similar records; or

(D) Maintained by a consumer reporting agency to which records have been disclosed under contract in accordance with 31 U.S.C. 952d.

(v) For contracting that is subject to this subpart and subpart G of this part, naval activities shall publish instructions that:

(A) Furnish Privacy Act guidance to personnel who solicit, award, or administer Government contracts;

(B) Inform prospective contractors of their responsibilities under this subpart and subpart G of this part and the Department of the Navy Privacy Program;

(C) Establish an internal system for reviewing contractor's performance for compliance with the Privacy Act; and

(D) Provide for the biennial review of a random sample of contracts that are subject to this subpart and subpart G of this part.

(2) *Contracting procedures.* The Defense Acquisition Regulatory (DAR) Council, which oversees the implementation of the FAR within the Department of Defense, is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts that are subject to this subpart and subpart G of this part and 5 U.S.C. 552a.

(3) *Contractor compliance.* Naval activities shall establish contract surveillance programs to ensure contractors comply with the procedures established by the DAR Council under the preceding subparagraph.

(4) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a contract let by a naval activity is considered a disclosure within Department of the Navy. The contractor is considered the agent of Department of the Navy when receiving and maintaining the records for that activity.

§ 701.106 Safeguarding records in systems of records.

Establish appropriate administrative, technical, and physical safeguards to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure.

[7] Copies available from OPNAV/SECNAV Directives Control Office, Washington Navy Yard, Building 200, Washington, DC 20350-2000.

Protect the records from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(a) *Minimum standards.* (1) Conduct risk analysis and management planning for each system of records. Consider sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) Train all personnel operating a system of records or using records from a system of records in proper record security procedures.

(3) Label information exempt from disclosure under this subpart and subpart G of this part to reflect their sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other statement that alerts individuals of the sensitivity to the records.

(4) Administer special administrative, physical, and technical safeguards to protect records processed or stored in an automated data processing or word processing system to protect them from threats unique to those environments.

(b) *Records disposal.* (1) Dispose of records from systems of records so as to prevent inadvertent disclosure. Disposal methods are considered adequate if the records are rendered unrecognizable or beyond reconstruction (i.e., such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation). Magnetic media may be cleared by completely erasing, overwriting, or degaussing the tape.

(2) The transfer of large volumes of records (e.g., printouts and computer cards) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records, if the volume of records, coding of the information, or some other factor render it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernable, dispose of the records in accordance with § 701.106(b)(1).

§ 701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.

(a) *Criteria for a new system of records.* A new system of records is one for which no existing system notice has been published in the **Federal Register**. If a notice for a system of records has been canceled or deleted, and it is determined that it should be reinstated or reused, a new system notice must be published in the **Federal Register**. Advance public notice must be given before a naval activity may begin to collect information for or use a new system of records. The following procedures apply:

(1) Describe in the record system notice the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(2) The public shall be given 30 days to comment on any proposed routine uses before the routine uses are implemented.

(3) The notice shall contain the date the system of records will become effective.

(b) *Criteria for an alteration to a system of records notice.* A system is considered altered when any one of the following actions occur or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained. For example, a decision to expand a system of records that originally covered personnel assigned to only one naval activity to cover personnel at several installations would constitute an altered system. An increase or decrease in the number of individuals covered due to normal growth or decrease is not an alteration.

(2) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would be an alteration.

(3) A change that alters the purpose for which the information is used. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system. For example, placing interactive computer terminals at regional offices when the system was formerly used only at the headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved.

(6) Combining record systems due to a reorganization within Department of the Navy.

(7) Retrieving by Social Security Numbers (SSNs), records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs. An altered system of records must be published in the **Federal Register**. Submission for an alteration must contain a narrative statement, the specific changes altering the system, and the system of records notice.

(c) *Criteria for amending a systems of records notice.* Minor changes to published system of records notices are considered amendments. All amendments should be forwarded to CNO (N09B30) for publication in the **Federal Register**. When submitting an amendment to a system of records notice, the naval activity must include a description of the specific changes proposed and the system of records notice.

(d) *Criteria for deleting a system of records notice.* When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this subpart and subpart G of this part, a deletion notice must be published in the **Federal Register**. The deletion notice shall include the system identification number, system name, and the reason for deleting it. If a system is deleted through incorporation into or merger with another system, identify the successor system in the deletion notice.

§ 701.108 Collecting information about individuals.

(a) *Collecting directly from the individual.* To the greatest extent practicable, collect information for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under the Federal programs.

(b) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about an individual directly from that person, such as verifying information through other sources for security or employment suitability determinations; seeking other opinions, such as a supervisor's comments on past performance or other evaluations; obtaining the necessary information directly from the individual would be exceptionally difficult or would result in unreasonable costs or delays; or, the

individual requests or consents to contacting another person to obtain the information.

(c) *Soliciting the social security number (SSN).* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide his or her SSN. However, this prohibition does not apply if a Federal law requires that the SSN be provided, or the SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual must be advised whether providing the SSN is mandatory or voluntary; by what law or other authority the SSN is solicited; and what uses will be made of the SSN.

(3) The preceding advice relates only to the SSN. If other information about the individual is solicited for a system of records, a Privacy Act statement (PAS) also must be provided to him/her.

(4) The notice published in the Federal Register for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. E.O. 9397 requires federal agencies to use SSNs as numerical identifiers for individuals in most federal records systems, however, it does not make it mandatory for individuals to provide their SSNs.

(5) When entering military service or civilian employment with the Department of the Navy, individuals must provide their SSNs. This is then the individual's numerical identifier and is used to establish personnel, financial, medical, and other official records (as authorized by E.O. 9397). The individuals must be given the notification described above. Once the individual has provided his or her SSN to establish the records, a notification is not required when the SSN is requested only for identification or to locate the records.

(6) The Federal Personnel Manual [8] must be consulted when soliciting SSNs for use in systems of records maintained by the Office of Personnel Management.

(7) A Department of the Navy activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act Statement for the SSN, alone, or a merged Privacy Act Statement covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his or her SSN, the activity must be prepared to identify the individual by alternate means.

(d) *Contents of Privacy Act Statement.* (1) When an individual is requested to furnish information about himself/herself for a system of records, a Privacy Act Statement must be provided to the individual, regardless of the method used to collect the information (i.e., forms, personal or telephonic interview, etc). If the information requested will not be included in a system of records, a Privacy Act Statement is not required.

(2) The Privacy Act Statement shall include the following:

(i) The Federal law or E.O. that authorizes collecting the information (i.e., E.O. 9397 authorizes collection of SSNs);

(ii) Whether or not it is mandatory for the individual to provide the requested information (It is only mandatory when a Federal law or E.O. of the President specifically imposes a requirement to furnish the information and provides a penalty for failure to do so. If furnishing information is a condition for granting a benefit or privilege voluntarily sought by the individual, it is voluntary for the individual to give the information.);

(iii) The principle purposes for collecting the information;

(iv) The routine uses that will be made of the information (i.e., to whom and why it will be disclosed outside the Department of Defense); and

(v) The possible effects on the individual if the requested information is not provided.

(3) The Privacy Act Statement must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by means other than a form completed by the individual, i.e., solicited over the telephone, the Privacy Act Statement should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the Privacy Act Statement.

(e) *Format for Privacy Act Statement.* When forms are used to collect information about individuals for a system of records, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form,

(2) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act Statement),

(3) On the back of the form with a notation of its location below the title of the form, or

(4) On a separate form which the individual may keep.

§ 701.109 Access to records.

(a) *Individual access to records—(1) Right of access.* Only individuals who are subjects of records maintained in systems of records and by whose personal identifiers the records are retrieved have the right of individual access under this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. Legal guardians or parents acting on behalf of a minor child also have the right of individual access under this subpart and subpart G of this part.

(2) *Notification of record's existence.* Each naval activity shall establish procedures for notifying an individual, in response to his or her request, if a system of records identified by him/her contains a record pertaining to the individual.

(3) *Individual request for access.* Individuals shall address requests for access to records in systems of records to the system manager or the office designated in the Department of the Navy compilation of system notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances").

(4) *Verifying identity.* (i) An individual shall provide reasonable verification of identity before obtaining access to records.

(ii) When requesting records in writing, naval activities may not insist that a requester submit a notarized signature. The courts have ruled that an alternative method of verifying identity must be established for individuals who do not have access to notary services. This alternative permits requesters to provide an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of American that the foregoing is true and correct."

(iii) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (i.e., identification card, driver's license, or other license, permit or pass normally used for identification purposes).

(iv) When access is requested other than in writing, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information

[8] Copies available from the Office of Personnel Management, 1900 E Street, Washington, DC 20415.

necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. Telephonic requests should not be honored.

(v) Allow an individual to be accompanied by a person of his or her choice when viewing the record; however, require the individual to provide written authorization to have the record discussed in front of the other person.

(vi) Do not deny access to an individual who is the subject of the record solely for refusing to divulge his or her SSN, unless it is the only means of retrieving the record or verifying identity.

(vii) Do not require the individual to explain why he or she is seeking access to a record under this subpart and subpart G of this part.

(viii) Only a designated denial authority may deny access. The denial must be in writing and contain the information required by § 701.109(d).

(5) *Blanket requests not honored.* Do not honor requests from individuals for notification and/or access concerning all Department of the Navy systems of records. In these instances, notify the individual that requests for notification and/or access must be directed to the appropriate system manager for the particular record system being requested, as indicated in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances"; and the request must either designate the particular system of records to be searched, or provide sufficient information for the system manager to identify the appropriate system. Also, provide the individual with any other information needed for obtaining consideration of his or her request.

(6) *Granting individual access to records.* (i) Grant the individual access to the original record (or exact copy) without any changes or deletions, other than those made in accordance with § 701.113.

(ii) Grant the individual's request for an exact copy of the record, upon the signed authorization of the individual, and provide a copy to anyone designated by the individual. In either case, the copying fees may be assessed to the individual pursuant to § 701.109(b).

(iii) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(7) *Illegible or incomplete records.* Do not deny an individual access solely because the physical condition or format of the record does not make it readily available (i.e., when the record is in a deteriorated state or on magnetic tape). Either prepare an extract or recopy the document exactly.

(8) *Access by parents and legal guardians.* (i) The parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf or for the benefit of the minor or incompetent. However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, use the following procedures:

(A) In the United States, the laws of the state where the records are located might afford special protection to certain medical records (i.e., drug and alcohol abuse treatment, and psychiatric records). The state statutes might apply even if the records are maintained by a naval medical facility.

(B) For installations located outside the U.S., the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(1) The minor at the time of the treatment or consultation was 15, 16, or 17 years old;

(2) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor;

(3) The minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and

(4) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(ii) A minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(9) *Access to information compiled in reasonable anticipation of a civil proceeding.* (i) An individual is not entitled under this subpart and subpart G of this part to access information compiled in reasonable anticipation of a civil action or proceeding.

(ii) The term "civil action or proceeding" includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation.

(iii) § 701.109(9)(i) and (ii) do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(10) *Personal notes or records not under the control of the Department of the Navy.* (i) Certain documents under the control of a Department of the Navy employee and used to assist him/her in performing official functions are not considered Department of the Navy records within the meaning of this subpart and subpart G of this part. These documents are not systems of records that are subject to this subpart and subpart G of this part, if they are:

(A) Maintained and discarded solely at the discretion of the author;

(B) Created only for the author's personal convenience;

(C) Not the result of official direction or encouragement, whether oral or written; and

(D) Not shown to other persons for any reason or filed in agency files.

(11) *Relationship between the Privacy Act and FOIA.* In some instances, individuals requesting access to records pertaining to themselves may not know which Act to cite as the appropriate statutory authority. The following guidelines are to ensure that the individuals receive the greatest degree of access under both Acts:

(i) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, are processed under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552a are processed under this subpart and subpart G of this part.

(iii) Access requests that cite both 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988 and 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act are processed under the Act that provides the greater degree of access. Inform the requester which instruction was used in granting or denying access.

(iv) Do not penalize the individual access to his or her records otherwise releasable under 5 U.S.C. 552a and periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances", simply because he or she failed to cite the appropriate statute or instruction.

(12) *Time limits.* Acknowledge requests for access made under Privacy Act or this subpart and subpart G of this part within 10 working days after receipt, and advise the requester of your

decision to grant/deny access within 30 working days.

(b) *Reproduction fees.* Normally, only one copy of any record or document will be provided. Checks or money orders for fees should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(1) Fee schedules shall include only the direct cost of reproduction and shall not include costs of:

(i) Time or effort devoted to searching for or reviewing the record by naval personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and the only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access, or the naval activity does not wish to surrender temporarily the original record for the individual to review).

(2) Fee schedules.

(i) Office copy (per page).....$.10

(ii) Microfiche (per fiche).....$.25

(3) Fee waivers. Waive fees automatically if the direct cost of reproduction is less than $15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed $15 are made on a case-by-case basis.

(c) *Denying individual access.* (1) Deny the record subject access to requested record only if it was compiled in reasonable anticipation of a civil action or proceeding or is in a system of records that has been exempt from the access provisions of § 701.113.

(2) Deny the individual access only to those portions of the record for which the denial will serve a legitimate government purpose. An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(3) Deny the individual access to his or her medical and psychological records if it is determined that access could have an adverse affect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual. If, however, the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(d) *Notifying the individual.* Written denial of access must be given to the individual. The denial letter shall include:

(1) The name, title, and signature of a designated denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part authorizing the denial;

(4) The individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the review authority.

§ 701.110 Amendment of records.

(a) *Individual review and amendment.* Encourage individuals to review periodically, the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) *Right to amend.* An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system has been exempt from the amendment procedures under this subpart. Amendments under this subpart and subpart G of this part are limited to correcting factual matters, not matters of opinion (i.e., information contained in evaluations of promotion potential or performance appraisals). When records sought to be amended are covered by another issuance, the administrative procedures under that issuance must be exhausted before using the Privacy Act. In other words, the Privacy Act may not be used to avoid the administrative procedures required by the issuance actually covering the records in question.

(2) *In writing.* Amendment requests shall be in writing, except for routine administrative changes, such as change of address.

(3) *Content of amendment request.* An amendment request must include a description of the information to be amended;the reason for the amendment; the type of amendment action sought (i.e., deletion, correction, or addition); and copies of available documentary evidence supporting the request.

(b) *Burden of proof.* The individual must provide adequate support for the request.

(c) *Verifying identity.* The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record. Use the verification guidelines provided in § 701.109(a)(4).

(d) *Limits on amending judicial and quasi-judicial evidence and findings.* This subpart and subpart G of this part do not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This subpart and subpart G of this part do not permit a collateral attack on a judicial or quasi-judicial finding; however, this subpart and subpart G of this part may be used to challenge the accuracy of recording the finding in a system of records.

(e) *Standards for amendment request determinations.* The record which the individual requests to be amended must meet the recordkeeping standards established in § 701.105. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, grant the amendment request to the extent necessary to meet them.

(f) *Time limits.* Within 10 working days of receiving an amendment request, the systems manager shall provide the individual a written acknowledgement of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances should more than 30 working days be required to complete the action on an amendment request.

(g) *Granting an amendment request in whole or in part.—(1) Notify the requester.* To the extent the amendment request is granted, the systems manager shall notify the individual and make the appropriate amendment.

(2)*Notify previous recipients.* Notify all previous recipients of the

information (as reflected in the disclosure accounting record) that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other naval activities, DoD components, or Federal agencies have been provided the information that now requires amendment, or if the individual requests that these agencies be notified, provide the notification of amendment even if those activities or agencies are not listed on the disclosure accounting form.

(h) *Denying an amendment request in whole or in part.* If the amendment request is denied in whole or in part, promptly notify the individual in writing. Include in the notification to the individual the following:

(1) Those sections of 5 U.S.C. 552a or this subpart and subpart G of this part upon which the denial is based;

(2) His or her right to appeal to the head of the activity for an independent review of the initial denial;

(3) The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(4) Where the individual can receive assistance in filing the appeal.

(i) *Requests for amending OPM records.* The records in an OPM government-wide system of records are only temporarily in the custody of naval activities. Requests for amendment of these records must be processed in accordance with OPM Regulations and the Federal Personnel Manual. The denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

(j) *Individual's statement of disagreement.* (1) If the review authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(2) If possible, incorporate the statement of disagreement into the record. If that is not possible, annotate the record to reflect that the statement was filed and maintain the statement so that it can be readily obtained when the disputed information is used or disclosed.

(3) Furnish copies of the statement of disagreement to all individuals listed on the disclosure accounting form (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(4) Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

(k) *Department of the Navy statement of reasons.* (1) If the individual files a statement of disagreement, the naval activity may file a statement of reasons containing a concise summary of the activity's reasons for denying the amendment request.

(2) The statement of reasons shall contain only those reasons given to the individual by the appellate official and shall not contain any comments on the individual's statement of disagreement.

(3) At the discretion of the naval activity, the statement of reasons may be disclosed to those individuals, activities, and agencies that receive the statement of disagreement.

§ 701.111 Privacy Act Appeals

(a) *How to file an appeal.* The following guidelines shall be followed by individuals wishing to appeal a denial of notification, access, or amendment of records.

(1) The appeal must be received by the cognizant review authority (i.e., ASN (M&RA), NJAG, OGC, or OPM) within 60 calendar days of the date of the response.

(2) The appeal must be in writing and requesters should provide a copy of the denial letter and a statement of their reasons for seeking review.

(b) *Time of receipt.* The time limits for responding to an appeal commence when the appeal reaches the office of the review authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper review authority.

(c) *Review authorities.* ASN (M&RA), NJAG, and OGC are authorized to adjudicate appeals made to SECNAV. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy General or Deputy General Counsel, respectively, under such terms and conditions as they deem appropriate.

(1) If the record is from a civilian Official Personnel Folder or is contained on any other OPM forms, send the appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415. Records in all systems of records maintained in accordance with the OPM government-wide systems notices are only in the temporary custody of the Department of the Navy.

(2) If the record pertains to the employment of a present or former Navy and Marine Corps civilian employee, such as Navy or Marine Corps civilian personnel records or an employee's grievance or appeal file, to the General Counsel, Navy Department, Washington, DC 20360–5110.

(3) If the record pertains to a present or former military member's fitness reports or performance evaluations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), Navy Department, Washington, DC 20350–1000.

(4) All other records dealing with present or former military members to the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400.

(d) *Appeal procedures.* (1) If the appeal is granted, the review authority shall advise the individual that his or her appeal has been granted and provide access to the record being sought.

(2) If the appeal is denied totally or in part, the appellate authority shall advise the reason(s) for denying the appeal, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part that apply; the date of the appeal determination; the name, title, and signature of the appellate authority; and a statement informing the requester of his or her right to seek judicial relief in the Federal District Court.

(e) *Final action, time limits and documentation.* (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) *Denial of appeal by activity's failure to act.* An individual may consider his or her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

§ 701.112 Disclosure of records.

(a) *Conditions of disclosure.* (1) 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or

agency, except when the record subject gives written consent for the disclosure or when one of the 12 conditions listed below in this subsection applies.

(2) Except for disclosures made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program," before disclosing any record from a system of records to any recipient other than a Federal agency, make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for Department of the Navy purposes. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(i) If validation cannot be obtained from the record itself, the naval activity may contact the record subject (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(ii) If validation cannot be obtained from the record and the record subject is not reasonably available, advise the recipient that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

(b) *Nonconsensual disclosures.* 5 U.S.C. 552a provides 12 instances when a record in a system of records may be disclosed without the written consent of the record subject:

(1) *Disclosures within the Department of Defense.* For purposes of disclosing records, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DoD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) For example, this may include disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Department of the Navy who may be included are: personnel of the Joint Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between naval components and non-DoD agencies in connection with the Personnel Exchange Program (PEP) and interagency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by this paragraph might also meet the criteria for disclosure under other exceptions specified in the following paragraphs of this section, they should be treated under this paragraph for disclosure accounting purposes.

(2) *Disclosures required by the FOIA.* (i) A record must be disclosed if required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, which is implemented by Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program" require that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(iii) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under exemption (b)(6) of 5 U.S.C. 552 (1988) as amended by the Freedom of Information Act Reform Act of 1986. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be a clearly unwarranted invasion of personal privacy. The first step is to determine whether a viable personal privacy interest exists in these records involving an identifiable living person. The second step is to consider how disclosure would benefit the general public in light of the content and context of the information in question. The third step is to determine whether the identified public interests qualify for consideration. The fourth step is to balance the personal privacy interests against the qualifying public interest. Numerous factors must be considered such as: the nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (i.e., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage of time since the event which is the topic of the record (i.e., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester.

(iv) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in exemption (b)(7)(C) of 5 U.S.C. 552. This broader standard applies only to records or information compiled for law enforcement purposes.

(v) A disclosure under 5 U.S.C. 552 about military members must be in accordance with Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program", but the following information normally may be disclosed from military personnel records (except for those personnel assigned to sensitive or routinely deployable units, or located in a foreign territory), without a clearly unwarranted invasion of personal privacy: Full name, rank, date of rank, base pay, past duty stations, present duty station and future duty station (if finalized), unless the stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, attendance at professional military schools, and duty status at any given time.

(vi) The following information normally may be disclosed from civilian employee records about CONUS employees: Full name, present and past position titles and occupational series,

present and past grades, present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials), past duty stations, present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit Department of the Navy effectiveness.

(viii) Disclosure of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if the individual has consented to the disclosure; the disclosure is required by the FOIA; the disclosure is required by another law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments, or the collection of alimony, and to state and local tax authorities for the purpose of enforcing tax laws. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(A) When compiling home addresses and telephone numbers, the individual may be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(B) Before listing home addresses and telephone numbers in Department of the Navy telephone directories, give the individual the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, do not assess any additional fee associated with maintaining an unlisted number for government-owned telephone services.

(C) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law. This does not prohibit the disclosure of names and addresses made under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(D) In response to FOIA requests, information concerning special and general courts-martial results (e.g., records of trial) are releasable. However, information regarding summary courts-martial and non-judicial punishment are generally not releasable. The balancing of interests must be done. It is possible that in a particular case, information regarding non-judicial punishment should be disclosed pursuant to a FOIA request (i.e., the facts leading to a nonjudicial punishment are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement). Announcement of nonjudicial punishment dispositions under JAGMAN, subsection 0107, is a proper exercise of command authority and not a release of information under FOIA or this subpart and subpart G of this part. Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (MI–3) prior to responding to requesters, including all requests for this type of information from members of Congress.

(3) *Disclosures for established routine uses.* (i) Records may be disclosed outside the Department of the Navy if the disclosure is for an established routine use.

(ii) A routine use shall:

(A) Be compatible with and related to the purpose for which the record was created;

(B) Identify the persons or organizations to whom the record may be disclosed;

(C) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(D) Have been published previously in the **Federal Register.**

(iii) A routine use shall be established for each user of the information outside the Department of the Navy who needs the information for an official purpose.

(iv) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

(v) In addition to the routine uses established by the Department of the Navy for each system of records, common "Blanket Routine Uses," applicable to all record systems maintained with the Department of the Navy, have been established. These "Blanket Routine Uses" are published at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices rather than at each system notice and are also reflected in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances." Unless a system notice specifically excludes a system of records from a "Blanket Routine Use," all "Blanket Routine Uses" apply to that system.

(vi) If the recipient has not been identified in the **Federal Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register**, the written consent of the individual is required before the disclosure can be made.

(4) *Disclosures to the Bureau of the Census.* Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activities authorized by 13 U.S.C. 8.

(5) *Disclosures for statistical research or reporting.* Records may be disclosed to a recipient for statistical research or reporting if:

(i) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(ii) The records are transferred in a form that does not identify individuals.

(6) *Disclosures to the National Archives and Records Administration.* (i) Records may be disclosed to the National Archives and Record Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Record Administration, which becomes the official owner of the records.

(ii) Records may be disclosed to the National Archives and Record Administration to carry out records management inspections required by Federal law.

(iii) Records transferred to a Federal Records Center operated by the National Archives and Record Administration for storage are not within this category. Those records continue to be maintained and controlled by the transferring naval activity. The Federal Records Center is considered the agent of Department of the Navy and the disclosure is made under § 701.112(b)(1).

(7) *Disclosures when requested for law enforcement purposes.* (i) A record may be disclosed to another agency or an

instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if:

(A) The civil or criminal law enforcement activity is authorized by law (federal, state or local); and

(B) The head of the agency (or his or her designee) has made a written request to the naval activity specifying the particular record or portion desired and the law enforcement purpose for which it is sought.

(ii) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(iii) If a naval activity discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be under an established routine use, such as the "Blanket Routine Use" for law enforcement.

(iv) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this paragraph, but may be made only under established "Blanket Routine Uses," routine uses published in the individual record system notice, or to other governing authority.

(8) *Disclosure to protect the health or safety of an individual.* Disclosure may be made under emergency conditions involving circumstances affecting the health and safety of an individual (i.e., when the time required to obtain the consent of the individual to whom the records pertain might result in a delay which could impair the health or safety of a person) provided notification of the disclosure is sent to the record subject. Sending the notification to the last known address is sufficient. In instances where information is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call.

(9) *Disclosures to Congress.* (i) A record may be disclosed to either House of Congress at the request of either the Senate or House of Representatives as a whole.

(ii) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(iii) Disclosure may not be made to a Member of Congress requesting in his or her individual capacity. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a "Blanket Routine Use" has been established to permit disclosures to individual Members of Congress.

(A) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(B) The oral or written statement of a Congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(C) If the constituent inquiry is made on behalf of an individual other than the record subject, provide the Member of Congress only that information releasable under 5 U.S.C. 552. Advise the Member of Congress that the written consent of the record subject is required before additional information may be disclosed. Do not contact the record subject to obtain consent for the disclosure to the Member of Congress unless the Congressional office specifically requests it be done.

(10) *Disclosures to the Comptroller General for the General Accounting Office (GAO).* Records may be disclosed to the Comptroller General of the U.S., or authorized representative, in the course of the performance of the duties of the GAO.

(11) *Disclosures under court orders.* (i) Records may be disclosed under the order of a court of competent jurisdiction.

(ii) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity or the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(iii) The court order must bear the signature of a federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority of the minimal requirements of SECNAVINST 5820.8A [9], "Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel."

(12) *Disclosures to consumer reporting agencies.* Certain information may be disclosed to consumer reporting agencies (i.e., credit reference companies such as TRW and Equifax, etc.) as defined by the Federal Claims Collection Act of 1966 (31 U.S.C. 952d). Under the provisions of that Act, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual;

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose. 31 U.S.C. 952d specifically requires that the **Federal Register** notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

(c) *Disclosures to commercial enterprises.* Records may be disclosed to commercial enterprises only under the criteria established by Secretary of the Navy Instruction 5720.42E and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support.

(1) Any information required to be disclosed by Secretary of the Navy Instruction 5720.42E and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a consent statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure: I hereby authorize the Department of the Navy to verify my SSN or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, provide the information to the commercial enterprise, unless the

[9] Copies available from the Judge Advocate General, Navy Department, (Code 34), 200 Stovall Street, Alexandria, VA 22332-2400.

disclosure is prohibited by another regulation or Federal law.

(4) Blanket consent statements that do not identify the Department of Defense or Department of the Navy, or that do not specify exactly the information to be disclosed, may be honored if it is clear that the individual, in signing the consent statement, was seeking a personal benefit (i.e., loan for a house or automobile) and was aware of the type of information necessary to obtain the benefit sought.

(5) Do not honor requests from commercial enterprises for official evaluations of personal characteristics such as personal financial habits.

(d) *Disclosure of Health Care Records to the Public.* This paragraph applies to disclosure of information to the news media and the public concerning individuals treated or hospitalized in Department of the Navy medical facilities and, when the cost of care is paid by the Department of the Navy, in non-Federal facilities.

(1) *Disclosures without the individual's consent.* Normally, the following information may be disclosed without the individual's consent:

(i) Information required to be released by Secretary of the Navy Instruction 5720.42E and OPM Regulations and the Federal Personnel Manual, as well as the information listed in § 701.112(b)(2)(v) for military personnel and in § 701.112(b)(2).

(ii) For civilian employees; and

(iii) General information concerning medical conditions, i.e., date of admission or disposition; present medical assessment of the individual's condition if the medical practitioner has volunteered the information, i.e., the individual's condition presently is (stable) (good) (fair) (serious) (critical), and the patient is (conscious) (semi-conscious) (unconscious).

(2) *Disclosures with the individual's consent.* With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent of the minor or appointed legal guardian of the incompetent may give consent on behalf of the individual.

(e) *Disclosure of Personal Information on Group/Bulk Orders.* Do not use personal information including complete SSNs, home addresses and phone numbers, dates of birth, etc., on group/bulk orders. This personal information should not be posted on lists that everyone listed on the orders sees. Such a disclosure of personal information violates the Privacy Act and this subpart and subpart G of this part.

(f) *Disclosure Accounting.* Keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DoD personnel for use in performing their official duties; and those made under the FOIA. Disclosure accounting is to permit the individual to determine what agencies or persons have been provided information from the record, enable Department of the Navy activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trial of Department of the Navy's compliance with 5 U.S.C. 552a.

(1) Disclosure accountings shall contain the date of the disclosure; a description of the information disclosed; the purpose of the disclosure; and the name and address of the person or agency to whom the disclosure was made.

(2) The record subject has the right of access to the disclosure accounting except when the disclosure was made at the request of a civil or criminal law enforcement agency under § 701.112(b)(7); or when the system of records has been exempted from the requirement to provide access to the disclosure accounting.

(g) *Methods of disclosure accounting.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will:

(1) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(2) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(3) Provide a means to prove, if necessary that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart and subpart G of this part.

(h) *Retention of Disclosure Accounting.* Maintain a disclosure accounting of the life of the record to which the disclosure pertains, or 5 years after the date of the disclosure, whichever is longer. Disclosure accounting records are normally maintained with the record, as this will ensure compliance with § 701.112(f).

§ 701.113 Exemptions.

(a) *Using exemptions.* No system of records is automatically exempt from all provisions of 5 U.S.C. 552a. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the exemption rule for the system. Subpart G of this part contains the systems designated as exempt, the types of exemptions claimed, the authority and reasons for invoking the exemptions and the provisions of 5 U.S.C. 552a from which each system has been exempt. Exemptions are discretionary on the part of Department of the Navy and are not effective until published as a final rule in the **Federal Register**. The naval activity maintaining the system of records shall make a determination that the system is one for which an exemption may be established and then propose an exemption rule for the system. Submit the proposal to CNO (N09B30) for approval and publication in the **Federal Register**.

(b) *Types of exemptions.* There are two types of exemptions permitted by 5 U.S.C. 552a.

(1) *General exemptions.* Those that authorize the exemption of a system of records from all but specifically identified provisions of 5 U.S.C. 552a.

(2) *Specific exemptions.* Those that allow a system of records to be exempt from only a few designated provisions of 5 U.S.C. 552a.

(c) *Establishing exemptions.* (1) 5 U.S.C. 552a authorizes the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements. The Secretary of the Navy has delegated the CNO (N09B30) to make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within Department of the Navy shall be considered exempt until the CNO (N09B30) has approved the exemption and an exemption rule has been published as a final rule in the Federal **Register**. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the Department of the Navy exemption rule for the system.

(2) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register**, at least 30 days prior to the effective date, describing the system. This allows interested persons an opportunity to comment. An exemption may not be used to deny an individual access to information that he or she can obtain under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(d) *Exemption for classified material.* All systems of records maintained by the Department of the Navy shall be

exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contains any information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

NOTE: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without establishing an exemption rule.

(e) *Exempt records in nonexempt systems.* (1) An exemption rule applies to the system of records for which it was established. If a record from an exempt system is incorporated intentionally into a system that has not been exempt, the published notice and rules for the nonexempt system will apply to the record and it will not be exempt from any provisions of 5 U.S.C. 552a.

(2) A record from one component's (i.e., Department of the Navy) exempted system that is temporarily in the possession of another component (i.e., Army) remains subject to the published system notice and rules of the originating component's (i.e., Department of the Navy). However, if the non-originating component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of 5 U.S.C. 552a.

(3) A record accidentally misfiled into a system of records is governed by the published notice and rules for the system of records in which it actually should have been filed.

(f) *General exemptions—(1) Central Intelligence Agency (CIA).* The Department of the Navy is not authorized to establish an exemption for records maintained by the CIA under subsection (j)(1) of 5 U.S.C. 552a.

(2) *Law enforcement.* (i) The general exemption provided by subsection (j)(2) of 5 U.S.C. 552a may be established to protect criminal law enforcement records maintained by Department of the Navy.

(ii) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws. The Naval Investigative Service, Naval Inspector General, and military police activities qualify for this exemption.

(iii) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(iv) Information that may be protected under the (j)(2) exemption includes:

(A) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status;

(B) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(C) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(v) The (j)(2) exemption does not apply to:

(A) Investigative records maintained by a naval activity having no criminal law enforcement duties as one of its principle functions, or

(B) Investigative records compiled by any element concerning individual's suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principle functions of the naval activity that compiled them.

(vi) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement activity cannot protect law enforcement records incorporated into a nonexempt system of records or any system of records maintained by an activity not principally tasked with enforcing criminal laws. All system managers, therefore, are cautioned to comply strictly with Department of the Navy regulations or instructions prohibiting or limiting the incorporation of criminal law enforcement records into systems other than those maintained by criminal law enforcement activities.

(g) *Specific exemptions.* Specific exemptions permit certain categories of records to be exempted from specific provisions of 5 U.S.C. 552a. Subsections (k)(1)-(7) of 5 U.S.C. 552a allow exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

NOTE: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without an established exemption rule.

(1) (k)(1) exemption: Information properly classified under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program" and E.O. 12356, in the interest of national defense or foreign policy.

(2) (k)(2) exemption: Investigatory information (other than that information within the scope of § 701.113(f)(2) compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source (see § 701.113(h), "confidential source"). The (k)(2) exemption, when established, allows limited protection on investigative records maintained for use in personnel and administrative actions.

(3) (k)(3) exemption: Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) (k)(4) exemption: Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) (k)(5) exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. (See § 701.113(h), "confidential source"). This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) (k)(6) exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

(7) (k)(7) exemption: Evaluation material used to determine potential for promotion in the military services, but

only to the extent that disclosure would reveal the identity of a confidential source. (See § 701.113(h), "confidential source".)

(h) *Confidential Source.* Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Establish appropriate procedures for granting confidentiality and designate those categories of individuals authorized to make such promises.

§ 701.114 Enforcement actions.

(a) *Administrative remedies.* An individual who alleges he or she has been affected adversely by a naval activity's violation of 5 U.S.C. 552a or this subpart and subpart G of this part shall be permitted to seek relief from SECNAV through proper administrative channels.

(b) *Civil court actions.* After exhausting all administrative remedies, an individual may file suit in Federal court against a naval activity for any of the following acts:

(1) *Denial of an amendment request.* The activity head, or his or her designee wrongfully refuses the individual's request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record;

(2) *Denial of access.* The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his or her request for a copy of the record;

(3) *Failure to meet recordkeeping standards.* The activity fails to maintain an individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record; or

(4) *Failure to comply with Privacy Act.* The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation promulgated under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) *Criminal penalties.* Subsection (i)(1) of 5 U.S.C. 552a authorizes three criminal penalties against individuals for violations of its provisions. All three are misdemeanors punishable by fines of $5,000.

(1) *Wrongful disclosure.* Any member or employee of Department of the Navy who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a or this subpart and subpart G of this part.

(2) *Maintaining unauthorized records.* Any member or employee of Department of the Navy who willfully maintains a system of records for which a notice has not been published under periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(3) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains information concerning an individual under false pretenses.

§ 701.115 Computer matching program.

(a) *General.* 5 U.S.C. 552a and this subpart and subpart G of this part are applicable to certain types of computer matching, i.e., the computer comparison of automated systems of records. There are two specific kinds of matching programs that are fully governed by 5 U.S.C. 552a and this subpart and subpart G of this part:

(1) Matches using records from Federal personnel or payroll systems of records;

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

The record comparison must be a computerized one. Manual comparisons are not covered, involving records from two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to 5 U.S.C. 552a); or a Department of the Navy automated systems of records and automated records maintained by a non-Federal agency (i.e., State or local government or agent thereof). A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

Subpart G–Privacy Act Exemptions

§ 701.116 Purpose.

Subparts F and G of this part contain rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and subpart F, § 701.113, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.117 Exemption for classified records.

All systems of records maintained by the Department of the Navy shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.118 Exemptions for specific Navy record systems.

(a) *System Identifier and Name:* N01070–9, White House Support Program.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (3), and (5).

Reasons: Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(b) *System Identifier and Name:* N01131–1, Officer Selection and Appointment System.

Exemption: Portions of this system of records are exempt from the following

subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(c) *System Identifier and Name:* N01133–2, Recruiting Enlisted Selection System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(d) *System Identifier and Name:* N01640–1, Individual Correctional Records.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reason: Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(e) *System Identifier and Name:* N01754–3, Navy Child Development Services Program.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2).

Reasons: Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(f) *System Identifier and Name:* N03834–1, Special Intelligence Personnel Access File.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k) (1) and (5).

Reasons: Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(g) *System Identifier and Name:* N04060–1, Navy and Marine Corps Exchange Security Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(h) *System Identifier and Name:* N04385–1, IG Investigatory System.

Exemption: Portions of this system or records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j) (2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, the orderly administration of justice, and might enable suspects to avoid detection and apprehension. Disclosures of this information could result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could result in the invasion of the personal privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the provisions of the other cited sections of 5 U.S.C. 552a.

(i) *System Identifier and Name:* N04385–2, Hotline Program Case Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (5), (6) and (7).

Reasons: Exempted portions of this system consist of information compiled for the purpose of investigations, including reports of informants and investigators. Such investigations may be associated with identifiable individuals. Disclosure of files in this system would interfere with orderly investigations, and possibly result in the concealment, destruction, or fabrication

of evidence, and possibly jeopardize the safety and well-being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could further result in the invasion of the personal privacy of individuals only incidentally related to an investigation. Depending on the nature of the complaint, records may contain information that: is currently and properly classified pursuant to E.O. and must be kept secret in the interest of national defense or foreign policy, is confidentially provided information located in investigatory records compiled for the purposed of enforcement of non-criminal law, relates to qualifications, eligibility, or suitability for Federal employment, is test or examination material used to determine qualifications for appointment or promotion in the Federal service, is confidentially provided information used to determine potential for promotion in the armed services.

(j) *System Identifier and Name:* N05300–3, Faculty Professional Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(k) *System Identifier and Name:* N05354–1, Equal Opportunity Information Management System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1) and (5).

Reasons: Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(l) *System Identifier and Name:* N05520–1, Personnel Security Eligibility Information System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (5), and (7).

Reasons: Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the government under an express or implied promise of confidentiality.

(m) *System Identifier and Name:* N05520–4, NIS Investigative Files System.

Exemption (1): Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority (1): 5 U.S.C. 552a(j)(2).

Reason (1): Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

Exemption (2): Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority (2): 5 U.S.C. 552a(k) (1), (3), (4), (5) and (6).

Reason (2): The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefor present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record. The notice of this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system containing screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps., i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal service.

(n) *System Identifier and Name:* N05520–5, Navy Joint Adjudication and Clearance System (NJACS).

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).

Authority: 5 U.S.C. 552a(k)(1) and (k)(5).

Reasons: Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

(o) *System Identifier and Name:* N05527–1, Security Incident System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.The exemption of the individual's right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(p) *System Identifier and Name:* N05527–4, Naval Security Group Personnel Security/Access Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).Authority: 5 U.S.C. 552a(k)(1) through (k)(5).

Reasons: Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(q) *System Identifier and Name:* N05800–1, Legal Office Litigation/ Correspondence Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

Authority: 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

Reasons: Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy's ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the "exparte" correction of such materials.

Subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

Subsection (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(r) *System Identifier and Name:* N05819–3, Naval Clemency and Parole Board Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

The exemption of the individual's right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(s) *System Identifier and Name:* N06320–2, Family Advocacy Program System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

Reasons: Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with

ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(t) *System Identifier and Name:* N12930–1, Human Resources Group Personnel Records.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5) and (k)(6).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

§ 701.119 Exemptions for Specific Marine Corps Record Systems.

(a) *System Identifier and Name:* MMN00018, Base Security Incident Reporting System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e) (2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(b) *System Identifier and Name:* MIN00001, Personnel and Security Eligibility and Access Information System.

Exemption: Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), as applicable.

Reasons: Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

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L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Coast Guard

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RIN 2115–AE47

Drawbridge Operation Regulations; Black Rock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Canadian National Railway Company, the Coast Guard is considering a change to the operating regulations governing the Canadian National railroad bridge at mile 3.8 across the Black Rock Canal in Buffalo, New York, by not requiring bridgetenders to be in constant attendance at the bridge during periods of time when there is little or no significant navigation on the Canal. This action should relieve the bridge owner of the burden of having a bridgetender in constant attendance and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 1, 1994.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to room 2083D at the above address between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993.

The Commander Ninth Coast Guard District maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch at (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD09–94–008) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment

period. This proposal may be changed in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Robert W. Bloom, Jr. at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Mr. Fred H. Mieser, Project Manager, and Commander J.M. Collin, Project Counsel, Ninth Coast Guard District.

Background and Purpose

Presently, the Canadian National railroad bridge is required to have bridgetenders in constant attendance at all times. The owner requested that they be allowed to remove bridgetenders from the bridge between the hours of 11 p.m. and 7 a.m., seven days a week, from April 15 through November 30, with a requirement to open the bridge on signal when notice is given at least two hours in advance of a vessel's time of intended passage through the draw. From December 1 through April 14 the bridge would be unattended at all times with a requirement to open the bridge on signal if notice is given at least four hours in advance of a vessel's time of intended passage through the draw. At all times, the bridge will be required to open as soon as possible for the passage of public vessels of the United States, State or local government vessels used for public safety, and vessels in distress. The removal of bridgetenders is being proposed because there is little or no significant navigation on the Canal during these times.

Discussion of Proposed Amendment

Bridgetender logs furnished by the Canadian National Railway Company showed that in 1992, between the hours of 11 p.m. and 7 a.m., there were 38 requests for bridge openings, with the highest number of 12 openings occurring in September. For the same period of time in 1993, there were 38 requests for bridge openings, with the highest number of 8 openings occurring in May. During the winter navigation season, December 1 through April 14, there was one request for a bridge opening for both 1992 and 1993. The periods of time and the number of hours required for giving an advance notice to have the bridge opened when there is no bridgetender in attendance at the bridge, are identical to regulations currently in effect for the Ferry Street Bridge over the Black Rock Canal.

In addition, the name of the Ferry Street bridge and the words New York will be eliminated from the section heading in 33 CFR 117.769, which reads, Ferry Street, Black Rock Canal, New York. The new section heading is being changed to conform with the structure and nomenclature of 33 CFR 117, Subpart B, and will read *§ 117.769 Black Rock Canal* under the listing for the State of New York. The list of vessels to be passed as soon as possible specified in paragraph (b) of 117.769 will be removed. This requirement for these vessels is covered under § 117.31 (b)(1), (2), (3), and (4).

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)3 of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because the periods of time specified by these regulations when the bridge would be unattended are periods when there are few requests to have the bridge opened for the passage of a vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since the proposed rule allows the owner of the Canadian National Railway Bridge to remove bridgetenders from the bridge during times when there is little or no significant vessel traffic on the Black Rock Canal, and because those vessels that would transit the Canal during these times can do so by giving notice in advance of their time of intended passage through the draw, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have significant impact on a substantial number of small entities

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for part 117 continues to read as follows.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.769 is revised to read as follows:

§ 117.769 Black Rock Canal.

The draws of the Ferry Street bridge, mile 2.6 and Canadian National Railway bridge, mile 3.8, both at Buffalo, shall operate as follows:

(a) From April 15 through November 30, the draws shall open on signal. However, between the hours of 11 p.m. and 7 a.m., seven days a week, no bridgetender is required to be in attendance at the bridges and the draws shall open on signal if notice is given to the owners at least two hours in advance of a vessel's intended time of passage through the draws.

(b) From December 1 through April 14, no bridgetender is required to be in attendance at the bridges and the draws shall open on signal if notice is given to the owners at least four hours in advance of a vessel's time of intended passage through the draws.

Dated: May 17, 1994.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 94-13089 Filed 5-31-94; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300341; FRL-4864-1]

RIN No. 2070-AC18

1,1-Dichloro-2,2-Bis(p-Ethylphenyl) Ethane; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the tolerances listed at 40 CFR 180.139 for residues of the pesticide 1,1-Dichloro-2,2-*bis*(*p*-ethylphenyl) ethane (also known as Perthane, Ethylan, or diethyl diphenyl dichloroethane, and hereafter referred to as Perthane) in or on raw agricultural commodities. This revocation is proposed because all registrations of Perthane have been canceled. The revocation would take effect 30 days after the date of publication of the final rule in the **Federal Register.**

DATES: Written comments, identified by the OPP document control number [OPP-300341], must be received on or before July 1, 1994.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed as confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. until 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202, Telephone: (703)-308-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currently, a tolerance of 15 ppm exists at 40 CFR 180.139 for residues of Perthane in or on the raw agricultural commodities apples, broccoli, brussels sprouts, cabbage, cauliflower, cherries, kohlrabi, lettuce, pears, and spinach; and a tolerance of 0 ppm for residues in milk and meat.

II. Background

Perthane is a chlorinated hydrocarbon insecticide chemically related to DDT. It was used for insect control on agricultural crops, on agricultural premises such as barns and corrals, in pet areas for tick control, in homes for mosquito and fly control, and in fabric for moth control. Rohm and Haas was the sole producer of technical Perthane, although many companies formulated end-use products.

On May 11, 1978, Rohm and Haas informed EPA that it was discontinuing production and sale of their Perthane insecticide because of its inability to produce the product at a reasonable cost and its loss of market share. Rohm and Haas also stated that it had already discontinued production of its last remaining Perthane product, which was technical Perthane. Rohm and Haas further stated that the expected sale of the remaining inventory was to be completed in the fourth quarter of 1978. The company also submitted a copy of a letter it was sending to its Perthane customers telling them of its business decision to stop producing this product and further stating that it would allocate existing stocks against open orders received by May 31, 1978.

On March 28, 1980, EPA issued a Data Call-In (DCI) for toxicology data to all technical and end-use registrants of Perthane. EPA had determined that it lacked adequate data to determine whether pesticide products containing Perthane cause unreasonable adverse effects on humans and the environment. Further, after reviewing all of the available acute, subchronic, and chronic toxicity studies supporting the registration of Perthane, the Agency determined that the available data were not sufficient to support the continued registration of these products.

On May 14, 1980, Rohm and Haas notified EPA by letter that it was choosing to voluntarily withdraw all the registrations it held for Perthane (Perthane 75% Solution — Registration 707-60, Perthane EC — Registration 707-65, and Perthane Technical -Registration 707-96). Subsequently, on June 20, 1980 (45 FR 41694), EPA announced that Rohm and Haas Co. had requested voluntary cancellation of the registrations of its three Perthane products. The effective date of the cancellation was July 21, 1980. Rohm and Haas was permitted to sell existing stocks of Perthane for 1 year.

On December 31, 1984, EPA issued a Data Call-In to the remaining registrants of Perthane to give them the opportunity to generate chronic toxicology data to support registrations of Perthane for food and certain non-food uses. In the ensuing years, registrations of end-use products of Perthane were canceled as a result of regulatory action and follow-up to the 1980 and 1984 DCIs. In 1990, the last Perthane registration, for a non-food use, was found to be unsupported for Phase II of reregistration and was subsequently canceled by Agency action (55 FR 31164).

III. Current Proposal

EPA is proposing to revoke all tolerances for Perthane under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq. The Agency is taking this action because all registrations for uses of Perthane have been canceled.

Once the tolerances for Perthane on these raw agricultural commodities are revoked, it will be unlawful to import into the United States any commodities or products containing any Perthane. EPA has no evidence of recent foreign usage of Perthane on commodities which may be imported into the United States.

EPA believes for the following reasons that it is unlikely that residues of perthane will be found in food commodities for which tolerances have been established. EPA has no evidence of domestic distribution of Perthane since at least 1985. In addition, the persistence of Perthane in crops (the half life) is about 30 to 40 days. Perthane may be moderately persistent in the environment. However, EPA believes that since so much time has lapsed since Perthane was produced and distributed for use, it is unlikely that Perthane will be found in either the commodities for which there are tolerances or in commodities for which

there are not tolerances. For these reasons, EPA does not recommend an action level.

IV. Public Comment Procedures

Any person who has registered or submitted an application for the registration of a pesticide under FIFRA, as amended, which contains Perthane, may request within 30 days after publication in the **Federal Register** that this proposal to revoke the Perthane tolerance listed in 40 CFR 180.139 be referred to an advisory committee in accordance with section 408(e) of FFDCA. Such requests should be addressed to the contact person listed at the beginning of this proposal.

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by July 1, 1994. Comments must bear a notation indicating the document control number [OPP-300341]. Three copies of the comments should be submitted to either location listed under "ADDRESSES" above in this document. Documents considered and relied upon by EPA in reaching its decision and all written comments filed pursuant to this document will be available for public inspection at the Virginia address listed at the beginning of this document.

V. Other Regulatory Requirements

To satisfy requirements for analysis specified by Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act, EPA has analyzed the impacts of this proposal. The complete analysis, summarized below, is available for public inspection at the address listed at the beginning of this proposal.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3 (f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another Agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The last registration of Perthane was canceled voluntarily in 1990 as part of reregistration. However, the registrant requested cancellation of Perthane technical in 1980, and EPA understands that production of technical Perthane ceased in 1978. EPA has no evidence of recent domestic or foreign usage of Perthane. There has been no domestic distribution of Perthane since at least 1985. For these reasons, EPA believes that existing stocks of those products should have been depleted and that sufficient time has elapsed for residues to dissipate and for legally treated commodities to have gone through channels of trade. Thus, revocation of Perthane tolerances is expected to have no impact which meets the conditions set forth in E.O. 12866.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The proposed tolerance revocation has been reviewed under the provisions of the Regulatory Flexibility Act and the Agency has determined that it will have no economic impact on small businesses, small governments, or small organizations. As indicated in Unit V.A. above, the revocation of the tolerance for perthane is expected to have no impact on any entity of any size, since there appears to have been no distribution of the pesticide for several years. The proposed regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide might be used in an unregistered or illegal manner.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recorkeeping requirements.

Dated: May 17, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.139 [Removed]

2. By removing § 180.139 *1,1-Dichloro-2,2-bis(p-ethylphenyl) ethane; tolerances for residues.*

[FR Doc. 94–13192 Filed 5–31–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 252

Defense Federal Acquisition Regulation Supplement; Demilitarization

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; reinstatement and extension of comment period.

SUMMARY: The Defense Acquisition Regulations (DAR) Council published a proposed rule on March 16, 1994, (59 FR 12223). The rule proposed amendment of the Defense Federal Acquisition Regulation Supplement to address control of Munitions List items and Strategic List items and demilitarization of excess property. The original date for receipt of comments was May 16, 1994. This document reinstates and extends the comment period.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 30, 1994, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Directorate, ATTN: IMD 3D139, PDUSD(A&T), 3062 Defense Pentagon, Washington, DC 20301–3062. Fax (703) 604–5971. Please cite DAR Case 92–D024 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, (703) 604–5929.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

[FR Doc. 94–13256 Filed 5–31–94; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Swift Fox as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the swift fox (*Vulpes velox*) to the List of Threatened and Endangered Wildlife and Plants. While the petition did not present substantial information indicating that the requested action may be warranted throughout the species range, the Service has found that substantial information exists to support a decision that listing of the swift fox may be warranted throughout its entire range. The Service is continuing a status review of the species and requests any additional information regarding this finding.

DATES: The finding announced in this notice was made on May 23, 1994. Comments and materials related to this petition finding may be submitted to the Field Supervisor (see **ADDRESSES** below) until further notice.

ADDRESSES: Information, comments, or questions concerning the swift fox petition may be submitted to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501–5408. The petition, finding, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Elizabeth McPhillips, Acting Supervisor, at the above address, telephone (605) 224–8693.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practical, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service also is required to promptly commence a status review of the species.

A petition dated February 22, 1992 from Mr. Jon C. Sharps was received by the Service on March 3, 1992. The petition requested the Service to list the swift fox (*Vulpes velox*) as an endangered species in the northern portion of its range, if not the entire range. A status review for the species was first initiated for the swift fox by a notice of review published on December 30, 1982 (47 FR 58454).

The petition and its referenced documentation states that the swift fox once occurred in abundant numbers throughout the species historical range. the species was known from the Canadian Prairie Province south through Montana, eastern Wyoming, and North and South Dakota to the Texas Panhandle. The petitioner asserts that the swift fox has declined and is considered rare in the northern portion of its range. The petitioner indicates that the swift fox is extremely vulnerable to human activities such as trapping, hunting, automobiles, agricultural conversion of habitat, and prey reduction from rodent control programs. The petitioner requests that, at a minimum, the swift fox be listed as an endangered species in Montana, North Dakota, South Dakota, and Nebraska. Justification for such action as cited by the petitioner includes the present status of the species and its habitat in the petitioned area, geographic and climatic positioning of the species, the strong link to the prairie dog ecosystem, the large distance from the kit-swift fox hybrid zone, and the potential for these populations to contain the subspecies, *Vulpes velox hebes* or northern swift fox.

The Service has reviewed information regarding the status of the swift fox throughout its range. Historically, the swift fox was considered abundant throughout the Great Plains and the prairie provinces of Canada (Hall and Kelron 1959; Egoscue 1979; Zumbaugh and Choates 1985; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). Beginning in the late 1800's to early 1900's, the swift fox declined in numbers, and soon the northern population collapsed and the southern population became quite rare (Cary 1911; Warren 1942; Egoscue 1979; Bee et al. 1981; FaunWest 1991).

In the mid-1950's the swift fox staged a limited comeback in portions of its historical range (Long 1965; Kilgore 1969; McDaniel 1976; Sharps 1977; Hines 1980; FaunaWest 1991). However, this reappearance was limited in nature and in recent years many of these populations have again declined. Several factors are provided as reasons for the decline of the species throughout much of its historical range. These factors include: (1) Loss of native prairie habitat through conversion for agricultural production and mineral extraction, (2) fragmentation of the remaining habitat, creating a less suitable cropland-grassland habitat mosaic, (3) degradation of habitat due to colonial rodent control activities, (4) predation and interspecific competition, and (5) the species' vulnerability to human activities, such as predator control, trapping, shooting, and collisions with automobiles (Hillman and Sharps 1978; Hines 1980; Armbruster 1983; Uresk and Sharps 1986; Jones et al. 1987; Sharps 1989; U.S. Fish and Wildlife Service 1990; FaunaWest 1991; Carbyn et al. 1992).

Currently, swift fox exist in highly disjunct populations in a greatly reduced portion of the species' historical range (Hines 1980; Jones et al. 1987; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). Presently, North Dakota, Montana, and Oklahoma do not contain known populations of swift fox. South Dakota and Nebraska only contain one to five remnant populations in a fraction of the States' historical range. Kansas, Texas, and Wyoming maintain localized populations with limited distributions. Colorado and New Mexico appear to contain localized populations distributed throughout reduced portions of the States' historical range.

In 1970, the Service listed the northern subspecies (*Vulpes velox hebes*) as endangered (35 FR 8485). This designation was removed in the United States due to controversy over taxonomy; however, the designation for Canada as endangered remains in place (45 FR 49844).

Canada classified the swift fox as extirpated in 1978 (Carbyn et al. 1992). Since 1983, the Canadian Wildlife Service has been involved in a reintroduction experiment in the hope of recovering the swift fox. This 12-year program has resulted in an estimated wild fox population of 150 foxes within two release areas (Carbyn et al. 1992). However, the viability of this population is in question due to the low numbers of established animals, high predation rates, continued habitat loss or modification within the release areas, and the unpredictability of climatic or other stochastic events such as disease (Carbyn et al. 1992).

The Service notes that the majority of information reviewed supported many of the petitioner's contentions concerning the decline of and threats to the swift fox within the northern portion of its historical range. This information also indicated that many of the petitioner's contentions appear valid throughout the remainder of the species' range.

The petitioner provided substantial information that listing of the swift fox may be warranted in the northern portion of its range but did not provide substantial information on the species' status in the southern portion of its range. The Service found that additional information existed to indicate that listing of the swift fox throughout its range may be warranted.

Therefore, after reviewing the petition, accompanying documentation, references cited, and the best scientific and commercial data available, the Service finds that the requested action may be warranted throughout the swift fox's historical range. Through issuance of this notice of the 90-day finding, the Service is continuing a status review of the swift fox and solicits additional information on the species. The Service will prepare a 12-month finding to determine if the petitioned action is warranted as required by section 4(b)(3)(B) of the Endangered Species Act.

References Cited

A complete list of all references cited herein, as well as others, it available upon request from the Service's, Pierre Field Office (see **ADDRESSES** above).

Author

This notice was prepared by Daniel Eklund (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

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

Dated: May 23, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–13283 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Delist the Lahontan Cutthroat Trout (Oncorhynchus clarki henshawi) Within the Humboldt River Drainage Basin in Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to delist the Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) within the Humboldt River drainage basin of Nevada. The Service finds that the petition and a subsequent supporting letter pursuant to section 4 of the Endangered Species Act did not present substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this document was made on May 24, 1994.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Reno Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David L. Harlow, Field Supervisor, at the above address (telephone 702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register.**

On April 12, 1993, the Service received a petition dated April 8, 1993, to delist the threatened Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) within the Humboldt River drainage basin of Nevada. The petition was received from Mr. Gene Gustin, Chairman of the Elko County Federal Land Use Planning Commission, Elko, Nevada. The petition clearly identified itself as a petition, and contained the name, signature, and address of the petitioner. A supporting letter was received from Mr. Llee Chapman, Chairman of the Elko County Board of Commissioners on April 21, 1993, also petitioning the Service to delist the Lahontan cutthroat trout within the Humboldt River drainage basin. The Service's policy on letters received subsequent to an original petition is to consider the information presented, even if one or more of these letters identifies itself as a petition. In that way, the Service evaluates the petitioned action in the most timely manner as the first letter accepted as a petition sets the statutory deadlines.

The petition, supporting letter, and other documentation were reviewed to determine if substantial information was provided to indicate that the requested action may be warranted. The petition and the supporting letter contained several assertions to support the petitioner's contention that the Humboldt River basin Lahontan Cutthroat Trout was no longer in need of protection provided by the Act.

As evidence that this species should be removed from the threatened species list, the petitioner referenced the existence of management plans from the Nevada Department of Wildlife (Nevada Dept. of Wildlife 1990, Coffin 1982), the U.S. Bureau of Land Management (1992, 1993), and the U.S. Forest Service, and a letter written by the Forest Service in 1986 that suggested that these management plans and the draft Recovery Plan contained enough data and information to meet the objectives for delisting this species. The Service acknowledges the existence of these plans; however, full implementation of these plans has not occurred. Furthermore, the Lahontan cutthroat trout populations and habitat quality in the Humboldt River basin continue to decline (French 1993).

A species may be delisted if it has recovered to the point that the Act's protection is no longer needed (50 CFR 424.11(d)(2)). Before delisting may occur, the Service must determine that the species does not meet the definition of endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Neither the petition nor the supporting letter provided substantial information that

the Lahontan cutthroat trout within the Humboldt River drainage basin no longer meets the definition of threatened or that recovery has been achieved. This finding is based on the information contained in the petition, the supporting letter, and information otherwise available to the Service.

References

Bureau of Land Management. 1992. Results of the 1991 stream survey, Elko Bureau of Land Management—Elko Resource Area. Unpubl. rept. Bureau of Land Management, Elko, Nevada. 5 pp.

Bureau of Land Management. 1993. 1992 stream survey summary—Elko District, Wells Resource Area. Unpubl. rept. Bureau of Land Management. Elko, Nevada. 3 pp.

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French, Jim. 1993. 1992 cutthroat trout summary report. Unpubl. rept., Nevada Department of Wildlife. 2 pp.

Nevada Department of Wildlife. 1990. Endemic Gamefish Management, Lahontan Cutthroat Trout. Federal Aid Job Progress Report F–20–26. Nevada Department of Wildlife, Reno, Nevada. 4 pp.

Author

This document was prepared by Patrick Coffin of the Reno Field Office (see **ADDRESSES** section).

Authority:

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 24, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–13282 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940553–4153; I.D. 050394A]

RIN 0648–AE98

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Amendment 7 would divide the eastern zone commercial quota for the Gulf migratory group of king mackerel into equal quotas for the Florida east and west coast fisheries, further divide the quota for the west coast sub-zone into equal quotas for hook-and-line and run-around gillnet harvesters, and allow persons to fish under the gillnet quota in the west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone. The intended effect of this rule is to equitably allocate the eastern zone commercial quota among users and avoid the negative social and economic emergencies related to a recent, disproportionately large, west coast harvest in the commercial fishery for Gulf group king mackerel off Florida.

DATES: Written comments must be received on or before July 11, 1994.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 7, which includes a regulatory impact review/initial regulatory flexibility analysis (IRFA) and an environmental assessment should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609–2486, FAX 813–225–7015, or to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, suite 306, Charleston, SC 29407–4699, FAX 803–769–4520.

Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

During the previous fishing year (July 1, 1992, through June 30, 1993), the commercial quota for king mackerel from the eastern zone of the Gulf of Mexico migratory group was reached, and the fishery was closed, on January 13, 1993, before fishermen on the east coast of Florida could harvest an equitable share. The record low catch of the east coast king mackerel fishery constituted social and economic emergencies. Accordingly, by emergency interim rule (58 FR 10990, February 23, 1993), the commercial king mackerel fishery in the exclusive economic zone (EEZ) off the east coast of Florida was reopened from February 18 through March 26, 1993, under a possession limit of 25 fish per vessel per day.

To avoid a similar, disproportionately large harvest on Florida's west coast during the 1993/94 fishing year and to allow sufficient time for the Councils to develop more permanent remedial action, the eastern zone commercial quota for the Gulf migratory group of king mackerel was divided into equal quotas for the Florida east and west coast sub-zones by an emergency interim rule (58 FR 51789, October 5, 1993). Additional regulations, which established daily vessel trip limits in each of the sub-zones, were implemented under the framework procedure for adjusting FMP management measures (58 FR 58509, November 2, 1993). The daily vessel trip limits were intended to reduce daily catches, thus preventing market gluts, extending the harvest season, and reducing the likelihood of exceeding king mackerel quotas.

Amendment 7

Amendment 7 proposes to: (1) Continue in effect the division of the eastern zone commercial quota for Gulf migratory group king mackerel into equal quotas for the Florida east and west coast sub-zones that were established in the emergency interim rule of October 5, 1993; (2) divide the Florida west coast sub-zone quota equally between the hook-and-line and run-around gillnet harvesters; and (3) allow persons to fish under the gillnet quota in the Florida west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone.

Rationale supporting the division of the eastern zone commercial quota for the Gulf migratory group of king

mackerel into equal quotas for the Florida east and west coast sub-zones was included in the emergency interim rule and is not repeated here. Rationale for implementation of equal sub-quotas for hook-and-line and gillnet sectors in the Florida west coast sub-zone and for allowing the use of gillnets in the west coast sub-zone only aboard vessels with permits with endorsements for use of such gear is discussed below.

Equal quotas in the west coast sub-zone for hook-and-line and gillnet fishermen, as proposed in this rule, will provide equitable sharing of the harvest of the annual quota between users of these two gear types, which are the only gears allowed to harvest Gulf group king mackerel. Depending on seasonal arrival of migrating schools and prevailing fishing conditions, the fishing power of either gear sector is sufficient to harvest a major and disproportionate share of the quota before the other sector could take an equitable share. The recent daily production of the 16–20 large gillnet vessels in the fishery and weekly catches of 80–100 hook-and-line vessels have demonstrated capacity of either gear sector to take the west coast sub-zone quota quickly. The daily harvesting capability of the hook-and-line users is not as great as that of gillnets. In December 1993, within a 24-hour period, the gillnet fleet landed in the lower Florida Keys approximately 250,000 pounds (lb) (113,398 kilograms (kg)) of king mackerel, which was 29 percent of the west coast sub-zone quota. Total gillnet production could easily double if catches for most of the large gillnet vessels approach their maximum holding capacity, which may be 50,000 pounds (22,690 kg) for the largest of these vessels. During the last two weeks of December 1992, the Key West hook-and-line fleet harvested approximately 380,000 pounds (172,365 kg) of king mackerel, which was 44 percent of the quota.

Implementation of the requirement for a gillnet endorsement on the Federal commercial mackerel permit would promote equitable harvest by the two gear harvesting sectors of the west coast sub-zone quota. The endorsement would restrict the gillnet users to their respective quota by counting all Gulf group king mackerel from the Florida west coast sub-zone harvested by vessels with gillnet endorsements against the gillnet quota. Except in the initial year of implementation, a vessel owner or any succeeding owner would have an opportunity to obtain the endorsement only during June each year, immediately prior to the July 1 commencement of the next fishing year. Once an owner or a succeeding owner obtains a gillnet endorsement, that individual and the designated vessel would be bound by the requirements of the endorsement for the entire fishing year in which it is issued, i.e., the endorsement could not be rescinded within the year issued. In 1994, the time frame for obtaining the endorsement would be immediately following publication of the final rule to implement Amendment 7.

Implementation of Amendment 7 would ensure equitable access to the king mackerel resource by fishermen in the Florida east and west coast fisheries, and equitable access by gear type in the west coast fishery. If approved, this rule would be effective early in the 1994/95 fishing year, which commences July 1, 1994, before a substantive commercial king mackerel fishery begins in the east coast sub-zone off Florida.

Additional background and rationale for the measures discussed above are contained in Amendment 7, the availability of which was announced in the **Federal Register** on May 6, 1994 (59 FR 23681).

Classification

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

The Councils prepared an IRFA as part of Amendment 7, which concludes that this proposed rule, if adopted, may have a significant economic impact on a substantial number of small entities. Specifically, equal division of the eastern zone quota of Gulf group king mackerel between the east and west coast sub-zones is expected to redistribute revenues among the participants in the fishery. Such redistribution is expected to approximate the historical distribution of revenues but may result in individual redistributions exceeding five percent of the revenues of some participants during the 1994/95 fishing year. All participants in the fishery are small entities. Copies of the IRFA are available (see **ADDRESSES**).

Section 642.4(m) of this proposed rule, concerning applications for gillnet endorsements on vessel permits, contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burden for this collection of information is estimated to average 30 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 reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 26, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. In § 642.4, new paragraph (m) is added to read as follows:

§ 642.4 Permits and fees.

* * * * *

(m) *Gillnet endorsement.*

(1) For a vessel to use a run-around gillnet for king mackerel in the Florida west coast sub-zone (see § 642.25(a)(1)(i)(B)), a vessel for which a king and Spanish mackerel permit has been issued under this section must have a gillnet endorsement on such permit. Such permit and endorsement must be on board the vessel.

(2) An owner of a permitted vessel may add or delete a gillnet endorsement on a permit by returning to the Regional Director the vessel's existing permit with a written request for addition or deletion of the gillnet endorsement. Such request must be postmarked or hand delivered during June, each year.

(3) A gillnet endorsement may not be added or deleted from July 1 through May 31 each year, any renewal of the permit during that period notwithstanding. From July 1 through May 31, a permitted vessel that is sold, if permitted by the new owner for king and Spanish mackerel, will receive a permit with or without the endorsement as was the case for the vessel under the previous owner. From July 1 through May 31, the initial king and Spanish mackerel permit issued for a vessel new to the fishery will be issued without a gillnet endorsement.

(4) The provisions of paragraph (m)(3) of this section notwithstanding, the initial requests for gillnet endorsements must be postmarked or hand delivered during the 45-day period commencing

on the first day of effectiveness of the final rule implementing this measure.

3. In § 642.7, paragraphs (p), (s), and (u) are revised, paragraph (t) is redesignated as paragraph (w), and new paragraphs (t) and (v) are added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(p) After a closure specified in § 642.26(a), sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king or Spanish mackerel of the closed species/migratory group/zone/sub-zone/gear type, as specified in §§ 642.22(c), 642.24(a)(4), and 642.26(b)(3).

* * * * *

(s) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.28(a) or § 642.28(b)(1)(ii), or transfer at sea such king mackerel, as specified in § 642.28(e).

(t) In the Florida west coast sub-zone, possess or land Gulf group king mackerel in or from the EEZ aboard a vessel that uses or has aboard a run-around gillnet on a trip when such vessel does not have on board a commercial permit for king and Spanish mackerel with a gillnet endorsement, as specified in § 642.28(b)(2)(i).

(u) In the Florida west coast sub-zone, transfer at sea Gulf group king mackerel taken by a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, as specified in § 642.28(e).

(v) Violate any prohibitions or restrictions for the prevention of gear conflicts that may be specified in accordance with § 642.29.

* * * * *

4. In § 642.25, paragraph (c) is removed and paragraphs (a)(1) introductory text and (a)(1)(i) are revised to read as follows:

§ 642.25 Commercial allocations and quotas.

* * * * *

(a) * * *

(1) The commercial allocation for the Gulf migratory group of king mackerel is 2.50 million pounds (1.13 million kg) per fishing year. The Gulf migratory group is divided into eastern and western zones separated by a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ. Quotas for the eastern and western zones are as follows:

(i) 1.73 million pounds (0.78 million kg) for the eastern zone, which is further divided into quotas as follows:

(A) 865,000 pounds (392,361 kg) for the Florida east coast sub-zone, which is that part of the eastern zone north of a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude); and

(B) 865,000 pounds (392,361 kg) for the Florida west coast sub-zone, which is that part of the eastern zone south and west of the Dade/Monroe County, Florida boundary (25°20.4'N. latitude), which is further divided into quotas by gear types as follows:

(*1*) 432,500 pounds (196,179 kg) for vessels fishing with hook-and-line gear; and

(*2*) 432,500 pounds (196,179 kg) for vessels fishing with run-around gillnets.

* * * * *

5. Section 642.26 is revised to read as follows:

§ 642.26 Closures.

(a) *Notice of closure.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group, zone, sub-zone, or gear type, and for Spanish mackerel from the Gulf migratory group, when the allocation or quota under § 642.25(a) or § 642.25(b)(1) for that migratory group, zone, sub-zone, or gear type has been reached or is projected to be reached. The commercial fishery for Atlantic group Spanish mackerel is managed under the commercial trip limits specified in § 642.27 in lieu of the closure provisions of this section.

(b) *Fishing after a closure.* On and after the effective date of a closure invoked under paragraph (a) of this section, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a)—

(1) A person aboard a vessel in the commercial fishery may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag limit specified in § 642.24(a)(1) for the closed species, migratory group, zone, sub-zone, or gear type, except as provided for under paragraph (b)(2) of this section.

(2) A person aboard a vessel, the permit for which indicates both commercial king and Spanish mackerel and charter vessel for coastal migratory pelagic fish, may continue to retain fish under a bag and possession limit specified in § 642.24 (a)(1) and (a)(2) provided the vessel is operating as a charter vessel.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel of the closed species, migratory group, zone, sub-zone, or gear type is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

6. Section 642.31 is removed; §§ 642.28 through 642.30 are redesignated as §§ 642.29 through 642.31; and new § 642.28 is added to read as follows:

§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.

(a) *Florida east coast sub-zone.* In the Florida east coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(1) From November 1, each fishing year, until 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(2) From the date that 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast sub-zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(b) *Florida west coast sub-zone.* (1) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(i) From July 1, 1994, until 75 percent of the sub-zone's fishing year quota of king mackerel has been harvested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast sub-zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(2) In the Florida west coast sub-zone,

(i) King mackerel in or from the EEZ may be possessed aboard or landed from a vessel that uses or has aboard a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement; and

(ii) King mackerel from the west coast sub-zone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 642.25(a)(1)(i)(B)(*2*).

(c) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal

Register, will effect the trip limit changes specified in paragraphs (a) and (b)(1)(ii) of this section when the requisite harvest levels have been reached or are projected to be reached.

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a) or (b)(1)(ii) of this section or a gear limitation specified in paragraph (b)(2) of this section applies may not transfer at sea from one vessel to another a king mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

[FR Doc. 94–13302 Filed 5–26–94; 3:12 pm]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 104
Wednesday, June 1, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94-045-1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

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

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Oranisms	Field test location
94-055-01	Upjon Company	04-13-94	Tomato plants genetically engineered to express the nucleocapsid protein from tomato spotted wilt virus (TSWV) for resistance to TSWV.	Georgia.
94-069-02, renewal of permit 91-346-01, issued on 04-16-92.	Calgene, Incorporated	04-19-94	Rapeseed plants genetically engineered to express oil modification genes.	Michigan.
94-027-02	University of Idaho	04-21-94	Potato plants genetically engineered to express resistance to potato leaf roll virus, potato virus Y, tobacco vein mottling virus, barley yellow dwarf virus, and tobacco rattle virus.	Idaho.
94-039-03	Cornell University	04-21-94	Apple trees genetically engineered to express resistance to fire blight.	New York.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3)

USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 25th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13292 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Grain Inspection Service

Designation of the Sioux City (IA) and Tischer (IA) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Sioux City Inspection & Weighing Service Company (Sioux City) to provide official inspection services and A. V. Tischer and Son, Inc. (Tischer), to provide official inspection and Class X and Class Y weighing services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: July 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 30, 1993, **Federal Register** (58 FR 69316), FGIS announced that the designations of Sioux City and Tischer end on June 30, 1994, and asked persons interested in providing official services in the geographic areas assigned to Sioux City and Tischer to submit an application for designation. Applications were due by January 31, 1994.

There were three applicants. Sioux City and Tischer each applied for designation in the entire areas they are currently assigned. The D. R. Schaal Agency, Inc. (Schaal), applied for designation to serve part of the Tischer area: Big Six Cooperative Terminal, Burt, and West Bend Elevator Co., Algona, Kossuth county; Gold-Eagle Coop, Goldfield, and Clarion Farmers Elevator Cooperative, Holmes, Wright County, Iowa, in addition to the area they are already designated to serve. Tischer and Schaal are contiguous official agencies.

FGIS requested comments on the applicants in the March 3, 1994, **Federal Register** (59 FR 10110). Comments were due by March 31, 1994. FGIS received no comments on the Sioux City area designation by the deadline. FGIS received four comments on the Tischer area designation: two supporting the designation of Schaal and two supporting the designation of Tischer.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Sioux City is able to provide official services in the geographic area for which they applied. Effective July 1, 1994, and ending June 30, 1997, Sioux City is designated to provide official inspection services in the geographic area specified in the December 30, 1993, **Federal Register**.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Tischer is better able than any other applicant to provide official services in the geographic area for which they applied.

Effective July 1, 1994, and ending June 30, 1997, Tischer is designated to provide official inspection and Class X and Class Y weighing services in the geographic area described in the December 30, 1993, **Federal Register**.

Interested persons may obtain official services by contacting Sioux City at 712–255–8073, and Tischer at 515–955–7012.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

Dated: May 24, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–13220 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicants for the Minot (ND), Southern Illinois, and Tri-State (OH) Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS is requesting comments on the applicants for designation to provide official services in the geographic areas currently assigned to Minot Grain Inspection Inc. (Minot), Southern Illinois Grain Inspection Service, Inc., and Tri-State Grain Inspection Service, Inc. (Tri-State).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by June 30, 1994.

ADDRESSES: Comments must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1994, **Federal Register** (59 FR 15370), FGIS asked persons interested in providing official services in the geographic areas assigned to Minot and Tri-State to submit an application for designation. Applications were due by May 2, 1994. Minot and Tri-State, the only applicants, each applied for designation to serve the entire area they are currently assigned.

In the April 7, 1994, **Federal Register** (59 FR 16613), FGIS asked persons interested in providing official services in the geographic area assigned to Southern Illinois to submit an application for designation. Applications were due by May 4, 1994. There were two applicants. Southern Illinois applied for designation to serve the entire area they are currently assigned. Decatur Grain Inspection, Inc. (Decatur), applied for designation to serve the entire Southern Illinois area in addition to the area they are currently assigned.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 24, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–13219 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Fostoria (OH), Idaho (ID), Lewiston (iD), and Utah Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Fostoria Grain Inspection, Inc. (Fostoria), Idaho Grain Inspection Service, Inc. (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and the Utah Department of Agriculture (Utah) will end November 30, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before June 30, 1994.

ADDRESSES: Applications must be submitted to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Fostoria, main office located in Fostoria, Ohio, Idaho, main office located in Pocatello, Idaho, Lewiston main office located in Lewiston, Idaho, and Utah, main office located in Ogden, Utah, to provide grain inspection services under the Act on December 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Fostoria, Idaho, Lewiston, and Utah end on November 30, 1994.

The geographic area presently assigned to Fostoria, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern and eastern Fulton County lines; the eastern Henry County line; the northern and eastern Wood County lines; the northern Sandusky County line east to State Route 590;

Bounded on the East by State Route 590 south to Seneca County; the northern Seneca County line east to State Route 53; State Route 53 south to Wyandot County; the northern Wyandot County line; the northern Crawford County line east to State Route 19; State Route 19 south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to the western Hancock County line; and

Bounded on the West by the western Hancock County line; the southern Henry County line west to State Route 108; State Route 108 north to U.S. Route 24; U.S. Route 24 southwest to the Henry County line; the western Henry and Fulton County lines.

The geographic area presently assigned to Idaho, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Lewiston, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Utah, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Utah.

Interested persons, including Fostoria, Idaho, Lewiston, and Utah are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning December 1, 1994, and ending November 30, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 24, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–13221 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of intent to revoke Antidumping Duty Orders and Findings

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty orders and findings listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than the last day of June 1994.

EFFECTIVE DATE: June 1, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public

of our intent to revoke the following antidumping duty orders and findings for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Duty Proceeding

Belgium
Sugar
44 FR 33878
June 13, 1979
A–423–077
Contact: Joe Fargo at (202) 482–5345

France
Sugar
44 FR 33878
June 13, 1979
A–427–078
Contact: Joe Fargo at (202) 482–5345

Germany
Sugar
44 FR 33878
June 13, 1979
A–428–082
Contact: Joe Fargo at (202) 482–5345

Sweden
Stainless Steel Plate
38 FR 15079
June 8, 1973
A–401–040
Contact: Barbara Victor at (202) 482–0780

Taiwan
Carbon Steel Plate
44 FR 33877
June 13, 1979
A–583–080
Contact: Barbara Victor at (202) 482–0780

Germany
Barium Carbonate
46 FR 32884
June 25, 1981
A–428–061
Contact: Kim Moore at (202) 482–0090

Japan
Nitrile Rubber
53 FR 22553
June 16, 1988
A–588–706
Contact: Sheila Forbes at (202) 482–5253

Romania
Tapered Roller Bearings
56 FR 23320
June 19, 1987
A–485–602
Contact: Karin Price at (202) 482–3782

Taiwan
Fireplace Mesh Panels
47 FR 24616
June 7, 1982
A–583–003
Contact: Art DuBois at (202) 482–6312

Taiwan
Oil Country Tubular Goods
51 FR 22098
June 18, 1986
A–583–505
Contact: Barbara Victor at (202) 482–0780

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, and domestic interested parties do not object to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping duty orders and findings are no longer of interest to interested parties and shall proceed with the revocation.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings by the last day of June 1994.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4230.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: May 23, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–13458 Filed 5–31–94; 8:45 am]

BILLING CODE 3510–05–P

[C–533–812]

Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Annika O'Hara, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0167 and (202) 482–4198, respectively.

PRELIMINARY DETERMINATION: The Department of Commerce ("the Department") preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in India of certain carbon steel butt-weld pipe fittings. For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register**, 59 FR 14148 (March 25, 1994), the following events have occurred.

On April 5, 1994, we issued a questionnaire to the Government of India ("GOI") in Washington, D.C. concerning petitioner's allegations. On May 9, 1994, we received questionnaire responses from the GOI, Karmen Steels of India ("Karmen"), and Sivanandha Pipe Fittings Limited ("Sivanandha"). According to the GOI, Karmen, Sivanandha, and Tata Iron & Steel Limited ("Tata") accounted for over 85 percent of exports of butt-weld pipe fittings to the United States. Therefore, these companies are the respondents in this investigation. However, Tata did not respond to the Department's questionnaire.

We issued deficiency questionnaires on May 11, 1994, to the GOI, Karmen, and Sivanandha. We received responses on May 18, 1994.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows", "tees", "caps", and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs

purposes, our written description of the scope of this proceeding is dispositive.

Injury Test

Because India is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of pipe fittings from India materially injure, or threaten material injury to, a U.S. industry. On April 20, 1994, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from India of the subject merchandise (59 FR 18825).

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidies (the period of investigation ("POI")) is the respondents' fiscal year: April 1, 1993 to March 31, 1994.

Non-Responding Company

Since Tata did not respond to our countervailing duty questionnaire, we have used best information available ("BIA") in accordance with § 355.37(a) of the Department's regulations. As BIA, we have used information provided in the petition except where we have calculated a rate for a given program in a previous countervailing duty investigation or administrative review for India which is higher than that provided in the petition. We did not include in the BIA subsidy rate for Tata programs for which we have no basis to calculate a benefit (*i.e.*, programs for which rates are not calculated in the petition, programs not previously investigated, or programs previously found not used). Based on this approach, we calculated a BIA rate for Tata of 23.03 percent *ad valorem*.

Calculation of Country-Wide Rate

In determining the benefits to the subject merchandise from the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports of the subject merchandise to the United States. The program rates were then added together to arrive at the country-wide rate.

Pursuant to 19 CFR 355.20(d) of the Department's regulations, we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rates for Karmen and Tata were significantly different from the country-wide rate. Therefore, Karmen and Tata received company-specific rates. Because Sivanandha was the only company whose total *ad valorem* benefit was not significantly different from the country-wide rate for all programs, we based the all-other rate only on benefits received by Sivanandha. We then assigned this all-other rate to all other manufacturers, producers, and exporters.

Consistent with our practice in preliminary determinations, when a response to an allegation denies that a program exists, that producers of the subject merchandise receive benefits under a program, or that producers of the subject merchandise are eligible for a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Karmen's Exports of Refurbished Pipe Fittings

Karmen reported in its responses that in addition to its production of new pipe fittings, the company imports rusty, unused pipe fittings from a Singaporean company which it refurbishes and subsequently re-exports to a customer of the Singaporean company in the United States. For purposes of this preliminary determination, we have considered this refurbished merchandise to be covered by this proceeding. For the final determination, we will seek additional information concerning the following: (1) the nature and extent of the processing operation, and (2) the extent to which the refurbished pipe fittings are being subsidized.

In its responses, Karmen reported only the value added in the refurbishing process for these sales. The U.S. Customs Service, however, collects duties based on the full value of the subject merchandise exported, i.e., the value of the pipe fittings and any value-added through the refurbishing process. Therefore, to avoid an over-assessment of the duty, we have adjusted Karmen's sales value used as the denominator in our subsidy rate calculation. For purposes of this preliminary determination, we have valued Karmen's exports of refurbished pipe fittings using the price per metric ton of new pipe fittings because we do not have an actual export value of refurbished pipe fittings.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined to be Countervailable

1. Preferential Pre-Shipment Financing

Pre-shipment financing is extended to exporters prior to shipment as working capital for purchasing raw materials, processing, packing, warehousing, transporting and shipping. Any exporter showing a confirmed export order or a letter of credit is eligible for this program. Generally, the loans are extended for 180 days. According to the responses, both Karmen and Sivanandha used pre-shipment financing during the POI.

Because only exporters are eligible for loans under this program, we preliminarily determine that they are countervailable to the extent they are provided at a preferential interest rate. We have used the average annual commercial interest rate on short-term financing in the POI as the benchmark interest rate. The GOI reported a short-term financing rate of 16.5 percent. We compared this benchmark rate to the interest rate charged on pre-shipment loans and found that the interest rate charged was lower than the benchmark rate. Therefore, we determine that loans provided under this program are countervailable.

To calculate the benefit, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the *Subsidies Appendix accompanying Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 49 FR 18006 (April 26, 1984); see also, *Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT 1985).

We compared the amount of interest paid during the POI to the amount of interest that would have been paid at the benchmark rate. The difference between these two amounts is the benefit. We then divided the benefit by total exports. On this basis, we preliminarily determine the estimated net subsidy from this program to be 0.23 percent *ad valorem* for Karmen and 0.84 *ad valorem* for all other manufacturers, producers, and exporters of pipe fittings in India.

2. Income Tax Deductions Under Section 80HHC

Income tax benefits are available to exporters in India under Section 80HHC

of the Income Tax Act of 1961. This program allows exporters to reduce their taxable income by the profits earned on exports. Both Karmen and Sivanandha claimed deductions under this program on their income tax returns filed in the POI.

Since tax deductions under Section 80HHC are available only to exporters, we preliminarily determine that this program is countervailable. To calculate the benefit, we multiplied the amount of the deduction claimed by each company by the corporate income tax rate and divided the result by total exports. On this basis, we preliminarily determine the estimated net subsidy from this program to be 1.07 percent *ad valorem* for Karmen and 2.69 *ad valorem* for all other manufacturers, producers, and exporters of pipe fittings in India.

B. Programs Preliminarily Determined not to Provide Benefits During the POI

1. Advance Licenses and Advance Customs Clearance Permits ("ACCP's")

Under the GOI's Duty Exemption Scheme, inputs used in the production of exports may enter the country duty-free. Two mechanisms under the Duty Exemption Scheme are Advanced Licenses and Advanced Custom Clearance Permits ("ACCP's"). Sivanandha used Advanced Licenses to import seamless carbon steel pipes in the POI. Karmen used ACCP's to import rusty unused butt-weld pipe fittings in the POI.

Both Advance Licenses and ACCP's permit the importation of goods duty free provided the imports are used in the production of goods which are subsequently re-exported. We consider the use of Advance Licenses and ACCP's to be the equivalent of a duty-drawback program (see *Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India*, 56 FR 46292 (September 11, 1991).

Under § 355.44(i)(4)(1) of the Department's proposed regulations (see *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989), the non-excessive drawback of import duties is not countervailable if the imported inputs are subsequently physically incorporated into exported products. According to the questionnaire responses, inputs imported under Advance Licenses and ACCP's were physically incorporated into pipe fittings which were subsequently re-exported. Therefore, we preliminarily determine that Advance Licenses and ACCP's did not provide a countervailable benefit in the POI.

2. *International Price Reimbursement Scheme*

The International Price Reimbursement Scheme ("IPRS") was established to compensate Indian exporters for the difference between the world market price and the domestic price of inputs. According to the responses, as of April 1, 1993, the input product used in the production of pipe fittings, *i.e.*, seamless carbon steel pipe, was no longer eligible for IPRS benefits. However, residual benefits could be received after that date and, in fact, Karmen indicated in its response that it received residual benefits under this program during the POI for exports of pipe fittings shipped prior to the POI.

Respondents maintain that the IPRS program is permissible within the framework of Item (d) of the Illustrative List of Export Subsidies annexed to the *Agreement on the Interpretation and Application of Article VI, XVI and XXIII of the General Agreement of Tariff and Trade* (1979). Pursuant to the Court of International Trade's decision in *Creswell Trading Co.* v. *United States*, 783 F. Supp. 1418 (CIT 1992), the IPRS program must be examined in light of Item (d). Accordingly, if the IPRS program does not provide a reimbursement which exceeds the difference between the international price and the domestic price, the program does not provide a countervailable benefit.

As discussed above, since the IPRS program was designed to compensate exporters for the difference between the world market price and the domestic price of inputs and since information provided in Karmen's response demonstrates that it was reimbursed in an amount equal to the difference between the domestic price and the international price, we preliminarily determine that the IPRS program is not countervailable with respect to inputs used in the production of pipe fittings.

C. Programs Preliminarily Determined to be not Used

The Department preliminarily determines that the following programs were not used during the POI.

A. *Preferential Post-Shipment Financing*
B. *Additional and Replenishment Licenses*
C. *Market Development Assistance*
D. *Export Promotion, Capital Goods Scheme*
E. *Benefits for 100 Percent Export-Oriented Units*
F. *Benefits Provided to Export Processing Zones Verification*

In accordance with section 776(b) of the Act, we will verify the accuracy of the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pipe fittings from India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Pipe fittings	Percent ad valorem
Karmen Steels of India	1.30
Tata Iron & Steel Limited	23.03
All-Others	3.53

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on Wednesday, July 27, 1994, at 10 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten business days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, case briefs must be submitted to the Assistant Secretary no later than July 18, 1994. Rebuttal briefs must be submitted to the Assistant Secretary no later than July 25, 1994. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 355.38 of the Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Susan G. Esserman,

Assistant Secretary for Import Administration.

Dated: May 24, 1994.

[FR Doc. 94-13316 Filed 5-31-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-508-808]

Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Penelope Naas, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0189 or 482-3534, respectively.

PRELIMINARY DETERMINATION: The Department preliminarily determines that benefits which constitute subsidies within the meaning of Section 701 of the Tariff Act of 1930, as amended (the Act) are being provided to manufacturers, producers, or exporters in Israel of certain carbon steel butt-weld pipe fittings (pipe fittings).

For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (59 FR 14149, March 25, 1994), the following events have occurred.

On March 31, 1994, we issued a questionnaire to the Embassy of Israel in Washington, DC, concerning petitioners' allegations. On May 9, 1994, we received responses from the Government of Israel (GOI) and Pipe Fittings Carmiel, Ltd. (Carmiel). On May 11, 1994, we issued a supplemental questionnaire to the GOI and Carmiel. We received responses on May 16, 1994.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows", "tees", "caps", and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Injury Test

Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act. Therefore, Title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On April 20, 1994, the ITC published its preliminary determination that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reasons of imports from Israel of the subject merchandise (59 FR 18825, April 20, 1994).

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

Period of Investigation

For purposes of this preliminary determination, the period of investigation ("the POI") is calendar year 1993.

I. Programs Preliminarily Determined to be Countervailable

We preliminarily determine that subsidies are being provided to manufacturers, producers or exporters in Israel of pipe fittings under the following programs:

A. Grants under the Encouragement of Capital Investments Law of 1959 (ECIL)

The ECIL program was established to develop the production capacity of the Israeli economy. In order to be eligible to receive benefits under the ECIL, the applicant must obtain "Approved Enterprise" status. Approved Enterprise status is obtained after a review of information submitted to the Investment Center of the Israeli Ministry of Industry and Trade.

The amount of an investment grant under ECIL is calculated as a percentage of the total approved investment in fixed assets. The amount of the grant also depends on the geographic location of the enterprise. For purposes of the ECIL program, Israel is divided into three zones—The Central Zone, Development Zone A and Development Zone B. Funding was restricted to companies in the Development Zones, with Development Zone A receiving a higher level of funding than those in Development Zone B. The Central Zone comprises the geographic center of Israel, including its largest and most developed population centers; companies in the Central Zone could not receive grants under this program at all.

In *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel ("IPA")* (52 FR 25447; July 7, 1987), the Department found the ECIL grants program to be *de jure* specific and, thus, countervailable because the grants are limited to

entperises located in specific regions (*i.e.*, Development Zone A and B). The GOI has provided no new information to warrant reconsideration of this finding.

Carmiel is located in Development Zone A, and received grants for two projects related to the production of subject merchandise. These grants were disbursed over the years 1983–1993.

It is our policy to allocate non-recurring grants over a period equal to the average useful life of assets in the industry, unless the sum of grants provided under a program in a particular year is less than 0.50 percent of a firm's total sales in that year. See *Countervailing Duties; Notice of Proposed Regulations and Request for Public Comments*, 54 FR 23366 (May 31, 1989(("Proposed Regulations") Section 355.49(a), and the General Issues Appendix to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austia*, 58 FR 37217, July 9, 1993. In this instance, respondents have not provided sales information for years prior to 1989. Therefore, we have no reason to believe the grants made before 1989 were less than 0.5 percent of sales in the year of receipt for these years and have preliminarily determined that the yearly disbursements should be allocated over time. In 1990, the sum of grants disbursed under the ECIL program accounted for less than 0.5 percent of Carmiel's total sales in that year. Therefore, benefits for 1990 were allocated to that year and are not included in our calculations. For all other years after 1989, the sum of the grants disbursed under the ECIL program accounted for more than 0.5 percent of Carmiel's total sales each year. Therefore, these benefits were allocated over time.

For ECIL grants allocated over time, we used a fifteen year allocation period (the average useful life of assets in the steel industry, as determined by the U.S. Internal Revenue Service Asset Depreciation Range System). The formula described in § 355.49(b)(3) of the Proposed Regulations for allocating grants relies on a fixed discount rate, which is based on the cost of long-term, fixed-rate debt of the firm or generally in the country under investigation. However, no long-term loans with fixed interest rates (or other long-term fixed-rate debt) were available to Carmiel or other companies in Israel during the years 1983–1993. Instead, the only long-term loans (or other long-term debt) available to companies in Israel appear to utilize variable interest rates, *i.e.* a fixed real interest rate added to the Consumer Price Index (CPI) or the dollar/shekel exchange rate.

We have preliminarily determined to adapt the grant allocation method described in our proposed regulations to use variable rather than fixed interest rates as the discount rate, given the absence of long-term fixed interest rates in the years these grants were disbursed. This methodology reflects the actual long-term options open to Israeli firms (*i.e.*, that long-term financing was only available through variable rate loans) and also ensures the the net present value of amounts countervailed in year of receipt does not exceed the face value of the grant.

In this preliminary determination, we have used the rate of return on CPI-indexed commercial bonds (the real rate of return, as published in the Bank of Israel Annual Reports, plus the CPI), as no actual loan rates for Carmiel or other companies in Israel were available. For use in our preliminary determination, CPI-indexed commercial bond rates were unavailable for the years 1983–1984, 1988–1989, and 1993. Therefore, for 1983 and 1984, we took the real rate reported for 1985 (information for prior years was not available) and added it to the CPIs for 1983 and 1984, respectively. For 1988 and 1989, we used the real rate for 1987 and added it to the CPIs for 1988 and 1989, respectively. For 1993, we used the real rate for 1992 and added it to the 1993 CPI.

We divided the benefit by Carmiel's 1993 total sales. On this basis, we preliminarily determine the estimated net subsidy for this program to be 2.12 percent *ad valorem* for the POI.

B. Long-Term Industrial Development Loans

Prior to July 1985, companies in Israel were eligible to receive long-term industrial development loans funded by the Government of Israel. This program was used in conjunction with ECIL; however, a company did not have to be an Approved Enterprise in order to receive a development loan.

The GOI reported that loans under this program were provided to a diverse number of industries. However, the interest rates varied depending on the location of the borrower. The interest rates on loans to borrowers in Development Zone A were lowest, while those on loans to borrowers in the Central Zone were highest. In previous cases, the Department has found long-term industrial development loans in Israel to be regional subsidies and countervailable to the extent that the applicable interest rates are less than those on loans to companies in the Central Zone (see *IPA*). The GOI has provided no new information to warrant reconsideration of this finding.

Carmiel received loans for one of its Approved Enterprise projects located in Zone A. These loans were received from the years 1983–1989. Under the terms of the program, the interest rates on these loans have two components—a fixed real interest rate and a variable rate, based on the Consumer Price Index (CPI) or the dollar/shekel exchange rate. Thus, these loans were variable rate loans. It is unclear from Carmiel's responses whether the loans they received were linked to the CPI or to the dollar-shekel exchange rate. Based on the limited information provided in the GOI and Carmiel's responses, we have assumed for purposes of the preliminary determination that all loans received by Carmiel had a fixed real rate of interest which was added to the CPI.

Because the CPI varies from year-to-year, we cannot calculate *a priorim* the payments that will be made over the life of these loans and, hence, we cannot calculate the "grant equivalent" of the loans. Accordingly, we have compared the interest that would have been paid by a company in the Central Zone, as a benchmark, to the amount actually paid by Carmiel during the POI (see Section 355.49(d)(1) of the Proposed Regulations). We divided the interest savings by Carmiel's total sales in 1993.

On this basis, we preliminarily determine the net subsidy rate from this program to be 0.15 percent *ad valorem* during the POI.

Exchange Rate Risk Insurance Scheme

Prior to September 1993, the Exchange Rate Risk Insurance Scheme (EIS) operated by the Israel Foreign Trade Insurance Corporation Inc. (IFTRIC), allowed exporters to insure themselves against the risk of losses which would occur when the rate of devaluation lagged behind the rate of inflation. The EIS was optional and open to virtually any exporter willing to pay a premium to IFTRIC.

Under EIS, if the rate of inflation was greater than the rate of devaluation, the exporter was compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation was higher than the change in the domestic price index, however, the exporter was required to compensate IFTRIC. Companies using EIS also paid a premium, calculated for each exporter as a percentage of their insured value of exports.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other

changes are adequate to cover the program's long-term operating costs and losses. See Section 355.44(d) of the Proposed Regulations and *IPA*. We have reviewed EIS data in this investigation which showed that EIS operated at a loss from 1981 through 1991. We believe that this 11 year history is more than adequate to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. This preliminary determination that EIS is countervailable is consistent with our determination in *IPA*.

The GOI has provided information showing that EIS was terminated in September 1, 1993. It also confirmed that residual benefits would exist after September 1, 1993.

We have calculated the benefit under this program as the net amount of compensation Carmiel received during the review period from IFTRIC (compensation received less compensation and fees paid) expressly for pipe fittings exported to the United States. This amount was divided by the value of the company's exports of pipe fittings to the United States during the POI.

On this basis, we preliminarily determine the estimated net subsidy for Carmiel from this program to be 0.25 percent *ad valorem* during the POI.

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that producers or exporters in Israel of the subject merchandise did not receive benefits during the POI for exports of the subject merchandise to the United States under the following programs:

A. *Additional Incentives under the ECIL*
   1. *Preferential Accelerated Depreciation*
   2. *Tax Benefits*
   3. *Preferential Loans*
   4. *Industry Subsidy Payments*
B. *Labor Training Grants*
C. *Encouragement of Industrial Research and Development Grants*
D. *Special Export Financing Loans*
E. *Provision of Funds for Transportation to Eilat Harbor*

III. Programs for Which We Need More Information

A. Exceptions from Wharfage Fee

Importers in Israel pay a wharfage fee of 1.5 percent on goods entering the country. Exporters are required to pay a wharfage fee of 0.2 percent, unless they are exempted by the Port Authority. Currently, the Port Authority has exempted all exporters from payment of this wharfage fee. We are seeking further information on why these fees might differ for importers and exporters.

B. Rebates of the Peace of Galilee Levy and Wharfage Fees

Exporters are also entitled to a partial rebate of levies paid under the Peace of Galilee and of wharfage fees paid on imported inputs which are physically incorporated into exported goods. It appears that these rebates are part of Israel's duty drawback system. However, we will be seeking further information to establish that these rebated were not excessive.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pipe fittings from Israel, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries in the amount indicated below. This suspension will remain in effect until further notice.

Certain Carbon Steel Butt-Weld Pipe Fittings

Country-Wide *Ad Valorem* Rate—2.52%

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, any interested party or U.S. Government agency may submit case briefs or other written comments with ten copies of the business proprietary version and five copies of the nonproprietary version to the Assistant Secretary no later than July 19, 1994, and rebuttal briefs no later than July 25, 1994. In accordance with 19 CFR 355.38(b), we will hold a public hearing, if requested by an interested party, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 27, 1994, at 1 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 355.38(b), oral presentations will be limited to issues in the briefs.

This determination is published pursuant to section 703(f) of the Act.

Dated: May 24, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-13317 Filed 5-31-94; 8:45 am]

BILLING CODE 3510-DS-P-M

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A

Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–5A016."

Wood Machinery Manufacturers of America's ("WMMA") original Certificate was issued on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); and December 13, 1993 (58 FR 66344, December 20, 1993). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Wood Machinery Manufacturers of America, 1900 Arch Street, Philadelphia, Pennsylvania 19103–1498.

Contact: Harold R. Zassenhaus, Export Director, Telephone: (301) 652–0693.

Application No.: 88–5A016.

Date Deemed Submitted: May 25, 1994.

Proposed Amendment: WMMA seeks to amend its Certificate to add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Machine Systems, L.L.C., Bend, Oregon; Safranek Ent., Inc., Atascadero, California; and The Original Saw Co., Britt, Iowa.

Dated: May 25, 1994.

Fredrich R. Crupe,

Deputy Director, Office of Export Trading Company Affairs.

[FR Doc. 94–13313 Filed 5–31–94; 8:45 am]

BILLING CODE 3510–DR–F–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Request for Bilateral Textile Consultations on Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Hong Kong

May 26, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 17, 1994, the Government of the United States requested consultations with the Government of Hong Kong regarding imports of men's and boys' coats and jackets in Category 834, produced or manufactured in Hong Kong. This request was made on the basis of the current bilateral agreement between the Governments of the United States and Hong Kong.

The United States reserves the right to control imports at the level under paragraph 7 of the agreement. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Hong Kong, further notice will be published in the Federal Register.

Anyone wishing to comment or provide data or information regarding the treatment of Category 834, under the agreement with the Government of Hong Kong, or in any aspect thereof, or to comment on domestic production or availability of products included in Category 834, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Hong Kong.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes.

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13315 Filed 5–31–94; 8:45 am]

BILLING CODE 3510–DR–F

Deduction of Import Charges for Certain Wool Textile Products Assembled in the Dominican Republic

May 25, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice of visa waivers.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

CITA has agreed to issue visa waivers for certain textile products in Categories 433 and 443 which were cut in the Virgin Islands and assembled in the Dominican Republic and exported to the

United States in amounts up to 7,500 dozen for Category 433 and 2,500 numbers for Category 443. As part of this agreement, the Chairman of CITA has issued waivers on three different occasions (58 FR 61072, published on November 19, 1993; 58 FR 67396, published on December 21, 1993; and 59 FR 17339, published on April 12, 1994). In conformity with the agreement, CITA will continue to deduct import charges for Categories 433 and 443, up to the agreed amounts, for goods exported on or before December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 67397, published on December 21, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13315 Filed 5–31–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 30, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waiver the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 25, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Extension.

Title: Lender's Application for Payment of Insurance Claims.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; Non-profit institutions.

Reporting Burden: Responses: 18,462; Burden Hours: 2,769.

Recordkeeping Burden: Recordkeepers: 9,231; Burden Hours: 1,108.

Abstract: This form will be used by lenders to request payment of a claim for the Federal Insured Student Loan Program (FISL) or for the Federal Stafford, Federal Plus, Federal SLS, Federal Consolidation, or Federal Unsubsidized Programs when a guaranty agency no longer exists and ED becomes the guarantor. The Department will use the information to match disbursement data already on file for claim payment validation.

[FR Doc. 94–13217 Filed 5–31–94; 8:45 am]

BILLING CODE 4000–01–M

CFDA No.: 84.242

National Science Scholars Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for the submission of fiscal year 1995 nominations under the National Science Scholars Program.

SUMMARY: The Secretary gives notice of the closing date and procedures for the State nominating committees approved by the Secretary to submit the names to the President of fiscal year (FY) 1995 nominees under the National Science Scholars Program (NSSP) authorized by title VI, part A of the Excellence in Mathematics, Science and Engineering Education Act of 1990, as amended, 20 U.S.C. 5381 *et seq.* (the Act).

The NSSP supports Goals 2000, particularly the goals that call for American students to be first in the world in science and mathematics achievement and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The National Science Scholars Program advances these goals by providing scholarship assistance and other benefits to students selected by the President for undergraduate study of the physical, life, or computer sciences, mathematics, or engineering.

The Secretary will accept the names of nominees on behalf of the President from the nominating committees of States participating in the NSSP, including the 50 States and the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Virgin Islands. Each State nominating committee must submit for consideration the names and pertinent information of at least four nominees from each congressional district in the State, at least half of whom must be female.

The Act provides that at least half of the nominees from each congressional district must be female and all of the nominees must be ranked in order of priority within each congressional district. A State with an approved nominating committee that desires to have a nominee considered for selection as a National Science Scholar must provide each nominee's name, permanent address, home telephone number, social security number if

provided by the nominee, sex, congressional district, congressional representative's or delegate's name for that congressional district, priority ranking within the congressional district, NSSP subject area in which the nominee intends to major and specific major if known, and any other Office of Management and Budget (OMB) approved applicant information the Secretary deems necessary to operate the program.

Closing Date and Media for Transmitting NSSP Nominee Information

A State must provide its NSSP nominations for FY 1995 by submitting the nominee information either—

(1) In typewritten format;

(2) On a data diskette provided by the U.S. Department of Education that the U.S. Department of Education sends directly to all States; or

(3) Through a modem using a software program on a diskette provided by the U.S. Department of Education that the U.S. Department of Education sends directly to all States.

To ensure that State nominees are considered for FY 1995 funds, a State must submit nominee information by October 31, 1994.

State NSSP Nominations Delivered By Mail

NSSP nominations must be sent to the following address: National Science Scholars Program, U.S. Department of Education, Office of Student Financial Assistance, ROB–3, Room 4621, 400 Maryland Avenue, SW., Washington, DC 20202–5453.

A State must obtain proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary.

If a State's NSSP nominations are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. A State should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method as proof of mailing, a State should check with its local post office. A State is encouraged to use registered mail or at least first-class mail.

Each State submitting nominations after the closing date will be notified that its nominees cannot be assured of consideration for FY 1995 funding.

State NSSP Nominations Delivered By Hand

State NSSP nominations that are hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4621, GSA Regional Office Building #3, Washington, DC Hand-delivered nominations will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

State nominations that are hand-delivered after 4:30 p.m. on the closing date cannot be assured of consideration.

State NSSP Nominations Transmitted Through A Modem

NSSP nominations transmitted to the U.S. Department of Education through a modem must be transmitted to (301) 587–1490. Modem transmissions must be received by the server (computer) no later than October 31, 1994. The transmission will be acknowledged by the server through transmission of a file to the sender that will display on the sender's computer screen, providing proof of the U.S. Department of Education's receipt of the transmission.

Program Information

Under the NSSP, the Secretary is authorized to award scholarships to outstanding students selected by the President for the study of physical, life, or computer sciences, mathematics, or engineering. The Secretary is authorized to award initial scholarships of up to $5,000 for the first year of undergraduate study to graduating high school students or those obtaining the equivalent of a certificate of graduation as well as continuation awards of up to $5,000 for up to four additional years of undergraduate study.

Applicable Statutory and Regulatory Provisions

The following statute and regulations are applicable to the FY 1995 NSSP:

(1) The program statute, 20 U.S.C. 5381 *et seq.*

(2) The National Science Scholars Program regulations in 34 CFR part 652.

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (with the exception of subpart C, §§ 75.200–75.216, 75.218, and 75.220–75.261 of subpart D, and §§ 75.580–75.592 of subpart E), 77, 79, 81, 82, 85, and 86.

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 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.

FOR FURTHER INFORMATION CONTACT: Charles R. Brazil, U.S. Department of Education, Division of Higher Education Incentive Programs, suite C80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3257. 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.

(Catalog of Federal Domestic Assistance Number 84.242, National Science Scholars Program)

Program Authority: 20 U.S.C. 5381 et seq.

Dated: May 24, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–13216 Filed 5–31–94; 8:45 am]

BILLING CODE 4000–01–P–M

DEPARTMENT OF ENERGY

Office of Policy, Planning, and Program Evaluation

Guidelines for Voluntary Reporting of Greenhouse Gas Emissions and Reductions, and Carbon Sequestration

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of availability of draft guidelines and request for comment and notice of public hearing.

SUMMARY: Pursuant to section 1605(b) of the Energy Policy Act of 1992, the Department of Energy is developing guidelines for the voluntary reporting of greenhouse gas emissions, their reduction, and carbon fixation achieved through any measure. The data will be reported on forms to be developed by the Energy Information Administration (EIA) and entered into an EIA database.

The guidelines provide for the voluntary and accurate reporting of greenhouse gas emissions and reductions, and of carbon sequestration. The guidelines and supporting materials assist parties in analyzing activities and determining emissions and reductions

and carbon sequestration in order to voluntarily report this data. EIA will develop reporting forms consistent with the guidelines. Draft guidelines and supporting materials are available for public review and comment.

DATES: Written comments on the draft guidelines and supporting materials (10 copies) are due on or before August 1, 1994. DOE does not anticipate extending this date. A public hearing will be held on June 29, 1994, beginning at 8:30 a.m. at the address listed below. If necessary to accommodate requests to speak, the hearing will continue on June 30, 1994. Requests to speak must be received by the Department on or before June 22, 1994.

ADDRESSES: Written comments (10 copies) should be submitted to: U.S. Department of Energy, Office of Policy, PO–63/VRP NOA, Docket No. PO–VR–94–101, room 4G–036, 1000 Independence Ave., SW., Washington, DC 20585.

A copy of the draft guidelines and supporting materials may be obtained by telephone request to (301) 601–8284. Requests to speak at the hearing should be made by telephone at (301) 601–8284.

The public hearing will be held at The Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024. Copies of the transcript of the public hearing and public comments received will be available for inspection at the DOE Freedom of Information Reading Room, room 1E–090, at the address listed above, between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Elmer Holt at (202) 586–0714.

SUPPLEMENTARY INFORMATION: Under section 1605(b) of the Energy Policy Act of 1992 (EPAct; Pub. L. 102–486), the Secretary of Energy with the Energy Information Administration (EIA) is to establish a voluntary reporting system and database on emissions of greenhouse gases (GHGs), reductions in emissions of these gases, and carbon fixation. DOE has consulted with the Environmental Protection Agency in developing the draft guidelines, as provided under section 1605(c).

The draft guidelines and supporting methodologies provide guidance on institutional and technical aspects of the voluntary program. They are presented in discrete parts, as discussed below. DOE requests comment on all provisions of the draft guidelines and supporting material.

I. Background

Under section 1605 of the EPAct, two databases related to greenhouse gases are to be established. These separately address (1) the inventory of aggregate national totals of greenhouse gas emissions, and (2) data voluntarily reported on emissions, reductions, and carbon sequestration.

First, under subsection (a), the Secretary of Energy through EIA and without any expanded data collection authority is required to develop an inventory of national aggregate emissions of each greenhouse gas for each calendar year of the baseline period of 1987 through 1990. This inventory was published in September, 1993 ("Emissions of Greenhouse Gases in the United States, 1985–1990;" DOE/EIA–0573). This inventory will be updated annually, as required by the legislation.

The voluntary reporting program database is required under subsection (b) of section 1605, and will consist of voluntarily reported information on annual greenhouse gas emissions and their reduction, and carbon sequestration. It is separate from the national aggregate inventory established and updated under subsection (a). Because submission of data to the program established under subsection (b) is voluntary, this database cannot be designed for use as a comprehensive national greenhouse gas accounting system, and thus may not serve to provide a statistically accurate representation of aggregate U.S. greenhouse gas emissions or their reductions.

The Secretary of Energy is required to issue guidelines with procedures for the accurate voluntary reporting of information on (1) greenhouse gas emissions on an annual basis for the baseline period 1987 through 1990, and for subsequent calendar years; (2) annual reductions of greenhouse gases and carbon fixation achieved through any measures; and (3) reductions in greenhouse gas emissions achieved voluntarily, or as a result of plant or facility closings, or as a result of State or Federal requirements.

The guidelines and supporting materials assist those who wish to report in determining or developing information necessary to report. EIA will develop and make available forms for voluntary reporting consistent with the final guidelines, and will develop a database for the information voluntarily submitted.

II. Public Input Process

The process for public input in developing the draft guidelines began with a Notice of Inquiry (NOI) in July 1993 (58 FR 40116; July 27, 1993), requesting comment on institutional and technical issues related to a 1605(b) reporting system. These comments assisted in developing the focus for discussion at six public workshops held in November and December of 1993. A summary of workshop sessions and a copy of all written comments submitted are available for public inspection in the DOE Freedom of Information Reading Room, listed in the **ADDRESSES** section above.

Additional public input to the guidelines is being sought through the comments requested and the public hearing announced in this notice.

III. Organization of the Draft Guidelines

The draft guidelines and supporting materials, "Voluntary Reporting of Greenhouse Gases Under Section 1605(b) of the Energy Policy Act of 1992: General Guidelines and Sector-Specific Issues and Reporting Methodologies," are presented in eight discrete parts. The first part, "General Guidelines," provides basic guidance for reporting under the program. Six parts, "Sector Specific Issues and Reporting Methodologies Supporting the General Guidelines" (or "supporting materials") discuss issues particular to specific sector or activity areas, as indicated: Electricity Supply, Residential and Commercial Buildings, Industrial, Transportation, Forestry, Agriculture.

The seventh supporting document, "Global Warming Potential and Other Indices for Representing Greenhouse Gas Effects on Climate" completes the guidelines set.

The public review draft does not include the sector-specific part on the Agriculture Sector; this document is expected to be available by the end of June. Notice of its availability for review and comment will be announced in the **Federal Register**.

IV. Goals of the Voluntary Reporting Program

The draft guidelines and supporting materials have been developed to reflect the dual goals of maximizing participation without compromising the usefulness of the data. These goals reflect public input received in response to the July 1993 Notice of Inquiry and the subsequent workshops discussed above.

Achievement of the participation goal will be measured by the numbers of voluntary reporters and the variety of economic sectors and activities they represent, and in the quantity of emissions and reductions and carbon sequestration reported. The draft guidelines and supporting materials

assist participation by minimizing administrative burden and repetitive submissions among data acquisition programs, and by providing flexibility for the use of self-generated data with optional default and prescribed data alternatives.

Usefulness of the data is defined not only by the quality, quantity, and variety of the data included, but also by its ability to serve the varied purposes of the program. These purposes include providing a database of information for entities seeking to reduce their own greenhouse gas emissions; formal recordation of emissions, reductions and carbon sequestration achievements for various objectives; and informing the public debate in future discussions on national greenhouse gas policy.

V. Summary Description and Discussion

A. What Are The Guidelines?

The guidelines define who may report, what information may be reported, and considerations in identifying or developing reportable data. Consistent with the guidelines, EIA will develop reporting forms for the program, receive submissions and evaluate them for compliance with the guidelines and reporting instructions, and develop and maintain the database of information reported.

The guidelines suggest to reporters data identification, collection and retention needs, and address the use by reporters of information which may be part of existing recordkeeping systems or standard business practices. They also provide a framework for analyzing activities with the goal of developing reportable data. Finally, the guidelines provide information for comparing emissions of gases on the basis of their differential greenhouse (radiative forcing) effects within the climate system. This discussion on differential effects is provided for information purposes only. The guidelines provide that data reported be in units of gas emitted or reduced, and not transformed by any radiative forcing index reported.

B. What is Covered by the Guidelines?

The reporter. The guidelines define "reporting entity" flexibly in order to accommodate total organization and project reporting, as well as reporting focused on specific activities or on specific sites. A reporting entity, or "reporter," may be any U.S. organization or individual that has taken actions which result in emissions, emissions reductions, or carbon sequestration, and that can define a project and report physical data in enough detail to quantify results of the activity. The following may report under the program: any U.S. citizen or resident alien; any company, organization, or group incorporated under or recognized by law; and any U.S. Federal, state, or local governmental entity.

Sector coverage. The guidelines may be used for all economic sectors. The supporting methodologies provide additional direction for reporting data on activities in the following sectors: electricity supply, residential and commercial buildings, transportation, industrial, forestry, and agriculture.

Size threshold. In order to encourage participation and to capture small-scale demonstration projects, DOE is not proposing minimum levels for participating in the reporting program. At the outset of the program design process, DOE assumed that the program would have a threshold level of participation to prevent overburdening EIA in managing a costly, inefficient database.

However, commenters recommended strongly that no threshold levels be set, in order to avoid unnecessary limitations that might discourage participation, particularly by those engaging in pilot projects and innovative approaches. In addition, setting threshold standards for the broad range of activities—for each gas, each sector, and for all activities within a sector—would be difficult.

DOE seeks comment on the possible need for a threshold level for participation. If thresholds are recommended, DOE requests suggestions for appropriate levels.

Direct and indirect emissions activities. The draft guidelines address activities that result in either direct or indirect emissions and reductions of greenhouse gas emissions. Direct greenhouse gas emissions may result from activities such as fossil fuel combustion and the venting of methane. DOE acknowledges that a program with submissions limited to direct emissions, and to activities directly producing or reducing those emissions, would be more manageable and transparent than the broad, flexible approach reflected in the draft guidelines.

The statute, however, provides some examples of activities which are to be covered which indirectly affect, or may indirectly affect, emissions or reductions. Among the activities mentioned are the manufacture of vehicles with reduced greenhouse gas emissions, appliance efficiency, and energy efficiency measures.

DOE believes that Congress intended that the program cover the broadest set of activities which impact greenhouse gases, both directly and indirectly. Thus, the guidelines address both indirect and direct emissions activities, which will be appropriately distinguished in submissions. Comment is specifically requested on the proposed approach which allows reporting emissions and reductions from indirect and direct emitting activities, with appropriate identification of each.

Multiple party activities. The guidelines permit the reporting of activities undertaken in association with others. The guidelines provide suggestions to the parties for assigning the ability to report among the parties, and ask that the reporter identify others who may also report the data. Examples of multiple party activities include utility demand-side management actions, and the manufacture, sale, and use of more efficient vehicles.

Some commenters urged that the guidelines prohibit "double reporting" of the results of joint activities, in order to prevent the accounting for the same emissions, reductions or sequestration more than once. DOE agrees. Thus, while the draft guidelines permit any party to the activity to report, they require reporters to identify the other parties to the activity. In addition, the guidelines suggest ways for reporters to help protect against "double counting." These methods are based on the nature of the relationship of the parties, and the comparative ability of the parties to perform adequate project analysis and to have, or have access to, necessary data. Methods suggested in the guidelines include contractual agreements.

Comment is specifically requested on the proposed approach on reporting multiple party activities. In particular, comment is requested on whether the guidelines and the reporting forms to be developed by EIA should contain additional protections against double counting.

Reporting through third parties. In order to increase participation, particularly of small reporters and small projects, the draft guidelines permit third party and aggregated reporting, at the reporter's discretion. For example, a trade association or other organization may, at the reporter's request, aggregate data from multiple entities. Such organizations may provide technical or administrative assistance in reporting, and aggregation of data may provide some degree of confidentiality of the data. However, third-party reporters may not be able to record individual achievements in the detail that individual reporters desire. The draft supporting documents provide a discussion of third-party reporting as it

may apply in each sector, as well as a discussion of the appropriateness of third-party reporting for different reporting purposes.

The gases. The draft guidelines cover emissions of the following greenhouse gases: carbon dioxide, nitrous oxide, methane, and the halogenated carbon substances. A more comprehensive list of greenhouse gases would include additional gases, most notably some of the conventional, or "criteria," pollutants for which emissions data is collected by EPA and State agencies under various air quality programs.

Because the Act does not provide a definition of "greenhouse gases," DOE has initially limited the coverage of the guidelines to those long-lived greenhouse gases specifically mentioned in the statutory provisions, or inferred to in the statutory language which provides examples of emissions reductions measures. Consistent with specific statutory language, the guidelines cover halogenated carbon substances such as CFCs.

Calculating radiative effects among different gases. The draft supporting materials for the guidelines provide methods for reporters to estimate, for their own use, the global warming potential of greenhouse gases, with a discussion of the radiative forcing system and the derivation and uncertainties of the estimates. In simplified terms, radiative forcing is the change in the balance (incoming versus outgoing) of solar and infra-red radiative energy in the troposphere (the layer of the atmosphere closest to Earth). Emitted gases have different direct radiative effects and atmospheric lifetimes. The Act requires the guidelines to establish procedures for taking into account these effects.

Because this area of science is complex and evolving, reporting activity results by any relative index would create an unnecessary additional burden in an area where few reporters are likely to have expertise. More importantly, the state of the science in this area is uncertain and rapidly changing; thus, any calculations performed will likely need revision. Therefore, while the draft guidelines provide information necessary for a reporter to perform these calculations, all data reported to this program will be in units of the gas emitted or reduced, and will not be transformed in voluntary submissions by any common radiative forcing index, such as the Global Warming Potential (GWP) index.

The draft supporting document on GWPs is based on the anticipated outcome later this year of ongoing international scientific inquiry and discussions. The Intergovernmental Panel on Climate Change Working Group I report, entitled "Second Supplemental Report to the IPCC Scientific Assessment (1994); Radiative Forcing of the Climate System" is scheduled to be released in November 1994. This document will provide the latest current scientific consensus on the issues of differential radiative activity of greenhouse gases.

The global warming potential supporting document will be finalized after release of the IPCC report, and will reflect that report. Since reporting will be by unit of gas emitted, neither the reporting program nor EIA forms development is dependent on this information. DOE seeks comment on this approach for assuring consistency with international scientific consensus and minimizing the immediate need for revision of guideline material.

Temporal and spatial coverage. The guidelines address reporting annual emissions for the historic baseline period of 1987 through 1990 (" historic baseline"), and subsequent years. The guidelines also cover the reporter's aggregate annual emissions and emissions reductions from all of its activities. Annual reductions of greenhouse gases and annual carbon sequestration, by activity and project, are also covered. Results of activities occurring outside the U.S. are covered in the same manner as those occurring within the U.S., as discussed below.

Reporters are encouraged to report and update historic baseline emissions and to report on an entity-wide (total organization) basis. The clarity and credibility of data provided by an organization will be enhanced by the optional submission of comprehensive greenhouse gas emissions data on the historic baseline and total annual emissions of the organization. While the guidelines do not require this comprehensive information to accompany reports of other, more focused data on projects and activities, reports will be identified within the database on the basis of the coverage of the submittal.

Causation. The guidelines require that reporters identify the cause for the activity resulting in greenhouse gas emission reductions. Section 1605(b) provides that the guidelines cover greenhouse gas emission reductions achieved as a result of: (1) plant or facility closings, (2) Federal or state requirements, and (3) voluntary reductions. Accordingly, the guidelines require reporters to identify, if appropriate, which of these factors caused the reported emissions reduction. Reports will identify the causative factor if it falls within these areas, but will not include any further information. Comment is specifically requested on the appropriateness of this limited identification of cause.

International activities. The draft guidelines provide that U.S. entities may report international activities to which they are a party if the submission meets the general reporting criteria. The Act is silent on the reportability of offshore activities to this program.

There is considerable interest in the potential for cooperation among firms in industrialized countries and governments, firms, or individuals in less developed countries in sequestering carbon and reducing global carbon emissions. Reporters are advised that there may be special difficulties in defining project boundaries, determining an appropriate reference case, and using appropriate estimation methods for offshore activities.

The United Nations Framework Convention on Climate Change (FCCC), Article 4, paragraph 2(A), requires some nations to take measures to mitigate climate change, and it allows the parties to implement these measures jointly with other parties. Criteria for "joint implementation," as this concept is known, will be formally addressed by FCCC's Conference of the Parties in 1995. Thus, it is impossible at this time to ensure that guidelines for the voluntary reporting of actions taken by U.S. entities in other countries will be consistent with the eventual requirements for joint implementation under the FCCC. Accordingly, the guidelines may be updated to reflect future decisions made by the Conference of the Parties.

VI. Relationship of the Voluntary Reporting Program to Other Greenhouse Gas Initiatives

EPAct, which requires the establishment of the voluntary reporting program, was enacted on October 24, 1992. It predates several domestic initiatives designed to respond to the threat of global climate change. Some of these initiatives refer to the voluntary reporting program as an associated tool in implementation. This reporting program can be used to record emissions reductions achieved under a variety of programs that may result in reducing greenhouse gas emissions or increasing carbon sequestration, whether as a primary goal or as a secondary result.

While activities that reduce or avoid greenhouse gas emissions or sequester carbon under existing programs would be reportable, the guidelines were not specifically designed to accommodate

any particular program. Although the ability to report beneficial greenhouse gas impacts of activities may encourage activities under existing programs, the guidelines were designed to encourage reporting regardless of cause or motivation for an activity.

The language of section 1605(b)(1)(C) provides that the guidelines are to address reporting reductions achieved as a result of plant closings, and Federal and state requirements, in addition to those which result from voluntary actions. Thus, the guidelines do not limit submissions based on either the motivation of the parties involved or on the reason for the activity.

A. The Climate Change Action Plan

A year after passage of the Energy Policy Act of 1992, the President, with the goal of returning U.S. greenhouse gas emissions to their 1990 levels by the year 2000, released the Climate Change Action Plan (CCAP). This plan contains over forty new or expanded initiatives, most seeking voluntary participation. Three actions under the CCAP—Climate Challenge, Climate Wise and the U.S. Initiative for Joint Implementation—specifically refer to participant reporting under section 1605(b). DOE anticipates that most accomplishments under CCAP initiatives will be reported under section 1605(b), but reporting is not limited to these specific activities.

The 1605(b) program is flexibly designed to accommodate broad participation consistent with the purposes of 1605(b). It was not designed to meet the accounting goals of any particular program. Some programs such as Climate Challenge and Climate Wise may need to adopt supplemental accounting procedures for the purposes of those programs.

The Climate Challenge and Climate Wise programs are designed to elicit commitments by members of the utility and industrial communities to take actions which will reduce or avoid greenhouse gas emissions. While the 1605(b) voluntary reporting program will provide a mechanism for recording information on those achievements, it does not provide a mechanism for registering commitments.

DOE is exploring establishment of a separate reporting system for the pledge portion of the commitment programs. While as yet undeveloped, that system may look similar to the reporting program and database established under 1605(b). This similarity, however, should not be confused as allowing commitments to be reported into the section 1605(b) database; only achievements will be part of this database and any information system developed for commitments will be distinct.

B. United States Actions Under the United Nations Framework Convention on Climate Change (FCCC)

Under the FCCC, the United States will be submitting a national communication which contains a mitigation plan of policies and measures. While data submitted to the voluntary reporting program may provide some limited information concerning accomplishments under U.S. measures, it is not designed to be a primary data source for communications of the United States under the FCCC.

VII. Discussion of Report Development and Analysis

The Act requires that DOE develop guidelines on procedures for four reporting categories: baseline emissions for the period 1987 through 1990, annual emissions, emissions reductions, and carbon sequestration activities. It also requires the procedures to take into account the differential radiative effects of each gas covered. However, it does not require that each report include all of these activities or address radiative effects. The legislation does not require that historic baseline, annual, or total organization emissions be reported as a prerequisite to reporting emission reductions or carbon sequestration project information.

DOE is requesting comment on the guidelines approach, which allows voluntary reporters to determine how comprehensive their submissions will be relative to historic baseline, annual and total organization emissions.

A. Annual and Total Organization Emissions

The guidelines encourage, but do not require, reports of annual emissions for the historic baseline period 1987–1990, and for subsequent years. In reporting emissions for this historic baseline period, the reporter may choose to report annual emissions for each of these years, or the average of the four years' emissions. Where adequate data exists (for example, for regulated industries such as utilities), the inclusion of emissions reports for the period 1987 through 1990, and for each subsequent year, will provide enhanced clarity to submissions on reductions and carbon sequestration projects.

The guidelines encourage annual emissions reports on a total-organization basis, covering all greenhouse gas producing activities of the reporter. However, recognizing that adequate information may not be available or may be overly burdensome to collect and analyze (in the case, for example, where an organization has multiple sites and decentralized management), the guidelines allow emissions reporting on a project basis. A project is variously defined, at the discretion of the reporter, as a site, an activity, or a group of activities.

B. Emissions Reduction or Increased Carbon Sequestration Projects

Reports will be accepted on a project-by-project basis as defined by the reporter. The reporter may credibly define a project at the entity level, at a subentity level (such as a plant or production line), at a supra-entity level (including, for example, joint reporting of the manufacture and use of fuel-efficient vehicles), or at a specific activity level (such as replacement of equipment). When defining a project, the entity must consider the amount and accuracy of available data and possible secondary effects of the project as described below.

1. Defining the Project

The draft guidelines allow reporters latitude in defining the project to be reported and in performing analyses to substantiate claimed emission reductions or carbon sequestration. This latitude extends to permitting narrow delineation of a reportable activity which does not reflect the greenhouse gas effects of all of the operations of the reporter. Some commenters stated that requiring reports to cover all greenhouse gas emitting activities of the reporter is the only way to ensure that the program records only "real" reductions, that is, reductions from the entity's total emissions. Other commenters pointed out that participation in the program would be unnecessarily limited by the universal imposition of significant data collection and analytic burdens. In order to achieve the goal of maximum participation, as discussed above, the draft guidelines allow for a broad choice in designing the scope of submissions.

Project-level reporting provides maximum flexibility to reporters based on individual circumstances. Participation is facilitated since growing entities would be able to report, even though their total emissions are growing; and parties who do not have or cannot develop data at the total organization level will be able to report quality data on an individual project. The focus of the program on individual achievements is preserved.

DOE acknowledges that the breadth of reporter discretion permitted could result in some submissions which selectively provide only data on environmentally beneficial activities,

without addressing secondary and other effects. By providing an analytic framework on project boundary definition and secondary effects, and in encouraging the submission of reports showing total organization emissions and emission reductions, the guidelines seek to minimize inappropriate use of narrow reporting. DOE specifically seeks comment on whether the proposed degree of flexibility provided for the scope of reports is appropriate.

2. Reporter's Data Identification, Analysis, and Certification

To encourage voluntary reporting, the guidelines minimize reporting demands, both in terms of ease and cost of data identification, collection and analysis. Three strategies have been developed to accomplish this objective:

(a) Provide that a reporter may use, to the extent possible, information it already collects for other purposes.

(b) Provide two paths for data analysis and report preparation: the first with detailed assistance for smaller or less analytically sophisticated reporters without adequate data or expertise, and the second with more general guidance for reporters with experience in analyzing and reporting the type of data sought by this program.

(c) Accept self-certification as an adequate accuracy check for the current purposes of the program, recommending that reporters consider retaining records where they may be appropriate for future use.

a. Using existing information. Many reporters, such as utilities and members of other regulated industries, currently collect data relevant to this program. This data may be on greenhouse gas emissions specifically, or activity parameters which can be translated to emissions. Some reporters collect data for internal purposes, for example, in order to monitor energy use or expenditures. To minimize data collection burdens, the guidelines encourage the use of existing data for submissions.

Data are collected and reported in various industrial and economic sectors under existing programs at the Federal, state, and local levels. The following discussion illustrates the types of information which will be useful for submissions under this program.

Many reports already required of utilities will readily provide relevant data. These include, for example, specific carbon dioxide emissions reports from electric utility units affected under the Clean Air Act acid rain program (40 CFR part 75). Information needed to estimate emissions of greenhouse gases is reported by all major fossil fuel electricity generating plants in several reports submitted to EIA, for example, on EIA Form 767 (fuel use by generating unit) and EIA Form 861 (utilities' net generation and sales to ultimate customers). In addition, utilities gather relevant data in order to report to public utility commissions and other state an local bodies.

For the industrial sector, examples of information useful for reporting include that provided to the Census Bureau via the Census of Manufactures (CM), the Annual Survey of Manufacturers (ASM), and the Manufacturing Energy Consumption Survey (MECS). Industrial reporters may be collecting relevant data pursuant to existing programs such as the Clean Air Act requirements for halogenated substances, annual reports to the EPA Toxic Release Inventory System, and state programs such as California's Directed Inspection/ Maintenance Programs. Data collected for reporting to the Federal Mining Safety and Health Administration and the Department of Transportation's Office of Pipeline Safety on methane may also be useful to the reporter.

In the transportation sector, reporters may have information gathered in planning and compliance activities undertaken for numerous programs, such as the corporate average fuel economy (CAFE) standards; EPAct and Clean Air Act mandates for alternative fuel use, employer carpooling and telecommuting; state-level subsidies for gasohol; and required fuel use reports by airlines an railroads.

Participants in voluntary programs in both the public and private sectors are or will be collecting information useful to reporting under this program. For example, DOE expects that data generated by participation in many initiatives under the CCAP will be reported under the EPAct 1605(b) program. Participation in private voluntary programs, such as trade association energy efficiency programs, will also result in participants generating data useful to reporting.

Ongoing Federal programs, generally concentrated at DOE and EPA but also at other agencies, afford participants the opportunity to use data generated for those programs in reporting under Section 1605(b). Among these are the Motor Challenge and the Golden Carrot programs. DOE's Energy Analysis and Diagnostic Center (EADC) energy audits, as well as independent energy audits, may provide data useful for the additional purpose of reporting here. EPA's voluntary programs, such as Green Lights, Natural Gas Star, Energy Star Transformers, and others, will also provide useful data.

In the forestry sector, participation in tree planting and urban forestry programs managed by agencies within the U.S. Departments of Agriculture (USDA), Interior, Transportation, and Defense, as well as by State forestry agencies, may provide useful data. Extensive physical data on land use and agricultural practices kept for and by the USDA's Soil Conservation Service and State agricultural agencies, developed for other purposes, may be useful in providing data on activities affecting greenhouse gas emissions and carbon sequestration in the agriculture sector.

b. Two paths for reporting. Public input into development of the draft guidelines indicated that at least two categories of reporters exist. The first includes large utilities and industrial organizations with extensive data collection programs and the capability to perform thorough organizational and project-specific analyses of activities and greenhouse gas and carbon sequestration achievements. The second category of reporters encompasses smaller entities with adequate physical information, but needing assistance in transforming this data into estimates of emissions and reductions or sequestration. To accommodate both categories of reporters, the guidelines ask reporters to provide adequate physical data about projects/activities, and provide two paths for estimating greenhouse gas emissions or carbon sequestration.

In all cases, submissions will include adequate physical data about projects; for example, how many and what type of trees were planted at a location, what quantities of materials were processed, or how many kilowatt hours were used. This information must be sufficient to derive a gross estimate of greenhouse gas emissions or carbon sequestration results.

However, two paths are open to reporters for deriving their estimates of the effects of reported projects. The first is to develop the data and methods needed to estimate credibly and accurately project effects. A variety of tools may be used—such as computer models, actual measurements, and engineering estimates—based on the circumstances of the project and the reporter's purpose for reporting.

The second path for reporters is the use of default values to derive estimates. The guidelines and supporting materials provide, or give references for, emission factors, stipulated savings, equations, and other default systems to be used at the option of the reporter. While the default path is likely to produce

conservative estimates (i.e., underreporting beneficial accomplishments) which are less precise than those derived from project-specific analyses, it will enhance the ability of less sophisticated reporters to report.

Identification of the types of tools used in either path will be part of the report.

c. Certification of submissions. EPAct 1605(b) requires self-certification of reported data. Consistent with the Act, the guidelines provide only for self-certification by the reporter of the accuracy of the submission.

DOE considered the private and public resources necessary for various types of verification of data submitted. The goal of broad participation would be adversely affected by imposing upon reporters additional requirements for certification or verification of submitted data.

Although the draft guidelines do not go beyond the self-certification specified in the statute, other verification and certification parameters may be set by and through other greenhouse gas programs in which a reporter participates. The reporter may identify data in its submission that has been verified by a third party. In addition, reporters may wish to retain auditable data supporting their reported data, based on the anticipated uses of the data.

VIII. Discussion of the Project Analysis Approach

This section discusses the basic approach of the draft guidelines for project analysis, and of the sector-specific supporting methodologies for applying this approach.

A. What the Reporter Must Be Able To Provide

The minimum requirements for reporting the achievements of a project include the following:

- Identifying information about the reporter and the project.
- Sufficient physical data on the project for calculating emission reductions or carbon sequestration results achieved.
- Definition of a reference case against which to measure reductions.
- Identification of the measurement and estimation methods used.

B. Reporting Emissions

Reporters are encouraged to provide total organization emissions data when reporting project emission reductions, as well as total project or activity emissions for the historic baseline period of 1987–1990 and subsequent years. Comprehensive reporting of all relevant emissions data will increase the credibility of any emission reduction reports, by providing a complete picture of the reporter's activities.

Reporters have the flexibility to determine and identify organization-wide reporting boundaries. The rationale for the boundaries they draw will depend, in part, upon the reasons the reporter is preparing and submitting information. If reporters are able to report emissions for their entire organization, they are encouraged to do so. Reporters do not need to report total organization emissions in order to report emission reduction and carbon sequestration projects. DOE recognizes, however, that reporting total emissions for a specific industrial plant, for example, may be more consistent with specific emissions reduction project elements of the report, and based on more readily available data than would a report on the organization's total emissions.

C. Reporting Emission Reductions or Carbon Sequestration: Project Analysis

Accurate and credible reporting under the EPAct 1605(b) program depends upon performing good project analysis. Entities may report emission reductions and carbon sequestration for projects which they define and for which they develop a basis of emissions with and without the project. The guidelines do not provide rigid rules for such an analysis, but provide general methodologies and considerations for use by the reporter, as discussed below.

After defining the project to report, a reporter will need to address three elements of project analysis: (1) Establishment of the reference case (the basis for comparison with the project); (2) definition of the project and reference case boundaries; and (3) estimation of emissions for the reference case and the project.

These elements are interdependent. For example, the selection of a reference case will depend upon both how widely the project boundaries are drawn and what data are available to measure or estimate emissions. The extent of the reporter's analytic efforts will be based on the purposes for reporting.

Defining the project to be reported. A project may consist of only one activity, undertaken for its projected cost savings (such as a relighting project) or as a pilot project (such as an experimental process change); several activities, perhaps as parts of an energy efficiency program (these may include activities, such as materials processing, outside the organization); or all emission-producing activities for the organization. The definition of a project depends on factors such as how clearly the reporter draws the boundaries, how credibly it defines a basis for comparison, and how well it can measure or estimate the effects of the activities.

Step 1. Establishing the reference case. A pivotal consideration in establishing project boundaries is how well the reporter can establish a reference case—that is, an emission level against which to measure the effects of a project. A reference case is often referred to as the "but for" scenario, as in, "but for this project, emissions would have been * * *." Two possible ways to finish this sentence are: (1) "* * * the same as a previous year" (the basic, or historic, reference case), or (2) "* * * different than any previous year" (the modified reference case, which is adjusted from historic data or projected). Each of these cases is discussed below.

Basic (or "historic"). Emissions from within the project boundary may be compared with the corresponding level for some previous year(s); for example, the 1987 to 1990 period, the year(s) just prior to commencement of the project, or some intervening year more indicative of normal operations. The reference case may be defined as the average annual emissions during some multiyear period or the highest or lowest annual emissions during that time. Alternatively, a single reporting year (e.g., 1990) could be chosen by the reporter as the reference case year.

Modified (or "projected"). Even in the absence of the project, emissions levels may differ from past levels, for example due to growth or decline in output and changed operations. In this case, the reference case might be extrapolated with the use of models from past trends and external data to determine what emissions "would have been" but for the project in the year in which the project's effects are being measured. Adjustments may involve estimating the emissions per unit of production using historic or current-year data and adjusting for growth by multiplying this rate by the rate of production in the year reported.

Under the guidelines, reporters may choose between these approaches depending on the reporter's purpose for reporting. For many purposes, a basic reference case using an average of emissions for the years 1987 to 1990 or the annual emissions in the year before the reported year may be more appropriate than a modified reference case.

In analyzing activities of a new entity or added capacity of an existing organization, extra care in constructing

a reference case is necessary. Use of industry standards or of the alternatives actually considered during planning for the new capacity will increase credibility of the reference case. Another approach is the use of a unit-production (or unit of service) reference case. For example, if an entity is adding capacity in order to increase production or service to customers, it may calculate emissions per unit or customer and show reductions based on this common standard.

Step 2. Defining project and reference case effects. The second major step in project analysis is identifying the types of effects the project had. The project may be primarily designed to reduce greenhouse gas emissions or increase carbon sequestration. It will, however, have both expected and unanticipated secondary effects. The reporter will need to address both primary and secondary effects in analyzing the project for reporting.

Primary effects. These are the obvious, immediate, direct and intended effects of the project, resulting in direct and indirect emissions and carbon sequestration. For example, the primary effect of an electricity conservation project is the reduction of electricity use and of the carbon dioxide emissions associated with the electricity generation avoided. The primary effect of a tree planting program is the sequestration of carbon.

Secondary effects. These are the more subtle, indirect, consequential, and perhaps unintended effects of projects. They may be positive (augmenting the primary effects) or negative (counterproductive to primary effects). Secondary effects may be large, in some cases as large as the primary effects, and include activity shifting, outsourcing, shifting emissions to different points of the life cycle, and offsetting emission reductions by residual market demand.

The guidelines ask the reporter to clearly state the primary effect of the project and identify any significant secondary effects. If the entity is quantifying the emission reductions or carbon sequestration associated with the project, the entity should try to quantify the secondary effects, particularly those that amount to ten percent or more of the primary effects. DOE recognizes that quantifying the effects of a project can be difficult. However, the credibility of emission reduction or carbon sequestration reports may be impaired if negative secondary effects rose, or appeared capable of rising, thereby offsetting a significant portion of the reported primary effects. Ultimately, the reporter must choose the balance between increased analysis cost and increased thoroughness of the analysis, depending upon the reasons for reporting.

Step 3. Quantifying reference case and project effects. The guidelines provide reporters with a wide range of options for identifying input data and defining methods for quantifying the project's impact on emissions or carbon sequestration. The types of data and methods used will be reported.

First, the guidelines recognize three types of data: physical, default, and measured/engineering.

Physical data. This is information that describes the activities involved in a project. For example, how many exit lights were replaced? What was the power requirement of the old and the new lights? How many hectares of which species of tree were planted?

Default Data. This is information provided in the guidelines and supporting methodologies to assist reporters in evaluating the effects of projects. While using default data will ease reporting for many reporters, it is generally conservative, and may not provide the reporter's desired precision. There are two types of default data:

Emissions Factors. These are factors that allow reporters to convert information about a change in energy use to an estimated change in greenhouse gas emissions. Emissions factors for direct emissions are more precise than for indirect emissions. For example, the change in direct emissions of carbon dioxide from a reduction in methane combustion is essentially constant, regardless of when or where the change takes place. Other emission factors, particularly those for indirect emissions, are less precise. For example, the draft guidelines provide emissions factors for electricity on a state-by-state basis. However, the effect that a specific change in electricity consumption has on emissions will vary by location within the state, the time of day, and the season in which a change occurs. Generally, the draft guidelines and supporting documents contain relatively conservative figures for indirect emissions factors.

Stipulated Factors. These are factors that allow reporters to convert physical data about projects into estimates of changes in energy use, greenhouse gas emissions or carbon sequestration. The guidelines provide this information for a few types of projects where the scope and nature of the project can be clearly defined and the effects on emissions predicted with relative certainty. For example, the guidelines provide stipulated factors for converting physical data about tree planting into estimates of carbon sequestration. They also provide stipulated factors for converting information about certain energy-efficiency projects into estimates of fuel savings. These estimates can be combined with default emissions factors to estimate reductions in greenhouse gas emissions.

Reporter-Generated Data. This is information developed by the reporter and used in estimating the effects of the reporter's projects. There are two types of reporter-generated data.

Measured Data. These are data on emissions operating parameters collected directly from the project or a control group, that a reporter can use in estimating project accomplishments.

Engineering Data. These are data that reporters derive from sources such as engineering manuals, manufacturer's equipment specifications, surveys, academic literature, and professional judgment.

Standard Project. These are projects for which the draft guidelines provide the procedures and information necessary to transform physical data into emissions reductions or carbon sequestration results, relying entirely on physical and default data. A few types of projects can be described through standard project reports; these are identified in the sector-specific methodologies supporting the guidelines. Reporters must recognize that, since the default values used are conservative, the precision of their report is lessened. However, for reporters who do not have direct project measurements or experience in estimation methods, standard project methodologies will allow them to quantify the effects of these activities.

Reporter-Defined Project. These are projects that use physical and reporter-generated data, possibly in combination with default data, to estimate the accomplishments of the project. For this type of project, reporters will need to be able to clearly indicate the sources of all data, and in the case of reporter-generated data, how it was measured or derived. For reporter-defined projects, the principles and guidance are provided in the sector specific methodologies supporting the guidelines.

Estimation of reportable effects of most reporter-defined projects will require gathering basic data, and using it to derive the levels of project and reference case emissions. This may involve relatively simple calculations or complex modeling.

The guidelines suggest recording the nature of the calculations or the type/name of the model used.

In some instances, identified in the sector-specific supporting

methodologies, it may not be possible to estimate emissions for both the project and the reference case. In these cases, it may be necessary for the reporter to measure the emission reductions or operating parameters directly.

IX. Significant Issues

DOE requests comment on all issues raised by the draft guidelines and supporting materials and calls particular attention to several significant issues. Commenters are requested to consider the impact of any alternative approach they suggest on the goals of encouraging broad participation and generating useful data.

(1) Is the scope of the guidelines with respect to emissions of the gases and substances specified appropriate?

(2) Should threshold reporting levels of emissions or carbon sequestration be set? If so, at what levels and why?

(3) Do the guidelines appropriately address and distinguish between direct and indirect emissions of the applicable gases? Are there additional ways which can address the statutory references to reportability of activities which result in direct emissions and those that result in indirect emissions?

(4) In order to report an emissions reduction or carbon sequestration project, should reporters be required to report comprehensive data on their historic (1987–1990) emissions? On their organization's total greenhouse gas emissions? From all activities in the year covered by the project report?

(5) What categories of data derivation should be identified (e.g., measurement, engineering estimate) as appropriate to achieve the dual goals of the program?

(6) Is the approach to reporting activities taken in association with others appropriate for minimizing double counting while encouraging participation?

(7) How should activities outside the U.S. be handled by the reporting program?

(8) Is the information and approach provided on different radiative activity of gases appropriate? Should DOE delay finalizing this portion of the guidelines until completion of the current international deliberations?

X. Administrative Requirements

A. Regulatory Review

DOE has concluded that this is not a significant regulatory action because it does not meet the criteria which define such actions under Executive Order 12866, 58 FR 51735, and is therefore not subject to regulatory review. Accordingly, the Office of Management and Budget (OMB) has informed DOE that no clearance of the draft guidelines and supporting materials is required.

B. Issues Under the Paperwork Reduction Act

In addition to providing information to parties which wish to participate in voluntary reporting, the guidelines and supporting materials provide direction to EIA in developing the reporting forms and database for the program. Separate administrative requirements apply to the development of EIA reporting forms, which will proceed after DOE finalizes the guidelines.

Any information collection requirements proposed in EIA forms for the voluntary reporting program are subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and will be submitted to the Office of Management and Budget for review and approval of paperwork requirements. Because the reporting forms developed by EIA will be necessary for participation in the program and must be consistent with the guidelines, the draft guidelines and supporting materials may involve issues relevant to subsequent review of the forms for paperwork requirements. Comments on any paperwork issues identified by the draft guidelines and supporting materials are requested.

XI. Opportunities for Public Comment

A. Public Hearing Procedures

A public hearing on the draft guidelines and supporting documents will be held at the time and place indicated in the **DATES** and **ADDRESSES** sections above. Any person who has an interest in the draft guidelines may request the opportunity to make an oral presentation. DOE reserves the right to cancel the second day of the hearing if scheduled requests to speak can be accommodated in the first day. All requests to speak should be made by telephone at the number listed in the **ADDRESSES** section.

DOE reserves the right to schedule speaker presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation may be limited to 5 minutes, or longer based on the number of persons requesting an opportunity to speak. Ten copies of the speaker's statement should be submitted at the hearing.

A DOE official will preside at the hearing. The hearing will be a legislative-type hearing; speakers will not be sworn in nor cross-examined. Further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made and will be available for public inspection as indicated in the **ADDRESSES** section above.

B. Written Comments

Interested persons are invited to submit comments on the draft guidelines and sector-specific issues and methodologies, and on the questions presented in this notice.

Ten copies should be submitted to the address indicated in the **ADDRESSES** section above, and must be received by the date indicated in the **DATES** section of this notice. All written comments received will be available for public inspection in the DOE Freedom of Information Office Reading Room at the address provided at the beginning of this notice.

Pursuant to provisions of 10 CFR 1004.11, any person submitting information which that person believes to be confidential information and which may be exempt by law from public disclosure should submit one complete copy of the document as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

Issued in Washington, DC, on May 26, 1994.

Susan F. Tierney,

Assistant Secretary, Office of Policy, Planning, and Program Evaluation.

[FR Doc. 94–13304 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Policy, Planning and Program Evaluation

DOE Headquarters Washington, DC, Chicago Operations Office

AGENCY: Department of Energy.

ACTION: Acceptance of noncompetitive financial assistance.

SUMMARY: The Department of Energy (DOE), Office of Transportation Technologies, through the Chicago Operations Office, announces that it intends to award a grant to the Society of Automotive Engineers (SAE) of Warrendale, Pennsylvania. The proposed award meets the criteria in 10 CFR 600.7(i)(D). The financial assistnce is for support of the Society of Engineers TOPical TEChnical (TOP TEC) workshop on Hybrid-Electrical Vehicle Technology in conjunction with the Hybrid Electrical Vehicle student design competition. The workshop will be hosted Southfield, Michigan, and is scheduled for June 21, 1994.

SUPPLEMENTARY INFORMATION: The TOP TEC workshops are an innovative forum for presenting and addressing the issues in Alternative Fuel Technology. Professionals from industry, academia and Government will join together to listen to experts discuss a broad range of topics such as:

1. Understanding the construction and operation of electric & hybrid vehicles;

2. Learn the benefits and limitations of electric and hybrid vehicles;

3. Appraisal of the current state of the art electric and hybrid vehicle technology, including fuel cell technology applications;

4. Learn how electric vehicles will impact the environment, and what infrastructure development for these vehicles is required;

5. Identify areas for future research to ensure successful electric vehicle commercialization.

The DOE will provide funds in the amount of $25,000 for a period of 2 months from June 20, 1994 through August 20, 1994. The Society of Automotive Engineers and other sponsors will provide the remaining funding for the conference.

FOR FURTHER INFORMATION CONTACT: Robert Kost, EE–321, U.S. Department of Energy, 1000 Independence SW., Washington, DC 20585, (202) 586–2334.

Issued in Chicago, Illinois on May 18, 1994.

Alan E. Smith,

Director, Operations Management and Support Division.

[FR Doc. 94–13310 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office, Implementation of Noncompetitive Financial Assistance

AGENCY: U.S. Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR Section 600.7(b)(2), it is awarding a noncompetitive financial assistance grant to the state of Nevada, Commission on Economic Development, Las Vegas, to further economic development.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Tammie Henderson, Program Management & Planning Division, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: This award will provide financial support to the state of Nevada, Commission on Economic Development, to establish a communication system to link 12 public/private development authorities throughout the State to further economic development. This communication system will contribute to state-wide sharing of relevant economic development information by providing the potential of attracting new businesses, providing information on job opportunities, and providing information for displaced workers.

Eligibility for the award of this grant is being limited to the state of Nevada, Commission on Economic Development, because of their exclusive capability in having the only office with state-wide branches that contribute to economic development.

The project period for this grant is for one year and will commence on June 15, 1994, through June 14, 1995. The total estimated cost of this award is $200,000.

Issued in Las Vegas, Nevada, on May 23, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–13309 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed the Week of April 29 Through May 6, 1994

During the Week of April 29 through May 6, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 29 through May 6, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 7, 1994	Westinghouse Hanford Co., Richland, WA.	LWZ–0030	Motion to Dismiss. *If Granted:* Westinghouse Hanford Company would be dismissed as party to the hearing request filed by Helen G. Oglesbee (Case No. LWA–0006).
May 2, 1994	Shannon & Wilson, Inc., Seattle, WA.	LFA–0371	Appeal of an Information Request Denial. *If Granted:* Shannon & Wilson, Inc. would receive access to requested information in five areas regarding the referenced Request Regarding Proposal Number W–208829–MV for Environmental Compliance Geotechnical RCRA Support.
May 2, 1994	H and W Oil Co., Inc., Sparta, IL.	LEE–0115	Exception to the Reporting Requirements. *If Granted:* H and W Oil Company, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
May 3, 1994	Concord Oil Co., San Antonio, TX.	LFA–0372	Appeal of an Information Request Denial. *If Granted:* The April 1, 1994 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and Concord Oil Company would receive access to various contracts pertaining to work already performed or to be performed on any UMTRA project.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 29 through May 6, 1994]

Date	Name and location of applicant	Case No.	Type of submission
May 3, 1994	Mary Ellen O'Brien, Reynolds Electric & Engineering Co., Las Vegas, NV.	LWA–0008 LWA–0009	Request for Hearing under DOE Contractor Employee Protection Program. *If Granted:* A hearing under 10 C.F.R. Part 708 would be held on the complaint of Mary Ellen O'Brien that reprisals were taken against her by management officials of Reynolds Electric & Engineering Company as a consequence of her having disclosed concerns of a supplier's alleged noncompliance with the terms of a contract, resulting in possible fraudulent charging practices.
May 4, 1994	Mark S. Boggs, Craig, CO	LFA–0373	Appeal of an Information Request Denial. *If Granted:* Mark S. Boggs would receive access to any information concerning the release of tissue samples from his deceased mother for the study of plutonium contamination from the DOE's Fernald site.
May 4, 1994	Nepera, Inc., Los Angeles, CA.	RR272–129	Request for Modification/Rescission in the Crude Oil Refund Proceeding. *If Granted:* The June 25, 1993 Dismissal Letter (Case No. RF272–48661) issued to Nepera, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
May 4, 1994	William H. Payne, Albuquerque, NM.	LFA–0374	Appeal of an Information Request Denial. *If Granted:* William H. Payne would receive access to DOE information.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund application	Case no.
Dec. 6, 1993	Criswell's Texaco Service	RF321–20981
Dec. 6, 1993	Gressett's Texaco #3	RF321–20980
Apr. 29, 1994 thru May 6, 1994.	Crude Oil Refund, Applications Received	RF272–95260 thru RF272–95276
May 3, 1994	Ingram Shell Service	RF315–10285
May 3, 1994	Orr's Texaco Service Station	RF321–20982
May 5, 1994	H.H. Irwin Dist. Company	RF304–15454
May 5, 1994	H.H. Irwin Dist. Company	RF304–15455
May 5, 1994	H.H. Irwin Dist. Company	RF304–25456
May 6, 1994	Tom Lass	RF321–20984
May 6, 1994	Marine Drilling Companies	RF272–95276

[FR Doc. 94–13308 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of April 11 Through April 15, 1994

During the week of April 11 through April 15, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Clyde Excell Clements, Jr., 4/11/94, LFA–0364

Clyde Excell Clements, Jr. filed an Appeal from a denial by the DOE's Pittsburgh Naval Reactors Office of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that a search for information conducted by the Pittsburgh Naval Reactors Office had been adequate. In addition, the DOE found that the FOIA does not require the Pittsburgh Naval Reactors Office to respond to questions posed in Clements' Appeal.

Coalition on West Valley Nuclear Wastes, 4/13/94, LFA–0361

The Coalition on West Valley Nuclear Wastes filed an Appeal from a partial denial of a Request for Information which the organization had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Idaho Operations Office and its management and operating contractor, West Valley Nuclear Services Company, had conducted a search reasonably calculated to find any responsive documents related to the 1982 ground survey of the former site of a nuclear fuel reprocessing plant. An important issue considered in the Decision and Order was whether a thorough but fruitless search for documents of a type not normally retained or copied is considered responsive under the FOIA.

Vista Control Systems, Inc., 4/12/94, LFA–0362

Vista Control Systems, Inc. (Vista) filed an Appeal from a determination issued by the Office of Intergovernmental and External Affairs of the Department of Energy's Albuquerque Field Office (DOE/AL), in response to a request for information under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the University of California, a DOE contractor who possessed the records sought by Vista, is not an "agency" as defined in the FOIA. However, because the contract between the DOE and the University, which manages the DOE's Los Alamos National Laboratory (LANL), provided that all records acquired or generated by the University employee's at LANL shall be the property of the Government, the DOE found that the records requested by Vista were agency records subject to the

FOIA. The matter was therefore remanded to DOE/AL for a determination either releasing the materials requested or providing a detailed justification for their withholding. In all other respects, the Appeal was denied.

McKusick Petroleum, 4/12/94, LEE–0054

McKusick Petroleum (McKusick) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not experiencing a gross inequity or serious hardship. On February 24, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying McKusick's Application for Exception.

Miller's Bottled Gas, Inc., 4/13/94, LEE–0059

Miller's Bottled Gas, Inc. (Miller's) filed an Application for Exception from the requirement that it file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Miller's to be permanently exempted from filing Form EIA–782B. In considering the request, the Office of Hearings and Appeals (OHA) found that the firm had not met the standards set forth by the DOE for exception relief. Furthermore, Miller's has never completed the form as required. Thus, the DOE found that the firm's claim that completion of the form would require an inordinate amount of time is purely speculative, and cannot provide a basis for relieving the firm of the filing requirement. Therefore, Miller's did not demonstrate that it is experiencing a serious hardship or gross inequity and exception relief was denied.

Refund Application

State Escrow Distribution, 4/12/94, RF302–15

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $10,047,284 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Alan N. Abner et al	RF272–90936	04/13/94
Alfred Friedman Management Corporation	RF272–80410	04/15/94
Atlantic Richfield Company/Aristech Chemical Corporation	RF304–10989	04/12/94
Atlantic Richfield Company/Ben's Arco et al	RF304–13861	04/14/94
Atlantic Richfield Company/Warfel Trucking, Inc. et al	RF304–14357	04/12/94
Beacon Oil Company/Harmon's Service	RF238–136	04/15/94
Coca Cola Bottling Co. Consolidated et al	RF272–67200	04/13/94
Gulf Oil Corp./Magic Valley Electric Coop Inc et al	RF300–13158	04/13/94
North Daviess Community Schools et al	RF272–87042	04/14/94
Sears Roebuck & Co	RF272–235	04/12/94
Texaco Inc./Barnett's Texaco et al	RF321–51	04/15/94
Texaco Inc./Bob's Texaco et al	RF321–18887	04/13/94
Texaco Inc./Griffin Oil Company	RF321–2415	04/13/94
Griffin Oil Company	RF321–20966	.....
Griffin Oil Company	RF321–20967	.....
Texaco Inc./Jim Williams Texaco	RF321–20969	04/14/94
Texaco Inc./John Sorum Texaco	RF321–20968	04/12/94
Texaco Inc./Lake Joy Texaco et al	RF321–571	04/14/94
Texaco Inc./Leo Faulkner's Texaco	RF321–8673	04/13/94
Texaco Inc./Richmond Steel & Welding, Inc	RF321–20970	04/15/94
Transue & Williams Steel Forge et al	RF272–77391	04/13/94

Dismissal

The following submissions were dismissed:

Name	Case No.
Arizona Chemical	RF321–20517
B&G Wood Products, Inc	RF272–82422
City of Haysville, KS	RF272–85588
Dorazio's Texaco	RF321–20670
Eddie M. Vega Valle	RF321–20833
Elm Garage, Inc	RF321–20513
Garage Texaco De Teodoro Ruiz Brigoni.	RF321–20832
GCO Mineral Company	RF321–20518
Givens Texaco	RF321–18623
Hanson's Texaco	RF321–20810
Henderson's Texaco	RF321–19288
Highlands Texaco	RF321–20897
Hyde Park Super Service Station.	RF321–20847
International Paper Company.	RF321–20515
J&R Texaco	RF321–20815
Jay & Al Texaco	RF321–20950
Masonite Corporation	RF321–20516
Nagel Service Station	RF321–18707
Walter Zable	RF321–20929
Wayne's Texaco	RF321–20052
Whitefish Bay School District.	RF272–82554

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–13307 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of April 4 Through April 8, 1994

During the week of April 4 through April 8, 1994, the decisions and orders

summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Christian County Farmers Supply Co., 4/7/94, LEE–0073

Christian County Farmers Supply Co. (CCFSC) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms and was not experiencing a serious hardship or gross inequity. Accordingly, exception relief was denied.

Decatur Cooperative Association, 4/5/94, LEE–0068

Decatur Cooperative Association (Decatur) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that Decatur did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Minneola CO-OP, Inc., 4/6/94, LEE–0071

Minneola Co-op, Inc. (Minneola) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On February 15, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed within the prescribed time period. Therefore, on April 6, 1994, the DOE issued the Proposed Decision and Order in final form, denying Minneola's Application for Exception.

Ranchers Supply, Inc. 4/7/94, LEE–0072

Ranchers Supply, Inc. (Ranchers Supply) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On February 15, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Ranchers Supply's Application for Exception.

Schaal Oil Co., 4/6/94, LEE–0069

Schaal Oil Co. (Schaal) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms and was not experiencing a serious hardship or gross inequity. Accordingly, exception relief was denied.

Star-Lite Propane Gas Corp., 4/8/94, LEE–0065

Star-Lite Propane Gas Corp. filed an Application for Exception from the requirement that it file Form EIA–782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm had failed to show that it suffered any burden significantly different from similarly situated reporting firms. Accordingly, exception relief was denied. The important issue discussed in the Decision and Order was that at the time it filed the Application, Star-Lite had not yet attempted to complete the form. Therefore, its claims of hardship regarding the time and effort needed to complete the form were speculative.

Motion for Reconsideration and/or Rescission

Energy Refunds, Inc., 4/5/94, LFR–0013

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Energy Refunds, Inc. (ERI). In its Motion, ERI requested that the DOE terminate the ERI's disqualification from representing refund applicants in OHA proceedings. *See Energy Refunds, Inc.*, 23 DOE ¶ 85,151 (1993); *Energy Refunds, Inc.*, 23 DOE ¶ 85,076 (1993).

In considering ERI's Motion, the DOE noted ERI's expressed commitment to accuracy in its submissions, as well as its proposed remedial procedures which, if conscientiously implemented, would prevent the repetition of the types of conduct for which it had been disqualified. Based on ERI's representations, the DOE determined that ERI should be reinstated, subject to OHA's further review of the firm's implementation of the procedures in question. Accordingly, the Motion for Reconsideration was granted.

Implementation of Special Refund Procedures

J.R. Cone, 4/5/94, LEF–0118

The DOE issued a final Decision and Order setting forth refund procedures for distributing $610,000, plus accrued interest, in alleged overcharges obtained from J. R. Cone (Cone). These funds were remitted by Cone to the DOE pursuant to a Consent Order resolving possible price violations with respect to sales of crude oil during the period September 1, 1973 through December 31, 1976. The DOE determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states (40%), the Federal Government (40%), and injured purchasers of refined products (20%). In this case, $244,000, plus accrued interest, was remitted to the states, $244,000, plus accrued interest, was remitted to the Federal government, and $122,000, plus interest accrued, has been reserved for direct restitution to injured purchasers of petroleum products. Applications for Refund from this fund will now be accepted. The specific information to be included in the Applications for Crude Oil Refunds, which must be submitted by June 30, 1994, is included in the Decision.

Refund Applications

Donco Carriers, Inc., 4/5/94, RC272–234

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Subpart V crude oil refund proceeding by Donco Carriers, Inc. This Decision adjusted the original refund granted to Donco Carriers in the Decision and Order issued on November 30, 1993, *Donco Carriers, Inc.* (Case No. RF272–78471). The original refund was adjusted to account for subtracting owner-operator miles from the gallonage claim and for recalculating the dollars to gallons conversion using average annual

prices for distillate fuel. Accordingly, this Decision rescinded in part the original refund granted to Donco Carriers, Inc. in Case No. RF272–78471.

Gulf Oil Corporation/Dennis Lee Lay, 4/6/94, RF300–21298

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Frances Carolyn Lee Perry on behalf of her ex-husband Dennis Lee Lay. Ms. Perry applied for purchases of petroleum products made by her ex-husband Mr. Lay when he operated a Gulf station during the refund period. In addition to providing information that she and Mr. Lay formed an economic unit and that she helped operate the station, Ms. Perry also submitted a court order directing that the entire refund be granted to her because of her ex-husband's delinquency on child support payments. Based on these considerations, the DOE determined that the entire refund should be granted to Ms. Perry.

Gulf Oil Corporation/Siegel Oil Co., 4/7/94, RF300–9356

Siegel Oil Company filed an application for Refund in the Gulf Oil Corporation special refund proceeding. Siegel requested an above-volumetric refund based on two alternative theories: 1) that Gulf's use of a substitute supplier for Siegel violated the price and allocation regulations, causing Siegel injury and 2) that Gulf's use of a substitute supplier, even if lawful, caused Siegel to suffer injury which should be remedied through the refund process. In considering Siegel's Application, the DOE determined that Siegel had not made a reasonable demonstration that Gulf committed a regulatory violation and that, absent such a demonstration, there was no basis for an above-volumetric refund. Finally, the DOE determined that Siegel was eligible for a refund of $5,000 plus interest based on its indirect purchases of Gulf product and the small claims injury presumption.

Texaco Inc./Todd's Texaco, 4/8/94, RR321–124

Barbara Todd, the owner of Todd's Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that Mrs. Todd had filed in the Texaco refund proceeding. Mrs. Todd stated that she had signed the second application, and certified that no other application had been filed, because she had asked her representative to cancel the first application. The DOE granted the Motion, finding that Mrs. Todd's explanation for filing the second application was credible. In considering Mrs. Todd's refund claim, the DOE found that, as an indirect purchaser of Texaco motor gasoline, she was eligible for a refund since her suppliers had not shown that they absorbed the Texaco overcharges. The total amount of the refund granted in this case was $1,828.

Texaco Inc./Tom's Texaco, 4/6/94, RR321–153

The DOE issued a Decision and Order denying a Motion for Reconsideration filed on behalf of Tom's Texaco in the Texaco in special refund proceeding. In this motion, Mr. Cirafici, owner of Tom's Texaco, attempted to show that the refund granted to Tom's Texaco was less than the refund for which Tom's Texaco is eligible. Mr. Cirafici relied solely on his memory to formulate additional gallonage estimates. The DOE found that Mr. Cirafici did not present sufficient evidence to support his estimates and that therefore he had not presented any new or overlooked information that would cause the DOE to alter its previous decision. Accordingly, the Motion for Reconsideration was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Company/D&B Arco et al	RF304–13386	04/07/94
Bassett Mirror Co. et al	RF272–92000	04/08/94
Charter Oil Co./California	RF23–266	04/08/94
California	RF3–267	
City of Richland, Missouri et al	RF272–85395	04/07/94
Gulf Oil Corp./Beard's Gulf Service et al	RF300–20548	04/08/94
Gulf Oil Corp./Blue Flame Gas Co. of Polk County	RF300–19655	04/05/94
Blue Flame Gas Company	RF300–21781	
Gulf Oil Corp./Eastern Express, Inc	RF300–21775	04/08/94
Gulf Oil Corp./WJT Oil	RF300–16244	04/08/94
Livonia Public Schools et al	RF272–82146	04/06/94
McDowell County School District	RF272–127	04/06/94
Talbot County School District et al	RF272–81295	04/06/94
Texaco Inc./Bill & Charlie's Texaco et al	RF321–7705	04/05/94
Texaco Inc./Gallaway Texaco Truck Stop	RF321–155	04/08/94
Texaco Inc./Hope Service Station, Inc. et al	RF321–7486	04/05/94
Winston County School District	RF272–80647	04/08/94
Midview Local School District	RF272–80818	
Humboldt Community School	RF272–81161	

Dismissals

The following submissions were dismissed:

Name	Case No.
Barberton City School District.	RF272–82232
Betteroads Asphalt Corp	RF315–9162
Bill's ARCO	RF304–12132
Cathedral City, CA	RF272–85581
Dave's Texaco	RF321–8603
De Ruyter Central School	RF272–93109
Downtown Texaco	RF321–992
Georgetown Schools	RF272–80039
Green Oil Corporation	RF304–12125
Greenwood Lake Union Free School District	RR272–106
Hipolex Corporation	RF272–67876
M&M Shell Station	RF315–5215
Manley Texaco	RF321–7175
Mike's Texaco & U-Haul	RF321–12604
Tri-State Homes, Inc	RF272–92520

Copies of the full text of these decisions and orders are available in the

Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–13306 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $38,214.98, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to County Fuel Company, Inc., Case No. LEF–0015. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, Subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6602.

DATE AND ADDRESS: Applications for Refund must be filed in duplicate, addressed to County Fuel Company, Inc. Special Refund Proceeding and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Applications should display a prominent reference to the Case Number LEF–0015 and be postmarked on or before November 30, 1994.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $38,214.98, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to County Fuel Company, Inc., on May 7, 1984. Under the Remedial Order, County Fuel Company, Inc., was found to have violated the federal petroleum price and allocation regulations involving the sale of motor gasoline during the relevant audit period.

The OHA has determined to distribute the Remedial Order fund in a two stage refund proceeding. Purchasers of motor gasoline from County Fuel Company, Inc., will have an opportunity to submit refund applications in the first stage. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of motor gasoline which they purchased from County Fuel Company, Inc.

In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before November 30, 1994. Instructions for the completion of refund applications are set forth in Section IV of the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: May 24, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: County Fuel Company, Inc.

Date of Filing: March 6, 1990.

Case Number: LEF–0015.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the ERA on March 6, 1990, for funds obtained due to alleged pricing violations in the sale of motor gasoline at wholesale and retail levels. The funds at issue in that Petition were obtained through DOE enforcement proceedings involving County Fuel Company, Inc. (County), pursuant to 10 CFR part 205, subpart V. The present Decision will set forth final procedures for the distribution of these funds to qualified purchasers of County's motor gasoline.

I. Background

During the period covered by the Remedial Order (March 1, 1979, through March 18, 1980), County was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and was located in Baltimore, Maryland. Accordingly, County was subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of County records revealed possible violations of these regulations in sales of County's motor gasoline during the period March 1, 1979, through March 18, 1980. On the basis of this audit, the ERA issued a Proposed Remedial Order (PRO) to County on May 24, 1982. This Office affirmed these alleged violations and issued a Remedial Order to County on May 7, 1984. *County Fuel Company, Inc.*, 12 DOE ¶ 83,007 (1984). The Remedial Order was affirmed by the Federal Energy Regulatory Commission on August 23, 1985. *County Fuel Company, Inc.*, 32 FERC ¶ 61,301 (1985). The Temporary Emergency Court of Appeals (TECA) affirmed the decision on August 12, 1987. *County Fuel Company, Inc.*, v. *DOE*, 3 Fed. Energy Guidelines ¶ 26,588 (Temp. Emer. Ct. App. 1987).

However, County had filed for bankruptcy on July 6, 1981. Following the TECA decision, the DOE's claim as an unsecured creditor was allowed by the bankruptcy court in the amount of $254,766.49, including interest. *In re: County Fuel Company, Inc.*, No. 81–2–2208–L (D. Md. 1986). Under the Second Amended Plan of Reorganization, unsecured creditors were paid 15 percent of the allowed claim in cash or 100 percent of the claim in common stock. On August 25, 1988, County delivered a check in the amount of $38,214.98 to the DOE, representing 15 percent of the allowed claim. The ERA accepted this amount in lieu of payment in common stock. Interest in the amount of $14,047.66 has accrued as of March 31, 1994.

II. The Proposed Decision and Order

On March 8, 1994, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged violation amount

obtained from County. 59 FR 11979 (March 15, 1994). The OHA tentatively outlined procedures under which purchasers of County's motor gasoline could apply for refunds. In order to permit applicants to make refund claims without incurring disproportionate costs as well as to allow the OHA to equitably and efficiently consider those claims, we set forth a number of presumptions pertaining to refund procedures.

First, we presumed that the alleged refined product overcharges were spread evenly over all of County's sales of motor gasoline during the Remedial Order period. We therefore proposed that an applicant's potential refund generally should be computed by multiplying the per-gallon refund amount by the number of gallons of County's motor gasoline that the claimant purchased during the Remedial Order period. The resulting figure is referred to as the claimant's "volumetric share" of the County Remedial Order funds. Because an applicant may have been overcharged by more than the volumetric refund presumption by showing that it sustained a greater amount of the overcharge.

Because it is potentially difficult, time-consuming, and expensive to demonstrate that one was forced to absorb any overcharges from County, we proposed to adopt a number of presumptions concerning injury. We proposed that resellers and retailers claiming refunds of $5,000 or less, end-users, agricultural cooperatives, and certain types of regulated firms would be presumed injuried by County's alleged overcharges. We proposed that refiners, resellers and retailers seeking refunds greater than $5,000 could receive a maximum of $20,000 based upon 40 percent of their volumetric share without having to prove injury. We also proposed to presume that claimants who made only spot purchases from County were not injured and must rebut that presumption to receive a refund. We stated that applicants not covered by one of the injury presumptions would be required to demonstrate that they were forced to absorb any overcharge by County in order to receive their full volumetric shares of the County Remedial Order funds.

Finally, we proposed that any money remaining after all County refund claims are analyzed should be disbursed as indirect restitution in accordance with the provisions of the Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. § § 4501–4507 (1988).

The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative refund process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the County settlement funds. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Eligibility for Refunds

As indicated above, the Remedial Order found that County overcharged its customers a total of $197,305.49, excluding interest, in violating 10 CFR 212.93, by charging prices in excess of its maximum lawful selling prices for motor gasoline. Accordingly, to the extent that is possible, the County Remedial Order amount of $38,214.98, plus accrued interest, will be distributed to purchasers of covered County motor gasoline who can show that they were injured by County's pricing practices during the period March 1, 1979, through March 18, 1980.

B. Calculation of Refund Amount

We are adopting a volumetric method to apportion the County escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the Remedial Order period times a per gallon refund amount. We will derive the volumetric figure (per gallon refund amount) by dividing the $38,214.98 received from County by the total volume of motor gasoline sold by the firm during the regulatory period, 2,431,180 gallons. This yields a volumetric refund amount of $.0157 per gallon, exclusive of interest.[1] This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of motor gasoline sold by County during the regulatory period. *E.g., American Pac. Int'l, Inc.*, 14 DOE ¶ 85,158, at 88,293 (1986).[2]

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from County during the period March 1, 1979, through March 18, 1980, multiplied by the per gallon volumetric amount for this proceeding. Accordingly, each claimant will be required to establish, by documentation of reasonable estimation, the volume of products that it purchased during this period. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the County funds since the date of remittance. As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g., Uban Oil Co.*, 9 DOE ¶ 82,541, at 85,225 (1982). Accordingly, an applicant must have purchased at least 924 gallons of motor gasoline from County in order for its claim to be considered.

C. Showing of Injury

Each claimant will be required to document its purchases of covered products from County during the Remedial Order period. In addition, in order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597, at 85,396–97 (1981).

However, as we have done in many prior refund cases, we will adopt a number of presumptions regarding injury for claimants in each category listed below. These presumptions are intended to ease what would be a time-consuming and potentially expensive process if an applicant were forced to demonstrate that they absorbed the alleged overcharges.

1. End-Users

In accordance with prior Subpart V proceedings,we are adopting the presumption that an end-user or

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[1] In the PDO, we included the interest which had accrued as of January 31, 1994, in the County Remedial Order Fund. It has come to our attention that this would lower the actual amount of restitution an applicant would receive when taking advantage of one of the presumptions. Therefore, in this Final Decision and Order, we have decided to only use the amount actually collected from County to compute the volumetric amount.

[2] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co. /Army and Air Force Exchange Serv.*, 12 DOE ¶ 85,015 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (1) it was "overcharged" by a specific amount, (2) it sustained a disproportionate share of County's alleged overcharges, and (3) it was injured by those overcharges. *See MCO Holdings, Inc., MGPC, Inc./ Little America Refining Co.*, 19 DOE ¶ 85,560 (1989); *Marathon Petroleum Co./Red Diamond Oil Co.*, 19 DOE ¶ 85,543 (1989); *Getty Oil Co / Atchison, Topeka & Santa Fe Railroad Co.*, 18 DOE ¶ 85,107 (1988). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refunds of this type, we will prorate the refund amount by the ratio of the County remedial order amount as compared to the aggregate overcharge amount alleged by the ERA. *Amtel, Inc./ Whitco, Inc.*, 19 DOE ¶ 85,319 (1989) (*Amtel/ Whitco*).

ultimate consumer of County motor gasoline whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the remedial order. *See, e.g., Texas Oil and Gas Corp.* 12 DOE ¶ 85,069, at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the remedial order period and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* Therefore, end-users of County motor gasoline need only document their purchase volumes from County during the remedial order period to make a sufficient showing that they were injured by the alleged overcharges.

2. Regulated Firms and Cooperatives

In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *i.e.*, a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. *See Marathon*, 14 DOE at 88,514–15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharge would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[3]

[3] A cooperative's purchases of County products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,215 (1989).

3. Refiners, Resellers, and Retailers

a. *Small claims presumption.* We will adopt a "small claims" presumption that resellers requesting relatively small refunds were injured by the alleged overcharges. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund to $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of County products it purchased during the remedial order period. *See TOGCO*, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might even exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable because it allows the OHA to process the large number of routine refund claims in an efficient manner.[4]

b. *Mid-level claim presumption.* In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds $5,000, excluding interest, may elect to receive as its refund either $5,000 or 40 percent of its allocable share, up to $20,000,[5] whichever is larger.[6] The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. We are adopting a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of County motor gasoline during the remedial order period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $20,000, or $5,000, whichever is greater.[7]

[4] In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 318,503 gallons of County motor gasoline during the remedial order period.

[5] In most prior proceedings, we have used a $40,000 mid-level claim presumption. However, due to the small size of the County Remedial Order Fund, this amount would be impractical.

[6] That is, claimants who purchased more than 318,504 gallons of County motor gasoline during the remedial order period (mid-level claimants) may elect to utilize this presumption.

[7] A claimant who attempt to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund, may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from County *See Exxon*, 17 DOE at 89,150 n.10.

c. *Spot purchasers.* We are adopting a rebuttable presumption that a reseller that made only spot purchases from County did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See, e.g., Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from County.[8]

4. *Allocation claims.* We may also receive claims based upon County's alleged failure to furnish motor gasoline that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in Subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048, at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989) (*Marathon/RFI*), *aff'd sub nom. Research Fuels, Inc.* versus *Department of Energy*, No. CA–3–89–2983G (N.D. Tex. 1990), *aff'd*, 977 F.2d 601 (Temp. Emer. Ct. App. 1992). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the remedial order firm and the likelihood that the remedial order firm failed to furnish motor gasoline that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the

[8] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases and (2) they were forced by market conditions to resell the product at a loss.

DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that County may have had to the alleged allocation violation. *See Marathon/RFI,* 19 DOE ¶ 85,575. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than County. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the County remedial order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the County Remedial Order Fund is less than County's potential liability in the proceedings, we will pro rate those allocation refunds that would otherwise be disproportionately large in relation to the remedial order fund. *Cf. Amtel/ Whitco,* 19 DOE ¶ 85,319.

D. Distribution of Funds Remaining After First Stage

In the event that money remains after all refund claims from the County fund have been analyzed, the remaining funds in that account will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the County remedial order escrow account that the OHA determined will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

IV. General Refund Application Requirements

Pursuant to 10 C.F.R. 205.283, we will now accept Applications for Refund from individuals and firms that purchased motor gasoline sold by County during the period March 1, 1979, through March 18, 1980. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[9] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names.

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm.

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application.

(4) A monthly schedule of the applicant's purchases of motor gasoline that it purchased from County during the Remedial Order period. The applicant must indicate the name of its supplier and the delivery location. The applicant should indicate the source of its volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address, and telephone number of its immediate supplier and indicate why it believes that the motor gasoline was originally sold by County.

(6) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the County proceeding, and if so, the circumstances surrounding that filing or authorization.

(7) A statement whether the applicant was in any way affiliated with County. If so, the applicant should explain the nature of the affiliation.

(8) If the applicant is a reseller, retailer, or refiner whose volumetric share exceeds $5,000, it must indicate whether it elects to receive its maximum refund under the presumptions of injury. If it does not elect a presumption of injury, it must submit a detailed showing that it was injured by County's pricing practices.

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along.

(10) A statement whether there has been any change in the ownership of the entity that purchased the covered County products at any time during or after the refund period. If so, the name and address of the current (or former) owner should be provided.

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

> I swear (or affirm) that this is the only refund Application filed on behalf of this applicant in the County Fuel Company, Inc. special refund proceeding and that the information contained in this Application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this Application is subject to public disclosure. I have enclosed a duplicate of this entire Application which will be placed in the OHA Public Reference Room.

We also invite each applicant to submit copies of no more than five contemporaneous invoices or other proofs of purchase showing that it purchased motor gasoline from County. While this information is not required of refund applicants, it may well expedite the processing of the refund application.

All applications should be either typed or printed and clearly labeled

[9] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the OHA.

"County Fuel Company, Inc. Application for Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: County Fuel Company, Inc. Refund Proceeding, Case No. LEF–0015, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is November 30, 1994.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by County Fuel Company, Inc., pursuant to the Remedial Order finalized on May 7, 1984, may now be filed.

(2) All Applications submitted pursuant to Paragraph (1) above must be filed in duplicate and postmarked no later than November 30, 1994.

Dated: May 24, 1994.

George B. Breznay,

Director Office of Hearings and Appeals.

[FR Doc. 94–13305 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 7589–007]

Paul S. Boyer; Availability of Draft Environmental Assessment

May 25, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Shingle Creek Project, which would be located southwest of the town of Riggins on Shingle Creek, Idaho County, Idaho, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that licensing the project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 7589 to all comments. For further information, please contact Dianne Rodman, Environmental Assessment Coordinator, at (202) 219–2830.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13271 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2587–002, Michigan and Wisconsin]

Northern States Power Company-Wisconsin; Availability of Draft Environmental Assessment

May 25, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the existing Superior Falls Hydroelectric Project, located in Iron County, Wisconsin, and Gogebic County, Michigan, and has prepared a Draft Environmental Assessment (EA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426. Please affix "Project No. 2587" to all comments. For further information, please contact Sabina Joe, Task Monitor, at (202) 219–1648.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13270 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST94–4399–000 et al.]

Gas Co. of New Mexico; Self-Implementing Transactions

May 23, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4399	Gas Co. of New Mexico.	El Paso Natural Gas Co.	03–01–94	G–HT	3,000	N	I	02–09–94	Indef.
ST94–4400	Midcon Texas Pipeline Corp.	Koch Gateway Pipeline Co.	03–01–94	C	75,000	N	I	02–01–94	Indef.
ST94–4401	ONG Transmission Co.	Arkla Energy Resources.	03–01–94	C	50,000	N	I	02–05–94	Indef.
ST94–4402	ONG Transmission Co.	Arkla Energy Resources.	03–01–94	C	50,000	N	I	02–02–94	Indef.
ST94–4403	ONG Transmission Co.	Phillips Gas Pipeline Co.	03–01–94	C	50,000	N	I	02–02–94	Indef.
ST94–4404	ONG Transmission Co.	Northern Natural Gas Co.	03–01–94	C	50,000	N	I	02–06–94	Indef.
ST94–4405	ONG Transmission Co.	Northern Natural Gas Co.	03–01–94	C	50,000	N	I	02–06–94	Indef.
ST94–4406	Gas Co. of New Mexico.	El Paso Natural Gas Co.	03–01–94	G–HT	1,000	N	I	02–02–94	Indef.
ST94–4407	Bridgeline Gas Distribution LLC.	Transco Louisiana Intrastate P/L Co.	03–01–94	G–HT	100	N	I	02–15–94	Indef
ST94–4408	Bridgeline Gas Distribution LLC.	Trunkline Gas Co	03–01–94	G–HT	6,000	N	I	01–29–94	Indef.
ST94–4409	Midwestern Gas Transmission Co.	Eastex Hydrocarbons, Inc.	03–01–94	G–S	9,900	N	F	02–16–94	Indef.
ST94–4410	Midwestern Gas Transmission Co.	Ledco, Inc	03–01–94	G–S	300,000	N	I	02–12–94	Indef.
ST94–4411	Midwestern Gas Transmission Co.	Westcoast Gas Services (USA), Inc.	03–01–94	G–S	5,000	N	F	02–12–94	Indef.
ST94–4412	Tennessee Gas Pipeline Co.	Interstate Gas Marketing Inc.	03–01–94	G–S	12,000	N	F	02–01–94	02–03–94
ST94–4413	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	03–01–94	G–S	6,200	N	F	02–01–94	Indef.
ST94–4414	Tennessee Gas Pipeline Co.	NGC Transportation Inc.	03–01–94	G–S	1,000	N	F	02–02–94	Indef.
ST94–4415	Tennessee Gas Pipeline Co.	MG Natural Gas Corp.	03–01–94	G–S	15,000	N	F	02–01–94	Indef.
ST94–4416	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	03–01–94	G–S	20,000	N	F	02–18–94	Indef.
ST94–4417	Mississippi River Trans. Corp.	Ward Gas Services, Inc.	03–01–94	G–S	250	N	I	02–01–94	Indef.
ST94–4418	Trunkline Gas Co	NI–TEX, Inc	03–01–94	G–S	30,000	N	F	02–01–94	Indef.
ST94–4419	Channel Industries Gas Co.	Seagull Marketing Services, Inc.	03–01–94	G–I	50,000	N	I	02–01–94	Indef.
ST94–4420	El Paso Natural Gas Co.	Chevron U.S.A., Inc.	03–01–94	B	103,000	N	I	02–01–94	Indef.
ST94–4421	El Paso Natural Gas Co.	Meridian Oil Trading, Inc.	03–01–94	G–S	10,300	N	I	02–01–94	Indef.
ST94–4422	El Paso Natural Gas Co.	Helmrich & Payne Energy Services.	03–01–94	G–S	20,600	N	I	02–01–94	Indef.
ST94–4423	El Paso Natural Gas Co.	Amoco Energy Trading Corp.	03–01–94	G–S	51,500	N	I	02–01–94	Indef.
ST94–4424	El Paso Natural Gas Co.	Richardson Products II, Ltd.	03–01–94	G–S	50,000	N	I	02–01–94	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94-4425	Williston Basin Inter. P/L Co.	Rainbow Gas Co .	03-01-94	G-S	365,228	A	I	02-01-94	07-31-94
ST94-4426	Mobile Bay Pipeline Co.	KCS Energy Marketing, Inc.	03-01-94	G-S	200,000	N	I	06-01-93	Indef.
ST94-4427	Mobile Bay Pipeline Co.	Tennaco Gas Marketing.	03-01-94	G-S	200,000	N	I	07-01-93	Indef.
ST94-4428	Mobile Bay Pipeline Co.	Boston Gas Co	03-01-94	G-S	N/A	N	I	11-01-93	Indef.
ST94-4429	Mobile Bay Pipeline Co.	Associated Natural Gas, Inc.	03-01-94	G-S	400,000	N	I	05-14-93	Indef.
ST94-4430	Mobile Bay Pipeline Co.	Sonat Marketing Co.	03-01-94	G-S	N/A	N	I	03-01-94	Indef.
ST94-4431	Acadian Gas Pipeline System.	Columbia Gulf Transmission, et al.	03-02-94	C	10,000	N	I	02-03-94	Indef.
ST94-4432	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, et al.	03-02-94	C	25,000	N	I	02-02-94	Indef.
ST94-4433	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	03-02-94	C	75,000	N	I	02-03-94	Indef.
ST94-4434	Enogex Inc	Arkla Energy Resources Co.	03-02-94	C	30,000	N	I	03-01-94	Indef.
ST94-4435	Overland Trail Transmission Co.	Kern River Gas Transmission.	03-02-94	C	20,000	N	I	12-02-93	Indef.
ST94-4436	Overland Trail Transmission Co.	Colorado Interstate Gas Co.	03-02-94	C	100,000	N	I	03-01-93	Indef.
ST94-4437	East Texas Gas Systems.	Texas Gas Transmission.	03-02-94	C	50,000	N	I	02-01-93	Indef.
ST94-4438	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	04-01-93	Indef.
ST94-4439	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	07-01-93	Indef.
ST94-4440	East Texas Gas Systems.	Texas Eastern	03-02-94	C	50,000	N	I	06-01-93	Indef.
ST94-4441	East Texas Gas Systems.	KCS Energy Marketing.	03-02-94	C	50,000	N	I	01-01-93	Indef.
ST94-4442	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	08-01-93	Indef.
ST94-4443	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	10-01-93	Indef.
ST94-4444	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	05-01-93	Indef.
ST94-4445	East Texas Gas Systems.	Koch Gateway Pipeline.	03-02-94	C	50,000	N	I	05-01-93	Indef.
ST94-4446	East Texas Gas Systems.	Koch Gateway Pipeline.	03-02-94	C	50,000	N	I	07-01-93	Indef.
ST94-4447	East Texas Gas Systems.	Texas Gas Transmission.	03-02-94	C	50,000	N	I	12-01-93	Indef.
ST94-4448	East Texas Gas Systems.	Koch Gateway Pipeline.	03-02-94	C	50,000	N	I	06-01-93	Indef.
ST94-4449	East Texas Gas Systems.	Arkla Energy Co ..	03-02-94	C	50,000	N	I	07-01-93	Indef.
ST94-4450	Oasis Pipe Line Co	Natural Gas Pipeline Co. of America.	03-02-94	C	25,000	N	I	01-19-94	Indef.
ST94-4451	Oasis Pipe Line Co	Transwestern Gas Co.	03-02-94	C	25,000	N	I	01-23-94	Indef.
ST94-4452	Oasis Pipe Line Co	Transwestern Gas Co.	03-02-94	C	100,000	N	I	01-19-94	Indef.
ST94-4453	Oasis Pipe Line Co.	El Paso Natural Gas Co.	03-02-94	C	25,000	N	I	01-18-94	Indef.
ST94-4454	Oasis Pipe Line Co.	Northern Natural Gas Co.	03-02-94	C	25,000	N	I	01-19-94	Indef.
ST94-4455	Oasis Pipe Line Co.	El Paso Natural Gas Co.	03-02-94	C	25,000	N	I	02-02-94	Indef.
ST94-4456	Oasis Pipe Line Co.	El Paso Natural Gas Co.	03-02-94	C	100,000	N	I	01-19-94	Indef.
ST94-4457	Oasis Pipe Line Co	Northern Natural Gas Co	03-02-94	C	25,000	N	I	01-20-94	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4458	Oasis Pipe Line Co.	El Paso Natural Gas Co.	03–02–94	C	50,000	N	I	02-02-94	Indef.
ST94–4459	Oasis Pipe Line Co.	Transwestern Gas Co.	03–02–94	C	100,000	N	I	01–21–94	Indef.
ST94–4460	Williams Natural Gas Co.	ARCO Natural Gas Marketing, Inc.	03–02–94	G–S	10,000	N	I	10–01–93	10-31–98
ST94–4461	Williams Natural Gas Co.	GPM Gas Corp ...	03–02–94	G–S	1,150	N	I	12–01–93	06–30–94
ST94–4462	Williams Natural Gas Co.	Kaiser Francis Oil Co.	03–02–94	G–S	150	N	I	11–01–93	09–30–98
ST94–4463	Williams Natural Gas Co.	AMAX Gas marketing, Inc.	03–02–94	G–S	25,000	N	I	12–01–93	09–30–94
ST94–4464	Williams Natural Gas Co.	Consolidated Fuel Corp.	03–02–94	G–S	30,000	N	I	12–01–93	09–30–94
ST94–4465	Williams Natural Gas Co.	Coastal Gas Marketing.	03–02–94	G–S	50,000	N	I	12-01-93	09–30–98
ST94–4466	Williams Natural Gas Co.	Energy Dynamics, Inc.	03–02–94	G–S	30,000	N	I	12–01–93	09–30–98
ST94–4467	Williams Natural Gas Co.	Transok Gas Co ..	03–02–94	G–S	50,000	N	I	11–01–93	09–30–98
ST94–4468	Williams Natural Gas Co.	OXY USA, Inc	03–02–94	G–S	5,000	N	I	10–01–93	09–30–94
ST94–4469	Williams Natural Gas Co.	Ward Gas Services, Inc.	03–02–94	G–S	25,000	N	I	12–01–93	11–30–94
ST94–4470	K N Interstate Gas Trans. Co.	Chevron U.S.A., Inc.	03–02–94	G–S	2,500	N	F	02–01–94	04–30–94
ST94–4471	Transcontinental Gas P/L Corp.	ANP Power Co	03–02–94	G–S	200,000	N	I	02–19–94	Indef.
ST94–4472	Transcontinental Gas P/L Corp.	James River Paper Co., Inc.	03–02–94	G–S	25,000	N	I	02–16–94	Indef.
ST94–4473	Natural Gas P/L Co. of America.	Entex	03–02–94	B	41,500	N	F	02–01–94	11–30–99
ST94–4474	Natural Gas P/L Co. of America.	Arkla Energy Marketing Co.	03–02–94	G–S	80,000	N	F	02–01–94	02–28–94
ST94–4475	Natural Gas P/L Co. of America.	O & R Energy, Inc	03–02–94	G–S	20,000	N	F	02-01–94	02–28–94
ST94–4476	Natural Gas P/L Co. of America.	Reynolds Pipeline Systems, Inc.	03–02–94	G–S	7,000	N	F	02–10–94	02–28–94
ST94–4477	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	03–02–94	G–S	25,000	N	F	02–01–94	02–28–94
ST94–4478	Natural Gas P/L Co. of America.	Broad Street Oil & Gas Co.	03–02–94	G–S	11,600	N	F	02–01–94	02–28–94
ST94–4479	Natural Gas P/L Co. of America.	North Shore Gas Co.	03–02–94	G–S	104,180	N	F	02–01–94	11–30–95
ST94–4480	Natural Gas P/L Co. of America.	American Hunter Energy.	03–02–94	G–S	1,000	N	F	02–01–94	11–30–00
ST94–4481	Natural Gas P/L Co. of America.	Peoples Gas Light & Coke Co.	03–02–94	G–S	254,026	N	F	02–01–94	11–30–95
ST94–4482	Natural Gas P/L Co. of America.	Polaris Pipeline Corp.	03–02–94	G–S	1,000	N	F	02–01–94	11–30–00
ST94–4483	Natural Gas P/L Co. of America.	Coastal Gas Marketing Co.	03–02–94	G–S	10,000	N	F	02–01–94	02–28–94
ST94–4484	Canyon Creek Compression Co.	Questar Pipeline Co.	03–02–94	G	6,000	N	F	12–01–93	11–16–02
ST94–4485	Tennessee Gas Pipeline Co.	Clinton Gas Marketing, Inc.	03–02–94	G–S	7,000	N	F	02–19–94	Indef.
ST94–4486	Midwestern Gas Transmission Co.	H & N Gas, Ltd ...	03–02–94	G–S	100,000	N	I	02–26–94	Indef.
ST94–4487	Florida Gas Transmission Co.	United Gas Pipe Line Co.	03–02–94	G–S	120,000	N	I	01–31–94	Indef.
ST94–4488	Florida Gas Transmission Co.	Deseret Ranches of Florida, Inc.	03–02–94	G–S	20	N	F	11–01–93	Indef.
ST94–4489	CNG Transmission Corp.	Meridian Gas Marketing.	03–02–94	G–S	5,000	N	I	02–01–94	01–01–00
ST94–4490	CNG Transmission Corp.	Yankee Gas Services Co.	03–02–94	G–S	3,577	N	F	02–14–94	03–31–03

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94-4491	CNG Transmission Corp.	Clinton Gas Marketing.	03-02-94	G-S	5,000	N	I	02-17-94	03-31-94
ST94-4492	CNG Transmission Corp.	Washington Gas Light.	03-02-94	G-S	30,000	N	F	02-02-94	02-28-94
ST94-4493	CNG Transmission Corp.	Peoples Natural Gas.	03-02-94	G-S	199,316	N	F	02-01-94	03-31-02
ST94-4494	CNG Transmission Corp.	L G & E—Westmoriand Rensselaer.	03-02-94	G-S	17,200	N	F	02-01-94	03-31-94
ST94-4495	Algonquin Gas Transmission Co.	Phibro Energy, Inc	03-02-94	G-S	700,000	N	I	02-03-94	Indef.
ST94-4496	Algonquin Gas Transmission Co.	CNG Gas Services.	03-02-94	B	23	N	F	02-01-94	Indef.
ST94-4497	Algonquin Gas Transmission Co.	CNG Gas Services.	03-02-94	B	268	N	F	02-01-94	Indef.
ST94-4498	Algonquin Gas Transmission Co.	Enron Gas Marketing, Inc.	03-02-94	G-S	350,000	N	I	02-11-94	Indef
ST94-4499	Panhandle Eastern Pipe Line Co.	Natural Gas Clearinghouse, Inc.	03-02-94	G-S	20,460	N	F	02-02-94	02-09-94
ST94-4500	Panhandle Eastern Pipe Line Co.	Missouri Gas Energy.	03-02-94	G-S	8,940	N	F	02-01-94	10-31-97
ST94-4501	Panhandle Eastern Pipe Line Co.	AIG Trading Corp	03-02-94	G-S	25,000	N	F	02-01-94	03-31-94
ST94-4502	Panhandle Eastern Pipe Line Co.	CMS Gas Marketing Co.	03-02-94	G-S	5,422	N	F	02-03-94	02-10-94
ST94-4503	Panhandle Eastern Pipe Line Co.	Nitex, Inc	03-02-94	G-S	7,035	N	F	02-01-94	02-06-94
ST94-4504	Panhandle Eastern Pipe Line Co.	Missouri Gas Energy.	03-02-94	G-S	8,941	N	F	02—1-94	04-30-95
ST94-4505	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	03-02-94	G-S	40,000	N	F	02-01-94	02-07-94
ST94-4506	Panhandle Eastern Pipe Line Co.	Nitex, Inc.	03-02-94	G-S	4,143	N	F	02-01-94	01-31-95
ST94-4507	Panhandle Eastern Pipe Line Co.	Vesta Energy Co .	03-02-94	G-S	10,000	N	F	02-01-94	02-28-94
ST94-4508	Panhandle Eastern Pipe Line Co.	Kerr-McGee Corp	03-02-94	G-S	5,000	N	I	02-01-94	01-31-99
ST94-4509	Panhandle Eastern Pipe Line Co.	Aurora Natural Gas.	03-02-94	G-S	20,000	N	I	02-01-94	11-30-98
ST94-4510	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co.	03-02-94	G-S	37,000	N	F	02-01-94	12-31-94
ST94-4511	Panhandle Eastern Pipe Line Co.	Tenneco Gas Marketing Co.	03-02-94	G-S	40,000	N	F	02-01-94	03-31-94
ST94-4512	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co.	03-02-94	G-S	9,426	A	F	02-01-94	03-31-94
ST94-4513	Panhandle Eastern Pipe Line Co.	Borg-Warner Automotive.	03-02-94	G-S	4,000	N	I	02-01-94	01-31-97
ST94-4514	Panhandle Eastern Pipe Line Co.	Semco Energy Services, Inc.	03-02-94	G-S	2,000	N	F	02-01-94	06-30-94
ST94-4515	Colorado Interstate Gas Co.	Industrial Gas Services, Inc.	03-02-94	G-S	97	N	I	03-01-94	Indef

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4516	Pacific Gas Transmission Co.	Southern California Edison Co.	03–02–94	G–S	201,687	N	F	12–20–93	10–31–23
ST94–4517	Pacific Gas Transmission Co.	Southern California Edison Co.	03–02–94	G–S	325,561	N	I	11–04–93	Indef.
ST94–4518	Pacific Gas Transmission Co.	Pacific Interstate Transmission Co.	03–02–94	G–S	304,500	N	F	01–01–94	10–31–06
ST94–4519	Pacific Gas Transmission Co.	Coastal Gas Marketing Co.	03–02–94	G–S	100,000	N	I	02–08–94	Indef.
ST94–4520	Pacific Gas Transmission Co.	Canwest Gas Supply, Inc.	03–02–94	G–S	15,708	N	F	02–14–94	10–31–09
ST94–4521	Florida Gas Transmission Co.	American Hunter Energy.	03–03–94	G–S	30,000	N	I	02–01–94	Indef.
ST94–4522	Florida Gas Transmission Co.	Vesta Energy Co .	03–03–94	G–S	5,000	N	I	02–01–94	Indef.
ST94–4523	Florida Gas Transmission Co.	Prior Intrastate Corp.	03–03–94	G–S	50,000	N	I	02–01–94	Indef.
ST94–4524	Black Marlin Pipeline Co.	Sonat Marketing Co.	03–03–94	G–S	2,625	N	F	02–02–94	02–01–95
ST94–4525	Black Marlin Pipeline Co.	Transok, Inc	03–03–94	B	100,000	N	I	02–23–94	Indef.
ST94–4526	Williams Natural Gas Co.	Colorado Interstate Gas Co.	03–03–94	G	4,000	N	I	11–10–93	04–01–94
ST94–4527	Williams Natural Gas Co.	Coastal Gas Marketing.	03–03–94	G–S	50,000	N	I	12–01–93	09–30–98
ST94–4528	Kentucky West Virginia Gas.	Equitable Resources Energy Co.	03–03–94	G S	35,000	A	I	02–01–94	Indef.
ST94–4529	Panhandle Eastern Pipe Line Co.	Nitex, Inc.	03–03–94	G–S	10,000	N	F	02–02–94	02–11–94
ST94–4530	Panhandle Eastern Pipe Lince Co.	PHIBRO Energy ..	03–03–94	G–S	100,000	N	I	02–04–94	01–31–95
ST94–4531	National Fuel Gas Supply Corp.	New Jersey Natural Gas Co.	03–04–94	G–S	3,248	N	I	08–01–93	10–31–94
ST94–4532	National Fuel Gas Supply Corp.	National Fuel Gas Distribution Corp.	03–04–94	G–S	1,148,648	A	I	08–01–93	03–31–03
ST94–4533	National Fuel Gas Supply Corp.	Clarion River Gas Co.	03–04–94	G–S	76	N	I	08–01–93	03–31–03
ST94–4534	National Fuel Gas Supply Corp.	Connectitut Natural Gas Co.	03–04–94	G–S	1,877	N	I	08–01–93	03–31–03
ST94–4535	National Fuel Gas Supply Corp.	Eastern Natural Gas Co.	03–04–94	G–S	10,058	N	I	08–01–93	03–31–07
ST94–4536	National Fuel Gas Supply Corp.	Elizabethcity Gas Co.	03–04–94	G–S	11,090	N	I	08–01–93	03–31–03
ST94–4537	National Fuel Gas Supply Corp.	Public Service Gas & Electric.	03–04–94	G–S	7,541	N	I	08–01–93	10–31–94
ST94–4538	National Fuel Gas Supply Corp.	Providence Gas Co.	03–04–94	G–S	1,889	N	I	08–01–93	03–31–03
ST94–4539	National Fuel Gas Supply Corp.	Yankee Gas Services Co.	03–04–94	G–S	1,797	N	I	08–01–93	03–31–03
ST94–4540	National Fuel Gas Supply Corp.	Granite State Gas Transmission.	03–04–94	G–S	1,540	N	I	08–01–93	03–31–03
ST94–4541	National Fuel Gas Supply Corp.	Peoples Natural Gas Co.	03–04–94	G–S	15,476	N	I	08–01–93	03–31–03
ST94–4542	National Fuel Gas Supply Corp.	North Attleborough Gas Co.	03–04–94	G–S	23	N	I	08–01–93	03–31–03
ST94–4543	National Fuel Gas Supply Corp.	Northeast Heat & Light.	03–04–94	G–S	4,031	N	I	08–01–93	03–31–03
ST94–4544	National Fuel Gas Supply Corp.	Southern Connecticut Gas Co.	03–04–94	G–S	1,457	N	I	08–01–93	03–31–03
ST94–4545	National Fuel Gas Supply Corp.	City of Rushford ..	03–04–94	G–S	49	N	I	08–01–93	03–31–95
ST94–4546	National Fuel Gas Supply Corp.	City of Middleborough.	03–04–94	G–S	34	N	I	08–01–93	03–31–03

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ST94–4547	National Fuel Gas Supply Corp.	Colonial Gas Co ..	03–04–94	G–S	577	N	I	08–01–93	10–31–00
ST94–4548	National Fuel Gas Supply Corp.	Brooklyn Union Gas Co.	03–04–94	G–S	2,486	N	I	08–01–93	10–31–93
ST94–4549	National Fuel Gas Supply Corp.	Bristol & Warren Gas Co.	03–04–94	G–S	158	N	I	08–01–93	03–31–03
ST94–4550	National Fuel Gas Supply Corp.	Boston Gas Co	03–04–94	G–S	6,335	N	I	08–01–93	03–31–03
ST94–4551	National Fuel Gas Supply Corp.	Norcon Power Partners L.P.	03–04–94	G–S	16,837	N	I	09–01–93	08–31–13
ST94–4552	National Fuel Gas Supply Corp.	Encogen Four Partners, Inc.	03–04–94	G–S	15,000	N	I	09–01–93	08–31–08
ST94–4553	National Fuel Gas Supply Corp.	Medina Power Co	03–04–94	G–S	2,000	N	I	08–01–93	11–09–94
ST94–4554	National Fuel Gas Supply Corp.	Northern Utilities, Inc.	03–04–94	G–S	286	N	I	11–01–93	03–31–03
ST94–4555	National Fuel Gas Supply Corp.	Iroquois Energy Management Inc.	03–04–94	G–S	702	N	I	11–01–93	10–31–03
ST94–4556	National Fuel Gas Supply Corp.	Columbia Gas Transmission Inc.	03–04–94	G–S	25,510	N	I	08–25–93	10–31–93
ST94–4557	National Fuel Gas Supply Corp.	LG&E-Westmoreland Rensselaer.	03–04–94	G–S	18,100	N	I	02–01–94	03–09–14
ST94–4558	National Fuel Gas Supply Corp.	Delmarva Power & Light Co.	03–04–94	G–S	2,800	N	I	01–01–94	12–31–04
ST94–4559	National Fuel Gas Supply Corp.	KCS Energy Management Services, Inc.	03–04–94	G–S	2,796	N	I	11–06–93	11–30–93
ST94–4560	National Fuel Gas Supply Corp.	KCS Energy Management Services, Inc.	03–04–94	G–S	6,000	N	I	11–01–93	11–01–06
ST94–4561	National Fuel Gas Supply Corp.	Transco Energy Marketing Co.	03–04–94	G–S	48,400	N	I	11–01–93	11–01–07
ST94–4562	National Fuel Gas Supply Corp.	Granite State Gas Transmission Inc.	03–04–94	G–S	7,265	N	I	09–01–93	08–31–03
ST94–4563	National Fuel Gas Supply Corp.	Fulton Cogeneration Associates.	03–04–94	G–S	6,050	N	I	09–01–93	10–31–05
ST94–4564	National Fuel Gas Supply Corp.	National Fuel Resources, Inc.	03–04–94	G–S	2,540	A	I	11–01–93	01–31–94
ST94–4565	National Fuel Gas Supply Corp.	New York State Electric & Gas Corp.	03–04–94	G–S	5,100	N	I	11–02–93	01–31–94
ST94–4566	National Fuel Gas Supply Corp.	Meridian Marketing & Trans. Corp.	03–04–94	G–S	7,500	N	I	11–01–93	01–31–94
ST94–4567	National Fuel Gas Supply Corp.	Iroquois Energy Management Inc.	03–04–94	G–S	3,000	N	I	11–01–93	01–31–94
ST94–4568	National Fuel Gas Supply Corp.	Northern Utilities, Inc.	03–04–94	G–S	969	N	I	11–01–93	08–31–03
ST94–4569	National Fuel Gas Supply Corp.	Consolidated Edison Co. or NY, Inc.	03–04–94	G–S	3,800	N	I	08–01–93	03–31–03
ST94–4570	National Fuel Gas Supply Corp.	Commonwealth Gas Co.	03–04–94	G–S	3,073	N	I	08–01–93	03–31–03
ST94–4571	Colorado Interstate Gas Co.	Tristar Gas Co	03–04–94	G–S	5,000	N	I	03–01–94	Indef.
ST94–4572	Transcontinental Gas P/L Corp.	New Jersey Natural Gas Co.	03–04–94	B	283,000	N	I	02–18–94	Indef.
ST94–4573	Northwest Pipeline Corp.	Boeing Co	03–04–94	G–S	4,000	N	F	02–01–94	Indef.
ST94–4574	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	03–04–94	G–S	5,000	N	F	02–10–94	02–28–94
ST94–4575	Natural Gas P/L Co. of America.	Panhandle Eastern Pipe Line Co.	03–04–94	G	200,000	N	I	02–10–94	Indef.
ST94–4576	Natural Gas P/L Co. of America.	Total Pipeline Co .	03–04–94	B	7,000	N	F	11–30–93	06–30–96

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ST94–4577	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	03–04–94	G–S	15,000	N	F	02–10–94	03–31–94
ST94–4578	Natural Gas P/L Co. of America.	Brooklyn Interstate Nat. Gas Corp.	03–04–94	G–S	10,000	N	F	03–01–94	02–28–95
ST94–4579	Natural Gas P/L Co. of America.	Catex Vitol Gas, Inc.	03–04–94	G–S	50,000	N	F	03–01–94	03–31–94
ST94–4580	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	03–04–94	G–S	10,000	N	F	03–01–94	03–31–94
ST94–4581	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp.	03–04–94	G–S	1,000	N	F	03–01–94	11–30–00
ST94–4582	Natural Gas P/L Co. of America.	DGS Trading, Inc	03–04–94	G–S	10,000	N	F	03–01–94	04–30–94
ST94–4583	Natural Gas P/L Co. of America.	Industrial Energy Applications, Inc.	03–04–94	G–S	2,744	N	F	11–01–93	10–31–97
ST94–4584	Natural Gas P/L Co. of America.	Midcon Gas Services Corp.	03–04–94	G–S	159,500	N	F	01–17–94	11–30–98
ST94–4585	Natural Gas P/L Co. of America.	Valero Gas marketing, L.P.	03–04–94	G–S	39,000	N	F	03–01–94	03–31–94
ST94–4586	Panhandle Eastern Pipe Line Co..	Missouri Gas Energy.	03–04–94	G–S	8,987	N	F	02–01–94	03–31–98
ST94–4587	Columbia Gas Transmission Corp.	Aristech Chemical Corp.	03–04–94	G–ST	N/A	N	I	02–28–94	Indef.
ST94–4588	Columbia Gas Transmission Corp.	Enron Gas Marketing, Inc.	03–04–94	G–S	250,000	N	I	02–28–94	Indef.
ST94–4589	Columbia Gas Transmission Corp.	Fuel Services Group.	03–04–94	G–ST	N/A	N	I	03–23–94	Indef.
ST94–4590	Columbia Gas Transmission Corp.	Washington Gas Light Co.	03–04–94	G	309,531	N	F	03–01–94	Indef.
ST94–4591	Columbia Gas Transmission Corp.	Cenergy, Inc	03–04–94	G–ST	N/A	N	I	03–01–94	Indef.
ST94–4592	Columbia Gas Transmission Corp.	Washington Gas Light Co.	03–04–94	G	355,000	N	I	03–01–94	Indef.
ST94–4593	Columbia Gas Transmission Corp.	Kane Gas Light & Heating Co.	03–04–94	B	565	N	I	03–01–94	Indef.
ST94–4594	Columbia Gas Transmission Corp.	Glen Gery Corp ...	03–04–94	G–S	650	N	F	03–01–94	10–31–94
ST94–4595	Columbia Gas Transmission Corp.	Jones Hamilton Co.	03–04–94	G–S	154	N	F	03–01–94	02–28–95
ST94–4596	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	03–04–94	B	828	N	F	03–01–94	Indef.
ST94–4597	Columbia Gas Transmission Corp.	Roanoke Gas Co	03–04–94	B	25,509	N	F	03–01–94	Indef.
ST94–4598	Columbia Gas Transmission Corp.	Waterville Gas Co	03–04–94	B	1,250	N	F	03–01–94	Indef.
ST94–4599	Columbia Gas Transmission Corp.	Union Light Heat & Power Co.	03–04–94	B	4,100	N	I	03–01–94	Indef.
ST94–4600	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	03–04–94	B	2,250	N	I	03–01–94	Indef.
ST94–4601	Columbia Gas Transmission Corp.	Pennsylvania Gas & Water Co.	03–04–94	B	20,000	N	I	03–01–94	Indef.
ST94–4602	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	03–04–94	B	5,600	N	I	03–01–94	Indef.

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ST94-4603	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	03-04-94	B	17,595	N	I	03-01-94	Indef.
ST94-4604	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	03-04-94	B	229	N	I	03-01-94	Indef.
ST94-4605	Lone Star Gas Co	Natural Gas Pipe Line Co. of America.	03-04-94	C	55,000	N	I	02-01-94	Indef.
ST94-4606	Lone Star Gas Co	Natural Gas P/L Co. of America, et al.	03-04-94	C	100,000	N	I	02-09-94	Indef.
ST94-4607	Delhi Gas Pipeline Corp.	Arkla Energy Resources, et al.	03-04-94	C	90,000	N	I	02-03-94	Indef.
ST94-4608	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, et al.	03-04-94	C	50,000	N	I	02-05-94	Indef.
ST94-4609	Westar Transmission Co.	ANR Pipeline Co .	03-04-94	C	2,000	N	I	01-01-94	Indef.
ST94-4610	Westar Transmission Co.	Transwestern Pipeline Co.	03-04-94	C	10,000	N	I	01-01-94	Indef.
ST94-4611	Westar Transmission Co.	ANR Pipeline Co .	03-04-94	C	5,000	N	I	01-01-94	Indef.
ST94-4612	Sea Robin Pipeline Co.	Sonat Marketing Co.	03-07-94	G-ST	14,231	A	F	03-01-94	03-31-94
ST94-4613	Williams Natural Gas Co.	Premier Enterprises, Inc.	03-07-94	G-ST	5,000	N	I	03-01-94	10-01-94
ST94-4614	Wiliams Natural Gas Co.	Twister Transmission Co.	03-07-94	G-ST	25,000	N	I	02-26-94	Indef.
ST94-4615	Wiliams Natural Gas Co.	Miles, Inc	03-07-94	G-ST	2,600	N	I	03-01-94	Indef.
ST94-4616	Wiliams Natural Gas Co.	CIG Merchant	03-07-94	G-ST	1,000	N	I	02-08-94	Indef.
ST94-4617	Chandleleur Pipe Line Co.	International Paper Co.	03-07-94	K-ST	15,000	N	F	11-01-89	Indef.
ST94-4618	Chandleleur Pipe Line Co.	Chevron U.S.A., Inc.	03-07-94	K-ST	100,000	Y	I	08-01-93	Indef.
ST94-4619	Chendleleur Pipe Line Co.	Chevron U.S.A., Inc.	03-07-94	K-ST	190,000	Y	F	04-01-89	Indef.
ST94-4620	Chendleleur Pipe Line Co.	Koch Gateway Pipe Line Co.	03-07-94	K-ST	20,000	Y	I	03-01-94	Indef.
ST94-4621	Transok, Inc	ANR Pipeline Co., et al.	03-07-94	C	7,500	N	I	02-18-94	Indef.
ST94-4622	Delhi Gas Pipeline Corp.	Transcontinental Gas Pipe Line Co.	03-07-94	C	3,000	N	I	02-01-94	05-18-94
ST94-4623	Transok, Inc	ANR Pipeline Co., et al.	03-07-94	C	100,000	N	I	02-02-94	08-01-95
ST94-4624	U-T Offshore System.	Texaco Gas Marketing, Inc.	03-08-94	K-ST	25,000	N	F	02-01-94	Indef.
ST94-4625	K N Interstate Gas Trans. Co.	Cenergy, Inc	03-08-94	G-ST	50,000	N	I	03-01-94	Indef.
ST94-4626	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	03-08-94	G-ST	15,000	A	F	03-01-94	Indef.
ST94-4627	U-T Offshore System.	Mobil Natural Gas Inc.	03-08-94	K-ST	10,000	N	F	02-01-94	Indef.
ST94-4628	Canyon Creek Compression Co.	Midcon Gas Services Corp.	03-08-94	G-ST	10,000	Y	F	03-01-94	04-30-95
ST94-4629	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	03-08-94	G-ST	10,000	N	F	02-28-94	Indef.
ST94-4630	Trailblazer Pipeline Co.	Chevron U.S.A., Inc.	03-08-94	G-ST	10,000	N	F	03-01-94	02-28-97
ST94-4631	Trailblazer Pipeline Co.	Midcon Gas Services Corp.	03-08-94	G-ST	87,000	N	F	03-01-94	09-30-94
ST94-4632	Sabine Pipe Line Co.	Apache Corp	03-09-94	G-ST	100,000	N	I	03-02-94	Indef.
ST94-4633	Panhandle Eastern Pipe Line Co.	CMS Gas Marketing Co.	03-09-94	G-ST	149,000	N	I	02-18-94	04-30-98

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ST94–4634	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	03–09–94	G–ST	10,000	N	F	12–01–93	03–31–94
ST94–4635	Panhandle Eastern Pipe Line Co.	Missouri Public Service.	03–09–94	G–ST	8,061	N	F	01–07–94	04–30–96
ST94–4636	Tennessee Gas Pipeline Co.	Ashland Petroleum.	03–09–94	G–ST	3,500	N	F	11–01–93	Indef.
ST94–4637	Northern Border Pipeline Co.	Renaissance Energy (U.S.) Inc.	03–09–94	G–ST	15,220	Y	I	03–01–94	10–31–90
ST94–4638	Northern Border Pipeline Co.	Montana-Dakota Utilities Co.	03–09–94	B	15,000	N	I	02–17–94	09–14–95
ST94–4639	Northern Border Pipeline Co.	POCO Petroleum Ltd.	03–09–94	G–S	5,000	Y	I	03–12–94	10–31–04
ST94–4640	Northern Border Pipeline Co.	Texas Utilities Fuel Co.	03–09–94	B	35,000	N	F/I	01–26–94	Indef.
ST94–4641	El Paso Natural Gas Co.	Nevada Power Co	03–09–94	G–S	72,100	N	I	02–07–94	Indef.
ST94–4642	Northern Natural Gas Co.	Peoples Natural Gas Co.	03–09–94	G–S	25,000	N	I	02–07–94	03–31–94
ST94–4643	Northern Natural Gas Co.	Panhandle Eastern Pipe Line Co.	03–09–94	G	100,000	N	I	02–17–94	03–16–94
ST94–4644	Tejas Gas Pipe Line Co.	Transcontinental Gas P/L Corp.	03–09–94	C	13,490	N	I	01–21–94	Indef.
ST94–4645	Tejas Gas Pipe Line Co.	Texas Eastern Transmission Corp.	03–10–94	C	6,045	N	I	01–19–94	Indef.
ST94–4646	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	15,000	N	I	01–02–93	Indef.
ST94–4647	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	10,000	N	I	11–05–93	Indef.
ST94–4648	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	15,000	N	I	11–13–93	Indef.
ST94–4649	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	10,000	N	I	11–25–93	Indef.
ST94–4650	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	20,000	N	I	11–20–93	Indef.
ST94–4651	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	10,000	N	I	11–11–93	Indef.
ST94–4652	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	25,000	N	I	11–04–93	Indef.
ST94–4653	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	5,000	N	I	12–01–93	Indef.
ST94–4654	Orange & Rockland Utilities, Inc.	Mystic River Energy Corp.	03–10–94	G–HT	20,000	N	I	02–11–94	02–28–94
ST94–4655	Texas Eastern Transmission Corp.	Meridian Marketing & Trans. Corp.	03–10–94	G–S	10,000	N	I	02–11–94	06–30–94
ST94–4656	Panhandle Eastern Pipe Line Co.	Quantum Chemical Corp.	03–10–94	G–S	16,912	N	F	02–01–94	03–31–95
ST94–4657	Panhandle Eastern Pipe Line Co.	Tylex, Inc	03–10–94	G–S	2,700	N	F	11–01–93	03–31–96
ST94–4658	Panhandle Eastern Pipe Line Co.	K N Gas Marketing, Inc.	03–10–94	G–S	36,000	N	I	12–01–93	04–30–98
ST94–4659	Panhandle Eastern Pipe Line Co.	Michigan Consolidated Gas Co.	03–10–94	B	45,000	N	I	01–28–94	04–30–98
ST94–4660	Panhandle Eastern Pipe Line Co.	Astral Industries, Inc.	03–10–94	G–S	20	N	I	02–21–94	11–30–94
ST94–4661	Stingray Pipeline Co.	Amerada Hess Corp.	03–10–94	K–S	100,000	N	I	02–26–93	Indef.
ST94–4662	Stingray Pipeline Co.	Pennzoil Gas Marketing Co.	03–10–94	K–S	45,000	N	I	01–01–93	Indef.
ST94–4663	Koch Gateway Pipeline Co.	Philbro Energy USA, Inc.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.

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ST94-4664	Koch Gateway Pipeline Co.	Mississippi Valley Gas Co.	03-10-94	G-S	N/A	N	I	02-15-94	Indef.
ST94-4665	Koch Gateway Pipeline Co.	LL & E Gas Marketing, Inc.	03-10-94	G-S	N/A	N	I	02-15-94	Indef.
ST94-4666	Koch Gateway Pipeline Co.	KCS Energy Marketing, Inc.	03-10-94	G-S	N/A	N	I	02-15-94	Indef.
ST94-4667	Koch Gateway Pipeline Co.	City of Kaplan	03-10-94	G-S	1,680	N	F	02-15-94	04-01-97
ST94-4668	Koch Gateway Pipeline Co.	Fina Natural Gas Co.	03-10-94	G-S	185,000	N	F	02-15-93	Indef.
ST94-4669	Koch Gateway Pipeline Co.	Energy Development Corp.	03-10-94	G-S	N/A	N	I	02-15-93	Indef.
ST94-4670	Koch Gateway Pipeline Co.	Texican Natural Gas Co.	03-10-94	G-S	6,000	N	F	02-15-94	Indef.
ST94-4671	Koch Gateway Pipeline Co.	Texaco Gas Marketing Inc.	03-10-94	G-S	55,000	N	F	02-15-94	Indef.
ST94-4672	Koch Gateway Pipeline Co.	Shell Gas Trading Co.	03-10-94	G-S	10,000	N	F	02-15-94	Indef.
ST94-4673	Koch Gateway Pipeline Co.	Phoenix Gas Pipeline Co.	03-10-94	G-S	N/A/	N	I	02-15-94	Indef.
ST94-4674	Koch Gateway Pipeline Co.	Endevco Oil & Gas Co.	03-10-94	G-S	N/A	N	I	02-15-94	Indef.
ST94-4675	Koch Gateway Pipeline Co.	Delhi Gas Pipeline Corp.	03-10-94	G-S	N/A	N	I	02-15-94	Indef.
ST94-4676	Koch Gateway Pipeline Co.	Coastal Gas Marketing Co.	03-10-94	G-S	N/A	N	I	02-15-94	Indef.
ST94-4677	Koch Gateway Pipeline Co.	Direct Gas Supply Corp.	03-10-94	G-S	N/A	N	I	02-15-94	Indef.
ST94-4678	Koch Gateway Pipeline Co.	Columbia Gas Transmission Corp.	03-10-94	G-S	10,570	N	F	02-15-94	Indef.
ST94-4679	Koch Gateway Pipeline Co.	Chevron U.S.A., Inc.	03-10-94	G-S	15,000	N	F	02-15-94	Indef.
ST94-4680	Koch Gateway Pipeline Co.	Amoco Energy Trading Corp.	03-10-94	G-S	N/A	N	I	02-15-94	Indef.
ST94-4681	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	03-11-94	G-HT	500	N	I	02-01-94	Indef.
ST94-4682	El Paso Natural Gas Co.	Velero Gas Marketing, L.P.	03-11-94	G-S	100,000	N	I	02-11-94	Indef.
ST94-4683	Columbia Gas Transmission Corp.	H & N Gas	03-11-94	G-S	100,000	N	I	03-01-94	Indef.
ST94-4684	Columbia Gas Transmission Corp.	Cabide Graphite Group, Inc.	03-11-94	G-S	5,000	N	I	03-01-94	Indef.
ST94-4685	Columbia Gas Transmission Corp.	Ohio Intrastate Gas Transmission Co.	03-11-94	B	4,000	N	F	03-01-94	10-31-94
ST94-4686	Columbia Gas Transmission Corp.	South Jersey Energy Co.	03-11-94	G-S	N/A	N	I	03-01-94	Indef.
ST94-4687	Columbia Gas Transmission Corp.	Ohio Intrastate Gas Transmission Co.	03-11-94	B	35,000	N	I	03-01-94	Indef.
ST94-4688	Columbia Gas Transmission Corp.	Atlantic City Electric Co.	03-11-94	B	60,000	N	I	03-01-94	Indef.
ST94-4689	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	03-11-94	B	100,000	N	I	03-01-94	Indef.
ST94-4690	Columbia Gas Transmission Corp.	South Jersey Gas Co.	03-11-94	B	1,000	N	I	03-01-94	Indef.
ST94-4691	Columbia Gas Transmission Corp.	South Jersey Gas Co.	03-11-94	B	3,400	N	I	03-01-94	Indef.
ST94-4692	Columbia Gas Transmission Corp.	South Jersey Gas Co.	03-11-94	B	1,000	N	I	03-01-94	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94-4693	Columbia Gas Transmission Corp.	Ashland Petroleum Co.	03-11-94	G-S	N/A	N	I	03-04-94	Indef.
ST94-4694	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	03-11-94	B	20,000	N	I	03-01-94	Indef.
ST94-4695	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	03-11-94	B	600	N	I	03-01-94	Indef.
ST94-4696	Columbia Gas Transmission Corp.	New York State Elect. & Gas Corp.	03-11-94	B	900	N	I	03-01-94	Indef.
ST94-4697	Columbia Gas Transmission Corp.	Peoples Natural Gas Co.	03-11-94	B	1,100	N	I	03-01-94	Indef.
ST94-4698	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	03-11-94	B	45,000	N	I	03-01-94	Indef.
ST94-4699	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	03-11-94	B	2,500	N	I	03-01-94	Indef.
ST94-4700	Columbia Gas Transmission Corp.	West Ohio Gas Co.	03-11-94	B	2,800	N	I	03-01-94	Indef.
ST94-4701	Columbia Gas Transmission Corp.	National Fuel Gas Supply Corp.	03-11-94	G	13	N	I	03-01-94	Indef.
ST94-4702	Columbia Gas Transmission Corp.	Gas Transport Inc	03-11-94	G	1,500	N	I	03-01-94	Indef.
ST94-4703	Columbia Gas Transmission Corp.	New York State Elect. & Gas Corp.	03-11-94	B	1,500	N	I	03-01-94	Indef.
ST94-4704	Columbia Gas Transmission Corp.	New York State Elect. & Gas Corp.	03-11-94	B	1,138	N	I	03-01-94	Indef.
ST94-4705	Columbia Gas Transmission Corp.	West Ohio Gas Co.	03-11-94	B	2,000	N	I	03-01-94	Indef.
ST94-4706	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc.	03-11-94	B	618	Y	I	03-01-94	Indef.
ST94-4707	Columbia Gas Transmission Corp.	West Ohio Gas Co.	03-11-94	B	639	N	I	03-01-94	Indef.
ST94-4708	Columbia Gas Transmission Corp.	West Ohio Gas Co.	03-11-94	B	2,910	N	I	03-01-94	Indef.
ST94-4709	Columbia Gas Transmission Corp.	Torch Energy Marketing, Inc.	03-11-94	G-S	50,000	N	I	03-01-94	Indef.
ST94-4710	Columbia Gas Transmission Corp.	Gas Transport, Inc.	03-11-94	G-S	50,000	N	I	03-01-94	Indef.
ST94-4711	Algonquin Gas Transmission Co.	New England Power Co.	03-11-94	G-S	20,200,200	N	I	02-27-94	Indef.
ST94-4712	Algonquin Gas Transmission Co.	NGC Transportation, Inc.	03-11-94	G-S	625,000	N	I	02-28-94	Indef.
ST94-4713	Algonquin Gas Transmission Co.	City of Norwich, Board Pub. Util.	03-11-94	B	580	N	I	02-01-94	Indef.
ST94-4714	ONG Transmission Co.	Northern Natural Gas Co.	03-14-94	C	50,000	N	I	12-28-93	Indef.
ST94-4715	ONG Transmission Co.	Williams Natural Gas Co.	03-14-94	C	30,000	N	I	02-01-93	Indef.
ST94-4716	ONG Transmission Co.	Panhandle Eastern Pipe Line Co.	03-14-94	C	30,000	N	I	09-15-93	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	AFF. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST94-4717	ONG Transmission Co.	ANR Pipeline Co.	03-14-94	C	50,000	N	I	10-08-93	Indef.
ST94-4718	ONG Transmission Co.	Panhandle Eastern Pipe Line Co.	03-14-94	C	100,000	N	I	12-28-93	Indef.
ST94-4719	ONG Transmission Co.	ANR Pipeline Co.	03-14-94	C	20,000	N	I	02-12-94	Indef.
ST94-4720	Tejas Gas Pipeline Co.	Natural Gas P/L Co. of America.	03-14-94	C	3,000	N	I	01-23-94	Indef.
ST94-4721	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	03-14-94	C	75,000	N	I	02-10-93	Indef.
ST94-4722	Transcontinental Gas P/L Corp.	Pennzoil Gas Marketing Co.	03-14-94	G-S	300,000	N	I	03-01-94	Indef.
ST94-4723	Transcontinental Gas P/L Corp.	City of Bessemer	03-14-94	G-S	750	N	F	03-01-94	02-28-14
ST94-4724	Transcontinental Gas P/L Corp.	City of Blacksburg	03-14-94	G-S	660	N	F	03-01-94	02-28-14
ST94-4725	Transcontinental Gas P/L Corp.	Premier Enterprises Inc.	03-14-94	G-S	30,000	N	I	03-02-94	Indef.
ST94-4726	Transcontinental Gas P/L Corp.	Petro Source Gas Ventures.	03-14-94	G-S	50,000	N	I	03-01-94	Indef.
ST94-4727	Transcontinental Gas P/L Corp.	Bristol and Warren Gas Co.	03-14-94	G-S	1,138	N	F	02-25-94	06-01-08
ST94-4728	Transcontinental Gas P/L Corp.	City of Union	03-14-94	G-S	595	N	F	03-01-94	02-28-14
ST94-4729	Great Lakes Gas Trans. L.P.	Union Gas Limited	03-14-94	G-S	25,000	N	F	03-01-94	03-31-94
ST94-4730	Great Lakes Gas Trans. L.P.	SEMCO Energy Services, Inc.	03-14-94	G-S	25,000	N	F	03-01-94	03-31-94
ST94-4731	K N Interstate Gas Trans. Co.	North Central Oil Corp.	03-14-94	G-S	1,500	N	I	02-03-94	Indef.
ST94-4732	Midwestern Gas Transmission Co.	Tenneco Gas Marketing Co.	03-14-94	G-S	9,900	A	F	03-01-94	Indef.
ST94-4733	Midwestern Gas Transmission Co.	Associated Natural Gas, Inc.	03-14-94	G-S	5,000	N	F	03-01-94	Indef.
ST94-4734	Tennessee Gas Pipeline Co.	North Atlantic Utilities, Inc.	03-14-94	G-S	150	N	F	03-01-94	Indef.
ST94-4735	Tennessee Gas Pipeline Co.	City of Grandview	03-14-94	G-S	472	N	F	03-01-94	Indef.
ST94-4736	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	03-14-94	G-S	8,000	N	F	03-01-94	Indef.
ST94-4737	Tennessee Gas Pipeline Co.	O & R Energy, Inc	03-14-94	G-S	5,000	N	F	03-01-94	Indef.
ST94-4738	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	03-14-94	G-S	2,500	N	F	03-01-94	Indef.
ST94-4739	Tennessee Gas Pipeline Co.	Transco Gas Marketing Co.	03-14-94	G-S	37,600	N	F	03-01-94	Indef.
ST94-4740	Tennessee Gas Pipeline Co.	O & R Energy, Inc	03-14-94	G-S	6,541	N	F	03-01-94	Indef.
ST94-4741	Tennessee Gas Pipeline Co.	Eastex Hydrocarbons, Inc.	03-14-94	G-S	10,000	N	F	03-01-94	Indef.
ST94-4742	Tennessee Gas Pipeline Co.	Aquila Energy Marketing Corp.	03-14-94	G-S	737	N	F	03-01-94	Indef.
ST94-4743	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	03-14-94	G-S	83,984	N	F	02-01-94	03-31-94
ST94-4744	Panhandle Eastern Pipe Line Co.	Maxus Gas Marketing Co.	03-14-94	G-S	55,000	N	I	12-28-93	12-09-98
ST94-4745	Panhandle Eastern Pipe Line Co.	Premier Gas Co ..	03-14-94	G-S	150,000	N	I	02-01-93	03-31-98
ST94-4746	Panhandle Eastern Pipe Line Co.	Enogex Services Corp.	03-14-94	G-S	98,500	N	I	01-01-94	04-30-98
ST94-4747	Natural Gas P/L Co. of America.	Diamond Shamrock Offshore Part. L.P.	03-14-94	G-S	50,000	N	I	10-01-90	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4748	Tennessee Gas Pipeline Co.	Catex Energy, Inc	03–15–94	G–S	10,000	N	F	03–01–94	Indef.
ST94–4749	Line Star Gas Co	Northern Natural Gas Co.	03–15–94	C	30,000	N	I	02–14–94	Indef.
ST94–4750	Williams Natural Gas Co.	Continental Natural Gas, Inc.	03–15–94	G–S	100	N	I	12–01–93	09–30–98
ST94–4751	Williams Natural Gas Co.	Midcon Gas Services.	03–15–94	G–S	10,000	N	I	12–01–93	11–30–03
ST94–4752	Questar Pipeline Co.	Universal Resources Corp.	03–16–94	G–S	5,000	A	I	03–01–94	10–31–94
ST94–4753	Delhi Gas Pipeline Corp.	Arkla Energy Resources, et al.	03–16–94	C	350,000	N	I	02–22–94	Indef.
ST94–4754	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co., et al.	03–16–94	C	9,500	N	I	02-20–94	Indef.
ST94–4755	Noark Pipeline System, L.P.	Southwestern Energy Pipeline Co.	03–16–94	C	25,000	Y	F	01-01–94	Indef.
ST94–4756	Columbia Gas Transmission Corp.	UGI Utilities, Inc ..	03–16–94	B	600	N	I	03–01–94	Indef.
ST94–4757	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	4,200	Y	I	03–01–94	Indef.
ST94–4758	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	50,000	Y	I	03–01–94	Indef.
ST94–4759	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	4,341	Y	I	03–01–94	Indef.
ST94–4760	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	3,525	Y	I	03–01–94	Indef.
ST94–4761	Columbia Gas Transmission Corp.	Bethlehem Steel Corp.	03–16–94	B	15,000	N	I	03–01–94	Indef.
ST94–4762	Columbia Gas Transmission Corp.	Bethlehem Steel Corp.	03–16–94	B	11,000	N	I	03–01–94	Indef.
ST94–4763	Columbia Gas Transmission Corp.	Dauphin Manor County Home & Hosp.	03–16–94	B	250	N	I	03-01–94	Indef.
ST94–4764	Columbia Gas Transmission Corp.	Exide Corp	03–16–94	B	2,565	N	I	03–01–94	Indef.
ST94–4765	Columbia Gas Transmission Corp.	Tyson Foods, Inc	03–16–94	B	800	N	I	03–01–94	Indef.
ST94–4766	Columbia Gas Transmission Corp.	Air Products & Chemicals, Inc.	03–16–94	B	600	N	I	03–01–94	Indef.
ST94–4767	Columbia Gas Transmission Corp.	Quaker State Corp.	03–16–94	B	4,100	N	I	03-01–94	Indef.
ST94–4768	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	175	N	I	03-01–94	Indef.
ST94–4769	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	7,000	N	I	03-01–94	Indef.
ST94–4770	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	2,585	N	I	03-01–94	Indef.
ST94–4771	Columbia Gas Transmission Corp.	Columbia Gas Of KY, Inc.	03–16–94	B	20,000	Y	I	03-01–94	Indef.
ST94–4772	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	300	N	I	03-01–94	Indef.
ST94–4773	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	3,000	N	I	03-01–94	Indef.

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ST94–4774	Columbia Gas Transmission Corp.	Columbia Gas of KY, Inc.	03–16–94	B	600	Y	I	03–01–94	Indef.
ST94–4775	Columbia Gas Transmission Corp.	Columbia Gas of KY, Inc.	03–16–94	B	3,700	Y	I	03–01–94	Indef.
ST94–4776	Columbia Gas Transmission Corp.	Columbia Gas of KY, Inc.	03–16–94	B	425	Y	I	03–01–94	Indef.
ST94–4777	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	6,000	Y	I	03–01–94	Indef.
ST94–4778	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	8,000	Y	I	03–01–94	Indef.
ST94–4779	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	465	Y	I	03–01–94	Indef.
ST94–4780	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	11,000	Y	I	03–01–94	Indef.
ST94–4781	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	160	N	I	03–01–94	Indef.
ST94–4782	Transok, Inc	ANR Pipeline Co., et al.	03–17–94	C	50,000	N	I	02–19–94	Indef.
ST94–4783	Transok, Inc	ANR Pipeline Co., et al.	03–17–94	C	5,000	N	F	03–01–94	02–28–95
ST94–4784	Mojave Pipeline Co.	Adobe Gas Marketing Co.	03–17–94	G–S	50,000	N	I	03–01–94	03–01–95
ST94–4785	Columbia Gas Transmission Corp.	Southern Gas Co., Inc.	03–17–94	G–S	N/A	N	I	03–10–94	Indef.
ST94–4786	Columbia Gas Transmission Corp.	South Jersey Gas Co.	03–17–94	B	15,000	N	I	03–15–94	Indef.
ST94–4787	Arkla Energy Resources Co.	Celotex Corp	03–17–94	G–S	500	N	F	03–15–94	Indef.
ST94–4788	Colorado Interstate Gas Co.	North Central Oil Corp.	03–17–94	G–S	6,378	N	I	10–01–93	02–01–96
ST94–4789	Colorado Interstate Gas Co.	KN Interstate Gas Transmission Co.	03–17–94	G–S	7,496	N	F	10–01–93	09–30–96
ST94–4790	Colorado Interstate Gas Co.	Cimarron Chemical, Inc.	03–17–94	G–S	12,600	N	F	10–01–93	09–30–08
ST94–4791	Colorado Interstate Gas Co.	Coastal Chem, Inc	03–17–94	G–S	23,220	Y	F	03–01–94	08–31–95
ST94–4792	Transok Gas Transmission Co.	Arkla Energy Resources, et al.	03–18–94	C	20,000	N	I	08–16–93	Indef.
ST94–4793	Noark Pipeline System, L.P.	Texas Eastern Trans. Co., et al.	03–18–94	C	141,000	N	I	09–01–92	Indef.
ST94–4794	Williston Basin Inter. P/L Co.	Union Oil Co. of California.	03–18–94	G–S	15,000	N	I	11–01–93	10–31–03
ST94–4795	Columbia Gas Transmission Corp.	Trigen Baltimore Energy Corp.	03–18–94	G–S	5,640	N	I	03–15–94	Indef.
ST94–4796	Columbia Gas Transmission Corp.	Diversified Energy Co.	03–18–94	G–S	15,000	N	I	03–01–94	Indef.
ST94–4797	Viking Gas Transmission Co.	Cenergy, Inc	03–18–94	G–S	50,000	Y	I	03–01–94	Indef.
ST94–4798	National Fuel Gas Supply Corp.	National Fuel Resources, Inc.	03–18–94	G–S	35,000	Y	I	03–11–94	03–09–14
ST94–4799	National Fuel Gas Supply Corp.	Myers Gas Co	03–18–94	G–S	30	N	I	02–07–94	01–19–99
ST94–4800	National Fuel Gas Supply Corp.	Three Rivers Pipeline.	03–18–94	B	20,000	N	I	03–02–94	02–06–14
ST94–4801	National Fuel Gas Supply Corp.	Hub Services, Inc	03–18–94	G–S	500,000	N	I	02–01–94	01–11–14

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ST94–4802	National Fuel Gas Supply Corp.	Louis Dreyfus Natural Gas Corp.	03–18–94	G–S	30,000	N	I	01–01–94	12–31–14
ST94–4803	National Fuel Gas Supply Corp.	Hub Services, Inc	03–18–94	G–S	50,000	N	I	02–27–94	01–11–14
ST94–4804	National Fuel Gas Supply Corp.	AGF Direct Gas Sales, Inc.	03–18–94	G–S	1,000	N	I	10–02–93	08–31–13
ST94–4805	National Fuel Gas Supply Corp.	Hub Services, Inc	03–18–94	G–S	500,000	N	I	09–12–93	08–31–13
ST94–4806	National Fuel Gas Supply Corp.	Midland Marketing Corp.	03–18–94	G–S	30,000	N	I	12–11–93	11–30–13
ST94–4807	Channel Industries Gas Co.	Transcontinental Gs. P/L Crp., et al.	03–18–94	C	75,000	A	I	02–03–94	Indef.
ST94–4808	Channel Industries Gas Co.	Coastal Gas Marketing Co.	03–21–94	G–I	50,000	N	I	02–19–94	Indef.
ST94–4809	Noark Pipeline System, L.P.	Texas Eastern Transmission Corp.	03–21–94	C	141,000	N	I	09–11–92	Indef.
ST94–4810	Columbia Gas Transmission Corp.	Toyota Motor Manufacturing USA, Inc.	03–21–94	G–S	10,000	N	I	03–15–94	Indef.
ST94–4811	Southern Natural Gas Co.	City of Tallahassee.	03–21–94	G–S	10,000	N	I	02–25–94	Indef.
ST94–4812	Southern Natural Gas Co.	Chesapeake Energy Corp.	03–21–94	G–S	10,000	N	I	02–26–94	Indef.
ST94–4813	Southern Natural Gas Co.	Tenngasco Marketing Corp.	03–21–94	G–S	52,000	N	I	03–01–94	Indef.
ST94–4814	Southern Natural Gas Co.	P&P Producing, Inc.	03–21–94	G–S	10,000	N	I	03–11–94	Indef.
ST94–4815	Florida Gas Transmission Co.	Peninsula Energy Services Co.	03–21–94	G–S	10,000	N	I	02–17–94	Indef.
ST94–4816	Sabine Pipe Line Co.	KCS Energy Marketing, Inc.	03–21–94	G–S	4,839	N	F	03–01–94	03–31–94
ST94–4817	Sabine Pipe Line Co.	Midcoast Energy Resources Inc.	03–21–94	B	10,000	N	F	03–01–94	03–31–94
ST94–4818	Algonquin Gas Transmission Co.	Bristol & Warren Gas Co.	03–21–94	G–S	412	N	F	03–01–94	Indef.
ST94–4819	Algonquin Gas Transmission Co.	City of Middleborough.	03–21–94	G–S	34	N	I	03–02–94	Indef.
ST94–4820	Alabama-Tennessee Natural Gas Co.	Burnsville Gas Co	03–21–94	B	205	N	F	09–01–93	11–01–00
ST94–4821	Alabama-Tennessee Natural Gas Co.	Alatenn Energy Marketing Co., Inc.	03–21–94	G–S	559	N	I	11–01–93	12–31–01
ST94–4822	Valero Transmission, L.P.	Northern Natural Gas Co.	03–21–94	C	20,000	N	I	02–17–94	Indef.
ST94–4823	Questar Pipeline Co.	Mitchell Energy Corp.	03–21–94	G–S	22,000	N	I	03–16–94	Indef.
ST94–4824	Transcontinental Gas P/L Corp.	City of Sugar Hill	03–22–94	G–S	63	N	F	03–02–94	03–01–14
ST94–4825	Transcontinental Gas P/L Corp.	Tuber Oil Co	03–22–94	G–S	150,000	N	I	03–10–94	Indef.
ST94–4826	Northern Illinois Gas Co.	Natural Gas Pipeline, et al.	03–22–94	C	20,000	N	I	02–08–94	02–28–94
ST94–4827	Northern Illinois Gas Co.	Natural Gas Pipeline, et al.	03–22–94	C	10,000	N	I	02–11–94	02–28–94
ST94–4828	Northern Illinois Gas Co.	Natural Gas Pipeline, et al.	03–22–94	C	7,000	N	I	02–18–94	02–28–94
ST94–4829	Tennessee Gas Pipeline Co.	Channel Industries Gas Co.	03–22–94	B	150	A	I	02–23–94	Indef.
ST94–4830	Acadian Gas Pipeline System.	Columbia Gulf Transmission, et al.	03–23–94	C	25,000	N	I	03–08–94	Indef.
ST94–4831	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, et al.	03–23–94	C	25,000	N	I	03–05–94	Indef.

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ST94-4832	Arkla Energy Resources Co.	CPS Chemical Co., Inc.	03-23-94	G-S	470	N	F	03-01-94	02-28-95
ST94-4833	Arkla Energy Resources Co.	Coleman Dairy, Inc.	03-23-94	G-S	163	N	F	03-01-94	02-28-95
ST94-4834	Arkla Energy Resources Co.	Hudson Foods, Inc.	03-23-94	G-S	729	N	F	03-01-94	02-28-95
ST94-4835	Gas Co. of New Mexico.	Transwestern Pipeline Co.	03-24-94	G-HT	16,500	N	I	03-01-91	03-31-91
ST94-4836	Gas Co. of New Mexico.	American Processing Maple Taps.	03-24-94	G-HT	4,500	N	I	10-01-91	Indef.
ST94-4837	Gas Co. of New Mexico.	El Paso Natural Gas Co.	03-24-94	G-HT	500	N	I	01-01-91	Indef.
ST94-4838	Gas Co. of New Mexico.	El Paso Natural Gas Co.	03-24-94	G-HT	20,000	N	I	01-01-90	Indef.
ST94-4839	Channel Industries Cas Co.	Mobil Natural Gas	03-24-94	G-I	50,000	N	I	02-26-94	Indef.
ST94-4840	Tennessee Gas Pipeline Co.	Indeck Kirkwood, L.P.	03-24-94	G-S	10,400	N	F	11-01-93	Indef.
ST94-4841	Ozark Gas Transmission System.	Encore Energy, Inc.	03-24-94	G-S	50,000	N	F	03-01-94	Indef.
ST94-4842	Trunkline Gas Co	Polaris Pipeline Corp.	03-24-94	G-S	10,000	N	I	03-01-94	Indef.
ST94-4843	Trunkline Gas Co	Tenneco Gas Marketing Co.	03-24-94	G-S	1,000	N	F	03-01-94	Indef.
ST94-4844	Trunkline Gas Co	Semco Energy Services, Inc.	03-24-94	G-S	103,500	N	I	03-01-94	Indef.
ST94-4845	Trunkline Gas Co	Midland Cogeneration Venture.	03-24-94	G-S	50,000	N	I	03-01-94	Indef.
ST94-4846	Texas Gas Transmission Corp.	Boston Gas Co	03-24-94	G-S	13,280	N	F	12-01-93	Indef.
ST94-4847	Assoc. Louisiana Intra. P/L Co.	Southern Natural Gas Co., et al.	03-25-94	C	70,000	N	I	03-01-94	Indef.
ST94-4848	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc.	03-25-94	G-S	100,000	N	I	10-01-90	Indef.
ST94-4849	Natural Gas P/L Co. of America.	Catex Energy, Inc	03-25-94	G-S	50,000	N	F	03-01-94	02-28-95
ST94-4850	Natural Gas P/L Co. of America.	Chevron U.S.A., Inc.	03-25-94	G-S	80,000	N	I	10-01-90	Indef.
ST94-4851	Columbia Gulf Transmission Co.	Torch Energy Marketing, Inc.	03-25-94	G-S	50,000	N	I	03-01-94	Indef.
ST94-4852	Columbia Gulf Transmission Co.	Union Oil Co. of California.	03-25-94	G-S	10,000	N	F	03-01-94	10-31-94
ST94-4853	Columbia Gulf Transmission Co.	Marathon Oil Co ..	03-25-94	G-S	7,000	N	I	03-01-94	Indef.
ST94-4854	Columbia Gulf Transmission Co.	Northern Natural Gas Co.	03-25-94	G	35,000	N	F	03-01-94	04-30-98
ST94-4855	Columbia Gulf Transmission Co.	Tennessee Gas Pipeline Co.	03-25-94	G	12,288	N	F	03-01-94	01-10-98
ST94-4856	Columbia Gulf Transmission Co.	Texaco Gas Marketing, Inc.	03-25-94	G-S	25,000	N	F	03-01-94	10-31-94
ST94-4857	Texas Eastern Transmission Corp.	Endevco Oil & Gas Co.	03-25-94	G-S	20,000	N	I	02-28-94	03-31-94
ST94-4858	Tennessee Gas Pipeline Co.	Oak Ridge Utility District.	03-25-94	G-S	7,283	N	F	11-01-93	Indef.
ST94-4859	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	03-25-94	G-S	3,438	N	F	03-16-94	Indef.
ST94-4860	El Paso Natural Gas Co.	Atlantic Richfield Co.	03-25-94	G-S	30,000	N	I	03-01-94	Indef.
ST94-4861	Transwestern Pipeline Co.	Richardson Products Co.	03-25-94	G-S	25,000	N	F	03-01-94	03-31-94
ST94-4862	Transwestern Pipeline Co.	Richardson Products Co.	03-25-94	G-S	7,070	N	F	03-01-94	03-31-94

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94-4863	Transwestern Pipeline Co.	Cibola Corp	03-25-94	G-S	5,125	N	F	03-01-94	04-30-94
ST94-4864	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	03-25-94	G-S	750,000	A	I	02-25-94	Indef.
ST94-4865	Transwestern Pipeline Co.	Conoco Inc	03-25-94	G-S	20,000	N	F	03-01-94	10-31-96
ST94-4866	Transwestern Pipeline Co.	CPM Gas Corp	03-25-94	G-S	7,500	N	F	03-01-94	03-31-94
ST94-4867	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	03-25-94	G-S	17,140	A	F	03-01-94	03-31-94
ST94-4868	Transwestern Pipeline Co.	Valero Gas Marketing, L.P.	03-25-94	G-S	4,290	N	F	03-01-94	03-31-94
ST94-4869	Transwestern Pipeline Co.	US Gas Transportation.	03-25-94	G-S	5,140	N	F	03-01-94	03-31-94
ST94-4870	Transwestern Pipeline Co.	Tristar Gas Marketing Co.	03-25-94	G-S	3,420	N	F	03-01-94	03-31-94
ST94-4871	Transwestern Pipeline Co.	NGC Transportation, Inc.	03-25-94	G-S	15,430	N	F	03-01-94	03-31-94
ST94-4872	Transwestern Pipeline Co.	Valero Gas Marketing, L.P.	03-25-94	G-S	20,360	N	F	03-01-94	03-31-94
ST94-4873	Transwestern Pipeline Co.	Enogex Services Corp.	03-25-94	G-S	1,040	N	F	03-01-94	03-31-94
ST94-4874	Transwestern Pipeline Co.	Tristar Gas Marketing Co.	03-25-94	G-S	37,830	N	F	03-01-94	03-31-94
ST94-4875	Transwestern Pipeline Co.	NGC Transportation, Inc.	03-25-94	G-S	31,530	N	F	03-01-94	03-31-94
ST94-4876	Transwestern Pipeline Co.	Clayton Williams Energy, Inc.	03-25-94	G-S	3,150	N	F	03-01-94	03-31-94
ST94-4877	Transwestern Pipeline Co.	Anthem Energy Co., L.P.	03-25-94	G-S	75,000	N	I	03-01-94	Indef.
ST94-4878	Valero Transmission, L.P.	Florida Gas Transmission Co.	03-28-94	C	5,000	N	I	03-01-94	Indef.
ST94-4879	Valero Transmission, L.P.	Transwestern Pipeline Co.	03-28-94	C	25,000	N	I	03-08-94	Indef.
ST94-4880	Transtexas Pipeline.	Florida Gas Transmission Co.	03-28-94	C	4,319	N	I	03-02-94	Indef.
ST94-4881	ONG Transmission Co.	Transok, Inc	03-28-94	C	10,000	N	I	09-08-93	Indef.
ST94-4882	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	03-28-94	G-S	500,000	A	I	03-18-94	Indef.
ST94-4883	National Fuel Gas Supply Corp.	Utility-2000 Energy Corp.	03-28-94	G-S	70,000	N	I	03-18-94	02-28-14
ST94-4884	National Fuel Gas Supply Corp.	Hub Services, Inc	03-28-94	G-S	500,000	N	I	02-27-94	01-11-14
ST94-4885	National Fuel Gas Supply Corp.	Songer Gas Co ...	03-28-94	G-S	100	N	I	01-16-94	01-15-14
ST94-4886	National Fuel Gas Supply Corp.	Songer Gas Co ...	03-28-94	G-S	500	N	I	01-16-94	01-15-95
ST94-4887	Florida Gas Transmission Co.	O & R Energy, Inc	03-28-94	G-S	100,000	N	I	02-25-94	Indef.
ST94-4888	Florida Gas Transmission Co.	Oryx Gas Marketing, L.P.	03-28-94	G-S	100,000	N	I	02-24-94	Indef.
ST94-4889	Panhandle Eastern Pipe Line Co.	North Atlantic Utilities.	03-28-94	G-S	20,000	N	I	03-01-94	04-30-98
ST94-4890	Panhandle Eastern Pipe Line Co.	Arkla Energy Marketing Co.	03-28-94	G-S	150,000	N	I	03-02-94	02-01-98
ST94-4891	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	03-28-94	G-S	25,000	N	I	03-05-94	04-30-98
ST94-4892	Panhandle Eastern Pipe Line Co.	Consumers Gas Co., Ltd.	03-28-94	G-S	20,000	N	F	03-01-94	10-31-94
ST94-4893	Panhandle Eastern Pipe Line Co.	Triumph Gas Marketing Co.	03-28-94	G-S	100,000	N	I	03-01-94	04-30-98

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94-4894	Panhandle Eastern Pipe Line Co.	Princeton Natural Gas Co.	03-28-94	G-S	10,000	N	I	03-01-94	01-31-99
ST94-4895	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	03-28-94	C	5,000	N	I	06-01-93	Indef.
ST94-4896	Transok Gas Transmission Co.	ANR Pipelline Co., et al.	03-28-94	C	25,000	N	I	06-04-93	Indef.
ST94-4897	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	10,000	N	I	02-01-93	10-31-02
ST94-4898	Montana Power Co.	Williston Basin Inter. Pipelline Co.	03-29-94	C	20,000	N	I	12-17-92	12-31-93
ST94-4899	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	10,000	N	I	12-22-92	12-31-93
ST94-4900	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	20,000	N	I	03-01-93	10-31-02
ST94-4901	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	10,000	N	I	05-01-93	10-31-02
ST94-4902	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	32,000	N	I	08-01-93	10-31-02
ST94-4903	Montana Power Co.	Northern Natural Gas Co.	03-29-94	C	5,000	N	I	07-01-93	03-31-98
ST94-4904	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	32,000	N	I	09-01-93	10-31-02
ST94-4905	Delhi Gas Pipeline Corp.	Transwestern P/L Co., et al.	03-29-94	C	5,000	N	I	05-05-94	Indef.
ST94-4906	Delhi Gas Pipeline Corp.	ANR Pipelline Co., et al.	03-29-94	C	10,000	N	I	03-02-94	Indef.
ST94-4907	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	03-29-94	C	5,000	N	I	03-03-94	Indef.
ST94-4908	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	03-29-94	C	20,000	N	I	03-01-94	Indef.
ST94-4909	Texas Eastern Transmission Corp.	United Cities Gas Co.	03-29-94	G-S	10,000	N	I	03-09-94	01-31-95
ST94-4910	Oktex Pipeline Co	Ong Western, Inc	03-29-94	G-S	5,000	N	I	08-06-93	Indef.
ST94-4911	Oktex Pipeline Co	Equitable Resources Marketing Co.	03-29-94	G-S	50,000	N	I	09-01-93	Indef.
ST94-4912	Texas Eastern Transmission Corp.	Polaris Corp	03-29-94	G-S	25,200	N	I	03-31-94	Indef.
ST94-4913	Natural Gas P/L Co. of America.	Arcadian Corp	03-29-94	G-S	5,000	N	I	03-01-94	03-31-94
ST94-4914	Natural Gas P/L Co. of America.	Pegasus Energy Corp.	03-29-94	G-S	30,000	N	I	03-03-94	Indef.
ST94-4915	CNG Transmission Corp.	Energy Sales Co .	03-29-94	G-S	2,000	N	I	03-09-94	04-22-94
ST94-4916	CNG Transmission Corp.	Global Petroleum Corp.	03-29-94	G-S	30,000	N	I	03-15-94	04-30-94
ST94-4917	CNG Transmission Corp.	Columbia Gas of Ohio, Inc.	03-29-94	G-S	675	N	F	03-13-94	03-31-99
ST94-4918	CNG Transmission Corp.	Bristol & Warren Gas.	03-29-94	G-S	537	N	F	03-14-94	04-30-94
ST94-4919	CNG Transmission Corp.	Volunteer Energy	03-29-94	G-S	15,000	N	I	03-14-94	04-30-94
ST94-4920	CNG Transmission Corp.	Eastern Marketing Corp.	03-29-94	G-S	100,000	N	I	03-08-94	04-30-94
ST94-4921	CNG Transmission Corp.	Equitable Resources Marketing.	03-29-94	G-S	200,000	N	I	02-24-94	04-30-94
ST94-4922	Williston Basin Inter. P/L Co.	Exxon Corp	03-29-94	G-S	310	A	I	03-01-94	03-11-96
ST94-4923	CNG Transmission Corp.	Energy Sales Co .	03-29-94	G-S	2,000	N	I	03-09-94	04-22-94
ST94-4924	Channel Industries Gas Co	Tennessee Gas Pipeline Co.	03-30-94	C	100,000	N	I	02-02-94	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	AFF. Y/A/ N [3]	Rate sch.	Date commenced	Projected termination date
ST94–4925	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	03–30–94	C	12,000	N	I	08–01–93	Indef.
ST94–4926	Natural Gas P/L Co. of America.	Texaco Gas Marketing Inc.	03–30–94	G–S	15,000	N	F	03–01–94	02–28–95
ST94–4927	Tennessee Gas Pipeline Co.	NGO Development Corp.	03–30–94	G–S	5,000	N	I	03–01–94	Indef.
ST94–4928	Tennessee Gas Pipeline Co.	Interstate Gas Marketing Inc.	03–30–94	G–S	12,000	N	F	03–01–94	Indef.
ST94–4929	Tennessee Gas Pipeline Co.	O & R Energy Inc	03–30–94	G–S	5,000	N	F	03–01–94	Indef.
ST94–4930	Tennessee Gas Pipeline Co.	Enron Gas Marketing Inc.	03–30–94	G–S	14,000	N	F	03–01–94	Indef.
ST94–4931	Tennessee Gas Pipeline Co.	National Gas Resources, L.P.	03–30–94	G–S	20,202	N	I	03–01–94	Indef.
ST94–4932	Tennessee Gas Pipeline Co.	Gasco, Inc	03–30–94	G–S	10,000	N	F	03–01–94	Indef.
ST94–4933	Tennessee Gas Pipeline Co.	Enron Gas Marketing, Inc.	03–30–94	G–S	14,100	N	F	03–01–94	Indef.
ST94–4934	Tennessee Gas Pipeline Co.	O & R Energy Inc	03–30–94	G–S	5,000	N	F	03–01–94	Indef.
ST94–4935	Tennessee Gas Pipeline Co.	Imco Recycling	03–30–94	G–S	2,100	N	F	03–15–94	Indef.
ST94–4936	Tennessee Gas Pipeline Co.	Connecticut Natural Gas Corp.	03–30–94	G–S	15,000	N	F	03–01–94	Indef.
ST94–4937	Midwestern Gas Transmission Co.	Associated Natural Gas Inc.	03–30–94	G–S	21,661	N	F	03–01–94	Indef.
ST94–4938	Northern Natural Gas Co.	Aurora Natural Gas and Assoc. Prod.	03–30–94	G–S	5,000	N	F	01–04–94	Indef.
ST94–4939	Iriquois Gas Transmission Sys.	Connecticut Natural Gas Corp.	03–30–94	G–S	5,154	N	F	03–01–94	04–01–94
ST94–4940	Iroquois Gas Transmission Sys.	New England Power Co.	03–30–94	G–S	30,355	N	F	03–02–94	04–01–94
ST94–4941	Iroquois Gas Transmission Sys.	Direct Gas Supply/Iesco, Inc.	03–30–94	G–S	9,931	N	F	03–01–94	04–01–94
ST94–4942	Iroquois Gas Transmission Sys.	Continental Energy Marketing, Inc.	03–30–94	G–S	10,221	N	F	03–01–94	04–01–94
ST94–4943	Iroquois Gas Transmission Sys.	Connecticut Natural Gas Corp.	03–30–94	G–S	8,408	N	F	03–02–94	04–10–94
ST94–4944	Panhandle Eastern Pipe Line Co.	Lebanon Chemical.	03–31–94	G–S	100	N	I	05–01–93	04–30–98
ST94–4945	Panhandle Eastern Pipe Line Co.	Direct Gas Supply Corp.	03–31–94	G–S	20,000	N	I	11–04–93	04–30–98
ST94–4946	Panhandle Eastern Pipe Line Co.	Michigan Gas Utilities.	03–31–94	G–S	15,000	N	F	11–01–93	10–31–98
ST94–4947	Panhandle Eastern Pipe Line Co.	Tristar Gas Marketing Co.	03–31–94	G–S	30,000	N	I	11–17–93	04–30–98
ST94–4948	Panhandle Eastern Pipe Line Co.	Big Co	03–31–94	G–S	200	N	I	05–01–93	04–30–94
ST94–4949	Panhandle Eastern Pipe Line Co.	GPM Gas Corp ...	03–31–94	G–S	9,000	N	I	05–01–93	04–30–98
ST94–4950	Panhandle Eastern Pipe Line Co.	Southeastern Michigan Gas.	03–31–94	G–S	38,133	N	F	02–01–94	10–31–97
ST94–4951	Panhandle Eastern Pipe Line Co.	Arcadian Partners, L.P.	03–31–94	G–S	6,500	N	F	02–01–94	10–31–94

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4952	Panhandle Eastern Pipe Line Co.	National Steel Corp.	03–31–94	G–S	17,161	N	F	02–15–94	03–31–95
ST94–4953	Trunkline Gas Co	North Canadian Marketing Corp.	03–31–94	G–S	155,250	N	I	03–03–94	Indef.
ST94–4954	Trunkline Gas Co	Unigas Energy, Inc.	03–31–94	G–S	103,500	N	I	03–01–94	Indef.
ST94–4955	Enogex Inc	Panhandle Eastern Pipe Line Co.	03–31–94	C	10,000	N	I	03–11–94	Indef.
ST94–4956	Arkla Energy Resources Co.	Princeton Natural Gas Co.	03–31–94	G–S	25,000	N	I	02–01–94	Indef.
ST94–4957	Tennessee Gas Pipeline Co.	National Fuel Gas Distribution Co.	03–31–94	G–S	25,000	N	I	03–01–94	Indef.
ST94–4958	Midwestern Gas Transmission Co.	National Gas Resources, L.P.	03–31–94	G–S	20,000	N	F	03–01–94	Indef.
ST94–4959	Channel Industries Gas Co.	Seagull Marketing Services, Inc.	03–31–94	G–I	50,000	N	I	03–01–94	Indef.
ST94–4960	Channel Industries Gas Co.	Tennessee Gas Pipeline Co., et al.	03–31–94	C	50,000	Y	I	03–30–94	Indef.
ST94–4961	Channel Industries Gas Co.	Amerada Hess Corp.	03–31–94	G–I	50,000	N	I	03–04–94	Indef.
ST94–4962	ONG Transmission Co.	Caprock Pipeline .	03–31–94	C	50,000	N	I	03–12–94	Indef.
ST94–4963	Channel Industries Gas Co.	Tennessee Gas Pipeline Co., et al.	03–31–94	C	50,000	Y	I	03–05–94	Indef.
ST94–4964	Chandeleur Pipe Line Co.	Associated Natural Gas, Inc.	03–31–94	K–S	30,000	N	I	02–26–94	Indef.
ST94–4965	Sabine Pipe Line Co.	Arkla Energy Marketing Co.	03–31–94	G–S	100,000	N	I	02–01–94	Indef.
ST94–4966	Sabine Pipe Line Co.	GEDI Inc	03–31–94	G–S	30,000	N	I	02–01–94	Indef.
ST94–4967	Sabine Pipe Line Co.	American Hunter Energy.	03–31–94	G–S	50,000	N	I	02–01–94	Indef.
ST94–4968	Sabine Pipe Line Co.	Appalachian Gas Sales.	03–31–94	G–S	50,000	N	I	02–01–94	Indef.
ST94–4969	Algonquin Gas Transmission Co.	New Jersey Natural Gas.	03–31–94	B	1,221	N	F	03–03–94	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85.

[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entitles involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 94–13071 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP93–99–000]

Colorado Interstate Gas Company; Informal Settlement Conference

May 25, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, June 7, 1994, at 10 a.m., at the offices of the Federal Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Lorna J. Hadlock at (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13266 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–000, et al.]

Equitrans, Inc.; Informal Settlement Conference

May 25, 1994.

Take notice that an informal conference will be convened in this proceeding on Thursday, June 2, 1994, at 10 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a

party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–0783 or Arnold H. Meltz at (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13267 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–248–000]

K N Interstate Gas Transmission Co.; Waiver of Tariff Provision

May 25, 1994.

Take notice that on May 13, 1994, K N Interstate Gas Transmission Co., (KNI), tendered for filing its request for a one-time waiver of compliance with FERC Gas Tariff, Second Revised Volume No. 1–B, Sheet No. 21, Section 15, "Fuel And Loss Reimbursement."

KNI states that the tariff provision would require KNI to file a revised fuel and loss reimbursement percentage on June 1, 1994 (to be effective July 1, 1994) based on only three months: October, November, and December of 1993. KNI states that a filing based on only three months of data would incorrectly represent the fuel and loss reimbursement percentages for 1993 by presenting an inaccurate and incomplete picture. KNI argues that at least twelve months of data are necessary to accurately revise the fuel and loss reimbursement percentage.

KNI respectfully requests that the Commission grant a one-time waiver of Section 15 "Fuel and Loss Reimbursement" to allow the filing of this annual report to take place on June 1, 1995. KNI states that the granting of such relief, on a one-time basis, will enable KNI to make its first yearly filing based on fifteen months of actual, historical fuel and loss reimbursement data (October 1993–December 1994) rather than on three-months of data (October–December 1993).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13268 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–44–000]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

May 25, 1994.

Take notice that on May 20, 1994 Trunkline Gas Company (Trunkline) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 as listed on Appendix No. 1 attached to the filing. Trunkline proposes that the revised tariff sheets listed on Appendix No. 1 become effective September 1, 1993, November 1, 1993, December 1, 1993, January 1, 1994, February 1, 1994, March 1, 1994, April 1, 1994, April 15, 1944, and May 1, 1994, respectively.

Trunkline states that this filing is being made in compliance with Section 154.4(b) of the Commission's Regulations. The revised tariff sheets reflect updates to the Index of Firm Customers and the addition of this section to the Table of Contents in Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that copies of this filing are being mailed to all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to be proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois C. Cashell,

Secretary.

[FR Doc. 94–13265 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2402–003, Michigan]

Upper Peninsula Power Company; Notice of 10(j) Meeting

May 25, 1994.

a. *Date and Time of Meeting*: June 8, 1994 at 9 am to 3 pm

b. *Place*: MI State Library & Historical Museum, 4th Floor, 717 West Allegan (Downtown), Lansing, MI 48918, (517) 373–0510.

c. *FERC Contact*: CarLisa Linton (202) 219–2802, Ed Lee (202) 219–2809.

d. *Purpose of the Meeting*: The Federal Energy Regulatory Commission, the Michigan Department of Natural Resources, and the Department of the Interior intend to have a Section 10(j) discussion and negotiation for the Prickett Hydro Project No. 2402.

e. *Proposed Agenda*: A. Introduction: Recognition of meeting participants, Teleconference procedures; B. Section 10(j) issues discussions; C. Section 10(j) negotiations; D. Issues outside of 10(j) discussion; and, E. Follow up actions.

f. All local, state and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants. Questions should be directed to Messrs. Linton and Lee at the numbers listed above.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13269 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–550–000]

Washington Natural Gas Company, as Project Operator; Application

May 25, 1994.

Take notice that on May 17, 1994, Washington Natural Gas Company, as Project Operator of the Jackson Prairie Storage Project (Applicant), 815 Mercer Street, Seattle, Washington 98109, filed an abbreviated application pursuant to section 7(c) of the Natural Gas Act and Part 157.7(a) of the Commission's Regulations under the Natural Gas Act for a certificate of public convenience and necessity authorizing the further testing and development of an under ground reservoir for the possible storage of gas in the Jackson Prairie Project located in Lewis County, Washington, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the Jackson Prairie Storage Project is an aquifer type storage facility which provides the storage capacity under existing authorizations to enable Northwest Pipeline Corporation (Northwest) to provide a winter season peaking service

for its customers under Rate Schedules SGS–1, SGS–2 and SGS–21 in its FERC Gas Tariff, Third Revised Volume No. 1. Applicant further states that the Storage Project is connected to Northwest's mainline in Lewis County, near Chehalis, Washington, and Applicant receives gas from Northwest at the interconnection, transports the gas through the Project facilities, stores the gas in the Project and withdraws the gas on instructions from Northwest and transports the gas and returns it to Northwest at the interconnection.

Applicant further states that the Storage Project is owned in joint and equal individual interest by Washington Natural Gas Company (Washington Natural), The Washington Water Power Company and Northwest. It is said that, pursuant to agreement among the owners, Washington Natural acts as Project Operator, that the Federal Power Commission certificated Washington Natural as Project Operator in its representative capacity to operate the Storage Project (Opinion No. 620; 47 FPC 1527 (1972)) and the Storage Project is operated pursuant to a Gas Storage Project Agreement which is on file with the Commission as Washington Natural's Rate Schedule S–1 in its FERC Gas Tariff, Original volume No. 1.

Applicant seeks authorization to conduct up to a two-year program, for further testing and development of Zone 9 in the Jackson Prairie Storage Project. The testing and development proposal will include the drilling of two new wells (an observation well and an injection/withdrawal well) and related facilities at a cost of $950,000, and injection of 3.0 Bcf of cushion gas at a cost of $6,000,000. Also, the Applicant requests authority to temporarily install and subsequently remove, a 600 HP rental compressor in order to expedite the injection process. Applicant states that the total projected cost of the testing program is $7,163,000. Further, Applicant requests expeditious approval of said application in order to allow for a prompt determination of the possibilities for full development of the Zone 9 reservoir. Applicant states that development of additional storage capacity may help meet the growing gas demand in the Pacific Northwest, and thus, prompt commencement of the testing program is in the public interest.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 15, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed construction and operations are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13264 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4889–5]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) for authorization to disclose Superfund confidential business information ("CBI") which has been submitted to EPA Region 2, Emergency and Remedial Response Division to the following contractor: TRC Environmental Corp. ("TRC") of New York, New York (referred to hereinafter as "Contractor"); and to the following subcontractor: DynCorp Viar of Alexandria, Virginia (referred to hereinafter as "Subcontractor"). TRC's principal offices are located at 291 Broadway, suite 1206, New York, New York 10007. DynCorp Viar's principal offices are located at 300 North Lee Street, Alexandria, Virginia 22314–2695.

FOR FURTHER INFORMATION CONTACT: Leslie Peterson, Program Support Branch, Emergency and Remedial Response Division, Environmental Protection Agency, Region 2, 26 Federal Plaza, New York, New York 10278. Telephone (212) 264–9251.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, also require the maintenance of many other records, including those relevant to cost recovery. EPA, Region 2, has entered into Contract No. 68–W4–0020 with TRC for management of these records. Pursuant to Contract No. 68–W4–0020, DynCorp Viar has entered into a subcontract with TRC under Work Assignment No. 003–RECD pursuant to which DynCorp Viar provides information management support services to EPA, Region 2. EPA, Region 2, has determined that disclosure of CBI to employees of the above Contractor and Subcontractor is necessary in order that the Contractor and Subcontractor may carry out the work required by the above contract and subcontract with EPA. The contract and subcontract complies with the requirements of 40 CFR 2.301(h)(ii). EPA, Region 2, requires that each employee of the Contractor and Subcontractor who will have access to CBI sign a written agreement that he or she (1) Will use the information only for the purpose of carrying out the work required by the contract or subcontract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information (and any abstracts or extracts therefrom) is no longer required by the Contractor or Subcontractor for

performance of the work required by the contract or subcontract, or upon completion of the contract or subcontract. These non-disclosure statements shall be maintained on file with the EPA, Region 2, Regional Project Officer.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii). Comments should be sent to: Environmental Protection Agency, Region 2, Attention: Leslie Peterson, 26 Federal Plaza, room 759, New York, New York 10278.

Dated: May 4, 1994.

George Pavlou,

Acting Director, Emergency and Remedial Response Division.

[FR Doc. 94–13186 Filed 5–31–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00381; FRL–4870–7]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality & Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal will hold a 2–day meeting, beginning on Monday, June 6, 1994, and ending on Tuesday, June 7, 1994. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG Working Committee on Water Quality and Pesticide Disposal will meet on Monday, June 6, 1994, from 8:30 a.m. to 5:00 p.m., and Tuesday, June 7, 1994, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: The DoubleTree Hotel, National Airport - Crystal City, 300 Army-Navy Drive, Arlington, VA, 22202, 703–892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1109, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–7164.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Water Quality and Pesticide Disposal includes the following:

1. Reports from the SFIREG Working Committee members on State Water Quality and Pesticide Disposal Projects.
2. Update on Ground Water Conference in Atlanta, Georgia.
3. Discussion of Surface Water Monitoring.
4. Update on the Michigan Waste Pesticide Collection Program.
5. Status of Ground Water Issues Resolution Process.
6. Update on Ground Water Policy Committee Meeting.
7. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: May 25, 1994.

Allan S. Abramson,

Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 94–13430 Filed 5–31–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 24, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0085

Title: Employment Inquiry

Form Number: FCC Form 65

Action: Revision of a currently approved collection

Respondents: Individuals or households and businesses or other for-profit

Frequency of Response: On occasion reporting requirement

Estimated Annul Burden: 600 responses: .25 hours average buden for response: 150 hours total annual burden

Needs and Uses: FCC Form 65 is used when obtaining references from former supervisors, co-workers, and other personal references furnished by an applicant for employment at the FCC. This is a long-term, standard practice for public and private employees. Reference contacts are made by personnel assistants and specialists. Contacts may be made by telephone, with responses recorded on the FCC Form 65, or by mailing the form to the reference source (furnished by the applicant), along with an addressed, franked envelope. The reference information is used by selecting officials to ensure that an applicant has an acceptable prior work history.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13259 Filed 5–31–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2012]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 25, 1994.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed June 16, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92–266). Number of Petitions filed: 7.

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation. (MM Docket No. 93–215) and Adoption of Uniform Accounting System for Provision of Regulated Cable Service. (CS Docket No. 94–28). Number of Petitions Filed: 6.

Subject: Implementation of Sections 3(n) and 332 of the Communications Act. Regulatory Treatment of Mobile Services. (GN Docket No. 93–252). Number of Petitions Filed: 15.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13206 Filed 5–31–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5

U.S.C. App. I) and Office of Management and Budget Circular A–63, as revised, the Federal Election Commission announces the following Advisory Panel meeting:

Name: Federal Election Commission Clearinghouse Advisory Panel
Date: 19–21 June 1994
Place: Westin La Paloma, 3800 E Sunrise, Tucson, AZ
Time: 1500–1730 on 19 June 1994; 0830–1200; 1330–1700 on 20 June 1994; and 0830–1230; 1400–1630 on 21 June 1994
Proposed Agenda: Leadership in Turbulent & Chaotic Environments; North American Conference on Elections; National Voter Registration Act: The Status of Commission Efforts; Retention of Election Records; Building Consensus for Effective Agency Registration; Advanced Technologies: Public and Private Perspectives on Telephone Voting; Experiences with All Mail Ballot Elections; Implementing Federal Bilingual Provisions.
Purpose of the Meeting: The Panel will present their views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public, dependent on available space. There is an $125.00 registration fee for food functions. Any member of the public may file a written statement with the Panel before, during or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding the Advisory Panel should be addressed to Penelope Bonsall, National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street NW., Washington, DC 20463.

Dated: May 26, 1994.

Marjorie W. Emmons,

Secretary to the Commission.

[FR Doc. 94–13252 Filed 5–31–94; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

BACKGROUND: Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202/452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551. Milo Sunderhauf, OMB Desk Officer (202/395-7316), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503.

Request for OMB approval to extend, without revision, the following report:

1. *Report title:* Reports of Condition and Income
Agency form number: FFIEC 031-034
OMB Docket number: 7100-0036
Frequency: Quarterly
Reporters: State member banks
Annual reporting hours: 166,042
Estimated average hours per response: 42.1
Number of respondents: 986
Small businesses are affected.

General description of report:

This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

SUMMARY: On a quarterly basis, state member banks are required to file detailed schedules of assets, liabilities, and capital in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes.

Board of Governors of the Federal Reserve System, May 25, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-13254 Filed 5-31-94; 8:45 am]

BILLING CODE 6210-01-F

Agency Forms Under Review

BACKGROUND: Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202/452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551. Milo Sunderhauf, OMB Desk Officer (202/395-7316), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Request for OMB approval to extend, without revision, the following report:

1. *Report title:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Agency form number: FFIEC 002
OMB Docket number: 7100-0032
Frequency: Quarterly
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 44,045
Estimated average hours per response: 19.15
Number of respondents: 575
Small businesses are affected.

General description of report:

This information collection is mandatory [12 U.S.C. 3105 (b)(2), 1817(a)(1) and (3), and 3102(b)] and is given partial confidential treatment [5 U.S.C. 552(b)(8)].

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the

supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies.

Board of Governors of the Federal Reserve System, May 25, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-13255 Filed 5-31-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Enforcement policy statement On Food Advertising

AGENCY: Federal Trade Commission.

ACTION: Enforcement policy statement.

SUMMARY: On May 13, 1994, the Federal Trade Commission ("the Commission") placed on the public record an enforcement policy statement to provide guidance regarding its enforcement policy with respect to the use of nutrient content and health claims in food advertising. The Commission believes the statement is appropriate in light of the passage of the Nutrition Labeling and Education Act of 1990 (NLEA), and the Food and Drug Administration's issuance of food labeling regulations implementing the NLEA. The NLEA applies only to labeling and did not change the FTC's statutory authority to prohibit deceptive acts or practices under sections 5 and 12 of the Federal Trade Commission Act. Nevertheless, in light of the comprehensive regulatory scheme established for food labeling by the NLEA, the Commission is issuing this statement to clarify how it will enforce its own statutes in the food advertising area in light of issues raised by FDA's food labeling regulations.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Anne V. Maher, (202) 326–2987, Michelle Rusk, (202) 326–5148, or Maureen Enright, (202) 326–3160, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

ENFORCEMENT POLICY STATEMENT ON FOOD ADVERTISING

I. Introduction

The Federal Trade Commission (FTC) is issuing this statement to provide guidance regarding its enforcement policy with respect to the use of nutrient content and health claims in food advertising. The Commission believes the statement is appropriate in light of the passage of the Nutrition Labeling and Education Act of 1990 (NLEA),[1] and the Food and Drug Administration's (FDA) January 6, 1993, issuance of food labeling regulations implementing the NLEA.[2]

The FTC, FDA, and USDA share jurisdiction over claims made by manufacturers of food products pursuant to a regulatory scheme established by Congress through complementary statutes. Section 5 of the Federal Trade Commission Act (FTC Act) (hereinafter "section 5") prohibits "unfair or deceptive acts or practices," and, in the case of food products, sections 12 and 15 of the FTC Act prohibit "any false advertisement" that is "misleading in a material respect."[3] FDA's authority is embodied in part in section 403(a) of the Federal Food, Drug, and Cosmetic Act (FDCA) which prohibits "labeling [that] is false or misleading in any particular."[4] Since 1954, the FTC and the FDA have operated under a Memorandum of Understanding,[5] under which the Commission has assumed primary responsibility for regulating food advertising, while FDA has taken primary responsibility for regulating food labeling.[6]

The NLEA amended section 403 of the FDCA and effected broad changes in the regulation of nutrition claims on food labels. In addition to requiring nutrition information on virtually all food products, the NLEA directed FDA to standardize and limit the terms permitted on labels, and allows only FDA-approved nutrient content claims and health claims to appear on food labels.[7] While the NLEA is designed in part to prevent deceptive and misleading claims on labels, Congress also intended that nutrient content and health claims educate consumers in order to assist them in maintaining healthy dietary practices.[8] The NLEA also mandated that FDA undertake a consumer education effort to educate consumers about the new food label and the importance of diet to health.[9] Therefore, in keeping with its recently expanded and unique jurisdictional mandate, the requirements set forth in FDA's regulations have a broader purpose than preventing false and misleading claims in food labeling.

The NLEA applies only to labeling and did not change the FTC's statutory authority to prohibit deceptive acts or practices under section 5 of the FTC Act. Nevertheless, in light of the comprehensive regulatory scheme established for food labeling claims by the NLEA, the Commission is issuing this statement to clarify how its own authority relates to issues raised by FDA's food labeling regulations.

The Commission recognizes the importance of consistent treatment of nutrient content and health claims in food advertising and labeling and seeks to harmonize its advertising enforcement program with FDA's food labeling regulations to the fullest extent possible under the statutory authority of the FTC Act. The Commission also recognizes the scientific expertise of FDA in this area. The Commission has traditionally accorded great weight to FDA's scientific determinations in matters of nutrition and health and will

[1] Nutrition Labeling and Education Act of 1990, Public Law No. 101–535, 104 Stat. 2353 (codified in part at 21 U.S.C. 343(i), (q) and (r)).

[2] Food labeling regulations implementing the Nutrition Labeling and Education Act of 1990: opportunity for comments (58 FR 2066, January 6, 1993), codified in part in sections of 21 CFR parts 5, 20, 104, 105, and 130. Simultaneously, the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA) issued its own nutrition labeling regulations relating to meat and poultry products. While FSIS's regulations were not mandated by the NLEA, these regulations were intended to implement the NLEA's goals for products regulated by USDA. Although the principles in this statement relate to FDA's regulations, the Commission intends to apply similar principles to consideration of claims for products regulated by USDA.

[3] 15 U.S.C. 45, 52, 55 (1980).

[4] 21 U.S.C. 343(a). USDA's authority is derived from the Federal Meat Inspection Act, 21 U.S.C. 601(n)(1) (prohibiting labeling of meat or meat products that is "false or misleading in any particular"), and the Poultry Products Inspection Act, 21 U.S.C. 453(h)(1) (prohibiting labeling of poultry products that is "false or misleading in any particular").

[5] Working Agreement Between FTC and Food and Drug Administration, 4 Trade Reg. Rep. (CCH) ¶ 9.850.01 (1971) (hereinafter "Memorandum of Understanding").

[6] The Memorandum of Understanding also reaffirms the agencies' shared commitment to prevent deception of the public, to coordinate their work to eliminate duplication of effort, and to promote consistency in handling matters of mutual concern.

[7] The NLEA defines a "nutrient content claim" as any claim that expressly or by implication "characterizes the level of any nutrient." 21 U.S.C. 343(r)(1)(A) (Supp. 1990). A "health claim" is defined as any claim that characterizes the relationship of any nutrient to a "disease or health related condition." 21 U.S.C. 343(r)(1)(B) (Supp. 1990).

[8] "Health claims supported by a [sic] significant scientific agreement can reinforce the Surgeon General recommendations and help Americans to maintain a balanced and healthful diet. Similarly, statements regarding the level of these nutrients in foods will assist Americans in following the Surgeon General's guidelines." House Committee on Energy and Commerce, Nutrition Labeling and Education Act of 1990, H.R. Doc. No. 538, 101st Cong., 2d Sess. 9–10 (1990).

[9] NLEA, 2(c).

continue to do so. In addition, as a general matter, it is unlikely that the Commission will take action under Sections 5 and 12 of the FTC Act regarding nutrient content and health claims if they comply with FDA's regulations.[10]

The principal elements of the Commission's authority to regulate nutrient content and health claims in food advertising are set forth below in the discussion of the Commission's legal framework in part II of this statement. Part III of the statement addresses the Commission's approach to harmonization with the NLEA and FDA's regulations in the area of nutrient content claims in food advertising. Part IV of the statement addresses the Commission's approach to health claims in food advertising. Claims made in food advertising may raise issues addressed in more than one section of this statement. Advertisers, therefore, should comply with all relevant provisions of the statement and not simply the provision that seems most directly applicable.

In issuing this statement, the Commission recognizes that the FDA intends its regulatory approach to be dynamic, designed to respond to changes in science and consumer understanding of nutrition and diet-disease issues. Therefore, while the Commission's purpose in issuing this statement is to provide guidance on how it will enforce sections 5 and 12 in the food advertising area, the statement is not intended to provide a comprehensive analysis of how each of FDA's regulations relates to the Commission's enforcement policy. Instead, this statement focuses on the general issues that are likely to remain relevant to the Commission's regulation of food advertising over time, as specific provisions in the FDA regulations are amended.

II. Legal Framework for Commission Action

As noted above, the FTC regulates food advertising under its statutory authority to prohibit deceptive acts or practices under Section 5 of the FTC Act. The Commission has set forth its interpretations of this authority in its Deception Policy Statement[11] and its Statement on Advertising Substantiation.[12] FTC food cases, applying the principles articulated in these statements, have also established a growing body of precedent against which food advertisers can assess the lawfulness of their claims.[13]

As set out in the Deception Statement, the Commission will find an advertisement deceptive under Section 5 and, therefore, unlawful, if it contains a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material.[14]

The first step in a deception analysis is to identify representations made by an advertisement. A representation may be made by express or implied claims. An express claim directly makes a representation. The identification of an implied claim requires an examination of both the representation and the overall context of the ad,[15] including the juxtaposition of phrases, images, and the nature of the claim and the transaction.[16] In other words, in ascertaining the meaning of an advertisement, the Commission will focus on the ad's overall net impression.[17]

In addition to deception arising from affirmative representations in an advertisement, the omission of material information may also be deceptive in certain circumstances. First, deception can occur through omission of information that is necessary to prevent an affirmative representation from being misleading.[18] Second, "it can also be deceptive for a seller to simply remain silent, if he does so under circumstances that constitute an implied but false representation."[19] However, "[n]ot all omissions are deceptive, even if providing the information would benefit consumers."[20] As with advertisements that contain affirmative representations, the test for whether an omission is deceptive is whether the overall impression created by the ad is deceptive.[21]

The next step in identifying deception in an ad requires the Commission to consider the representation from the perspective of a consumer acting reasonably under the circumstances.[22] Finally, a representation must be material, *i.e.*, likely to affect a consumer's choice or use of a product or service.[23] Express claims and claims involving health or safety are presumptively material.[24]

In addition, objective claims carry with them the implication that they are supported by valid evidence. It is deceptive, therefore, to make an express or implied nutrition or health benefit claim for a food unless, at the time the claim is made, the advertiser possesses and relies upon a reasonable basis substantiating the claim.[25] A reasonable basis consists of competent and reliable evidence. In the context of nutrient content or health claims, substantiation will usually require competent and reliable scientific evidence sufficient to support the claim that is made.[26] Commission orders generally require that scientific evidence consist of tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to

[10] The Commission notes that the manner in which such information is conveyed in advertising may differ from the way it would be presented in labeling. The Commission cautions advertisers to consider carefully the importance of the context in which they make claims. Some claims that would technically comply with FDA's labeling regulations might be deceptive in advertising if the context of the ad renders the express message of the claim misleading.

[11] See Cliffdale Associates, Inc., 103 F.T.C. 110, 176 (1984), reprinting as appendix letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives ("Deception Statement").

[12] FTC Policy Statement on Advertising Substantiation, 48 Fed. Reg. 10,471 (1984), reprinted in Thompson Medical Co., 104 F.T.C. 648, 839 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987) ("Substantiation Statement").

[13] See, *e.g.*, cases cited *infra* notes 26, 29, 32, 36, 50, 51, 74, 75, 81, 87, 96.

[14] Deception Statement, 103 F.T.C. at 183.

[15] Kraft, Inc., FTC Dkt. No. 9208, slip op. at 7 (Jan. 30, 1991), aff'd, 970 F.2d 311 (7th Cir. 1992), cert. denied, 113 S. Ct. 1254 (1993) (citing Thompson Medical Co., 104 F.T.C. at 789, 799; Cliffdale Associates, 103 F.T.C. at 164; Deception Statement, 103 F.T.C. at 176).

[16] Deception Statement, 103 F.T.C. at 176. The Commission may rely on its own expertise in finding claims that are reasonably clear from the face of an advertisement. Kraft, 970 F.2d at 319, and cases cited therein. If the Commission is unable to conclude that an implied claim is conveyed based on a review of the ad itself, the Commission may rely on extrinsic evidence demonstrating that the ad implies a claim. Kraft, slip op. at 7; Thompson Medical, 104 F.T.C. at 789.

[17] Kraft, slip op. at 7–8; Removatron Int'l Corp., 111 F.T.C. 206, 292 (1988), aff'd, 884 F.2d 1849 (1st Cir. 1989); Thompson Medical, 104 F.T.C. at 790.

[18] Deception Statement, 103 F.T.C. at 175 n.4; see also International Harvester Co., 104 F.T.C. 949, 1057 (1984); Campbell Soup Co., FTC Dkt. No. 9223 (Aug. 18, 1992) (consent order).

[19] International Harvester, 104 F.T.C. at 1058.

[20] Deception Statement, 103 F.T.C. at 175 n.4; International Harvester, 104 F.T.C. at 1059.

[21] Deception Statement, 103 F.T.C. at 175 n.4.

[22] Deception Statement, 103 F.T.C. at 177.

[23] *Id.* at 182.

[24] Kraft, slip op. at 22–23, Thompson Medical, 104 F.T.C. at 816–17; Deception Statement, 103 F.T.C. at 182–83.

[25] Substantiation Statement, 104 F.T.C. at 839.

[26] See, e.g., Kraft, slip op. at 2 (scientific evidence required to substantiate calcium content claims and comparative calcium content claims); Bertolli, Inc., FTC Dkt. No. C–3396 (Aug. 17, 1992) (consent order) (scientific evidence required to substantiate claims regarding edible oil's impact on any physiologic function or risk factor for disease or other health benefit); Pacific Rice Prods., FTC Dkt. No. C–3395 (Aug. 17, 1992) (consent order) (scientific evidence required to substantiate claims regarding health benefits derived from consumption of products); see also Thompson Medical, 104 F.T.C. at 822.

do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.[27] The substantiation must also be examined in the context of the entire body of relevant evidence, particularly if it produces results that are contrary to that body of evidence.

III. Nutrient Content Claims

A. Claims Describing the Absolute and Comparative Nutrient Content of Foods

As mandated by the NLEA, FDA's regulations define certain absolute and comparative terms that can be used to characterize the level of a nutrient in a food. "Absolute" terms (*e.g.*, "low," "high," "lean") describe the amount of nutrient in one serving of a food. "Relative" or comparative terms (*e.g.*, "less," "reduced," "more") compare the amount of a nutrient in one food with the amount of the same nutrient in another food. With very few exceptions, only these specific terms, and certain approved synonyms, may be used on food labels to characterize the level of a nutrient, although interested parties may petition FDA to authorize new nutrient content terms and synonyms.[28]

1. Absolute Nutrient Content Claims

Prior to the finalization of FDA's regulations, there was no comprehensive set of standardized definitions for absolute terms such as "low" and "high" to describe the level of a nutrient in a food. Now that FDA has established a standard metric to describe the nutrient content of foods, the Commission will apply FDA's definitions for absolute nutrient content terms when those terms are used in the same context in advertising. In general, the Commission will use FDA's serving size or reference amounts customarily consumed, as set forth in FDA's regulations, in its analysis of a claim. If, however, an advertiser chooses to depict a non-standard serving size in an advertisement, the Commission will require the advertiser to meet the FDA's standard both for the reference amount customarily consumed and for the serving size depicted.[29]

The Commission has previously indicated that where a claim is subject to the joint jurisdiction of the FTC and the FDA, it will accord significant deference to the FDA's standards.[30] Consumer understanding will be improved if the agencies responsible for regulating the use of express or implied absolute nutrient content descriptors have consistent requirements for use of these terms. Multiple governmental definitions for the same terms would have the potential to mislead consumers.[31]

Similarly, the use in advertising of FDA-defined terms in a manner inconsistent with FDA's definitions is likely to mislead consumers. The uniform and detailed nutrient content information required on food labels, as well as the NLEA-mandated educational effort, are likely to familiarize consumers with both the FDA-defined terms and their definitions, further reinforcing consumer expectation that nutrient content terms are consistently applied.

Furthermore, the principle that certain claims may be deceptive unless they are based on a common standard of measurement or testing is well founded under section 5.[32] At the same time, statements that a food is "high" or "low" in a particular nutrient are objective product claims that imply support by a reasonable basis.[33] The Commission generally determines what level of substantiation constitutes a reasonable basis by weighing the six factors set forth in Pfizer, Inc. and subsequent cases.[34] Applying those factors here leads the Commission to conclude that to avoid deception, advertisers should meet FDA's definitions for absolute nutrient content claims.

Where FDA has not established any standard metric, such as "low" or "high," for a specific nutrient, the Commission will closely review claims in food advertising that characterize the level of that nutrient.[35] The Commission has traditionally deferred to FDA's scientific and public health determinations, and will consult with FDA and other government and public health authorities regarding the significance of the nutrient for which such a claim is made.

2. Comparative Nutrient Content Claims

FDA's regulations also establish definitions for comparative terms that characterize the nutrient content of a labeled food relative to that of a comparison or "reference" food. These definitions require that a food bearing a comparative term meet specified minimum percentage differences in the relevant nutrient. For example, the regulations permit use of the terms "less" and "reduced" only where there is a minimum 25 percent difference in the relevant nutrient. In addition, comparative claims must disclose the reference food, the percentage difference in the nutrient between the labeled and reference food (*e.g.*, "50 percent less fat than our regular cheese"), and quantitative information regarding the absolute amount of the nutrient in the labeled and reference foods (*e.g.*, "fat reduced from 6 g. to 3 g. per serving").

Comparative nutrient content claims that comply with FDA's regulations will generally comply with section 5.[36] The

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[27] See Bertolli; Pacific Rice.

[28] 21 CFR 101.69(b) (1993).

[29] See, *e.g.*, Nestle Food Co., FTC Dkt. No. C-2265 (Jan. 21, 1992) (consent order) and Presto Food Prods., Inc., FTC Dkt. No. C-3480 (Feb. 23, 1994) (consent order) (resolving allegations that low fat claims based on the small serving of nondairy creamers that might be used in coffee were deceptive when made with respect to a larger serving that might be used over cereal or fruit or in cooking).

[30] See Thompson Medical, 104 F.T.C. at 826.

[31] In the past, courts have upheld the Commission's position that inconsistent meanings for the same terms have the potential to mislead consumers. In FTC v. Brown & Williamson Tobacco Corp., 778 F.2d 35 (D.C. Cir. 1985), the court held that Brown & Williamson had deceptively advertised its Barclay cigarettes as "1 mg. tar." The 1 mg. tar rating was a result of the cigarettes' different design, which caused the amount of tar that Barclay cigarettes delivered to smokers to be disproportionately greater than that delivered by cigarettes that were similarly rated under the FTC rating system. Considering the claim against the background of the Commission's tar and nicotine rating system, the court affirmed the Commission's position that the claim misled consumers who had come to rely on the FTC rating system to make comparative assessments regarding cigarettes.

[32] *E.g.*, Presto Food Prods., Inc., FTC Dkt. No. C-3480 (Feb. 23, 1994) (consent order); Clorox Co., FTC Dkt. No. C-3427 (May 17, 1993) (consent order); Isaly Klondike Co., FTC Dkt. No. C-3412 (Jan. 28, 1993) (consent order); Nestle Food Co., FTC Dkt. No. C-2265 (Jan. 21, 1992) (consent order).

[33] Substantiation Statement, 104 F.T.C. at 839.

[34] 81 F.T.C. 23, 64 (1972); Thompson Medical, 104 F.T.C. at 813, 821; Bristol-Myers, 102 F.T.C. at 321. These are: (1) the type of product advertised, (2) the type of claim, (3) the benefits of a truthful claim, (4) the ease of developing substantiation for the claim, (5) the consequences of a false claim, and (6) the amount of substantiation that experts in the field believe is reasonable.

[35] Under FDA's regulations, a label claim characterizing the level of a nutrient (*i.e.*, a nutrient content claim) is prohibited unless made in accordance with the regulations. 21 CFR 101.13(b) (1993). However, the label of a product may contain a statement of the amount of a nutrient, such as "1 g. of omega-3 fatty acids" if it does not explicitly or implicitly characterize the level of the nutrient. 21 CFR 101.13(i)(3) (1993). Thus, statements that merely note the amount of a nutrient without characterizing the level are permitted even for nutrients not approved to appear on the nutrition panel.

[36] This principle is already apparent from recent Commission consent orders, which provide safe harbors for those claims specifically permitted in labeling. See, *e.g.*, Nestle Food Co., FTC Dkt. No. C-2265 (Jan. 21, 1992) (consent order) (providing that nothing in the relevant portions of the order shall prohibit certain representations regarding total fat, saturated fat or cholesterol if such representations are specifically permitted in labeling, for the serving size advertised or promoted, by FDA regulation); Isaly Klondike Co., FTC Dkt. No. C-3412 (Jan. 28, 1993) (consent order) (providing that nothing in the order shall prevent respondent from making representations specifically permitted in labeling for food by the NLEA regulations).

Commission will scrutinize carefully comparative nutrient content claims that characterize nutrient differences in ways that do not comply with FDA's regulations. However, a comparative advertising claim that is accurately qualified to identify the nature of a nutrient difference and to eliminate misleading implications [37] may comply with section 5, even if the nutrient difference does not meet FDA's prescribed differences for purposes of labeling.[38]

In examining comparative claims, several principles are likely to be applied by the Commission. First, comparative claims should make clear the basis for the comparison.[39] Claims should identify the reference food to which the product is being compared so that the appropriate comparison is clear to consumers. Second, consistent with the position it has taken on the use of descriptors, the Commission believes that advertisers using unqualified comparative terms must meet FDA's minimum percentage difference requirements for those claims. For example, if an ad represents that a food has "less fat than Brand X," without indicating the percentage or absolute difference in fat, the Commission will rely on FDA's 25% minimum difference requirement in determining whether the claim is deceptive.

Third, comparative claims should not overstate the significance of a nutrient difference.[40] For this reason, some comparative claims may need to be qualified in a manner sufficient to ensure that consumers are not misled regarding the significance of the nutrient difference. For example, a simple statement of percentage difference for a food that contains only a small amount of a nutrient, such as "our crackers have one-third less fat than Brand X," may suggest that the nutrient difference is greater in an absolute sense than it actually is. This type of claim may need further qualification to prevent the claim from creating a misleading impression (*e.g.*, "one third less fat than Brand X—theirs has 3 g., ours has 2 g.").

Even where nutrient differences are substantial in an absolute sense, careful qualification may be necessary for products that despite such absolute reductions, still contain appreciable amounts of a nutrient, to ensure that consumers are not misled regarding the absolute level of the nutrient. Thus, a claim such as "20% less fat in our frozen entree compared to Brand X," regarding a product that nevertheless contains a significant amount of fat, may need to identify the quantitative amount of fat in the advertised food and the reference food (*e.g.*, "20% less fat than Brand X—Brand X has 25 g. fat, ours has 20 g. fat"), particularly in situations where consumers are not likely to be aware that the item is generally high in fat.

In summary, the Commission ordinarily will not challenge comparative nutrient content claims that comply with FDA's regulations, and will carefully scrutinize comparative nutrient content claims that characterize nutrient differences in ways that do not comply with FDA's regulations.[41]

3. Synonyms for Nutrient Content Claims

In addition to authorizing the use of only a limited set of defined nutrient content terms on food labels, FDA's regulations authorize the use of only certain synonyms for these defined terms.[42] The impetus behind Congress's requirement that FDA limit defined terms and synonyms may be found in the educational and public health goals of the NLEA—to promote consumer understanding of the meaning of the terms through a limited lexicon that will allow consumers to make informed dietary choices.[43]

The Commission will examine advertising to ensure that claims that characterize the level of a nutrient, including those using synonyms that are not provided for in FDA's regulations, are consistent with FDA definitions. Commission precedent establishes that an advertisement that can reasonably be interpreted in a misleading way is deceptive, even though other, nonmisleading interpretations may be equally possible.[44] Thus, when express or implied claims suggest that a food product meets the standard for use of an FDA-defined term, advertisers should ensure that the food actually meets the relevant FDA standard. For example, depending on the context of an ad, use of the phrases "packed with" or "lots of" to describe the level of fiber in a food could convey to some reasonable consumers that the food is "high" in fiber. Because FDA's regulations define the terms "good source" and "high" with respect to fiber,[45] consumers are likely to be misled if a "high fiber" claim is implied by an ad for a food that is only a "good source" of fiber.

4. Implied Nutrient Content Claims

As defined in FDA's regulations, an implied nutrient content claim is a claim that:

(i) Describes the food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (*e.g.*, "high in oat bran"); or

(ii) Suggests that the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient (*e.g.*, "healthy, contains 3 grams (g) of fat").[46]

Under this definition, statements about ingredients may or may not be nutrient content claims.[47] FDA has

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[37] As it has in the past, the Commission emphasizes that truthful comparisons may need to be sufficiently qualified to remove deceptive implications. See Policy Statement in Regard to Comparative Advertising, 16 CFR 14.15 (1979) (comparative advertising regarding objective measurable attributes must have sufficient clarity or disclosures to ensure that such comparisons are not deceptive).

[38] For example, a small nutrient difference that appears as part of a claim touting the multidimensional nutritional differences offered by a product is less likely to overstate the significance of that difference than would such a claim standing alone. Thus, an advertiser may seek to signal to consumers that, while it has reduced total fat and saturated fat in its product by 25%, it has also achieved a small reduction in sodium compared with other products in the category. In these circumstances, a truthful claim that makes clear that the sodium reduction is less than the 25% reduction in other nutrients and does not overstate the significance of this incidental reduction is unlikely to mislead consumers.

[39] See Policy Statement in Regard to Comparative Advertising, 16 CFR 14.15 (1979). The Commission's Guides for the Use of Environmental Marketing Claims also include this requirement. 16 CFR 260.6(d) (1993).

[40] See P. Lorillard Co. v. FTC, 186 F.2d 52, 57 (4th Cir. 1950) (advertising claiming that cigarette was lowest in nicotine, tar and resins challenged in part because the difference was, in fact, insignificant); Sun Co., FTC Dkt. No. C-3381 (May 6, 1992) (consent order) (challenging advertising for octane gasoline that represented gas would provide superior power that would be significant to consumers).

[41] Although the term "light" is defined in FDA's regulations as a comparative descriptor, the term also has been used to describe the food itself, much like an absolute descriptor such as "low." As reflected in FDA's preamble and regulations, the term also is associated chiefly with substantial reductions in fat or calories. See 58 FR 2351–2358. Given the unique characteristics of the term "light" as reflected in FDA's regulations, it is unlikely that the term can be used in advertising without undue confusion unless the food meets FDA's definitions. Accordingly, the Commission will apply FDA's definition for "light" in determining whether advertising using the term is deceptive.

[42] 21 CFR 101.13(b) (1993). Interested parties may petition FDA to authorize additional synonyms. 21 CFR 101.69(b)(2) (1993).

[43] 58 FR 2319–20, Jan. 6, 1993. See Nutrition Labeling and Education Act of 1990, section 403(4)(2)(A)(i).

[44] Chrysler Corp. v. FTC, 561 F.2d 357, 363 (DC Cir. 1977); Kraft, slip. op. at 6 n.8. See also Deception Statement, 103 F.T.C at 178 n.21 ("A secondary message understood by reasonable consumers is actionable if deceptive even though the primary message is accurate").

[45] 21 CFR 101.54(b) and (c) (1993).

[46] 21 CFR 101.13(b)(2) (1993).

[47] 58 FR 2371, Jan. 6, 1993.

generally adopted a case-by-case approach to statements about ingredients that depends on the overall context of the label. The regulations also provide, however, that certain ingredient statements will be treated as nutrient content claims whenever they appear on labels.[48]

The Commission's approach to implied claims also relies on an analysis of the overall context in which a claim appears. As explained above, the Commission evaluates the overall impression created by an ad, including the ad itself, the arrangement of phrases and images in the ad, and the nature of the claim being made, in order to determine whether a representation is likely to mislead reasonable consumers.[49] If the net impression produced by an ad is likely to mislead reasonable consumers, the ad is deceptive and violates section 5.

FTC food cases and consent agreements also demonstrate the principle that statements regarding ingredients may have nutrient content implications. For example, advertising may implicitly characterize the amount of a nutrient in a product through representations regarding the ingredients with which the product is made.[50] An ad may imply that a food is free of a particular nutrient by suggesting that the product is free of ingredients that are essentially the same from the consumer's perspective.[51]

Consistent with its statutory authority and its commitment to harmonization, the Commission will look closely at advertisements that may implicitly characterize the level of a nutrient. The Commission will give great weight to any FDA determinations concerning ingredient statements in analyzing the net impression conveyed by an ad.

B. Nutrient Content Claim Disclosures

As mandated by the NLEA, FDA's nutrient content labeling regulations require a number of disclosures. These mandated disclosures include, but are not limited to: (1) A referral statement to the nutrition panel, required whenever a nutrient content claim is made;[52] (2) disclosure of nutrients (fat, saturated fat, cholesterol, and sodium) present in a food at a level that FDA has concluded increases the risk of diet-related disease, required whenever a nutrient content claim is made;[53] and (3) "triggered" disclosures of the amount of certain related nutrients when claims concerning fiber, saturated fat, and cholesterol appear.[54]

As set forth in part II above, disclosure of material information that is necessary to prevent deception may be required under section 5 of the FTC Act.[55] For example, it is misleading to fail to disclose qualifying information necessary to prevent an affirmative statement from creating a misleading impression.[56] However, a seller's silence in circumstances that do not give a particular meaning to the silence is not deceptive.[57] The failure to provide nutrition information that consumers may find useful in improving their diet, while subject to challenge under the NLEA with respect to labels, therefore, is not necessarily subject to challenge as deceptive under Section 5.[58] In the context of advertising that makes affirmative nutrient content claims, the Commission's analysis of deception by omission will be based on a consideration of whether a nutrient content claim gives rise to a misleading impression absent disclosure of other nutrition information.

Some of FDA's disclosures appear designed to fulfill the educational goals of the NLEA, which are beyond the scope of the Commission's law enforcement mandate. For example, all nutrient content claims on a label must be accompanied by a statement referring the consumer to the nutrition panel, where complete nutrition information regarding the product is found.[59] While a complete nutrition portrait of a food may be useful to consumers, it is unlikely that the absence of this referral statement from an advertisement would render the ad deceptive to consumers.

In contrast, other disclosures mandated for food labels may also appropriately be required under certain circumstances to prevent deception in advertising under section 5. In determining whether such disclosures are necessary to prevent deception, the Commission will consider several factors. First, the Commission will carefully evaluate nutrient content claims for foods that contain a nutrient at a level considered by FDA to increase the risk of a diet-related disease.[60] When the context of an ad as a whole conveys to consumers the net impression that the food makes only positive contributions to a diet, or does not contain any nutrients at levels that raise the risk of diet-related disease, the failure to disclose the presence of risk-increasing nutrients is likely to be deceptive.[61]

Second, the Commission will also scrutinize nutrient content claims for cholesterol, saturated fat, and fiber. Congress enacted "special rules"[62] requiring that claims for these nutrients trigger disclosure of other nutrients.[63] Consumers often may infer that certain nutrient claims imply a characterization of the amount of another nutrient. Similarly, where different nutrients are linked to the same health issue (for example, cholesterol and saturated fat, or dietary fiber and total fat), a claim regarding one of these nutrients is likely to give rise to a misleading impression regarding the benefit of the food absent disclosure of the presence of the other nutrient. Under these circumstances, the failure to correct these misimpressions through adequate disclosures is likely to be deceptive.

IV. Health Claims[64]

FDA's regulations for health claims in food labeling establish general standards

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[48] For example, the regulations state that "a claim that a food contains oat bran is a claim that it is a good source of dietary fiber; that a food is made only with vegetable oil is a claim that it is low in saturated fat; and that a food contains no oil is a claim that it is fat free." 21 CFR 101.65(c)(3) (1993).

[49] *Kraft*, slip op. at 7–8; Removatron, 111 F.T.C. at 292; Thompson Medical, 104 F.T.C. at 790. See also FTC v. Sterling Drug, 317 F.2d 669, 674 (2d Cir. 1963) (the Commission examines "the entire mosaic . . . rather than each tile separately").

[50] *Kraft*, 970 F.2d at 322 (upholding Commission's finding that claims about the amount of milk in processed cheese slices were, in context, implied claims about calcium content).

[51] See Estee Corp., 102 F.T.C. 1804 (1983) (consent order) (advertisements that claimed that foods sweetened with high-fructose corn syrup did not contain sugar and were accepted by the American Diabetes Association implied (falsely) that the foods were appropriate for people who needed to avoid sugar).

[52] 21 CFR § 101.13(g) (1993).

[53] 21 CFR 101.13(h) (1993). As discussed in part IV, *infra*, these same levels of nutrients serve to disqualify foods from bearing health claims. See 21 CFR 101.14(a)(5) (1993).

[54] See 21 CFR 101.54(d) (requirements for fiber claims); 21 CFR 101.62(c) (requirements for saturated fat claims); 21 CFR 101.62(d) (requirements for cholesterol claims).

[55] Deception Statement, 103 F.T.C. at 176.

[56] International Harvester, 104 F.T.C. at 1057.

[57] *Id.* at 1059.

[58] *Id.* at 1058 ("[n]ot all omissions are deceptive, even if providing the information would benefit consumers").

[59] 21 CFR § 101.13(g) (1993).

[60] See North American Philips Corp., 111 F.T.C. 139, 177–84 (1988) (Initial Decision) (according great weight to other government agencies' determinations regarding the significance of a chemical added to drinking water by the water filter and thus whether the failure to disclose this fact was material).

[61] *Id.* at 175 (Commission's complaint alleged, and the Administrative Law Judge found, that failure to disclose that water filter device introduced a potentially hazardous chemical into drinking water was misleading in light of representations that device would remove organic chemicals and clean the water).

[62] House Committee on Energy and Commerce, Nutrition Labeling and Education Act of 1990, H.R. Rep. No. 538, 101st Cong., 2d Sess. 20 (1990).

[63] 21 U.S.C. 343(r)(2)(A)(iii)–(v).

[64] FDA's definition of a health claim includes two basic elements: (1) A substance or nutrient; and (2) the relationship of that substance or nutrient to a disease or health-related condition. 21 CFR 101.14(a)(1) (1993). Thus, claims on food labels are

for the use of claims that characterize the relationship of a substance in a food to a disease or health-related condition.[65] These general standards include, among other things: (1) Limiting authorization of health claims only to those categories for which there is "significant scientific agreement" that the relevant diet-disease relationship is supported by the scientific evidence;[66] (2) establishing disqualifying levels for total fat, saturated fat, cholesterol, and sodium, above which foods are disqualified from bearing any health claims;[67] (3) for the specific substance that is the subject of a health claim, setting a threshold level for the amount of such substance in the food, that is either sufficiently low or sufficiently high to support the health claim;[68] (4) requiring that foods bearing health claims have some minimal nutritional value;[69] and (5) requiring that health claims identify those factors, other than dietary intake of the substance, that affect the diet-disease relationship.[70] In addition, as required by the NLEA, FDA's regulations provide a petition process for interested persons to seek FDA authorization of additional health claims.[71]

The Commission shares the concerns underlying the NLEA, and embodied in FDA's regulations, that health claims be adequately substantiated and presented in a manner that is truthful and not misleading. These same principles form the foundation of the Commission's well-established deception and advertising substantiation doctrines, described in part II above. The Commission's approach to the regulation of health claims in food advertising and FDA's approach to such claims in labeling therefore share many basic elements.

A. Standard for Substantiation of Health Claims

The NLEA directed FDA to promulgate regulations authorizing claims about diet-disease relationships only if FDA determined,

> based on the totality of the publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.[72]

The NLEA directed FDA to apply this "significant scientific agreement" standard in determining whether there was adequate substantiation to permit health claims for ten specific diet-disease relationships.[73] After reviewing the scientific literature, FDA issued regulations authorizing a number of specific categories of health claims.

The Commission's standard for substantiation of health claims in food advertising shares many elements with FDA's approach to such claims in labeling. Like FDA, the Commission imposes a rigorous substantiation standard for claims relating to the health or safety of a product, including health claims for food products.[74] The Commission's standard that such claims be supported by "competent and reliable scientific evidence" has been more specifically defined in Commission orders addressing health claims for food products to mean:

> tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.[75]

Thus, both the Commission and FDA look to well-designed studies, including clinical research and other forms of reliable and probative scientific evidence, in evaluating health claims for foods.

In addition, the Commission, like FDA, evaluates substantiation for health claims in the context of the surrounding body of evidence, and does not look to isolated studies, especially if those studies are unrepresentative of the larger body of evidence. However, the Commission does not require food advertisers to establish that there is scientific consensus in support of their claims. Similarly, FDA has clearly indicated that its "significant scientific agreement" standard does not require that such agreement represent a "full consensus among scientists."[76]

In evaluating health claims, the Commission looks to a number of factors to determine the specific level of scientific support necessary to substantiate the claim.[77] Central to this analysis is an assessment of the amount of substantiation that experts in the field would consider to be adequate. The Commission regards the "significant scientific agreement" standard, as set forth in the NLEA and FDA's regulations, to be the principal guide to what experts in the field of diet-disease relationships would consider reasonable substantiation for an unqualified[78] health claim.[79] Thus, it is likely that the Commission will reach the same conclusion as FDA as to whether an unqualified claim about the relationship between a nutrient or substance in a food and a disease or health-related condition is adequately supported by the scientific evidence.

The Commission also recognizes the importance of the petition process, established under the NLEA and FDA's regulations, as a mechanism for authorizing health claims in food labeling. The Commission will look with particular care at any health claims not specifically considered by the FDA in this process. The absence of an FDA determination that a health claim is scientifically valid will be a significant factor in the Commission's assessment

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not governed by FDA's health claims regulations unless they include either express or implied references to both a substance and a disease. FDA's approach to implied health claims is similar to the Commission's in that this definition includes claims in which the disease element is implied through symbols or by other means, looking at the context of the entire label. *Id.*; see also discussion of FDA's definition of implied health claims, 58 FR 2483, Jan. 6, 1993. Like FDA, the Commission examines food claims in the context of the entire advertisement to determine whether an implied health claim is being made. Therefore, the Commission may determine in certain instances, based on its review of the entire context of an advertisement, that a nutrient content claim, even in the absence of any express reference to a disease or health-related condition, conveys an implied health message to consumers.

[65] 21 CFR 101.14 *et seq.* (1993).

[66] 21 CFR 101.14(c) (1993).

[67] 21 CFR 101.14(a)(5) (1993).

[68] 21 CFR 101.14(d)(2)(vi)-(vii) (1993).

[69] 21 CFR 101.14(e)(6) (1993).

[70] 21 CFR 101.14(d)(2)(iii) (1993).

[71] 21 CFR 101.70 (1993). This regulation requires that FDA take final action within 180 days of the receipt of a petition, either to deny the petition or to publish a proposal to amend the regulations to allow the use of the requested health claim.

[72] 21 U.S.C. 343(r)(3)(B)(i). This standard is also set forth in FDA's regulations at 21 CFR § 101.14(c) (1993).

[73] NLEA, 3(b).

[74] See, *e.g.*, Pacific Rice, FTC Dkt. No. C-3395 (Aug. 17, 1992) (consent order) (claims about health benefits of consuming rice bran cereal challenged as unsubstantiated); *see* also Thompson Medical, 104 F.T.C. at 822 (claims involving health or safety issues require a "relatively high level of substantiation, typically scientific tests").

[75] Gracewood Fruit Co., FTC Dkt. No. C-3470 (Oct. 29, 1993) (consent order); *see* also Pompeian, Inc., FTC Dkt. No. C-3402 (Oct. 27, 1992) (consent order).

[76] 58 FR 2505, Jan. 6, 1993.

[77] See Pfizer, Inc., supra note 34. See also Substantiation Statement, 104 F.T.C. at 840; Thompson Medical, 104 F.T.C. at 821.

[78] Unqualified as used in this discussion of substantiation refers to health claims that do not include specific disclosures concerning the extent of supporting scientific evidence.

[79] This approach is consistent with the Commission's approach to evaluating the substantiation for claims made for drug products and medical devices regulated by FDA. See, *e.g.*, Removatron, 111 F.T.C. at 305 (FDA's determination of efficacy of hair removal device given substantial weight); Thompson Medical, 104 F.T.C. at 826 (recognizing importance of applying standard consistent with FDA's in evaluating safety and efficacy of a drug product subject to jurisdiction of both agencies).

of the adequacy of substantiation for the claim.[80]

While the Commission's approach to evaluation of unqualified health claims will generally parallel FDA's assessment of whether there is significant scientific agreement supporting the relevant diet-disease relationship, the Commission recognizes that there may be certain limited instances in which carefully qualified health claims may be permitted under section 5 although not yet authorized by the FDA, if the claims are expressly qualified to convey clearly and fully the extent of the scientific support. At the same time, however, the Commission believes that qualified claims based on evidence that is inconsistent with the larger body of evidence have the potential to mislead consumers, and, therefore, are likely to violate section 5.

The Commission recognizes the need to scrutinize closely qualified claims to maintain the credibility of health claims in food advertising and labeling. The Commission will therefore be especially vigilant in examining whether qualified claims are presented in a manner that ensures that consumers understand both the extent of the support for the claim and the existence of any significant contrary view within the scientific community.[81] In the absence of adequate qualification, the Commission will find such claims deceptive.[82]

B. Health Claims for Foods That Contain a Nutrient at a Level That Increases the Risk of a Disease

FDA's health claim regulations identify four nutrients—total fat, saturated fat, cholesterol, and sodium—the consumption of which has been associated with increased risk of certain diseases or health-related conditions, particularly cancer, cardiovascular disease, and hypertension. For each of these nutrients, the regulations establish levels above which foods containing the nutrient are disqualified from bearing health claims.[83] The disqualifying levels set by FDA were based on an analysis of what level of these nutrients in a food would increase, "to persons in the general population, the risk of a diet-related disease, taking into account the significance of the food in the total daily diet."[84]

The Commission will rely heavily on FDA's scientific determination as to what levels of total fat, saturated fat, cholesterol, and sodium may increase the risk of a diet-related disease or other health condition[85] and, while not necessarily prohibiting all health claims in advertising for foods that contain such levels, will carefully scrutinize health claims for such foods to ensure that the claims are truthful and adequately qualified.[86] Situations involving risk-increasing levels established by FDA should not be interpreted as an exhaustive list of instances in which a broad, unqualified health claim for a food may be found deceptive by the Commission.

Unqualified health claims in advertising for such foods are likely to be deceptive when the risk-increasing nutrient is closely related to the subject health claim. Often the presence and significance of such a nutrient will have to be disclosed. Without such disclosures, consumers could infer from the health message that the food does not present any related health risks.[87] The failure to disclose the presence and significance of risk-increasing nutrients that are closely related to the health claim for such foods is likely to constitute an omission of a material fact and render the health claim deceptive.[88]

For example, a claim that a food will reduce the risk of one specified disease is likely to convey to reasonable consumers that the food will not increase the risk of some other health condition closely related to that disease. Thus, an unqualified claim that a food is low in saturated fat and cholesterol, and therefore compatible with a diet designed to reduce the risk of cardiovascular disease, would be deceptive if the food contained so much sodium that it might increase the risk of hypertension and thus, cardiovascular disease.[89] To prevent deception, a health claim for such a food is likely to need a disclosure that clearly conveys both the presence and significance of the risk-increasing nutrient.[90]

Even when the risk-increasing nutrient does not bear directly on the health condition that is the subject of the health claim, it may be necessary to disclose the presence of a risk-

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[80] Food marketers should not expect to circumvent FDA's petition process for health claims simply by limiting the assertion of unapproved or unreviewed claims to advertising.

[81] See, e.g., National Comm'n on Egg Nutrition (NCEN), 517 F.2d 485 (7th Cir. 1975), appeal after remand, 570 F.2d 157 (7th Cir. 1977), cert. denied, 483 U.S. 921 (1978). The final Commission order in NCEN, as modified by the court, required that the advertiser, if it made any claims regarding the relationship between dietary cholesterol and heart disease, disclose that there was a controversy among experts about the scientific basis for the link between egg consumption and heart disease, and that NCEN was presenting its side of that controversy. Where NCEN characterized the level of scientific evidence, the order further required a disclosure that many medical experts believed that increasing egg consumption might increase the risk of heart disease.

[82] In order to be effective, qualifications or disclosures should be sufficiently clear and prominent to prevent deception. *See* Deception Statement, 103 F.T.C. at 180; Thompson Medical, 104 F.T.C. at 789 n.9, 842–43; see also Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.6(a) (1993). Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent. See, e.g., Figgie Int'l, Inc., 107 F.T.C. 313, 401 (1986), aff'd, 817 F.2d 102 (4th Cir. 1987). For example, the Commission is unlikely to find a video superscript, without accompanying audio, to be an effective method of disclosure in a television ad. See, e.g., Kraft, slip. op. at 10. As always, the Commission will also consider any extrinsic evidence of the effectiveness of qualifications and disclosures in its determination of whether a claim is deceptive. In making this determination, the Commission will consider all reasonable interpretations of the advertisement. The Commission will find an advertisement to be deceptive if it can reasonably be interpreted in a misleading way, even though other, nonmisleading interpretations may be equally possible. See Kraft, slip. op. at 6 n.8.

[83] These specific disqualifying levels are set forth at 21 CFR 101.14(a)(5) (1993).

[84] 58 FR 2489, Jan. 6, 1993.

[85] The Commission has routinely accorded great weight to FDA determinations of the safety and efficacy of food and drug products. See, e.g., Removatron, 111 F.T.C. at 305; Thompson Medical, 104 F.T.C. at 826; see also Sterling Drug, Inc., 102 F.T.C. 395, 768–69, *aff'd*, 741 F.2d 1146 (9th Cir. 1984), cert. denied, 470 U.S. 1084 (1985).

[86] For example, USDA has stated its "intention to publish a proposed rule on health claims in line with FDA's proposal." See 58 FR 632, 664, Jan. 6, 1993. If so, the regulation's disqualifying level for cholesterol will preclude health claims on the labels of virtually all meat and poultry products. Notwithstanding the regulations, however, the Commission would not prohibit a truthful advertising claim that explains in a nondeceptive manner the health advantages of substituting meat or poultry items that are relatively low in fat and saturated fat for higher fat alternatives (e.g., a claim suggesting the merit of substituting skinless breast of turkey for hamburger). Such claims would assist consumers who are trying to improve their diets but who are unwilling to forgo all meat and poultry.

[87] See, e.g., Campbell, FTC Dkt. No. 9223 (Aug. 18, 1992) (consent order required disclosure of sodium content and recommended maximum daily sodium intake in advertisements making claims about heart disease for soups with more than 500 mg. of sodium per 8-oz. serving).

[88] The Commission has traditionally required that material information be disclosed if its absence could mislead reasonable consumers. See Deception Statement, 103 F.T.C. at 182; see also International Harvester, 104 F.T.C. at 1057; North American Philips, 111 F.T.C. at 175, 195 (failure to disclose the fact that a water filter could introduce a harmful chemical into the water was misleading).

[89] In Campbell, the Commission charged that claims that the company's soups contained little fat or cholesterol, and were heart-healthy, were deceptive because the company had failed to disclose that the soups were high in sodium. Specifically, the complaint alleged that the high level of sodium was a material fact given that a diet high in sodium can contribute to hypertension, a risk factor associated with heart disease. FTC Dkt. No. 9223 (Aug. 18, 1992) (consent order).

[90] A statement indicating both the amount of the risk-increasing nutrient and the recommended maximum daily intake of that nutrient, as determined by FDA, would be one example of an acceptable disclosure, provided such information adequately conveys the health implications of the risk-increasing nutrient. See, e.g., Campbell, *supra*

increasing nutrient. Depending on context, a specific health claim may convey to consumers a broader message that the food is healthful in all respects. For example, a health claim describing the benefits of calcium in reducing the risk of osteoporosis, when made in advertising for a dairy product that is high in saturated fat, may create the deceptive impression among reasonable consumers that consuming the dairy product will reduce the risk of osteoporosis without increasing the risk of any other health-related condition or disease, for example, heart disease. To prevent deception, a health claim for such a food may need to include a disclosure that conveys the presence and significance of the risk-increasing nutrient.[91]

In those instances, as outlined above, where disclosure of a risk-increasing nutrient level is necessary to prevent deception, the Commission will carefully scrutinize the disclosure to ensure that it is adequate to convey clearly the limited nature of the health claim being asserted.

C. Nutrient/Substance Levels Sufficient to Ensure Meaningful Health Benefits

In addition to establishing levels of total fat, saturated fat, cholesterol, and sodium, above which foods are disqualified from bearing health claims, FDA's regulations also establish threshold levels for the specific nutrients that are the subject of particular health claims made in food labeling. If a health claim is about the effects of consuming a substance at decreased dietary levels (*e.g.*, lowering saturated fat and cholesterol intake to reduce the risk of coronary heart disease), FDA sets the threshold at a level that it determines is "sufficiently low to justify the claim."[92] If a claim relates to the effects of consuming the substance at other than decreased dietary levels (*e.g.*, increasing calcium intake to reduce the risk of osteoporosis), FDA sets the threshold at a level that it determines is "sufficiently high to justify the claim."[93] In establishing these "high" and "low" thresholds, FDA specifically considered both whether these levels were sufficient to advance the public health policy of assisting consumers in maintaining healthy dietary practices,[94] and whether health claims for foods not meeting such thresholds would be "misleading because the nutrient levels [were] not low enough, or not high enough, to really contribute to the claimed effect."[95]

The Commission shares FDA's view that health claims should not be asserted for foods that do not significantly contribute to the claimed benefit. A claim about the benefit of a product carries with it the implication that the benefit is significant.[96] Thus, consistent with its position on the use of absolute nutrient content descriptors and unqualified comparative nutrient content claims, the Commission will ordinarily apply FDA's thresholds for specific nutrient levels in examining unqualified health claims for the specific nutrient levels that are the subject of the particular health claim.

The Commission recognizes, however, that there may be certain limited instances in which it is possible to craft a qualified, truthful, and nonmisleading claim comparing the relative health benefits of a food product to other products for which the food can be substituted, even if the nutrient level does not meet FDA's prescribed threshold for the food. Such comparative claims, encouraging consumers to substitute a food that is significantly lower or higher in the relevant nutrient than other foods in the same category, will be unlikely to mislead consumers if the claimed benefit from the substitution will contribute significantly to the claimed health effect.

In addition, such comparative claims must be sufficiently qualified to make clear to consumers that the benefit derives only from the substitution of the advertised food for a significantly less healthful alternative and that the subject product does not otherwise offer an overall health benefit. It may be necessary to disclose the actual level of the nutrient that is the basis for the claim and its significance to prevent deception.[97]

D. Minimum Nutritional Value for Foods Bearing Health Claims

Under FDA's regulations, any food bearing a health claim must not only meet the threshold level for the specific substance or nutrient that is the subject of the health claim, as discussed in part IV, section C., *supra*, but also must contain a sufficient amount of at least one of six nutrients and substances specified by FDA.[98] For example, a food that is sufficiently low in total fat to meet FDA's threshold level for a health claim about dietary fat and cancer would also need to contain one or more of the six specific nutrients or substances at a sufficient quantity to ensure that the food contributed significantly to a healthful diet. Like FDA's threshold levels, this rule ensures that health claims are reserved for foods that contribute significantly to a healthy diet.[99]

The Commission shares FDA's view that health claims may be misleading to the extent that they encourage consumers to choose foods that provide calories but have little or no nutritional value, under the mistaken belief that their choices will contribute to a healthy diet. The Commission believes that, like claims for foods that fail to meet FDA's threshold levels, health claims for foods with little or no positive nutritional value have the potential to be deceptive since they imply that the health benefit being asserted is significant.[100] Therefore, the Commission will generally give great deference to FDA's standards for minimum nutritional value for foods bearing unqualified health claims.

The Commission recognizes, however, that there may be some instances in which it is possible to craft a qualified, truthful, and nonmisleading claim comparing the relative health benefits of a food product to other products for which the food can be substituted, even if the food does not meet FDA's minimum nutritional value standards. While the food bearing such a qualified comparative health claim may not contribute in any absolute sense to a healthful diet, the substitution of such food for a less healthful food in the same category could result in a

[91] Further, FDA's treatment of health claims in labeling for any food containing a risk-increasing level of a nutrient, as well as the NLEA-mandated educational effort, could well increase consumers' expectations concerning the scope of unqualified health claims, including expectations that the foods do not present any significant health risks.

[92] 21 CFR 101.14(d)(2)(vi) (1993).

[93] 21 CFR 101.14(d)(2)(vii) (1993).

[94] 58 FR 2514, Jan. 6, 1993.

[95] 56 FR 60,553 (1992) (discussion of proposed regulations).

[96] See, *e.g.*, *Gracewood Fruit Co.*, FTC Dkt. No. C-3470 (Oct. 29, 1993) (consent order). The complaint accompanying the Gracewood consent agreement challenged claims that eating grapefruit could reduce serum cholesterol levels, in part because there was no evidence that the small amount of pectin (the relevant nutrient) in grapefruit was sufficient to cause any meaningful reduction in serum cholesterol. See also Lorillard, 186 F.2d at 57 (advertising claiming that cigarettes were lowest in nicotine, tars, and resins challenged in part because the difference was so small as to be insignificant). Similarly, the Commission's Guides for the Use of Environmental Marketing Claims include the general principle that claims should not be presented in a manner that overstates the attribute or benefit of a product, and that "[m]arketers should avoid implications of significant environmental benefits if the benefit is in fact negligible." 16 CFR 260.6(c) (1993).

[97] See discussion supra at Part III, Section A.2., (comparative nutrient claims).

[98] 21 CFR 101.14(e)(6) (1993).

[99] 58 FR 2522 (1994).

[100] See discussion supra at part IV, section C.

meaningful contribution toward the claimed health effect without detracting from the healthfulness of the overall diet.[101]

As noted in part IV, section C., *supra*, such comparative claims must be sufficiently qualified to convey clearly that the claimed health benefit derives only from the substitution of the advertised food for a significantly less healthful alternative.

E. Relevance of Dietary Factors to Claimed Health Benefit

For each category of health claims approved by FDA, the regulations present model health claim language that places the health benefits to be derived from consuming a nutrient in the context of other factors that bear on the relevant disease or health-related condition.[102] For example, in authorizing claims about calcium/osteoporosis, FDA developed model language explaining how other factors like gender, age, ethnicity, and exercise bear on the relationship between calcium consumption and osteoporosis.[103] FDA's model health claims are intended to ensure that health claims are complete, truthful and not misleading. The model statements therefore include reference to the fact that factors other than consumption of the food also bear on the claimed health effect.[104]

The Commission shares FDA's concern that health claims for food products may mislead consumers if they oversimplify the diet-disease relationship or otherwise overstate the relative significance of dietary factors in achieving certain health effects. Health claims in food advertising should therefore be sufficiently qualified to avoid implying to reasonable consumers that consumers can achieve the claimed effect simply by consuming the food and without regard to other factors, such as overall diet, exercise, age, or family history, that may either contribute or detract from the claimed effect.

However, while the Commission recognizes the desirability of educating consumers about the role of other factors that bear on the risk of disease and how such factors interact with diet, the Commission must evaluate whether the failure to disclose such qualifying information in a claim about the health effects of a food would mislead consumers. As explained above, not all omissions of information are deceptive in violation of Section 5. In assessing whether an omission is deceptive, the Commission examines whether the omitted information would be necessary to prevent an affirmative claim from creating a misleading impression.[105]

The Commission will not require food advertisers to include in advertising containing health claims all potentially relevant information about the specific diet-related disease, or affirmatively to disclose that the risk of the disease depends on many factors, unless such disclosure is necessary to prevent consumers from being misled about the significance of diet as one of those factors. Indeed, in many forms of advertising it would not be feasible to include all nutritional information that may be of interest to consumers. While the additional dietary and nondietary factors associated with a health condition may be of interest to consumers, in most cases section 5 would not require full disclosure of such information to prevent consumers from being misled by statements about the contribution of a particular food to a health effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–13284 Filed 5–31–94; 8:45 am]

BILLING CODE 6750–01–P

[101] For example, a qualified comparative health claim suggesting that consumers switch from a high fat to a fat-free salad dressing, and indicating that diets low in total fat may contribute to a reduced risk of some forms of cancer, could encourage a dietary choice resulting in a significant health benefit, even if the fat-free salad dressing did not contain sufficient levels of any of the six nutrients or substances specified by FDA.

[102] FDA has stated that model health claim language can be paraphrased as long as all mandatory elements of the model statements are addressed. 58 FR 2510, Jan. 6, 1993.

[103] 21 CFR 101.72(e) (1993). In authorizing other health claims, FDA provides alternative approaches of either expressly enumerating the relevant factors, or stating more simply that the development of the disease depends on many factors. See, e.g., 21 CFR 101.73 (1993) (governing claims about dietary fat and cancer).

[104] 58 FR 2511, Jan. 6, 1993; 21 U.S.C. 343(r)(3)(B)(iii).

[105] Deception Statement, 103 F.T.C. at 176. In J.B. Williams Co. v. FTC, for example, the Commission challenged as deceptive advertising claims that a vitamin and iron supplement would reduce tiredness because the advertiser failed to disclose that those symptoms are usually caused by factors other than vitamin and iron deficiency. 381 F.2d 884, 890 (6th Cir. 1967). See also Keele Hair & Scalp Specialists, 55 F.T.C. 1840 (1959), aff'd, 275 F.2d 18 (5th Cir. 1960) (baldness cure claims challenged for failure to disclose significance of male heredity as cause of baldness, for which cure was ineffective).

[Dkt. C–3265]

Arkla, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order grants a petition to reopen the proceeding and to modify the Commission's 1989 consent order by modifying the description of the assets identified in paragraph I(j) and Schedule B of the order as the Arkla Pipeline Assets. The Commission concluded that changed conditions warranted reopening and modifying the order.

DATES: Consent Order issued October 10, 1989. Modifying Order issued March 28, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Kenneth Libby, FTC/S–2115, Washington, DC 20580. (202) 326–2694.

SUPPLEMENTARY INFORMATION: In the Matter of Arkla, Inc. The prohibited trade practices and/or corrective actions as set forth at 55 FR 7565, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–13287 Filed 5–31–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9189]

Detroit Auto Dealers Association, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, one hundred and forty four Detroit-area automobile dealerships, owners and managers, and dealer associations (including respondents associated with the sale of GM, Ford, Lincoln-Mercury and Volkswagen vehicles, and respondents associated with the sale of Chrysler, Plymouth and Dodge vehicles) to stay open a specified minimum number of hours a week. In addition, the order prohibits the respondents from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation.

DATES: Complaint issued December 20, 1984. Order issued April 20,1994.[1]

FOR FURTHER INFORMATION CONTACT:

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th & Pa. Ave., NW., Washington, DC 20580.

[1] Copies of the Complaint, and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Ernest Nagata, FTC/H–394, Washington, DC 20580. (202) 326–2714.

SUPPLEMENTARY INFORMATION: On Thursday, February 10, 1994, there was published in the **Federal Register**, 59 FR 6263, a proposed consent agreement with analysis In the Matter of Detroit Auto Dealers Association, Inc., *et al.*, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–13285 Filed 5–31–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Human Services Transportation Technical Assistance Project

AGENCY: The Assistant Secretary for Planning and Evaluation and the Director of the Office of Intergovernmental Affairs (IGA) of the Department of Health and Human Services (HHS).

ACTION: Request for applications for technical assistance in the area of human services transportation from national organizations with a record of assisting rural and special transportation needs.

SUMMARY: This announcement solicits applications and describes the application process for the award of the cooperative agreement. It is the intent of HHS to fund one project which address the various task areas in this announcement. The project period will be for three years. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project. A total of $400,000 is available for this cooperative agreement.

DATES: The closing date for submittal of applications under this announcement is July 1, 1994.

ADDRESSES: Send application to Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 405–F, Hubert H. Humphrey Building, Washington, DC 20201. Attn: Al Cutino.

FOR FURTHER INFORMATION CONTACT: Technical Questions, Dianne L. McSwain, HHS/IGA, 200 Independence Avenue, SW., room 621–E, Washington, DC 20201, Telephone: (202) 690–6036. Questions may be faxed to (202) 690–5672 (applications may not be faxed for submission). Application Instructions and Forms, should be requested from and submitted to: Grants Officer, Department of Health and Human Services, ASPE/IO, 200 Independence Avenue, SW., room 405–F, Washington, DC 20201, phone (202) 401–3951. No faxes will be accepted. Questions concerning the preceding information should be submitted to the Grants Officer at the same address.

Eligible Applicants

Eligible applicants are national organizations or large institutions with a record of assisting rural and special transportation needs. However, for-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee. Congress has indicated that the funded organization should have experience in administering a national toll-free hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and State affiliates, and have demonstrated experience in providing information and technical assistance on human service transportation to local agencies and programs.

SUPPLEMENTARY INFORMATION:

Part I

Legislative Authority

The Transportation Coordination Technical Assistance Project cooperative agreement(s) are authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 103–112 (DHHS Appropriation Act for FY 1994).

Project History and Purpose

In FY 1990, Congress authorized $250,000 for the provision of technical assistance to human service transportation providers. This effort included the compilation of data on specific target populations, the development of mechanisms for dissemination of information, and the preparation of a report to the Secretary on the provision of transportation services to human service clients. For FYs 1991, 1992 and 1993, the Congress authorized $500,000 for this effort, adding funding for specific technical assistance and research and analysis in the implementation of the requirements of the Americans with Disabilities Act (ADA). For FY 1994, the Congress has again authorized $500,000 for continued technical assistance in human services transportation.

The purpose of this announcement is to solicit applications for the provision of technical assistance to those organizations, agencies and individuals involved in the planning and provision of human services transportation to the clients of HHS-funded programs. This announcement represents a follow-on activity to the efforts funded in FYs 1991–1993.

It is the policy of HHS to coordinate related programs at the Federal level wherever possible and to promote maximum feasible coordination at the State and local level. Coordination and collaborative effort maximize the resources available to address specific needs. Reflecting this policy, HHS and the DOT have established the Joint DHHS/DOT Coordinating Council on Human Services Transportation (Coordinating Council) as a focal point for the effort to coordinate HHS and DOT resources for transportation of HHS program client populations. The goals of the Coordinating Council are as follows: (1) To achieve the most cost-effective use of Federal, State and local resources for specialized and human services transportation; (2) to encourage State and local governments to take a more active role in the management and coordination of programs supporting specialized and human services transportation; (3) to adopt administrative and management practices in the implementation of Federal programs which encourage coordination among service providers and increase access to specialized and human services transportation; (4) to share technical resources and information with recipients of Federal assistance and transportation providers; and (5) to encourage the most efficient system of providing services, including consideration of private sector providers and use of competitive bidding.

In support of these goals, HHS has identified the following objectives for the Human Services Transportation Technical Assistance Project: (1) to

promote more efficient use of equipment, facilities, and staff resources at the State local level; and (2) to provide information, technical data, and assistance to State and local agencies to improve management of transportation services and the acquisition of appropriate equipment and facilities. Applicants should reflect an understanding of these goals and objectives in their applications.

Available Funds

HHS intends to award one cooperative agreement in the amount of $400,000 resulting from this announcement.

Period of Performance

The start-up date of the project will be July 1, 1994 for a project period of 36 months. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

Part II—Human Services Transportation Technical Assistance Project—Responsibilities of the Awardees and the Federal Government

Awardee Responsibilities

The Human Services Technical Assistance project requires the development and maintenance of mechanisms to provide information, technical assistance, and training to HHS human services transportation planners and providers on the efficient use of transit resources, equipment and facilities. Applicants should be aware of and be sensitive to the need to coordinate the activities herein with the activities of the Rural Transit Assistance Program (RTAP) funded through the Federal Transit Administration (FTA) of the Department of Transportation (DOT) and ongoing relevant transportation efforts by other federal departments. Knowledge of the universe of federal efforts pertaining to the transportation of human services clients will be considered partially indicative of ability to perform the required tasks.

The following tasks are to be specifically addressed in the project narrative of the application. Applicants are encouraged to be innovative and to suggest additional or alternative approaches through subtasks that may improve the potential for successful completion of the task. However, applicants are cautioned to provide suggestions for additional subtasks judiciously with concern for the overall cost of the project. There will be no additional funds beyond those appropriated by Congress for this project.

Task I: Project Planning and Coordination

Task I entails the preparation of a detailed work plan of the activities proposed to meet the stated objectives of the project, including monthly meetings with the federal project staff, quarterly written progress reports and a final report due at the end of the project period. The work plan provides detailed descriptions of task activities and specific time frames for the accomplishment of the activities in measurable terms and reflects consultation with the Federal Project Officer (FPO). In the second and third year, additional planning with the FPO should be reflected to allow for the annual minor project adjustments needed to keep the tasks relevant to consumer need.

Task II: Development and Maintenance of Human Services Transportation Resource Center

Task II addresses the development and maintenance of a central repository of information and technical assistance materials for developing or improving coordinated transportation systems (hereafter known as the Resource Center). Access to the Resource Center should be available to State and local human service agencies, planning entities, government decision-makers and transportation service providers. The Resource Center will be the focal point for the ongoing collection and dissemination of information on issues of specific concern to human services transportation planners and providers as the issues evolve. A priority of the Resource Center will be the support of regional, State or local groups that seek to improve coordination of human services transportation.

The Resource Center collection of materials will represent the universe of reports, studies, and additional written and video materials that represent the current knowledge base in human services transportation. The Resource Center will include, at a minimum, federal- and State-produced reports, technical assistance and training materials, federal human service transit-related legislation and regulations, training and technical assistance materials that will be developed through this effort, and other relevant materials as identified by HHS, the Coordinating Council, or the awardee. A thorough listing of proposed initial holdings for the Resource Center will be considered partially indicative of the ability to undertake this task. Although the awardee is encouraged to minimize costs by referral to other resources for acquisition of documents, a minimum of one copy of each identified referral piece will be maintained in the Resource Center for research purposes. In order to encourage students and practitioners to further the knowledge base, the Resource Center will be made available, within reasonable constraints, to individuals or organizations wishing to do research in the area of human services transportation.

Activities that might be undertaken to accomplish this task include: (1) Providing ready access to the technical assistance and information of the Center such as through the use of physical access, "hotlines" and electronic bulletin boards; (2) developing a mechanism for periodic systematic searches of appropriate online information services to identify new materials; (3) maintaining ongoing relationships with the recognized individuals undertaking research in relevant fields in order to identify new work and to provide feedback on new issues to be explored; (4) identifying and maintaining contact with relevant transportation-related programs in colleges and universities; (5) developing and maintaining a calendar of the meetings, conferences and events of major organizations that would be of interest to the human services transportation field; and (6) developing procedures to ensure that organizations or individuals obtain requested materials or information in a timely manner (Applicants are encouraged to disseminate information through links with other agencies rather than attempting to store and disseminate documents large quantities of documents).

Task III: Development and Coordination of a Resource Network of Knowledgeable Practitioners of Human Services Transportation

Task III represents the establishment and coordination of a network of identified, certified practitioners in the field of human services transportation whose expertise can be made available to transportation planners or providers. Such expertise might be called upon for presentations at conferences or meetings, through telephone or written exchange, or on-site visits. If the level of expertise that was required was significant, the certified peer might be assisted to visit the site of the requesting party to assist first-hand with the problem.

The following activities at a minimum, might be undertaken to complete this task; (1) develop a set of

criteria against which practitioners may be certified; (2) develop and implement a plan to identify practitioners for certification; (3) develop an automated database to manage the certified practitioner data, including name, contact information, specific expertise, title and description of current transportation position, and record of activity within the peer network; (4) develop a mechanism for screening requests for technical assistance which will identify the need for practitioner assistance and that assistance can be provided by telephone, in writing, or if an on-site visit is warranted; and (5) develop a process for documenting the practitioner contacts for inclusion in the Resource Center and to be summarized in the quarterly reports. Emphasis might be placed on the use of certified peers in ways to meet the most need.

Task IV: Disseminate Information on the Provision of Human Services Transportation

Task IV addresses the dissemination of the information compiled through the Resource Center activities, information accumulated under Task III, and information that the federal government deems necessary for distribution to the human services transportation network. The dissemination of information and materials relating to the implementation of the ADA transportation requirements and the effective coordination of transportation resources is of priority under this task.

Project dissemination activities under Task IV will be coordinated with those of regional, State and other federal human services transportation coordination efforts to avoid duplication of efforts and to construct complementary and mutually beneficial activities. Under no circumstances should the awardee undertake the development of technical assistance or training information or materials that knowingly duplicate existing information or materials without prior written permission of the FPO.

At a minimum the awardee would be expected to undertake the following activities in support of Task IV: (1) Identifying opportunities to disseminate information through the existing publications of relevant human services organizations on human services transportation issues (a minimum of 6 articles during the project period); (2) identifying and coordinating through the practitioner network request for conveners and facilitators for regional, State and local-level human services organizations and forums (a minimum of 6 opportunities); (3) identifying, tracking and coordinating activities of other major national or regional human services organizations interested in human services transportation with activities planned this project including identifying opportunities to participate in national or regional conferences (present at a minimum of 5 human services meetings); (4) planning, organizing and presenting training conferences on coordination and ADA implementation issues (a minimum of two regional meetings linked to major human services meetings where feasible); (5) ensuring the availability of current information on the project resources and the Resource Center including the dissemination of a basic information package on the Resource Center through the major human services networks, at a minimum of once a year; (6) compile information on the transportation requirements of the ADA, as well as additional transportation requirements such as drug and alcohol testing and blood born pathogins handling, prepare summaries on these requirements and assist HHS programs in the dissemination of this information to the appropriate HHS grantees; (7) compiling information on the usage of the Resource Center and dissemination activities, including but not limited to the data on the rate of use, kinds of inquiries, and types of requesting organizations, to be included in the monthly project meetings; and (8) indicate a process for screening requests for information and technical assistance which will identify the appropriate level and type of technical assistance, such as immediate telephone response, research and compilation of a written response, practitioner network assistance by telephone, in writing, or through an on-site visit.

Federal Government Cooperative Agreement Responsibilities

HHS or its representatives will provide: (1) Consultation and technical assistance in planning, operating, and evaluating the technical assistance activities of the project; (2) up-to-date information on federal government regulations identified as affecting the provision of transportation services to human service clients; (3) assistance in the evaluation of project effectiveness; (4) assistance in collaborating with appropriate State and local governmental entities in the performance of the project activities; (5) assistance in the identification of HHS information and technical assistance resources pertinent to the success of this project; and (6) assistance in the transfer of "successful practices" in the human services transportation to other Federal, State and local entities.

Part III—Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement, the forms necessary for submission and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

To ensure that organizations with the greatest capacity for providing quality services participate in this effort, applicants for funding under the announcement should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in this section of the announcement. Applicants must address all the identified tasks. It is the intent of HHS to make an award sufficient to accomplish the entire scope of effort described in this announcement, if submissions of sufficient scope and quality are received to permit it.

The applicant should include: (1) A management plan, which sets forth how the project will be managed and who will be the key personnel involved, including a Gantt chart and other graphics which specifically display the management information provided in text; and (2) a budget plan, which specifically delineates the costs associated with the project. When the applicant chooses to suggest additional efforts to support a task, the cost of those additional efforts (not required by this announcement) should be separately identified. However, at no time will a proposed budget in excess of $400,000 for all the Tasks listed in the Announcement be considered for funding, unless the amount in excess of $400,000 represents grantee cost-sharing.

Review Process and Funding Information

Applications that are submitted by the deadline date and which meet the screening criteria will be reviewed and scored competitively. The applications will be reviewed using the evaluation criteria listed below to score the applications. These review results will be a primary factor in funding decisions.

HHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of the reviewers, will be considered in making funding decisions.

State Single Point of Contact (E.O. No. 12372)

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is July 1, 1994. Applications must be postmarked or hand-delivered to the application receipt point no later than 5 p.m. on July 1, 1994.

Hand-delivered applications will be accepted Monday through Friday prior to and on July 1, 1994 during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue SW., in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before July 1, 1994; or (2) Postmarked before midnight of the deadline date, and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the July 1, 1994 deadline are considered late applications and will not be considered or reviewed in the current competition. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Requirements: Applicants are advised to read and follow this section very carefully. Applications which do not meet these initial requirements may not be considered or reviewed in the competition, and the applicant will be so informed. A complete and conforming application must meet the following requirements:

Eligible applicants are national organizations or large institutions with a record of assisting rural and special transportation needs. Congress has indicated that the funded organization should have experience in administering a national toll-free hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and State affiliates, and have demonstrated experience in providing information and technical assistance on human service transportation to local agencies and programs. However, for-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee.

Application Forms: See section entitled "Components of a Complete Application". All of these documents must accompany the application package.

Maximum Length: No specific limit will be set for the length of the application. However, applications that are overly long and/or contain superfluous material will be viewed as indicating an inefficient approach.

Evaluation Criteria: The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Applications which meet the initial requirements will be reviewed by a panel of at least three reviewers. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provided comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. Understanding of the Effort

The application discusses in detail the applicant's understanding of the need for the project, the background and evolution of the effort to coordinate human services transportation, the significant participants in the coordination effort, the universe of current federal activities, and the specific relevance of the proposed tasks to the identified need. The application relates the project to the goals and objectives described in the first section of this announcement. 20 points

2. Project Approach

The application outlines a sound and workable approach to the effort and details how the proposed tasks will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary collaborative involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and/or maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution. 35 points.

3. Staffing Utilization, Staff Background and Experience

The application identifies the background of the principal project staff members. The name, address, training, educational background, and other qualifying experience are provided for the project director and the key project staff. Any staff to be added as a result of the award of this cooperative agreement should be clearly delineated. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the cooperative agreement. The principal author of the application is

identified and that person's role in the project is identified. 20 points

4. Organizational Experience

The application identifies the qualifying experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. Congress has directed HHS to identify the applicant as a national organization or large institution with a record of assisting rural and special transportation needs. The organization should have experience in administering a national toll free assistance hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and state affiliates, and have demonstrated experience in providing information and technical assistance on human services transportation to local agencies and programs. Previous specific experience with work similar to the tasks proposed is clearly and specifically described.

The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a chart which lists all related Federal assistance received within the last five years. In the event a consortium of applicants is proposed, the project history of prior joint work should be provided. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer. 25 points

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424B, REV 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, REV 4–88);
4. Table of Contents;
5. Budget justification for Section B—Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following areas:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience
   (d) Organizational Experience;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying.
13. Supplement to Section II—Key Personnel.
14. Application for Federal Assistance Checklist.

Dated: May 17, 1994.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 94–13274 Filed 5–31–94; 8:45 am]

BILLING CODE 4151–04–M

Human Services Transportation Research and Analysis Project

AGENCY: The Assistant Secretary for Planning and Evaluation and the Director of the Office of Intergovernmental Affairs (IGA) of the Department of Health and Human Services (HHS).

ACTION: Request for applications for research and analysis in the area of human services transportation from national organizations with a record of successfully completing recognized research and analysis informing the field of human services transportation.

SUMMARY: This announcement solicits applications and describes the application process for the award of the cooperative agreement. It is the intent of HHS to fund one project which address the various task areas in this announcement. The project period will be for three years. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project. A total of $100,000 is available for this cooperative agreement.

DATES: The closing date for submittal of applications under this announcement is August 1, 1994.

ADDRESSES: Send application to Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 405–F, Hubert H. Humphrey Building, Washington, DC 20201. Attn: Al Cutino.

FOR FURTHER INFORMATION CONTACT: Technical Questions, Dianne L. McSwain, HHS/IGA, at (202) 690–6036. Questions may be faxed to (202) 690–5672 (applications may not be faxed for submission).

Eligible Applicants

Eligible applicants are nationally-recognized organizations, institutions, or for profit entities with a record of study and analysis in rural and special transportation needs. However, for-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee. Such applicants should indicate a significant publication history indicating a range of analysis and study projects in human services or specialized transportation brought to successful completion. Experience in working with special populations which represent HHS target populations will be of particular interest.

SUPPLEMENTARY INFORMATION:

Part I

Legislative Authority

The Transportation Coordination Research and Analysis Project cooperative agreement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 103–112 (DHHS Appropriations Act for FY 1994).

Project History and Purpose

In FY 1990, Congress authorized $250,000 for the provision of technical assistance to human services transportation providers. This effort included the compilation of data on specific target populations, the development of mechanisms for dissemination of information, and the preparation of a report to the Secretary on the provision of transportation services to human service clients. For FYs 1991, 1992 and 1993, the Congress authorized $500,000 for this effort, adding funding for specific technical assistance in the implementation of the requirements of the Americans with Disabilities Act (ADA). For FY 1994, the Congress has again authorized $500,000 for continued technical assistance and research and analysis in human services transportation.

The purpose of this announcement is to solicit applications for the performance of research and data analysis in various issue areas informing the provision of human services transportation to the clients of HHS-funded programs. This announcement represents a partial follow-on activity to the efforts funded in FYs 1991–1993 in that the short-term research and analysis tasks of the prior projects have been incorporated into a separate announcement for FY 1994.

It is the policy of HHS to coordinate related programs at the Federal level wherever possible and to promote maximum feasible coordination at the State and local level. Coordination and collaborative effort maximize the resources available to address specific needs. Reflecting this policy, HHS and the DOT have established the Joint DHHS/DOT Coordinating Council on Human Services Transportation (Coordinating Council) as a focal point for the effort to coordinate HHS and DOT resources for transportation of HHS program client populations. The goals of the Coordinating Council are as follows: (1) To achieve the most cost-effective use of Federal, State and local resources for specialized and human services transportation; (2) to encourage State and local governments to take a more active role in the management and coordination of programs supporting specialized and human services transportation; (3) to adopt administrative and management practices in the implementation of Federal programs which encourage coordination among service providers and increase access to specialized and human services transportation; (4) to share technical resources and information with recipients of Federal assistance and transportation providers; and (5) to encourage the most efficient system of providing services, including consideration of private sector providers and use of competitive bidding.

The research and analysis tasks of this effort represent data acquisition and synthesis support activities to the Coordinating Council and the Human Services Transportation Technical Assistance Project. In support of these goals, HHS has identified the following objectives for the Human Services Transportation Research and Analysis Project: (1) To develop information on the most efficient use of equipment, facilities, and staff resources at the State and local level; (2) to examine and analyze issues and concerns identified by the Coordinating Council; and (3) to provide information, technical data, and assistance for use by State and local agencies to improve management of transportation services and the acquisition of appropriate equipment and facilities. Applicants should reflect an understanding of these goals and objectives in their applications.

Available Funds

HHS intends to award one cooperative agreement in the amount of $100,000 resulting from this announcement

Period of Performance

The start-up date of the project will be on or before August 1, 1994 for a project period of 36 months. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

Part II—Human Services Transportation Technical Assistance Project—Responsibilities of the Awardee and the Federal Government

Awardee Responsibilities

The Human Services Transportation Research and Analysis project requires data acquisition, synthesis, examination, evaluation and analysis support for the Human Services Transportation Technical Assistance project and the Coordinating Council on the issues affecting efficient use of transit resources, equipment and facilities to serve the clients of HHS-funded programs. Applicants should be aware of and be sensitive to the need for flexibility to accommodate the shifting information needs and to coordinate the activities herein with the activities of the Community Transportation Assistance Project (CTAP) funded by HHS and the Rural Transit Assistance Program (RTAP) funded through the Federal Transit Administration (FTA) of the Department of Transportation (DOT) and as well as work undertaken through the Transportation Research Board and ongoing relevant transportation efforts by other federal departments. Knowledge of the universe of federal efforts pertaining to the transportation of human services clients will be considered partially indicative of ability to perform the required tasks.

The following tasks are to be specifically addressed in the project narrative of the application. Applicants are encouraged to be innovative and to suggest additional or alternative approaches through subtasks that may improve the potential for successful completion of the task. However, applicants are cautioned to provide suggestions for additional subtasks judiciously with concern for the overall cost of the project. There will be no additional funds beyond those appropriated by Congress for this project.

Task I: Project Planning and Coordination

Task I entails the preparation of a detailed work plan of the activities proposed to meet the stated objectives of the project, including monthly meetings with the federal project staff, quarterly written progress reports, and a final report due at the end of each identified activity. In addition, an overall final report of the project activities and recommendations for future activities due at the end of the project year should be included. The work plan provides detailed descriptions of task activities and specific time frames for the accomplishment of the activities in measurable terms and reflects periodic consultation with the Federal Project Officer (FPO). In the second and third year, additional planning with the FPO should be reflected to allow for the minor project adjustments needed to keep the tasks relevant to consumer need.

Task II: Identification of Research and/or Analysis Topics

Task II consists of the identification of the research and analysis topics to be examined during the initial and subsequent project years. Such topics might include a comprehensive review of the human service transportation interests and information needs among the members of the Coordinating Council; an evaluation of the Community Transportation Assistance Project (CTAP), identification of the information needs of Head Start grantees regarding the pending transportation regulations; development of a comprehensive database of the authorizing legislation for HHS programs providing funding for transportation services permitting tracking of the authorization cycles; examine the transportability of mobility devices; identify, describe and recommend solutions to inconsistencies in existing HHS regulations posing barriers to the effective coordination of transportation resources; and assisting the Coordinating Council with an ongoing strategic planning process. Some consideration should be made for the appearance of unanticipated topics during each project year.

The nature of the work of the Coordinating Council is such that issues/topics evolve quickly and the need for information within the human services transportation network can become critical quite quickly. Therefore, the awardee should anticipate sufficient resources to explore two to three additional topics beyond those proposed and agreed upon by the FPO at the initial project meeting. The suggestion of additional topics not listed herein will be considered indicative of knowledge of the field and current practices.

The activities which might be undertaken to accomplish this task could include: (1) Review of existing reports from meetings, conferences and

roundtables which have identified current issues and concerns as identified by the providers and consumers of human services transportation; (2) discussions with the membership of the Coordinating Council and the workgroup supporting the Council on information needs within the various member programs; (3) consultation with the grantee supporting the CTAP project with regard to the most requested topics through the TAP-IN bulletin board and the hotline; (4) compilation of a suggested prioritized list of topics with rationale for inclusion and the resources necessary for completion of each activity; and (5) presentation of the topics list to the FPO for consultation and approval.

Task III: Performance of Topic Activities

Task IV represents the research and analysis activities to be undertaken as identified in Tasks II and III. No more than six separate topics will be explored during each project year from the list created in Task III as well as the unanticipated topics discussed in Task I. The number of completed activities will be driven by the complexity of the topics undertaken and the need for information within the human services transportation network.

The activities that might be undertaken with each topic to be explored under this task could include: (1) A comprehensive description/definition of the issue(s) with relevant existing data; (2) a detailed description of the proposed activity (analysis, synthesis, etc.) with resource requirements; (3) a rationale for the proposed approach; (4) a request for any required technical support from the FPO, other federal staff or the CTAP project; (5) completion of the proposed activities; and (6) monthly oral reports and quarterly written reports (if the activity will entail more than three months work) as well as a well documented written final report for each topic.

Part III—Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

To ensure that organizations with the greatest capacity for providing quality services participate in this effort, applicants for funding under the announcement should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in this section of the announcement. Applicants must address all the identified tasks. It is the intent of HHS to make an award sufficient to accomplish the entire scope of effort described in this announcement, if submissions of sufficient scope and quality are received to permit it.

The applicant should include: (1) A management plan, which sets forth how the project will be managed and who will be the key personnel involved, including a Gantt chart and other graphics which specifically display the management information provided in text; and (2) a budget plan, which specifically delineates the costs associated with the project. When the applicant chooses to suggest additional efforts to support a task, the cost of those additional efforts (not required by this announcement) should be separately identified. However, at no time will a proposed budget in excess of $100,000 for all the Tasks listed in the Announcement be considered for funding, unless the amount in excess of $100,000 represents grantee cost-sharing.

Review Process and Funding Information

Applications that are submitted by the deadline date and which meet the screening criteria will be reviewed and scored competitively. The applications will be reviewed using the evaluation criteria listed below to score the applications. These review results will be a primary factor in funding decisions.

HHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of the reviewers, will be considered in making funding decisions.

State Single Point of Contact (E.O. No. 12372)

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

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Hand-delivered applications will be accepted Monday through Friday prior to and on August 1, 1994 during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 1, 1994, or (2) Postmarked before midnight of the deadline date, August 1, 1994 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

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HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Requirements: Applicants are advised to read and follow this section very carefully. Applications which do not meet these initial requirements may not be considered or reviewed in the competition, and the applicant will be so informed. A complete and

conforming application must meet the following requirements:

Eligible applicants are nationally-recognized organizations, institutions, or for profit entities with a record of study and analysis in rural and special transportation needs. However, for-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee. Such applicants should indicate a significant publication history indicating a range of analysis and study projects in human services or specialized transportation brought to successful completion. Experience in working with special populations which represent HHS target populations will be of particular interest.

Application Instructions and Forms See section entitled "Components of a Complete Applications". All of these documents must accompany the application package. Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, room 405-F, 200 Independence Avenue, SW., Washington, DC 20201, Phone (202) 401-3951. No faxes will be accepted. Questions concerning the preceding information should be submitted to the Grants Officer at the same address.

Maximum Length: No specific limit will be set for the length of the application. However, applications that are overly long and/or contain superfluous material will be viewed as indicating an inefficient approach.

Evaluation Criteria: The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Applications which meet the initial requirements will be reviewed by a panel of at least three reviewers. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. Understanding of the Effort

The application discusses in detail the applicant's understanding of the need for the project, the background and evolution of the effort to coordinate human services transportation, the significant participants in the coordination effort, the universe of current federal activities, and the specific relevance of the proposed tasks to the identified need. The application relates the project to the goals and objectives described in the first section of this announcement. 20 points

2. Project Approach

The application outlines a sound and workable approach to the effort and details how the proposed tasks will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary collaborative involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates

To the extent applicable, the application identifies the kinds of data to be collected and/or maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution. 35 points

3. Staffing Utilization, Staff Background and Experience

The application identifies the background of the principal project staff members. The name, address, training, educational background, and other qualifying experience are provided for the project director and the key project staff. Any staff to be added as a result of the award of this Cooperative agreement should be clearly delineated. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the cooperative agreement. The principal author of the application is identified and that person's role in the project is identified. 20 points

4. Organizational Experience

The application identifies the qualifying experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application specifically identifies the applicant as a nationally-recognized organization, institution, or company with a record of study and analysis of rural and special transportation needs. Previous specific experience with work similar to the Tasks proposed is clearly and specifically described. The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a chart which lists all related Federal assistance received within the last five years. In the event a consortium of applicants is proposed, the project history of prior joint work should be provided. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer. 25 points

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4-88);
2. Budget Information—Non-construction Programs (Standard Form 424A, REV 4-88);
3. Assurances—Non-construction Programs (Standard Form 424B, REV 4-88);
4. Table of Contents;
5. Budget justification for Section B-Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following areas:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience
   (d) Organizational Experience;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying.
13. Supplement to Section II—Key Personnel.
14. Application for Federal Assistance Checklist

Dated: May 17, 1994

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 94-13275 Filed 5-31-94; 8:45 am]

BILLING CODE 4151-04-M

Administration For Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we are requesting approval for a new information collection system titled: "Title IV–B and title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption." This information collection is authorized by section 479 of the Social Security Act. This authority requires to States to establish and implement a national data collection system for all children who are in foster care under the responsibility of the State title IV–B/IV–E agency or adopted with the involvement of the same State agency.

ADDRESSES: Copies of this data collection system may be obtained from Edward E. Saunders of the Office of Information Systems Management, Administration for Children and Families, (ACF), by calling (202) 205–7921.

Written comments and questions regarding this requested approval 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–B and Title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption.

OMB No.: New Request.

The Children's Bureau of the Administration on Children, Youth and Families, (ACYF), at the Administration for Children and Families (ACF) will be responsible for implementing a system for the collection of adoption and foster care data in the United States and shall assure that the information collection will be consistent among the States through the use of uniform definitions and methodologies.

This national data collection system will: (1) Provide comprehensive national information with respect to legal status, demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents; (2) Provide the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care); and (3) Provide the number and characteristics of children placed in or removed from foster care and children adopted or children for whom adoptions have been dissolved, the extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children receiving the services.

ACF will aggregate the data both by State and nationally and will issue summaries to the States and to other organizations on request. In addition, the data will be analyzed by the Administration for Children and Families and will be used for preparing congressional testimony and special reports; determining foster care and adoption trends and projections; proposing policy and legislative changes and making budget forecasts.

Annual Number of Respondents: 51.

Annual Frequency: 2.

Average Burden Hours Per Response: 367.94.

Total Respondent Burden Hours: 37,530.

Number of Recordkeepers: 51

Number of Annual Hours Per Recordkeeper: 9,410.07

Total Recordkeeping Hours: 479,914.

Total Annual Burden: 517,444

Dated: May 19, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–13225 Filed 5–31–94; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Requests for Nominations of Members of Clinical Practice Guideline Panel on Prevention of Osteoporosis

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Correction notice.

SUMMARY: The date for submission of nominations of members for the clinical practice guideline panel on osteoporosis in the May 18, 1994 issue (59 FR 25945–25946), should be changed to July 15. The date which appeared on page 25946 in the second complete paragraph of the second column was erroneously stated as June 15.

Dated: May 24, 1994

J. Jarrett Clinton,

Administrator

[FR Doc. 94–13205 Filed 5–31–94; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director CDC.

Time and date: 8:30 a.m.–3 p.m., July 1, 1994.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters to be discussed: The agenda will include remarks from CDC Director, David Satcher, M.D., Ph.D., and the remainder of time will be used to allow all committee members to present their perspectives on two major topics: marketing of public health and health communications. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Martha F. Katz, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., Mailstop D–23, Atlanta, Georgia 30333, telephone 404/639–3243.

Dated: May 25, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13230 Filed 5–31–94; 8:45 am]

BILLING CODE 4163–18–M

[CDC–441]

Announcement of a Grant to the National Foundation for the Centers for Disease Control and Prevention, Inc.

Summary

The Centers for Disease Control and Prevention (CDC) announces that approximately $500,000 is anticipated in fiscal year (FY) 1994 funds for a grant program for the National Foundation for the Centers for Disease Control and Prevention, Inc (NFCDC). The grant may be expended only for the purpose

of the administrative expenses of the NFCDC. It is expected that the award will begin on or before September 30, 1994, and will be made for a 12-month budget period within a project period of up to 5 years. Continuation of awards within the project period will be made on the basis of satisfactory progress. Approximately $500,000 is anticipated for each future fiscal year.

The purpose of this grant is to provide funding for the administrative expenses of the NFCDC. An illustrative, non-exhaustive list of administrative expenses includes administrative personnel salaries, benefits, and expenses; administrative travel; administrative equipment; office supplies; utilities, such as water, electricity, and gas; printing; postage; communications; and rent.

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 all the priority areas. (For ordering a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information.")

Authority

This grant is authorized under section 399F of the Public Health Service Act, 42 U.S.C. 280d–11.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to the National Foundation for the Centers for Disease Control and Prevention, Inc. (NFCDC). No other applications are solicited. The program announcement and application kit have been sent to NFCDC.

Public Law 102–531 was enacted on October 27, 1992, and authorized the establishment of the NFCDC. The NFCDC is a nonprofit corporation whose purpose is to support the mission of the CDC, primarily by supporting and carrying out activities in conjunction with the CDC for the prevention and control of diseases, disorders, injuries, and disabilities, and the promotion of public health. Public Law 102–531 requires the Director of CDC to make a grant to the NFCDC for administrative expenses for each fiscal year once the Foundation is established.

Use of Funds

Public Law 102–531 requires that grant funds be used only for the purpose of the administrative expenses of the Foundation. The grant award may not be used to fund endowments for positions that are associated with the CDC.

Executive Order 12372

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.283.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this grant, please refer to Announcement 441 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, 255 East Paces Ferry Road, NE., room 300, Mailstop E–09, Atlanta, GA 30305, telephone (404) 842–6880 for business management technical assistance.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–004373–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 25, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13232 Filed 5–31–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 482]

Regional Poison Control Center Demonstration Project; Notice of Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of funds in fiscal year (FY) 1994 for a cooperative agreement for a comprehensive cost-effectiveness analysis of a regional Poison Control Center.

The Public Health service (PHS) is committed to achieving the health promotion and disease prevention objectives described in "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 Reducing the Incidence of Unintentional Injuries and Poisonings. (For ordering a copy of "Healthy People 2000," see the Section "Where to Obtain Additional Information.")

Authority

This program is authorized under Sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b), as amended. Applicable program regulations are set forth in Title 42 CFR part 52.

Smoke-Free Workplace

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to a regional Poison Control Center which provides services in a single State, multi-state area or a portion of a State The center must be certified by the American Association of Poison Control Centers. Poison Control Centers are the only eligible applicants because no other organization can perform the project activities.

Availability of Funds

Approximately $188,000 is available in FY 1994 to fund one Regional Poison Control Center. It is expected that the award will begin on or about September 30, 1994, and will be made for a 12-month budget period, with a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation of funding for future years will be made on the basis of satisfactory progress, including the achievement of milestones, and the availability of Federal funds.

Use of Funds

These awards may be used for personnel services, supplies, equipment, travel, subcontracts and services directly related to project activities. Project funds may not be used

to supplant existing State or local funds for poison control programs.

Purpose

The purpose of this cooperative agreement is to support a demonstration project at a regional Poison Control Center. This project will evaluate the costs and effectiveness of the regionalized approach to poison control. For a comprehensive evaluation, alternative methods for providing poison control services in the region served by the center also need to be analyzed.

Program Requirements

The applicant must be a certified member of the American Association of Poison Control Centers. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. (Recipient Activities), and CDC shall be responsible for activities under B. (CDC Activities).

A. Recipient Activities

1. Create the necessary data collection instruments and procedures, and provide coordination and standardization of data collection activities among multiple sites, if necessary.
2. Analyze and interpret the data.
3. Evaluate the cost-effectiveness of alternative poison control strategies including the regional control center. This includes incremental cost-effectiveness results, information on economies of scale (if such exist), distribution effects of the alternative strategies in terms of clients served and distribution of costs.
4. Publicize the outcome of the demonstration project.

B. CDC Activities

1. Provide up-to-date scientific information about cost-effectiveness study methodology.
2. Provide consultation and technical assistance in protocol development and design of data collection instruments and procedures.
3. Monitor data collection and analysis and provide consultation in establishing standardized data collection and reporting, if necessary.
4. Provide statistical support for appropriate data analysis and interpretation.
5. Assist in the transfer of information and methods developed in this project to other programs.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10%)

The extent to which the applicant demonstrates understanding of the need for a cost-effectiveness analysis of a regional Poison Control Center. The extent to which the applicant presents data describing the magnitude and type of human poisoning exposures and poisonings in the region served by the applicant, identifies alternative sources of poison control services, and demonstrates capacity through related work to conduct the proposed project.

2. Goals and Objectives (10%)

The extent to which the applicant has included goals that are specific, measurable, and relevant to the purpose of the proposal. The extent to which the applicant has included objectives that are specific, time-framed, measurable, feasible, and addressed all activities necessary to accomplish the purpose of the proposal.

3. Methods (40%)

The extent to which the applicant provides a detailed description of proposed activities that are likely to achieve each objective for the budget period. The extent to which the applicant provides a reasonable schedule for implementation of the activities and the extent to which coordination and supervision of staff and organizations involved in activities is apparent. The extent to which data collection, data processing, and management activities are described. The extent to which relationships between the applicant and necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities.

4. Evaluation (30%)

The extent to which the proposed evaluation plan and research protocol are detailed and will document the cost-effectiveness of a regional Poison Control Center. The extent to which the evaluation plan is appropriate for the region served, data collection opportunities, and the proposed project period. The extent to which the various threats to the validity of the study are recognized and addressed.

5. Project Management and Staffing (10%)

The extent to which management and staff are clearly described, appropriately assigned, and have pertinent skills and experiences. Descriptions should include the position titles, education and experience required, and the percentage of time each will devote to the project. Curriculum vitae for existing staff should be included.

6. Budget Justification (not weighted)

The extent to which the applicant provides a detailed budget justification consistent with stated objectives, planned program activities and intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (EO) 12372. EO 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be

subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Application Submission and Deadline

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E–13, Atlanta, GA 30305, on or before July 29, 1994.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do no meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, business management technical assistance, and an application package may be obtained from Georgia Jang, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6634.

Scientific or technical assistance may be obtained from Daniel A. Pollock, M.D., and Paul Burlack, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop F–41, Atlanta, GA 30333, telephone (404) 488–4031.

Programmatic technical assistance may be obtained from Paul Burlack, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop F–41, Atlanta, GA 30333, telephone (404) 488–4031.

Please refer to Announcement Number 482 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 25, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13229 Filed 5–31–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 468]

Skin Cancer Primary Prevention Education Projects

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for cooperative agreements to develop skin cancer primary prevention education demonstration projects. Projects are to develop and evaluate educational messages that target parents and caregivers of children under the age of 13 in clinical settings, schools, and the community. Messages should heighten the awareness of parents and caregivers of the need to protect children from the sun's harmful rays.

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 Cancer. (To order a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information.")

Authority

This program is authorized under Section 317(k)(3) of the Public Health Service Act, as amended [42 U.S.C. 247b(k)(3)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

State and Territorial Health Departments (SHD) have a unique opportunity to impart primary prevention information regarding skin cancer. They have health education expertise and existing channels that can be used to identify and impart knowledge to those in the target populations. SHDs provide organizational structure that can facilitate collaboration with other organizations regarding the development of skin cancer primary prevention educational strategies.

Availability of Funds

Approximately $500,000 is available in FY 1994 to fund approximately five awards. It is expected that the average award will be $100,000, ranging from $75,000 to $125,000. It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this demonstration project is to design, conduct, and evaluate creative and innovative skin cancer primary prevention educational strategies by using the scientific process. Educational strategies can be defined as instruments that have been designed to impart information, such as information campaigns, health fairs, multi-media messages, etc. The intent is to successfully heighten the awareness and knowledge of parents and caregivers of the risks to children associated with exposure to the harmful rays of the sun and to ultimately affect sun protection behavior.

Program Requirements

The target population for the demonstration project is parents and caregivers of children under the age of 13. Caregivers are defined as those

individuals who spend a significant number of consecutive hours with a child or children on a daily basis, i.e., grandparents, day-care workers, teachers foster parents, etc.

Collaboration with agencies and organizations such as local and county health departments, education departments, parent groups, day-care centers, and voluntary organizations is considered essential to the success of this project. This collaboration should ensure that sound principles of behavioral science and the unique characteristics of the target population are reflected in the design of educational strategies. Single or multiple educational messages may be delivered to parents and caregivers in a variety of community settings including clinical settings, schools, day-care centers, and other locations where parents and caregivers gather. Educational design, implementation, and evaluation should be grounded in behavioral and educational theory.

Funds may not be used to pay for skin cancer screening.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Select, convene, and maintain an advisory panel of not less than five persons to ensure target population input into designing, conducting, and evaluating creative and innovative skin cancer primary prevention educational strategies. In addition to parents and caregivers, the advisory panel membership may include representatives from the local and county health department, the education department, the American Cancer Society, the medical community (pediatricians, dermatologists, and family practice physicians), academic institutions (adult educators, early childhood educators), local representatives of community organizations, and others. (year one through year three)

2. Develop an Action Plan, in collaboration with CDC, that targets parents and caregivers of children under the age of 13. (year one)

3. Develop and field-test educational strategies and modify the strategies based on field-test results. (year one or year two)

4. Carry out educational strategies among the proposed target populations and evaluate the outcome according to a predetermined evaluation plan. (year two or year three)

5. Share information about program effectiveness and materials with CDC and with other interested recipients through electronic databases, bulletin boards, program conferences, and participation in CDC-sponsored training and demonstration workshops. (year two and year three)

6. Participate in at least two planning meetings with CDC per year. (year one through year three)

B. CDC Activities

1. Provide consultation on the design, evaluation, and management of the educational strategies in the project.

2. Collaborate in the design of data collection, analysis, and evaluation systems.

3. Collaborate in the transfer and dissemination of information, methods, and findings developed in the project.

4. Convene recipients at least twice a year to evaluate progress and provide technical assistance

Evaluation Criteria (Total of 100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Experience and Background

The extent to which the applicant's past experience with the prevention of skin cancer or other cancers demonstrates the ability to design, develop, conduct, and evaluate educational messages and strategies; use behavioral science research for primary prevention; apply principles of adult learning and parental influence; and develop and maintain relationships with appropriate educational agencies and departments. (15 Points)

B. Collaboration

The extent to which the applicant proposes to involve, and describes collaboration with, relevant organizations, to include letters of support (15 Points)

C. Target Populations

The adequacy and extent of disease burden analysis; the sociodemographic and behavioral description of the geographic areas, communities, and target populations; and the degree to which the applicant demonstrates relevant experience and ability to work with interested target populations and the community. (15 Points)

D. Action Plan Development

The feasibility and appropriateness of the Action Plan and proposed timeline to establish: A procedure likely to develop, design, and carry out appropriate process and outcome objectives; methods for selection and development of educational strategies, selection of channels that reach parents and caregivers; field-testing educational strategies, procedures for conducting and disseminating strategies; and evaluation plan with process and outcome indicators and a method to track recipients of information. (25 Points)

E. Project Objectives

The appropriateness of proposed objectives that are specific, measurable, time-phased, and realistic for the first year activities and a brief description of proposed objectives for years two and three (excluding those proposed in the Action Plan), and the extent to which end-of-project expected outcomes are described. (15 Points)

F. Project Management and Staffing Plan

The extent to which the role(s) proposed for the advisory panel and the staff, organizational structure, staff experience and background, and job descriptions and résumé for proposed and current staff indicate ability to carry out the purpose of the project. (15 Points)

G. Budget

The extent to which the applicant provides a detailed budget and justification consistent with the stated objectives and proposed project activities. (Not Weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If SPOCs or tribal governments have any process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants

Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" for State or tribal process recommendations it receives after that date.

Public Health Systems Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.945.

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.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mail Stop E–18, Atlanta, GA 30305, on or before July 1, 1994.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Locke Thompson, 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, Mail Stop E–18, Atlanta, GA 30305, telephone (404) 842–6595.

Programmatic technical assistance may be obtained from Barbara A. Bewerse, M.N., M.P.H., Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–57, Atlanta, GA 30341–3724, telephone (404) 488–4347.

Please refer to Announcement Number 468 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 25, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13231 Filed 5–31–94; 8:45 am]

BILLING CODE 4163–18–P

Health Care Financing Administration

[BPD–774–CN]

RIN 0938–AG25

Medicare Program; Physician Performance Standard Rates of Increase for Fiscal Year 1994 and Physician Fee Schedule Update for Calendar Year 1994

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

ACTION: Correction of final notice with comment period.

SUMMARY: This document corrects an error that occurred in the calculation of the fiscal year 1994 Medicare volume performance standard for surgical services and that appeared in the final notice with comment period published in the **Federal Register** on December 2, 1993 (58 FR 63856) entitled "Medicare Program; Physician Performance Standard Rates of Increase for Fiscal Year 1994 and Physician Fee Schedule Update for Calendar Year 1994." This notice also corrects a typographical error in a date.

EFFECTIVE DATE: The performance standard rates of increase are effective on October 1, 1993. The Medicare physician fee schedule update is effective on January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Louisa Buatti, (410) 966–5716.

SUPPLEMENTARY INFORMATION:

Note: This notice corrects an error that occurred in the calculation of the 1994 Medicare volume performance standard (MVPS) for surgical services. The fiscal year (FY) 1994 MVPS is used in the calculation of the calendar year (CY) 1996 Medicare physician fee schedule update. While this notice announces the correct standard rate of increase for surgical services for FY 1994, it has no impact on current payment levels. The correct value will be used, however, in the default calculation of the CY 1996 physician fee schedule update for surgical services. This notice also corrects a typographical error in a date.

In **Federal Register** Document [93–29361] beginning on page 63856, in the issue of December 2, 1993, make the following corrections:

A. Page 63856

In the **SUMMARY** section, the second sentence is corrected to read "The physician performance standard rates of increase for Federal FY 1994 are 9.1 percent for surgical services, 10.5 percent for primary care services, 9.2 percent for other nonsurgical services, and 9.4 percent for all physicians' services."

B. Page 63858, MVPS Table, in the First Column

In the column headed "MVPS (percent)," the entry for FY 1994 surgical services is corrected from "8.6" to read "9.1."

MVPS

Fiscal year	MVPS (percent)	Actual (percent)	Difference (percent)
FY 1994:.			
Surgical	9.1		

C. Page 63860

In the second column, in the first paragraph beneath the table, in the first sentence, the date is corrected to read "January 1, 1992."

D. Page 63863

In the section designated III.B., the first paragraph is corrected to read "Under the requirements in section 1848(f)(2)(A) and (B) of the Act, we have determined that the performance standard rates of increase for physicians' services for FY 1994 are 9.1 percent for surgical services, 10.5 percent for primary care services, 9.2 percent for other nonsurgical services, and 9.4 percent for all physicians' services."

E. Page 63864, Table at the Top of the Page

In the table at the top of the page, the legislation factor and the total for surgical services are corrected to read as follows:

Legislative factors	Surgical services (percent)	Primary care services (percent)	Nonsurgical services (percent)
Legislation	1.9	3.2	1.9
Total	9.1	10.5	9.2

(Section 1848 of the Social Security Act (42 U.S.C. 1395w–4))

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

Dated: May 20, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–13272 Filed 5–31–94; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute on Deafness and Other Communiction Disorders; Workshop on Communication Disorders and Juvenile Behaviors

Notice is hereby given of a Workshop on Communication Disorders and Juvenile Behaviors, sponsored by the National Institute on Deafness and Other Communication Disorders Advisory Council. The workshop will be held on June 14–15, 1994, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852. The meeting room will be posted in the hotel lobby.

The meeting will be open to the public on June 14 from 8:30 am to recess and on June 15 from 8:30 a.m. to adjournment at approximately 4 p.m. Attendance by the public will be limited to space available.

Further information concerning the meeting may be obtained from Dr. Jay Moskowitz, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, building 31, room 3C02, 9000 Rockville Pike, Bethesda, Maryland 20892, 301–402–2220. An agenda of the meeting and roster of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Moskowitz.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: May 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–13210 Filed 5–31–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Notification of Expiring Project Periods for Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 204 Community Health Center and Migrant Health Center (C/MHC) grantees will reach the end of their project periods during fiscal year (FY) 1995. Assuming the availability of sufficient appropriated funds in FY 1995, it is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their designation as medically underserved. HRSA will open competition for awards under sections 329 and 330 of the Public Health Service (PHS) Act (42 U.S.C. 254c and 254b, respectively) to support health services in the areas currently served by these grants.

This notice provides interested parties the opportunity to gather information and decide whether to pursue Federal funding as a community or migrant health center. During this process, communication with Regional Office staff is essential (see Appendix I). A subsequent notice will be published in the **Federal Register** to announce the availability of funds for FY 1995 and provide detailed information on the grant application process and review criteria.

DATES: Current grant expiration dates vary by area throughout FY 1995. Applications for competing continuation grants are normally due 120 days prior to the expiration of the current grant award.

SUPPLEMENTARY INFORMATION: The C/MHC programs are carried out under the authority of sections 329 and 330 of the Public Health Service Act. The program regulations are codified in Title 42 of the Code of Federal Regulation (CFR), Parts 51c and 56. The C/MHC programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations.

The list of service areas for which a current section 329/330 grant project period expires in FY 1995 is set forth in Appendix II. The service areas are listed by city and county. Detailed information about each service area, such as census tracts, can be obtained by contacting the appropriate PHS regional office (see Appendix I).

A project period is the total amount of time for which a section 329/330 grant has been programmatically approved. For the purposes of this notice, grant awards will be made for a one year budget period and project periods will be for up to three years.

Dated: May 24, 1994.

Ciro V. Sumaya,

Administrator.

Appendix I—Regional Office Staff

Region I

Rob Lawrence, DDS, Acting Director, Division of Health Services Delivery, DHHS—Region I, JFK Federal Building #1401, Boston, MA 02203

Region II

Ron Moss, Director, Division of Health Services Delivery, DHHS—Region II, JFK Federal Building, 26 Federal Plaza, New York, NY 10278

Region III

Bruce Riegel, Director, Division of Health Services Delivery, DHHS—Region III, 3535 Market Street, Philadelphia, PA 19101

Region IV

Ms. Marlene Lockwood, Division of Health Services Delivery, DHHS—Region IV, 101 Marietta Tower, Atlanta, GA 30323

Region V

Tony Levandowski, Acting Director, Division of Health Services Delivery, DHHS—Region IV, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Region VI

Fred Pintz, M.D., Director, Division of Health Services Delivery, DHHS—Region VI, 1200 Main Tower Building, Dallas, TX 75202

Region VII

Ray Maddox, Director, Division of Health Services Delivery, DHHS—Region VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106

Region VIII

Barbara Bailey, Director, Division of Health Services Delivery, DHHS—Region VIII, Federal Office Building, 1961 Stout Street, Denver, CO 80294

Region IX

Gordon Soares, Director, Division of Health Services Delivery, DHHS—Region IX, 50 United Nations Plaza, San Francisco, CA 94102

Region X

Doug Woods, Director, Division of Health Services Delivery, DHHS—Region X, Blanchard Plaza, 2201 Sixth Avenue, Seattle, WA 98121

APPENDIX II

Region/state/service area	Number of grants	Grant expiration date BCRR No.
REGION: 01		
CONNECTICUT	6	
Cities: New Haven		05/31/95
Counties: New Haven		
Cities: New London		06/30/95
Counties: New London		
Cities: Hartford		12/31/94
Counties: Hartford		
Cities: Bridgeport		01/31/95
Counties: Fairfield		
Cities: Bridgeport		01/31/95
Counties: Fairfield		
Cities: New Haven		03/31/95
Counties: New Haven		
MAINE	1	
Cities: Bethel		01/31/95
Counties: Oxford		
MASSACHUSETTS	12	
Cities: Quincy, Hull		05/31/95
Counties: Norfolk, Plymouth		
Cities: Lawrence		05/31/95
Counties: Essex		
Cities: New Bedford		05/31/95
Counties: Bristol		
Cities: Worthington, Huntington		05/31/95
Counties: Hampden, Hampshire		
Cities: Boston		05/31/95
Counties: Suffolk		
Cities: Springfield		06/30/95
Counties: Hampden		
Cities: Mattapan		03/31/95
Counties: Suffolk		
Cities: Dorchester, Boston		03/31/95
Counties: Norfolk, Suffolk		
Cities: Worcester		05/31/95
Counties: Worcester		
Cities: Lowell		03/31/95
Counties: Middlesex		
Cities: Worcester		03/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Worcester		
Cities: Peabody, Salem		03/31/95
Counties: Essex		
NEW HAMPSHIRE	1	
Cities: Berlin		06/30/95
Counties: Coos		
VERMONT	2	
Cities: Burlington		06/30/95
Counties: Chittenden		
Cities: St. Johnsbury, Danville, Greensboro, Hardwick, Concord		03/31/95
Counties: Caledonia, Essex, Lamoille, Orleans, Washington		
REGION: 02		
NEW JERSEY	3	
Cities: New Brunswick		06/30/95
Counties: Middlesex		
Cities: Newark, East Orange		11/30/94
Counties: Essex		
Cities: Jersey City		03/31/95
Counties: Hudson		
NEW YORK	8	
Cities: Schenectady		05/31/95
Counties: Schenectady		
Cities: New York City		11/30/94
Counties: New York		
Cities: New York City		12/31/94
Counties: Kings		
Cities: Rochester		12/31/94
Counties: Monroe		
Cities: Warrensburg, Chestertown, North Creek, Indian Lake, Lake George		12/31/94
Townships: Minerva, Schroon, Indian Lake.		
Counties: Essex, Hamilton, Warren		
Cities: Pulaski		12/31/94
TOWNSHIPS: Albion, Boylston, Mexico, Orwell, Redfield, Richland, Sandycreek, Williamstown		
Counties: Oswego		
Cities: Mt. Vernon, Yonkers		12/31/94
Counties: Westchester		
Cities: New York City		01/31/95
Counties: Kings		
PUERTO RICO	4	
Cities: Rio Grande		06/30/95
MUNICIPOS: Rio Grande		
Cities: Naranjito, Corozal, Comerio, Barranquitas, Orocovis		05/31/95
Municipos: Barranquitas, Comerio, Corozal, Naranjito, Orocovis.		
Cities: Camuy		01/31/95
Municipos: Camuy.		
Cities: Arroyo		06/30/95
Municipos: Arroyo.		
REGION: 03		
DISTRICT OF COLUMBIA	1	
Cities: Washington, District of Columbia		01/31/95
Counties: District of Columbia		
MARYLAND	5	
Cities: Baltimore		06/30/95
Counties: Baltimore City		
Cities: Baltimore		05/31/95
Counties: Baltimore City		
Cities: Baltimore		11/30/94
Counties: Baltimore, Baltimore City		
Cities: Hancock		11/30/94
Counties: Allegany, Washington, Fulton, PA, Morgan, WV		
Cities: Denton, Goldsboro		12/31/94
Counties: Caroline		
PENNSYLVANIA	5	
Cities: Scranton		11/30/94
Counties: Lackawanna		
Cities: McKees Rocks		11/30/94
Counties: Allegheny		
Cities: Burgettstown		01/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Washington		
Cities: Coalport, Glasgow		03/31/95
Counties: Cambria, Clearfield		
Cities: Harrisburg		03/31/95
Counties: Dauphin		
VIRGINIA	11	
Cities: Richmond		06/30/95
Counties: Richmond City		
Cities: Dungannon		05/31/95
Counties: Russell, Scott		
Cities: Laurel Fork		05/31/95
Counties: Carroll, Floyd, Patrick		
Cities: Arrington		12/31/94
Counties: Nelson		
Cities: Saltville		01/31/95
Counties: Smyth		
Cities: Bastian, Bland		01/31/95
Counties: Bland		
Cities: Aylett, Hanover		01/31/95
Counties: Caroline, King and Queen, King William		
Cities: Stoney Creek		01/31/95
Counties: Dinwiddie, Sussex		
Cities: Ivor		03/31/95
Counties: Isle of Wight, Southampton		
Cities: New Canton, Farmville, Esmont		03/31/95
Counties: Albemarle, Amelia, Buckingham, Charlotte, Cumberland, Fluvanna, Lunenburg, Nelson, Nottoway, Prince Edward		
Cities: Onancock		05/31/95
Counties: North Hampton		
WEST VIRGINIA	5	
Cities: Scarbro, Hico		11/30/94
Counties: Fayette		
Cities: Rock Cave		11/30/94
Counties: Lewis, Upshur, Webster		
Cities: Clay		11/30/94
Counties: Clay		
Cities: Fairmont, Shinnston		01/31/95
Counties: Harrison, Marion, Taylor		
Cities: Spencer		01/31/95
Counties: Roane		
REGION :04		
ALABAMA	7	
Cities: Mobile, Citronelle		05/31/95
Counties: Mobile		
Cities: Uniontown, Pine Apple, Yellow Bluff		05/31/95
Counties: Perry, Wilcox		
Cities: Huntsville		11/30/94
Counties: Madison		
Cities: Russellville, Town Creek, Decatur		11/30/94
Counties: Franklin, Lamar, Lawrence, Marion, Morgan		
Cities: Eutaw, Greensboro, Gilbertown, Livingston, Dempolis		01/31/95
Counties: Choctaw, Greene, Hale, Lowndes, Marengo, Sumter		
Cities: Vernon, Marion, Sipsey, Oakman, West Blocton, Clanton, Autaugaville, Eclectic, Rockford, Berry		01/31/95
Counties: Autauga, Bibb, Chilton, Coosa, Elmore, Fayette, Lamar, Perry, Walker		
Cities: Troy, Dozier, Clayton, Brundidge		03/31/95
Counties: Barbour, Crenshaw, Dale, Pike		
FLORIDA	8	
Cities: Palatka, Crescent City, Hastings, Interlachen		11/30/94
Counties: Putnam, St. Johns		
Cities: Parrish, Samoset, Palmetto, Myakka City, South County		11/30/94
Counties: Manatee		
Cities: Quincy, Chahahoochee, Midway		11/30/94
Counties: Gadsden		
Cities: Ft. Myers, Bonita Springs, La Belle		12/31/94
Counties: Glades, Hendry, Lee		
Cities: Miami, Hialeah		01/31/95
Counties: Dade		
Cities: Miami		01/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Dade		
Cities: Miami, Homestead		01/31/95
Counties: Dade		
Cities: Wauchula, Frostproof, Avon Park		01/31/95
Counties: Hardee, Highlands, Polk		
GEORGIA	4	
Cities: Fitzgerald		06/30/95
Counties: Ben Hill, Irwin, Wilcox		
Cities: Columbus		06/30/95
Counties: Muscogee		
Cities: Morganton, Suches		11/30/94
Counties: Fannin, Union		
Cities: Palmetto		05/31/95
Counties: Fulton		
KENTUCKY	2	
Cities: Louisville, Taylorsville		11/30/94
Counties: Jefferson, Spencer		
Cities: Covington		01/31/95
Counties: Campbell, Kenton		
MISSISSIPPI	6	
Cities: Fayette		05/31/95
Counties: Jefferson		
Cities: Lexington		06/30/95
Counties: Holmes		
Cities: Vicksburg		11/30/94
Counties: Issaquena, Sharkey, Warren		
Cities: Liberty, Gloster		01/31/95
Counties: Amite		
Cities: Brandon, Mendenhall, Prentiss, Pelahatchie, New Hebron		01/31/95
Counties: Lawrence, Rankin, Simpson, Jefferson Davis		
Cities: Laurel, Sandersville		03/31/95
Counties: Clarke, Jasper, Jones, Smith, Wayne		
NORTH CAROLINA	3	
Cities: Durham		05/31/95
Counties: Durham		
Cities: Hollister		05/31/95
Counties: Halifax		
Cities: Hendersonville		03/31/95
Counties: Buncombe, Henderson, Polk, Rutherford		
SOUTH CAROLINA	8	
Cities: Clearwater		05/31/95
Counties: Aiken		
Cities: Trenton, Saluda, Ware Shoals, McCormick,		05/31/95
Counties: Abbeville, Aiken, Edgefield, Greenwood, McCormick, Saluda		
Cities: Society Hill, Bishopville, Clio, Cheraw		05/31/95
Counties: Chesterfield, Darlington, Dillon, Lee, Marlboro		
Cities: Orangeburg, Vance, Springfield, St. Matthews		11/30/94
Counties: Calhoun, Orangeburg		
Cities: Olanta, Manning		01/31/95
Counties: Clarendon, Florence, Williamsburg		
Cities: Greenville		01/31/95
Counties: Greenville		
Cities: Eastover		01/31/95
Counties: Richland		
Cities: Conway, Johnsonville, Myrtle Beach		03/31/95
Counties: Florence, Horry, Marion		
TENNESSEE	2	
Cities: Clairfield, Frakes		01/31/95
Counties: Bell, Ky, Campbell, Claiborne		
Cities: Maynardville, Washburn		03/31/95
Counties: Grainger, Union		
REGION: 05		
ILLINOIS	5	
Cities: Ullin		06/30/95
Counties: Alexander, Hardin, Johnson, Massac, Pope, Pulaski, Union		
Cities: Centreville		12/31/94
Counties: St. Clair		
Cities: Chicago		12/31/94

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Cook		
Cities: Dongola, Vienna		01/31/95
Counties: Alexander, Jackson, Johnson, Massac, Pope, Pulaski, Union		
Cities: Chicago		01/31/95
Counties: Cook		
INDIANA	3	
Cities: Indianapolis		05/31/95
Counties: Marion		
Cities: Evansville		06/30/95
Counties:		
Cities: Indianapolis		11/30/94
Counties: Marion		
MICHIGAN	11	
Cities: Detroit		06/30/95
Counties: Wayne		
Cities: Carleton		11/30/94
Counties: Huron, Monroe, Wayne		
Cities: Lincoln, Alpena		05/31/95
Counties: Alcona, Alpena, Iosco, Presque Isle		
Cities: Spalding, Ewen		01/31/95
Counties: Chippewa, Delta, Dickinson, Gogebic, Menominee, Ontonagon		
Cities: Detroit		01/31/95
Counties: Wayne		
Cities: Saginaw, Caro, Greenville, Linwood		03/31/95
Counties: Arenac, Bay, Genesee, Lapeer, Saginaw, Tuscola		
Cities: Sterling		03/31/95
Counties: Arenac, Bay, Gladwin, Ogemaw		
Cities: Manistee, Shelby		03/31/95
Counties: Antrim, Benzie, Grand Traverse, Leelanau, Manistee, Mason, Muskegon, Oceana		
Cities: Temperance		03/31/95
Counties: Monroe		
Cities: Bangor, Pullman, South Haven, Plainwell, Pennville, Allegan		03/31/95
Counties: Allegan, Van Buren		
Cities: Flint		03/31/95
Counties: Genesee		
MINNESOTA	4	
Cities: Schroeder, Grand Maraise		05/31/95
Counties: Cook		
Cities: Minneapolis		06/30/95
Counties: Henngpin		
Cities: St. Paul		11/30/94
Counties: Ramsey		
Cities: Ada, Crookston, Breckenridge, Montevideo, Moorhead, Olivia, Dodge Center, Hopkins		01/31/95
Counties: Brown, Chippewa, Dodge, Freeborn, Grant, Hennepin, Kandiyohi, Kittson, Lac Qui Parle, Marshall, McLeod, Meeker, Nicollet, Norman, Otter Tail, Polk, Redwood, Renville, Sibley, Steele, Wilkin, Yellow Medicine		
OHIO	4	
Cities: Cleveland		12/31/94
Counties: Cuyahoga		
Cities: Toledo		11/30/94
Counties: Lucas		
Cities: Continental, Gibsonburg, Clyde, Tiffin, Fostoria, Freemont		03/31/95
Counties: Sandusky		
Cities: Youngstown		12/31/94
Counties: Mahoning		
WISCONSIN	4	
Cities: Cashton		06/30/95
Counties: Monrtoe		
Cities: Milwaukee		12/31/94
Counties: Milwaukee		
Cities: Wild Rose		03/31/95
Counties: Adams, Columbia, Dodge, Fond du Lac, Green Lake, Jefferson, Juneau, Marinette, Marquette, Oconto, Outagamie, Ozaukee, Portage, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago		
Cities: Milwaukee		03/31/95
Counties: Milwaukee		
REGION: 06		
ARKANSAS	3	
Cities: Marshall		06/30/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Newton, Searcy		
Cities: Corning		06/30/95
Counties: Clay, Greene, Randolph		
Cities: Augusta, Cotton Plant, Des Arc, McCrory, Searcy, Hazen, Bald Knob, Carlisle		12/31/94
Counties: Cross, Jackson, Lonoke, Monroe, Prairie, White, Woodruff		
LOUISIANA	2	
Cities: Greensburg		06/30/95
Parishes: St. Helena		
Cities: Lake Charles		01/31/95
Parishes: Calcasieu		
NEW MEXICO	1	
Cities: El Rito, Ojo Caliente		06/30/95
Counties: Rio Arriba, Taos		
OKLAHOMA	1	
Cities: Konawa		05/31/95
Counties: Pottawatomie, Seminole		
TEXAS	12	
Cities: Lavelland, Morton, Lavelland		05/31/95
Counties: Cochran, Dawson, Hockley, Lynn, Terry, Yoakum		
Cities: Amarillo, Plainview, Hereford, Crosbyton, Friona, Dimmitt, Littlefield, Olton, Matador, Floydada, Muleshoe, Silverton		05/31/95
Counties: Bailey, Briscoe, Carson, Castro, Crosby, Deaf Smith, Floyd, Hale, Lamb, Motley, Parmer, Potter, Swisher		
Cities: Wichita Falls		06/30/95
Counties: Wichita		
Cities: De Leon, Goldthwaite, San Saba		11/30/94
Counties: Comanche, Mills, San Saba		
Cities: Pharr, Mission, Mercedes, Edcouch		12/31/94
Counties: Hidalgo		
Cities: Greenville, Ladonia, Commerce		01/31/95
Counties: Delta, Fannin, Hunt		
Cities: San Antonio		01/31/95
Counties:		
Cities: Port Arthur		03/31/95
Counties: Jefferson		
Cities: Cotulla, Pearsall, Carrizo Springs		03/31/95
Counties: Dimmit, Frio, La Salle		
Cities: La Marque, Galveston, Texas City		03/31/95
Counties: Galveston		
Cities: San Antonio, Somerset		03/31/95
Counties: Bexar		
Cities: Laredo		03/31/95
Counties: Webb		
REGION: 07		
IOWA	2	
Cities: Des Moines		05/31/95
Counties: Polk		
Cities: Des Moines		01/31/95
Counties: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Scott, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, Wright		
KANSAS	2	
Cities: Kansas City		06/30/95
Counties:		
Cities: Topeka		06/30/95
Counties: Shawnee, Wyandotte		
MISSOURI	5	
Cities: Ellington		05/31/95
Counties: Carter, Reynolds, Shannon		
Cities: St. Louis		11/30/94
Counties: St. Louis, St. Louis City		
Cities: St. Louis		01/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: St. Louis City		
Cities: Richland		11/30/94
Counties: Pulaski, Miller, Laclede, Camden		
Cities: Hamilton		11/30/94
Counties: Caldwell		
REGION: 08		
COLORADO	4	
Cities: Dove Creek		05/31/95
Counties: Dolores, San Iviguel, Montezuma		
Cities: Rocky Ford, Las Animas, La Junta		12/31/94
Counties: Crowley, Otero, Bent		
Cities: Norwood, Maturita		01/31/95
Counties: San Miguel, Montrose		
Cities: Ft. Lupton, Commerce City, Longmont, Brighton, Hudson, Frederick, Platteville, Ft. Morgan		05/31/95
Counties: Adams, Boulder, Denver, Weld, Morgan		
MONTANA	1	
Cities: Butte, Anaconda		01/31/95
Counties: Silver Bow, Deer Lodge		
NORTH DAKOTA	1	
Cities: Fargo, Moorhead, Minnesota		06/30/95
Counties: Cass, Clay, Minnesota		
SOUTH DAKOTA	1	
Cities: Isabel		03/31/95
Counties: Corson, Dewey, Ziebach		
UTAH	3	
Cities: Bicknell		05/31/95
Counties: Wayne		
Cities: Provo, Salt Lake City, Kearns		12/31/94
Counties: Salt Lake		
Cities: Enterprise		03/31/95
Counties: Washington		
WYOMING	1	
Cities: Guernsey, Torrington, Wheatland		01/31/95
Counties: Goshen, Platte		
REGION: 09		
ARIZONA	1	
Cities: Phoenix (South Central Phoenix)		11/30/94
Counties: Maricopa		
CALIFORNIA	16	
Cities: Susanville, Alturas, Westwood, Doyle		05/31/95
Counties: Lassen, Modoc (Southern Portion), Siskiyou (Southeastern Portion)		
Cities: Olivehurst		05/31/95
Counties: Butte, Colusa, Glenn, Sutter, Yuba		
Cities: Parlier, Huron, Orange Cove, Sanger, Earlimart, Kerman, Mendota, Selina		05/31/95
Counties: Fresno, Kern, Kings, Tulare		
Cities: Madera		11/30/94
Counties: Madera		
Cities: San Marcos, Encinitas, Ramona, Oceanside		12/31/94
Counties: San Diego		
Cities: San Francisco (Chinatown, North Beach, Telegraph Hill, Russian Hill, Nob Hill, Presidio, Marina, Parts of Inner and Outer Richmond)		12/31/94
Counties: San Francisco		
Cities: Los Angeles (Highland Park, Mt. Washington, Glessellpark, Lincoln Heights, Bell, Bell Gardens, Cudahy, El Sereno, Boyle Heights, East Los Angeles, City Terrace)		12/31/94
Counties: Los Angeles		
Cities: Union City, Newark, Fremont, Hayward		12/31/94
Counties: Alameda		
Cities: San Francisco (Mission District Including: Noe/Eureka Valley, Excelsior District, Berndi Heights, Glen Park, Crocker/Amayon)		01/31/95
Counties: San Francisco		
Cities: Porterville		01/31/95
Counties: Tulare		
Cities: San Francisco (South of Market, Tenderloin)		03/31/95
Counties: San Francisco		
Cities: Alviso, San Jose		03/31/95
Counties: Santa Clara		
Cities: Oakland (Downtown Oakland Including: Chinatown, Lake Merritt)		03/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Alameda		
Cities: San Fernando, Pacoima, Arlata, Lake View Terrace, Sunland, Sun Valley, Sylwer, North Hollywood, Van Nuys, Pauorama City, Graneda Hills, Mission Hills, Sepulveda, North Hills, Northridge, Resada, Canoga Park, Chatsworth, Tujunga		11/30/94
Counties: Los Angeles		
Cities: Los Angeles (Chinatown, Koreatown, Cranshaw Districts of Metropolitan Los Angeles)		01/31/95
Counties: Los Angeles		
Cities: Camarillo, Fillmore, Oxnard, Ojai, Saticoy		03/31/95
Counties: Ventura		
NEVADA	1	
Cities: Beatty, Eureka, Gerlach, Amargosa, Valley, Austin		05/31/95
Counties: Eureka, Lander, Washoe, Gerlach Township, Nye		
FED. STATES OF MICRO	1	
Cities: Kolonia, Pohnpei		12/31/94
Counties: Statewide/Nationwide Including Kosrae State, Pehnper State, Yap State, Chunk State		
REGION: 10		
IDAHO	3	
Cities: Glenns Ferry, Grand View		05/31/95
Counties: Elmore, Owyhee		
Cities: Plummer		06/30/95
Counties: Benewah, Kootenia, Idaho, Whitman, Spok, Washington		
Cities: Boise, Horseshoe Bend, Garden Valley, Pierce		11/30/94
Counties: Boise, Clearwater, Pierce, WA		
OREGON	3	
Cities: Phoenix		05/31/95
Counties: Jackson		
Cities: Cave Junction		06/30/95
Counties: Josephine		
Cities: Cornelius		03/31/95
Counties: Washington, Yamhill		
WASHINGTON	5	
Cities: Bremerton		06/30/95
Counties: Kitsap		
Cities: Okanogan, Tonasket, Brewster		03/31/95
Counties: Douglas, Okanogan		
Cities: Wenatchee		03/31/95
Counties: Chelan, Douglas, Washington		
Cities: Seattle, Mt. Vernon, Bellingham, Marysville		03/31/95
Counties: King, Skagit, Whatcom, Snohomish		
Cities: Renton		03/31/95
Counties: King		

[FR Doc. 94–13260 Filed 5–31–94; 8:45 am]
BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Supplemental Awards to Demonstration Grant Program for the Prevention of Alcohol and Other Drug Abuse Among High Risk Youth Grantees

AGENCY: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of Supplemental Funds for Currently Funded Grantees in the Center for Substance Abuse Prevention's (CSAP) Demonstration Grant Program for the Prevention of Alcohol and Other Drug Abuse Among High Risk Youth.

SUMMARY: This notice informs the public that CSAP is making available approximately $1 million in Fiscal Year 1994 for up to 20 supplemental awards to existing grantees in its Demonstration Grant Program for the Prevention of Alcohol and Other Drug (AOD) Abuse Among High Risk Youth (HRY). The supplemental funding is intended to assist these grantees to enhance and expand their AOD prevention goals to include outreach and appropriate risk reduction intervention activities for preventing HIV/AIDS, and to evaluate these activities.

Consistent with the House of Representatives Report 103–156, Committee on Appropriations, only currently funded HRY grantees are eligible to apply for supplemental funding. Further, CSAP agrees that the limited funds available can be used most effectively by building on the existing grant infrastructures and intervening with active clients.

To apply for a supplemental award, a HRY grantee must have a minimum of 18 months remaining in the current grant as of September 30, 1994. Awards will be limited to one year and can not exceed a total of $50,000 in direct and indirect costs. The receipt date for applications is June 24, 1994. The application receipt and review and the award process will be handled in an expedited manner. Applications will be reviewed for merit by a panel of expert Federal and non-Federal reviewers, and supplements will be awarded on the basis of merit and availability of funds no later than September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Rose Kittrell, M.S.W. Division of Demonstrations for High Risk Populations, Center for Substance Abuse Prevention, Rockwall II, room 9B–03, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0353.

Authority: Awards will be made under the authority of section 517 of the Public Health Service Act, as amended.

The Catalog of Federal Domestic Assistance (CFDA) number for the CSAP Demonstration Grant Program for the Prevention of Alcohol and Other Drug Abuse Among High Risk Youth is 93.144.

Dated May 24, 1994.

Richard Kopanda.

Acting Executive Officer, SAMHSA.

[FR Doc. 94–13203 Filed 5–31–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–4111–03]

Egan Resource Management Plan Approved Oil and Gas Leasing Amendment and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Egan Resource Management Plan (RMP) Approved Oil and Gas Leasing Amendment and Record of Decision (ROD) is available to the public. The ROD documents the Bureau of Land Management's (BLM) decision to select the Proposed Amendment as the Approved Amendment to the Egan RMP for Oil and Gas Leasing.

DATES: The Approved Amendment and ROD was available to the public on May 11, 1994.

ADDRESSES: The Approved Plan Amendment and ROD may be obtained from: Egan Resource Area Manager, Bureau of Land Management, 702 N. Industrial Way, HC 33, Box 33500, Ely, Nevada 89301–9408.

FOR FURTHER INFORMATION CONTACT: Brian C. Amme, Team Leader, at BLM's Ely District Office address listed above or telephone (702) 289–4865.

SUPPLEMENTARY INFORMATION: The Egan RMP Proposed Oil and Gas Leasing Amendment was prepared to bring the original Egan RMP into conformance with the Supplemental Program Guidance (SPG) for Oil and Gas Resources (BLM Manual 1624). This plan amendment describes and analyzes the options for management of oil and gas leasing on 3,841,633 acres of public lands in portions of Nye, Lincoln and White Pine Counties, Nevada. Alternatives analyzed included: (1) Proposed Amendment; (2) Continuation of Present Management (No Action); and (3) Standard Terms and Conditions (of the lease instrument).

The Approved Amendment allows 61 percent of the resource area to be open to leasing with standard leasing stipulations; 1.7 percent with No Surface Occupancy; 30.9 percent with Timing Limitations; and 6.4 percent with No Leasing.

In addition to the leasing determinations, the amendment describes the Standard Practices and Procedures (SPPs) for geophysical operations and Conditions of Approval (COAs) for exploratory and development drilling which will be enforced for each Notice of Intent (NOI) or Application for Permit to Drill (APD).

The Approved Amendment and ROD has been mailed to all interested individuals, agencies, interest groups and organizations who have participated in or have shown an interest in this planning process.

Dated: May 10, 1994.

Ronald B. Wenker,

Acting State Director, Nevada.

[FR Doc. 94–13246 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–HC–M

[NV–050–4410–08]

Notice of Availability of the Supplement to the Draft Stateline Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Supplement to the Draft Stateline Resource Management Plan and Environmental Impact Statement (RMP/EIS) is available to the public for a 90 day review period. The purpose of this supplement is to analyze four additional issues: (1) Ephemeral/perennial rangeland classification; (2) utility corridors; (3) mineral management in Wilderness Study Areas not designated by Congress; and (4) implications of the U.S. Fish and Wildlife Service's (FWS) Draft Tortoise Recovery Plan and Proposed Critical Habitat. These four issues have implications to all of the resources of the area, therefore a complete Alternative E was developed for consideration in this Supplement.

DATES: All written comments on the Supplement to the Draft RMP/EIS must be submitted to BLM in person or postmarked no later than August 19, 1994.

ADDRESSES: Written comments should be addressed to: Stateline Resource Area Manager, Attn. RMP Team Leader, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126.

Copies of the Supplement to the Draft RMP/EIS may be obtained from the above BLM Las Vegas District Office.

Public reading copies are available for review at the public libraries of Clark and Nye Counties, all government depository libraries and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5000, 1849 C Street, NW., Washington, DC

Public Room, Nevada State Office, 850 Harvard Way, Reno, Nevada

Las Vegas District Office at the above address

FOR FURTHER INFORMATION CONTACT: Jerry Wickstrom, RMP Team Leader, at BLM's Las Vegas District Office listed above or telephone (702) 647–5000.

SUPPLEMENTARY INFORMATION: The Supplement to the Draft is a complete alternative, Alternative E, to the five previous alternatives analyzed in the Draft RMP/EIS. All of these alternatives, along with public comment received during review of the Draft and also this Supplement, will be considered in preparation of a Proposed Resource Management Plan and Final Environmental Impact Statement.

The Supplement to the Draft provides resource recommendations that differ from the previous alternatives. Major variations include ephemeral/perennial range classification, revision and relocation of utility corridors, opening of wilderness study areas to mineral development if Congress does not designate, and incorporation of desert tortoise critical habitat and the Draft Desert Tortoise Recovery Plan. Areas of Critical Environmental Concern (ACECs) for protection of the desert tortoise have been reduced in size from the Preferred Alternative of the Draft RMP/EIS.

During the 90 day comment period, public workshops may be held to discuss specific issues of the Supplement. Dates and location of these workshops will be announced at least 15 days prior to the meetings. Public requests for specific workshops will be considered during the 90 day comment period.

No public hearings are scheduled to be held on this Supplement.

Dated: May 13, 1994.

Ronald B. Wenker,

Acting State Director, Nevada.

[FR Doc. 94–13247 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–HC–M

[CO–932–4214–10: COC 55323]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado; Correction

Summary: This action will correct the original notice to include a parcel of land that was incorrectly omitted.

In 58 FR 51648, 51649, dated October 4, 1993, page 51648, third column, under McDonald Creek Cultural Resource Area, T. 10 S., R. 104 W., sec. 32 is corrected to include SW¼SE¼NE¼. The acreage total is corrected to 4,166.23 acres of public lands in Mesa County.

Robert S. Schmidt,

Chief, Branch of Realty Actions.

[FR Doc. 94–13245 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–JB–M

National Park Service

Katmai National Park and Preserve, AK

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of termination.

TITLE: Environmental Impact Statement (EIS) on the Plan of Operations for the Katmai Scientific Drilling Project.

SUMMARY: The National Park Service (NPS) in cooperation with the U.S. Geological Survey (USGS) is terminating the EIS process for the proposed Plan of Operations for the Katmai Scientific Drilling Project in designated wilderness of Katmai National Park and Preserve, Alaska.

An Interagency Coordinating Group for Continental Scientific Drilling (ICG/CSD) composed of the USGS, the Department of Energy and the National Science Foundation originally requested permission from the NPS in October 1988 to conduct scientific drilling in the wilderness area in the Valley of Ten Thousand Smokes of Katmai National Park. The primary purpose of the proposal was to gain new understanding into the nature of explosive volcanic eruptions through scientific study of subsurface structures and deposits. Primary objectives of the proposal were to study the behavior of magma as it ascends in highly explosive eruptions, investigate the transport of metals in igneous systems, and test models for the cooling of volcanic vents. To achieve the objectives, three core holes were planned within two years of operation: one vertical hole to 4,000 feet near Novarupta, the site of the historic 1912 eruption; one hole to 3,300 feet deviated from the first hole; and one slant hole to about 700 feet through the ashflow sheet about three miles from Novarupta.

Pursuant to the National Environmental Policy Act (NEPA) a Notice of Intent to prepare an EIS was published in the **Federal Register**, Vol. 56 No. 19, on Tuesday, January 29, 1991. Public scoping meetings were held on April 15 and 16, 1992, in Anchorage and King Salmon, Alaska, respectively. Work ensued on the draft EIS, but due to internal reviews and revisions to the original proposal, a draft EIS was not released.

The ICG/CSD has formally withdrawn its application to the NPS for a permit to conduct scientific drilling and related research at Katmai National Park and Preserve. The ICG/CSD gave two primary reasons for requesting termination of the EIS process: (1) Increased costs since the original proposal, and (2) procedural decisions affecting preparation and completion of the EIS. The NPS, therefore, will not complete the EIS process, and a draft EIS on the Plan of Operations for the Katmai Scientific Drilling Project will not be released. If a proposal is revived at a future date, the NEPA process will be reinitiated.

COMMENTS: For comments or further information on this action contact: Joan B. Darnell, Chief, Division of Environmental Quality, National Park Service, 2525 Gambell Street, room 107, Anchorage, Alaska 99503, Telephone (907) 257–2648.

John M. Morehead,

Regional Director, Alaska Region.

[FR Doc. 94–13277 Filed 05–31–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 21, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 16, 1994.

Beth M. Boland,

Acting Chief of Registration, National Register.

ALASKA

Juneau Borough-Census Area

Juneau Downtown Historic District, Roughly, Franklin St. from Second St. to S of Ewing Way, Second and First Sts. from Franklin to Main St., and Front St., *Juneau*, 94000603

FLORIDA

Sarasota County

Sanderling Beach Club, 105 Beach Rd., Sarasota, 94000618

ILLINOIS

McLean County

White Building, 215–223 E. Douglas St., Bloomington, 94000612

MICHIGAN

Calhoun County

Advent Historic District, Roughly bounded by N. Washington Ave., Champion St., Hubbard St. and Greenwood Ave., Battle Creek, 94000623

Merritt Woods Historic District, Roughly bounded by Orchard, Emmett and Chestnut Sts. and northernmost parts of Woodmer Dr. and Crest Dr., Battle Creek, 94000622

Washtenaw County

Detroit, Hillsdale and Indiana Railroad—Saline Depot (Saline MRA), 402 N. Ann Arbor St., Saline, 94000619

Wayne County

Saint Paul Catholic Church Complex, 157 Lake Shore Rd., Grosse Pointe Farms, 94000621

Wall, Carlton D., House, 12305 Beck Rd., Plymouth, 94000620

MISSOURI

Jackson County

Fitzhugh—Watts' Mill (Santa Fe Trail MPS), 103rd St., Kansas City, 94000616

Santa Fe Trail—Minor Park, Kansas City, Trail Segments, (Santa Fe Trail MPS), Red Bridge Rd. E of jct. with Holmes Rd., Kansas City, 94000617

Saline County

Santa Fe Trail—Saline County Trail Segments (Santa Fe Trail MPS), Co. Rd. 416 (Rural Rt. 3) W of jct. with MO 41, Stanhope vicinity, 94000615

NEW MEXICO

Socorro County

Seco Ruin (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Chupadera vicinity, 94000614

OHIO

Cuyahoga County

Cedar Glen Apartments, 11424–11432 Cedar Glen Pkwy., Cleveland, 94000594

Lorain Avenue Commercial Historic District, 3202–5730 Lorain Ave., Cleveland, 94000596

Franklin County

Livingston, Alexander W., House, 1792 Graham Rd., Reynoldsburg, 94000593

Hamilton County

Church, John, Company Building (Hannaford, Samuel, & Sons TR), 14–16 E. Fourth St., Cincinnati, 94000592

Lucas County

Brandville School, 1133 Grasser St., Oregon, 94000595

OREGON

Marion County

Elsinore Theater, (Architecture of Ellis F. Lawrence MPS), 170 High St. SE., Salem, 91001575

PUERTO RICO

Sabana Grande Municipality

Supulveda, Berta, House, 37 Munoz Rivera St., Isabel Segunda, 94000624

SOUTH CAROLINA

Charleston County

Seaside School, 1097 SC 174, Edisto Island, 94000602

TENNESSEE

Unicoi County

Tilson Farm, 242 Little Branch Rd., Flag Pond, 94000613

TEXAS

Dallas County

Kessler Park Historic District (Oak Cliff MPS), Roughly bounded by Kidd Springs, Stewart, Oak Cliff, Plymouth, I–30, Turner, Colorado and Sylvan, Dallas, 94000607

King's Highway Historic District (Oak Cliff MPS), 900–1500 Blocks of King's Highway between W. Davis St. and Montclair Ave., Dallas, 94000606

Lake Cliff Historic District (Oak Cliff MPS), Roughly bounded by E. 6th St., Beckley Ave., Zangs Blvd. and Marsalis Ave., Dallas, 94000609

Lancaster Avenue Commercial Historic District (Oak Cliff MPS), Roughly bounded by E. Jefferson Blvd., S. Marsalis, E. 10th St., E. 9th St. and N. Lancaster Ave., Dallas, 94000605

Miller and Stemmons Historic District (Oak Cliff MPS), Roughly bounded by W. Davis St., Woodlawn Ave., Neches and Elsbeth, Dallas, 94000611

North Bishop Avenue Commercial Historic District (Oak Cliff MPS), Roughly bounded by 9th St., Davis St., Adams and Madison, Dallas, 94000608

Rosemont Crest Historic District (Oak Cliff MPS), Roughly bounded by 10th St., Oak Cliff Blvd., W. Davis St., N. Brighton Ave., W. 8th St. and Rosemont Ave., Dallas, 94000610

Tenth Street Historic District (Oak Cliff MPS), Roughly bounded by E. Clarendon Dr., S. Fleming Ave., I–35E, E. 8th St. and the E end of Church, E. 9th and Plum Sts., Dallas, 94000604

WISCONSIN

Chippewa County

Hotel Chippewa, 16–18 N. Bay St., Chippewa Falls, 94000598

Dane County

Eggiman, Ernest, House, 857 S. Shore Dr., Madison, 94000599

Kewaunee County

Ahnapee Brewery, 115 Navarino St., Algoma, 94000597

Lincoln County

Center Avenue Historic District, Roughly bounded by Cedar, Park, Third, Center and Seventh Sts., Merrill, 94000600

Waupaca County

Hansen, Jens, Wagon and Carriage Shop, 117 E. Fulton St., Waupaca, 94000601

[FR Doc. 94–13278 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Bureau of Reclamation To Negotiate Temporary Contracts With Umatilla Project Irrigation Districts for Water Service to Lands Outside District Boundaries

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation intends to negotiate temporary contracts for 1994 with the following Umatilla Irrigation Districts for the provision of water service to lands lying outside of their boundaries: Hermiston, Stanfield, Westland, and West Extension. These proposed temporary contracts will be subject to evaluation under the National Environmental Policy Act.

DATES: Comments on the proposed contracts may be submitted until June 10, 1994.

ADDRESSES: Written data, views, and comments concerning the proposed contracts may be submitted to the Bureau of Reclamation, Attention: PN–3323, 1150 N. Curtis Road, Boise, Idaho 83706–1234. Requests for copies of the proposed contracts may be placed by calling Larry Parsons at (208) 378–5346.

Dated: May 25, 1994.

Donald R. Glaser,

Acting Director, Program Analysis Office.

[FR Doc. 94–13319 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–94–P

Office of Surface Mining Reclamation and Enforcement

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare an environmental impact statement, extension of scoping.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is extending the public comment period on the notice of intent to prepare an environmental impact statement (EIS) published in the April 28, 1994 **Federal Register** (59 FR 21996). This will provide more time in which to comment on the scope of the analysis.

DATES: Written comments: OSM will accept written comments on the scope of the EIS until 5 p.m. Eastern Time on June 30, 1994.

Scoping meetings: OSM will meet with interested persons upon request to discuss the scope of the EIS until June 30, 1994. See "**ADDRESSES**" for the locations of the meetings.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record 660–NC, 1951 Constitution Avenue NW., Washington, DC 20240.

Scoping meetings: Upon request, OSM staff will be available to meet with interested persons, individually or in groups, during the comment period at the following OSM locations: Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220 (Contact: Chuck Wolf, 412–937–2897); Western Support Center, 1020 15th Street, Second floor, Denver, Colorado 80202 (Contact: Floyd McMullen, 303–844–3104); Knoxville Field Office, 530 Gay Street, suite 500, Knoxville, Tennessee 37902 (Contact: Gary Tucker, 615–545–4122); and Branch of Environmental and Economic Analysis, room 640, 800 North Capitol Street, Washington, DC 20002 (Contact: Andy DeVito, 202–343–5150).

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., room 640–NC, Washington, DC 20240; Telephone: 202–343–5150.

SUPPLEMENTARY INFORMATION: OSM published a notice of intent to prepare an EIS on April 28, 1994 (59 FR 21996).

The notice solicited comments on the scope of the analysis for a rulemaking that would (1) define the term valid existing rights (VER), and (2) determine the degree, if any, to which subsidence resulting from underground coal mining is subject to the prohibitions of section 522(e) of the Surface Mining Control and Reclamation Act of 1977.

The comment period for the notice of intent was scheduled to close on May 31, 1994. However, OSM has received requests for an extension in order to provide more time in which to comment on the scope of the analysis. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on June 30, 1994.

Dated: May 25, 1994.

Gene E. Krueger,

Acting Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 94-13208 Filed 5-31-94; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: JP Foodservice, Inc., 9830 Patuxent Woods Drive, Columbia, MD 21046.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

(i) Sky Bros., Inc.—Pennsylvania.

(ii) Illinois Fruit & Produce—Illinois.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-13280 Filed 5-31-94; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[AG Order No. 1882-94]

National Instant Criminal Background Check System

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Under section 103(b) of the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103-159, Title I, 107 Stat. 1536 (to be codified at 18 U.S.C. 922), the Attorney General is required by November 30, 1998, to establish a national instant criminal background check system (NICS). The NICS must be able to supply information immediately regarding whether receipt of a firearm by a prospective transferee would violate section 922 of Title 18, United States Code, or state law. Under section 103(a)(1) of the Brady Act, the Attorney General is required by June 1, 1994, to determine the type of computer hardware and software that will be used to operate the NICS and the means by which state criminal records systems and the telephone or electronic device of licensees will communicate with the national system. Under section 103(a)(3) of the Brady Act, the Attorney General is also required by June 1, 1994, to notify each state of these determinations.

This notice by the Attorney General provides the required information concerning the NICS to each state. It explains how the NICS will operate, how states will interface with the federal segment of the NICS, and how licensees will communicate with the NICS. Technological advances can be expected in the course of NICS development. Therefore, additional detailed information may be published regarding hardware and software for the NICS before its establishment. Final functional specifications for the NICS will be developed and published to enable the system to be operational by November 30, 1998. Regulations detailing the duties and obligations of the federal, state, and local agencies responsible for NICS development and operation, including security and privacy of the information contained in the system, will be published in the future.

EFFECTIVE DATE: This determination is effective on June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Virgil L. Young, Jr., Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation, room 11854, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20537-9700, (202) 324-5084.

Notice of Determination

As required of me as Attorney General under section 103(a)(1) of the Brady Handgun Violence Prevention Act, I hereby determine that the NICS will include information from all of the states and the federal government, concerning whether receipt of a firearm by a prospective transferee would violate section 922 of Title 18, United States Code, or state law. A "state segment" of the NICS will consist of information provided at the state and local levels, and a "federal segment" will contain information from federal agencies. All background checks initiated by federal firearms licensees will go through the appropriate state or local law enforcement information system, as determined by the state, to reach the federal segment of the NICS.

The NICS will build upon existing information systems. One of these systems is the National Crime Information Center (NCIC) Interstate Identification Index, which includes state as well as federal criminal history records. Another is the future Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation (FBI), which when completed will provide the foundation for remote positive identification capabilities to state and local agencies. Records on wanted persons are currently available through NCIC. Other possible federal data files include Department of Defense records on persons who have been dishonorably discharged, Veterans Affairs Department records on mental commitments, Immigration and Naturalization Service records on illegal aliens, and Department of State records on individuals who have renounced their U.S. citizenship. The Department of Justice intends to secure such information directly from those agencies for inclusion in the federal segment of the NICS pursuant to section 103(e)(1) of the Brady Act.

All criminal records provided through the NICS will be supported by fingerprints. Some means of identification also will be associated with any other information included in the NICS. Fingerprints will be included with this information whenever possible.

The NICS itself will not approve or deny the transfer of a firearm. The NICS cannot by itself resolve important questions of fact and interpretation. Rather, a representative of a state or local criminal justice agency in the state where the firearm transaction is proposed to occur will make this decision.

There are several reasons why the state or local agency should make this determination. First, many individuals have the same names, and some individuals use several names. Before denial of a firearm transaction, there must be a determination that the prospective transferee is the same individual associated by the NICS with disqualifying information. The system cannot decide such questions of identity

on its own. Second, information provided by the NICS may require interpretation. For instance, some information could represent a violation of the laws of one state but not another. Third, state and local agencies have disqualifying information that does not lend itself to storage or indexing at the federal level. An example is the observed use of illegal drugs in the absence of an arrest. Finally, because of state confidentiality laws and other restrictions, in some states, only state officials may review some of the records needed to make disqualification determinations. These restrictions apply, for example, to information about commitments to mental institutions. States and localities will use any relevant disqualifying information that they have in their files when making decisions concerning approval or denial of a firearm transaction.

Background checks from federal firearms licensees will go first to the state segment, possibly through local agencies, at the discretion of the state. States and localities may deny a firearm transaction without contacting the federal segment of the NICS if they find information in their own data files that disqualifies the prospective transferee. If no disqualifying information is found in state or local data files, the state will transmit the background check to the federal segment.

State information systems will communicate with the federal segment directly via their NCIC interface. Each state will determine the specific electronic means and procedures needed by the licensees in that state to access the state segment and the federal segment through the state. States will offer telephonic access at a minimum, and may offer other electronic means of access in addition to the telephone. If the state system allows automated access, then training for licensees will be provided by the state.

As part of the notification that the NICS is operational (by November 30, 1998), the Attorney General will inform licensees of any access options and interface requirements for the NICS that are available within their states. Licensees will not be required to use expensive equipment to access the federal segment.

The FBI will supervise the development and use of information in the federal segment for background checks with the full cooperation and support of other federal agencies having data files with potentially disqualifying information. The FBI will develop one consolidated federal response to a request for a background check. The response will be either (1) a notification that no information was found about the prospective transferee in the federal segment, or (2) a list that summarizes any potentially disqualifying information found in the federal segment, with a brief description of the person to whom the information relates. The FBI will provide this response to the state that requested the background check within 30 seconds of receiving that state's request. If a part of the federal response is unavailable within that time, then the consolidated response will identify the specific file information that is not yet available. The FBI will thereafter send the missing information to the state as soon as it is available.

A state of local agency representative where the firearm transaction is to occur will determine whether the transaction is (1) approved, (2) denied, or (3) "not approved at this time because part of the background check has not been completed." The state or local agency will communicate only this determination to the licensee, and not the information leading to the determination.

The use of any state or federal information in the NICS will be supervised and administered exclusively by criminal justice agencies. State will use security measures to ensure the integrity of the NICS, such as licensee terminal restrictions, telephone call-back, and caller ID. States will assign a unique transaction number for each approval and denial of a firearm transaction.

The Attorney General intends to provide access to appropriate information in the NICS for purposes of carrying out the Brady Act, and does not intend to charge for such access provided that there are sufficient appropriations. State and local agencies may, however, in accordance with their statutes, charge discretionary fees to recover their costs for background checks.

Dated: May 26, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94-13328 Filed 5-31-94; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 94-4]

Scot Kazalla, D.D.S.; Revocation of Registration

On July 2, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Scot Kazalla (Respondent), 2910 University Drive, Coral Springs, Florida proposing to revoke his DEA Certificate of Registration, BK087152, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was that: (1) Respondent lacked authorization to handle controlled substances in the State of Florida; (2) Respondent was convicted of a felony offense related to controlled substances; and (3) Respondent's continued registration was inconsistent with the public interest.

Respondent requested a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. On November 18, 1993, the Government filed a motion for summary disposition. The motion was supported by the Order of Emergency Suspension of the License issued by the State of Florida, Department of Professional Regulation, dated December 9, 1992.

On November 19, 1993, the administrative law judge issued an order which allowed the Respondent twenty days to file a response to the Government's motion. Respondent failed to file a response. On December 21, 1993, the administrative law judge issued her opinion and recommended decision, granting the Government's motion for summary disposition and recommending revocation of Respondent's DEA Certificate of Registration. No exceptions were filed and, on January 21, 1994, the administrative law judge transmitted the record of these proceedings to the Administrator. The Deputy Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

The administrative law judge found that the Respondent is not currently authorized to practice dentistry in Florida. Based upon his lack of a valid dental license, Respondent is precluded from handling controlled substances in the State of Florida.

The Deputy Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See James H. Nickens, M.D., 57 FR 59847 (1992); Elliott F. Monroe, M.D., 57 FR 23246 (1992); Bobby Watts, M.D., 53 FR 11919 (1988); Robert F. Witek,

D.D.S., 52 FR 47770 (1987); and cases cited therein.

Since there is no dispute about Respondent's lack of authority to handle controlled substances in the State of Florida, the administrative law judge properly granted the Government's motion for summary disposition. When no question of fact is involved, a plenary, adversarial administrative proceeding with the full panoply of due process rights is not obligatory. See Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); *United States v. Consolidated Mines and Smelting Company, Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971); NLRB v. International Association of Bridge, Structural and Ornamental Ironworks, AFL–CIO, 549 F.2d 634 (9th Cir. 1977).

Having considered the facts and circumstances in this matter, the Deputy Administrator concludes that Dr. Kazalla's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Florida. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BK0879152, previously issued to Scot Kazalla, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be and they hereby are, denied. This order is effective June 30, 1994.

Dated: May 25, 1994.

Stephen H. Greene,

Deputy Administrtor.

[FR Doc. 94–13209 Filed 5–31–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,405]

General Motors Corporation, Inland Fisher Guide Division, Syracuse, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

On April 22, 1994, the United Auto Workers, Region 9 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was published in the **Federal Register** on April 7, 1994 (59 FR 16663).

The union stated that a production relationship existed between General Motors' (GM) Tarrytown plant which was certified and Inland Fisher Guide in Syracuse. The Department will also review other certified G.M. plants to determine whether the Syracuse workers were adversely affected because of imports.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–13296 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 13, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 13, 1994.

The petitions filed in this case are available for inspection at the Offices of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of may, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assitance.

APPENDIX

Petitoner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
BP Exploration and Oil, Inc (Co)	Houston, TX	05/16/94	04/27/94	29,861	Oil & Gas Exploration Production.
Wolverine International (Wkrs)	Bay City, MI	05/16/94	04/27/94	29,862	Ladies' Robes & Auto Seat Covers.
Sealy Mattress (UTWA)	Watertown, WI	05/16/94	04/28/94	29,863	Mattresses.
Philips Consumer Electronics Co (USWA).	Williamsport, PA	05/16/94	05/02/94	29,864	Electronic Components.
Prudential Insurance & Financial (Wkrs).	Newark, NJ	05/16/94	05/01/94	29,865	Insurance and Financial Services.
Whitehead Mfg Co (UAW)	Detroit, MI	05/16/94	05/03/94	29,866	Metal Stampings.
Struthers-Dunn, Inc & Hi–G. Co (IUE)	Pitman, NJ	05/16/94	04/29/94	29,867	Electro-Mechanical & Magnetic Relays.
Pat Fashions (ILGWU)	Wind Gap, PA	05/16/94	05/03/94	29,868	Ladies' Sportswear.
McCord Winn Textron (IUE)	Winchester, MA	05/16/94	04/19/94	29,869	Fuel Pump Parts.
ITT Automotive (UAW)	Selmer, TN	05/16/94	05/02/94	29,870	Automotive Security Door Alarm Switches.

APPENDIX—Continued

Petitoner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Digital Equipment Corp (Co)	Maynard, MA	05/16/94	04/29/94	29,871	European Support Group.
Baxter-Bentley Div (Wkrs)	Irvine, CA	05/16/94	04/26/94	29,872	Cardiovascular Products.
Allied Signal (Wkrs)	Teterboro, NJ	05/16/94	05/06/94	29,873	F–16 Component Parts.
Alcoa Recycling (Wkrs)	Knoxville, TN	05/16/94	05/02/94	29,874	Recycle Aluminum.
Alcoa Recycling (Wkrs)	Maryville, TN	05/16/94	05/02/94	29,875	Recycle Aluminum.
Posso Corporation (Wkrs)	Kerrville, TX	05/16/94	05/03/94	29,876	Wood & Plastic Cassette & Tape Storage.
Penny Sportswear, Inc (Wkrs)	Weissport, PA	05/16/94	05/04/94	29,877	Ladies' Skirts, Pants & Shorts.
Guardian Industries Corp (Wkrs)	Falconer, NY	05/16/94	04/20/94	29,878	Flat Glass Mirrors.
ARCO Oil and Gas Co (Co)	Dallas, TX	05/16/94	05/05/94	29,879	Oil and Gas.
ARCO Oil and Gas Co. (Co)	Houston, TX	05/16/94	05/05/94	29,880	Oil and Gas.
Karg Tanning (ACTWU)	Johnstown, NY	05/16/94	05/05/94	29,881	Tanned Leather.
Pan America (ACTWA)	Gloversville, NY	05/16/94	05/05/94	29,882	Tanned Leather.

[FR Doc. 94–13299 Filed 5–31–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,206]

Vought Aircraft Co., Dallas, TX; Notice of Negative Determination on Reconsideration

On April 7, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice was published in the **Federal Register** on April 15, 1994 (15 FR 18162).

Both the company and the union claimed that one of Vought's customers ordered the production of subassemblies for its commercial aircraft to be transferred to firms in selected countries offshore to create a "market pull" for the sale of its aircraft.

On reconsideration the company submitted new data on the number of hours by shop and function which are offloaded to firms in selected countries overseas. The new data shows that the number of hours offloaded do not constitute a substantial amount of the total hours by shop and function and therefore did not contribute importantly to employment, sales and/or production declines at Dallas.

The Department would entertain a new petition when the amount of production offloaded overseas constitutes a substantial portion of the production at the Dallas facility.

The Department certified (TA–W–28,470) Vought workers producing manual fiberlite fabrications of aircraft skin panels (Job Family 7380) because Vought Aircraft shifted a significant portion of its manual fiberlite fabricating offshore thereby increasing company imports of aircraft skin panels in the first-quarter of 1993.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the Vought Aircraft Company in Dallas, Texas.

Signed at Washington, DC, this 23rd day of May 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–13298 Filed 5–31–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,379]

Carter Automotive Company, Inc., a Federal-Mogul Co.; LaFayette, TN; Notice of Negative Determination Regarding Application for Reconsideration

By an application received April 28, 1994, Local #1988 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was published in the **Federal Register** on March 30, 1994 (58 FR 14876).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation files show that the workers produced automotive fuel systems.

The union submitted additional information showing that components for fuel pumps and filter pump assemblies were imported to Lafayette for further production.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. All production was transferred to another corporate domestic plant in Indiana. A transfer of production to another domestic location would not provide a basis for a worker group certification.

The investigation files shows that the component parts (adapters, bodies, motors, etc.) used in the assembly of fuel systems which were purchased offshore were not produced at Lafayette during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–13295 Filed 5–31–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,789]

International Paper Company; Presque Isle, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 25, 1994 in response to a worker petition which was filed on April 18, 1994 on behalf of workers at

International Paper Company, Presque Isle, Maine.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–29,721). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–13294 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,554]

O&K, Incorporated, Batavia, NY; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated May 13, 1994, Local #78 of the International Brotherhood of Boilermakers requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on April 29, 1994 and will soon be published in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the workers performed warehousing, material handling including parts supply, technical services and general administrative functions for the sales and service of O&K front end loaders.

The Department's denial was based on the fact that the workers do not produce an article within the meaning of section 222(3) of the Trade Act. The Department has consistently determined that the performance of services does not constitute the production of an article and this determination has been upheld in the U.S. Court of Appeals. Accordingly, warehousing, material handling and general administrative duties, by themselves, do not constitute the production of an article.

All production of articles at Batavia ceased in March, 1992. Section 223(b)(1) of the Trade Act does not permit the certification of workers who were laid off prior to one year of the date of the workers' petition. The date of the union's petition is February 4, 1994. Workers laid off with the cessation of production at Batavia in March 1992 could not be covered under any certification whose petition is dated February 4, 1994.

The investigation files show that the workers were initially certified for TAA under TA–W–24,230, issued on June 14, 1990, when the workers were still producing front end loaders. However, this is not the case now since Batavia's function has changed from a producer to an importer of front end loaders. For importers, increased imports should have a positive impact on employment not the other way around.

The worker adjustment assistance program was not intended for everyone who is in some way affected by imports but only for those workers who were producing an article in the relevant period and were adversely affected because of increased imports of like or directly competitive products which contributed importantly to declines in employment and sales or production at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–13297 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agrement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than June 13, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than June 13, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23rd day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received at Governor's office	Petition No.	Articles produced
General Electric Company; Motors (IUE).	Linton, IN	05/12/94	NAFTA–00110	Fractional horsepower electric motor parts.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Elf Atochem; Tacoma ( )	Tacoma, WA	05/16/94	NAFTA–00111	Industrial chemicals for forestry; i.e. chlorine.
NEC America, Inc.; PBX, Radio & Transmission (Wkrs).	Hillsboro, OR	05/13/94	NAFTA–00112	Cellular telephone mfg.
Infotec Development Inc.; Federal Systems Division (Wkrs).	Santa Ana, CA	05/03/94	NAFTA–00113	Computer integrated information systems (ie. GIS)
Portac, Inc.; Portac, Tacoma ( )	Tacoma, WA	05/17/94	NAFTA–00114	Softwood lumber (Hemlock and Fir) for construction of homes.
Canon Business Machines. Inc. (Wkrs).	Costa Mesa, CA	05/18/94	NAFTA–00115	Assembly of word processors and cassettes.
Fisher Price (Wkrs)	Brownsville, TX	05/20/94	NAFTA–00116	Toys.
Lennon Foods, Inc. ( )	Seattle, WA	05/19/94	NAFTA–00117	Processed pork and meat products.
Laurel Street Art Club Inc.; Art Workers Division (Wkrs).	Hebron, KY	05/20/94	NAFTA–00118	Production of art works for furniture retailers.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of May, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,524; Vygen Corp., Ashtabula, OH

TA–W–29,681; National Steel Pellet Co., Keewatin, MN

TA–W–29,716; Armco Stainless & Alloys Products, Bridgeville, PA

TA–W–29,569; Display, Inc., Lewistown, PA

TA–W–29,590; Oahu Sugar, Waipahu, HI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,608; Koch Gathering Systems, Inc., Russell, KS

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,546; Apache International, A Div., of Apache Corp., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,607; Koch Service, Inc., Roosevelt, UT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,705; Widemer Bros. Well Service, Inc., Tioga, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,754; Any Wash, Inc., Hialeah, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,578; General Well Service, Inc, Roosevelt, UT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,535; Aviation Transport Services of Texaco, Inc, Houma, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,769; Charles Bluestone Co., Elizabeth, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,521; IBM Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,682; J.C. Penney Co., Inc., Drapery Fabrication Center, Custom Decorating Sales Center, Newark, DE

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,558; Genesco, Inc., (GPAB), Nashville, TN

TA–W–29,598; Genesco, Inc., Warehouse 63, Nashville, TN

TA–W–29,600; Genesco, Inc., Fayetteville, TN

TA–W–29,601; Genesco, Inc., Chapel Hill, TN

TA–W–29,602; Genesco, Inc., (Genstar), Nashville, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,653; Lockheed—Ft Worth Div., Ft Worth, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,391; Teledyne Controls, West Los Angeles, CA

US imports of parts for civilian and military aircraft declined absolutely in the twelve month period of October 1992-September 1993 as compared to the same period a year earlier.

TA-W-29,677; Leviton Manufacturing Co., Inc., Melville, NY

A corporate decision was made to transfer certain product lines from the subject firm to more modern facilities in the US.

TA-W-29,678; Maspeth, Queens, NY

The services provided by the subject firm did not originate at a production facility whose workers met the statutory criteria for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29,709; Abbott & Co. dba ABEPP Acquisition Crop., Manchester, TN

A certification was issued covering all workers separated on or after March 25, 1993.

TA-W-29,565; Crown Pacific Inland Lumber, Spokane, WA

A certification was issued covering all workers separated on or after February 17, 1993.

TA-W-29,555; Polo Clothing Co., Inc., Lawrence, MA

A certification was issued covering all workers separated on or after February 8, 1993.

TA-W-29,660; Portco Corp., Twine Div., Vancouver, WA

A certification was issued covering all workers separated on of after March 11, 1993.

TA-W-29,628; Western Publishing Co., Racine, WI

A certification was issued covering all workers separated on or after March 5, 1993.

TA-W-29,793; Dosimeter Corp., of America, Cincinnati, OH

A certification was issued covering all workers separated on or after April 12, 1993.

TA-W-29,741; Mallard I.V., Inc., McPherson, KS

A certification was issued covering all workers separated on or after March 28, 1993.

TA-W-29,450; Gandalf Systems Corp., Cherry Hill, NJ

A certification was issued covering all workers separated on or after January 11, 1994.

TA-W-29,643; Colebrook-Terry, Inc., Colebrook, PA

A certification was issued covering all workers separated on or after January 30, 1994.

TA-W-29,645 & TA-W-29,646; Colebrook-Terry, Inc., Leola, PA and, York, PA

A certification was issued covering all workers separated on or after February 15, 1993.

TA-W-29,771; Milco Industries, Inc., Bloomsburg, PA

A certification was issued covering all workers separated on or after April 8, 1993.

TA-W-29,696; Allen Drilling Co., Great Bend, KS

A certification was issued covering all workers separated on or after March 19, 1993.

TA-W-29,728 and TA-W-29,728A; Wundies Enterprises, Inc., Liberty, PA and Wellsboro, PA

A certification was issued covering all workers separated on or after April 1, 1993.

TA-W-29,662; Rose Oil Co., Rosehill, KS

A certification was issued covering all workers separated on or after March 15, 1993.

TA-W-29,572; Brooks Manufacturing, Inc., Fremont, NC

A certification was issued covering all workers separated on or after February 16, 1993.

TA-W-29,635; D.P.M., Inc/Sans Souci Lingerie, Poplar Bluff, MO

A certification was issued covering all workers separated on or after March 7, 1993.

TA-W-29,665, TA-W-29,666, TA-W-29,667, TA-W-29,668; J.E. Morgan Apparel, Wadesboro, NC

TA-W-29,669, TA-W-29,670; J.E. Morgan Apparel, Albemarle, NC

TA-W-29,671; J.E. Morgan Apparel, Pageland, SC

TA-W-29,672; J.E. Morgan Apparel, Great Falls, SC

A certification was issued covering all workers separated on or after March 14, 1993.

TA-W-29,584; Maybelle Manufacturing, Wiggins, MS

A certification was issued covering all workers separated on or after February 24, 1993.

TA-W-29,495; S.B. Manufacturing Co., Inc., Saddlebrook, NJ

A certification was issued covering all workers separated on or after January 25, 1994.

TA-W-29,575; Peterson Shake Co., Inc., Amanda Park, WA

A certification was issued covering all workers separated on or after February 16, 1993.

TA-W-29,534; Cowden Manufacturing Co., Lancaster, KY

A certification was issued covering all workers separated on or after January 26, 1993.

TA-W-29,633; Centurion International Manufacturing, Lee Park, Wilkes Barre, PA

A certification was issued covering all workers separated on or after March 10, 1993.

TA-W-29,603; Hughes Christianson Co., Headquartered in Houston, TX & Operating at Various Locations in the Following States: A; AK, B; AL, C; AR, D; AZ, E; CA, F; CO, G; CT, H; IL, I; KS, J; KY, K; LA, Ll; MI, M; MO, N; MS, O; MT, P; ND, Q; NH, R; NM, S; OH, T; OK, U; OR, V; PA, W; SC, X; TX, Y; UT, Z; WI, AZ; WV, ZB; WY

A certification was issued covering all workers separated on or after January 11, 1993.

TA-W-29,557, TA-W-29,594, TA-W-29,595, TA-W-29,596, TA-W-29,599; Genesco, Inc., Danville, KY, Fulton, MS, Iuka, MS, Hohenwald, TN, Waynesboro, TN

TA-W-29,597; Genesco, Inc., J&M Plant, Nashville, TN

A certification was issued covering all workers separated on or after February 16, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either——

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00080; Sunshine Rope Manufacturing, Inc., Miami, FL

The investigation revealed that criteria (1) was not met in conjunction with the requirements of Section 506 (b)(2) of the Act. Worker separations from the subject firm occurred prior to December 8, 1993, the earliest date for which certification under NAFTA–TAA applies.

NAFTA–TAA–00092; Indal Limited, Season-All Industries, Indiana, PA

The investigation revealed that criteria (1) was not met in conjunction with the requirements of Section 506 (b)(2) of the Act. Worker separations from the subject firm occurred prior to December 8, 1993, the earliest date for which certification under NAFTA–TAA applies.

NAFTA–TAA–00079; Swiss Precision Aproducts, Inc., Lake Havasu, AZ

The investigation revealed that criterion (3) and criterion (4) were not met. A survey of the subject plant's customers revealed that customers did not import small high precision connectors, pins, & contractors from Mexico or Canada during the relevant period.

NAFTA–TAA–00109; Wilmington Steel & Construction Co., Inc., New Castle, PA

The investigation revealed that criterion (3) and criterion (4) were not met. A survey conducted with customers to whom Wilmington Steel submitted bids for the fabrication of structural steel products revealed that the contacts that Wilmington Steel did not receive were awarded to domestic firms & all production was done domestically.

NAFTA–TAA–00078; Radform Tool Co., East McKeesport, PA

The investigation revealed that criterion (3) and criterion (4) were not met. Radform Tool Company closed on April 26, 1994, and all workers were permanently laid off at that time. A survey of major customers revealed that customers did not import machines tooling or replacement parts for nuclear & steam power systems from Canada or Mexico. Radform Tool did not shift production to Mexico or Canada.

NAFTA–TAA–00070; Quartet Fashions, Inc., Sportette Industries, Inc. Bath, PA

NAFTA–TAA–00102; Quartet Fashions, Inc., Denise Barry Fashions, Inc., Nazareth, PA

NAFTA–TAA–00103; Quartet Fashions, Inc., Sportette Industries, Inc., Nazareth, PA

The investigation revealed that criteria (3) and criteria (4) were not met. A survey conducted with major customers revealed that respondents did not import women's skirts and jackets from Mexico or Canada during the relevant time period. Customer imports of women's blouses and pants from Mexico or Canada were a very small proportion of the customers' total purchases & consequently, did not contribute importantly to production and employment declines at the subject firms.

Affirmative Determination NAFTA–TAA

NAFTA–TAA–00086; Pope & Talbot, Inc., Port Gamble, WA

A certification was issued covering all workers of Pope & Talbot, Inc., Port Gamble, WA separated on or after December 8, 1993.

NAFTA–TAA–00077; Data Products Corp., Norcross, GA

NAFTA–TAA–00077A; Staffing Resources, Norcross, GA

NAFTA–TAA–00077B; ATS Staffing, Norcross, GA

NAFTA–TAA–00077C; Maristaff Temporary Services, Inc., Atlanta, GA

A certification was issued covering all workers who were engaged in the production of typewriter ribbons separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of May, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: May 24, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–13293 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,350]

The Western Company of North America a/k/a Western Oceanic Services, Inc. Headquartered in Houston, TX and Operation at Various Locations in the Following States: TA–W–27,350A Alabama; TA–W–27,350B Mississippi; TA–W–27,350C Louisiana; TA–W–27,350D Colorado; TA–W–27,350E New Mexico; TA–W–27,350F Texas; TA–W–27,350G Kansas; TA–W–27,350H Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of The Western Company of North America, headquartered in Houston, Texas. The certification notice was issued on July 30, 1992 and published in the **Federal Register** on August 18, 1992 (58 FR 37173).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages for The Western Company of North America were

reported under a UI tax account for Western Oceanic Services, Inc. in Houston, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA-W-27350 is hereby issued as follows:

All workers of The Western Company of North America a/k/a Western Oceanic Services, Inc., Houston, Texas (TA-W-27,350) and operating at various locations in the following cited states, who became totally or partially separated from employment on or after May 27, 1991, are eligible to apply for adjustment assistance under Section 223 of the trade Act of 1974.

TA-W-27,350A Alabama
TA-W-27,350B Mississippi
TA-W-27,350C Louisiana
TA-W-27,350D Colorado
TA-W-27,350E New Mexico
TA-W-27,350F Texas
TA-W-27,350G Kansas
TA-W-27,350H Oklahoma

Signed at Washington, DC, this 19th day of May 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-13301 Filed 5-31-94; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Healthcare Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Wednesday, June 22, 1994, in suite N-3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to healthcare reform for employee benefit plans covered by ERISA.

The purpose of the June 22 meeting is to receive testimony from invited interested persons on the impact of proposed federal healthcare reform legislation on self-insured, ERISA-covered employee welfare benefit plans as well as participating employees and their families. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 17, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 17, 1994.

Signed at Washington, DC this 25th day of May, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94-13228 Filed 5-31-94; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1 p.m. until 3:30 p.m., Wednesday, June 22, 1994, in suite N-3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210/

This work group was formed by the Advisory Council to study issues relating to reporting and disclosure for employee benefit plans covered by ERISA.

The purpose of the June 22 meeting is to hear testimony on the disclosure of plan information to participants and beneficiaries as identified in the Department of Labor's Disclosure Request for Information which appeared in the Monday, December 27, 1993 edition of the **Federal Register**, page 68339. The principal sources of information for such disclosure include summary plan descriptions, summary annual reports and individual benefit statements. The work group is interested in identifying information that is useful to and used by participants as well as the costs and benefits of any proposed changes. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 17, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 17, 1994.

Signed at Washington, DC this 25th day of May, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94-13327 Filed 5-31-94; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Thursday, June 23, 1994, in suite N-3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the June 23 meeting is to take testimony regarding five areas of defined contribution plans, i.e., the role of the trend toward participant self-directed investments in determining benefit levels; the impact of the current regulatory scheme on benefit levels for defined contribution plans in general and 401(k) plans in particular; from a retirement policy perspective, the level of benefits provided by defined

contribution plans in general and 401(k) plans in particular; mandatory employer contributions to defined contribution plans as a possible source of increase in the overall retirement income for most employees; the impact of increased educational efforts on benefit levels; and the impact of increased disclosure on benefit levels. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 17, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 17, 1994.

Signed at Washington, DC this 25th day of May, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–13226 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System WPPSS Nuclear Project No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing a license amendment in response to a Washington Public Power Supply System (the licensee) request for the WNP-2 nuclear plant, located in Benton County, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed action would change the license to permit upgrading the analog main steam line (MSL) radiation monitors to digital monitors. The proposed action is in accordance with the licensee's November 30, 1993, amendment request.

The Need for the Proposed Action

The utility needs the MSL analog to digital radiation monitor upgrade because General Electric no longer manufactures the analog monitor currently installed at the plant. Thus, the utility is not sure replacement parts will be available in the future. The monitors are also becoming obsolete. The proposed change represents an unreviewed safety question, as defined in 10 CFR part 59. The digital monitors use a microcomputer, and have electronic circuits that could be susceptible to common-mode failures. Failure mechanisms include software, electrostatic discharge, and electromagnetic and radio frequency interference. Thus, the licensee needs prior NRC approval and a license amendment to make the change.

Environmental Impacts of the Proposed Action

The proposed exemption would not adversely affect radiation monitor functions since the licensee determined the replacement monitor is an exact replacement for the analog monitors. The MSL radiation monitors detect fuel element failures, and trip the main condenser mechanical vacuum pump and associated discharge valve. The new digital monitors will continue to do these functions. The digital monitor has present day state of the art technology and features, including improved drift rate, instrument accuracy and resolution, and reliability. The existing analog monitors have problems with signal drift, spiking, inaccuracy, and channel drawer failures. The new installation will use the existing ion chamber detectors and associated inplant cabling.

Issuing this exemption will not increase accident probability or result in any environmental impacts beyond those evaluated in the WNP-2 Final Environmental Statement. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on March 10, 1994 (59 FR 11334). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Any alternative with equal or greater environmental impact does not need to be evaluated since the Commission has concluded that the environmental effects of the proposed action are not significant.

The principal alternative would be to deny the license amendment request. This would not reduce the facility's environmental impact, and would result in a larger expenditure of licensee resources to maintain, calibrate, and test the MSL radiation monitors.

Alternative Use of Resources

This action does not use resources not previously considered in the Final Environmental Statement related to operation of the Washington Nuclear Project, Unit No. 2 dated December 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and consulted the Washington State official. The state official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmentall impact statement for the proposed exemption.

For further details with respect to this action, see the November 30, 1994, request for license amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated: Dated at Rockville, Maryland, this 25th day of May 1994.

For The Nuclear Regulatory Commission
Theodore R. Quay,
Director, Project Directorate IV-3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.
[FR Doc. 94-13249 Filed 5-31-94; 8:45 am]
BILLING CODE 7590-01-M

[IA 94-12]

Kelli J. Hinds; Muncie, Indiana; Order Prohibiting Involvement In Licensed Activities (Effective Immediately)

I

Ball Memorial Hospital, Muncie, Indiana (Ball or Licensee) is the holder of Byproduct Material License No. 13-00951-03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The license authorizes the use of byproduct material for medical purposes pursuant to 10 CFR part 35 (*e.g.*, as radiopharmaceuticals identified in 10 CFR 35.100, 35.200 and 35.300; as brachytherapy sources identified in 10 CFR 35.400; as sealed sources identified in 10 CFR 35.500; and as prepackaged in vitro kits identified in 10 CFR 31.11). The facility where licensed materials are authorized for use and storage is located at 2401 University Avenue, Muncie, Indiana. The license, originally issued on August 19, 1958, was last amended on February 24, 1994. The license was due to expire on December 31, 1993, but continues in effect pursuant to 10 CFR 30.37(b).

Ms. Kelli J. Hinds was employed by Ball from October 17, 1988, until her employment was terminated by Ball effective September 23, 1993. She most recently held the position of Acting Chief Nuclear Medicine Technologist at Ball with responsibilities involving compliance with NRC requirements for the use of byproduct materials.

II

On July 19, 1993, the NRC Region III Office received information from an individual outside of the Licensee's organization that the Licensee was investigating an allegation that it received from one of its nuclear medicine technologists in early June 1993. NRC contacted the Licensee to verify the information and determined that, allegedly, the Acting Chief Nuclear Medicine Technologist at Ball Memorial Hospital, Ms. Kelli J. Hinds, had increased the dosages of radiopharmaceuticals used in nuclear medicine diagnostic studies in order to reduce the imaging time and had falsified the records of the dosage measurements. In mid-June 1993, during the Licensee's investigation, Ms. Hinds admitted that she increased the dosages of radiopharmaceuticals given to patients for nuclear medicine diagnostic studies in order to minimize a patient's discomfort, to reduce the duration of a study of a critically ill patient, or to enhance the clarity of the image for a study performed on an obese patient. Based on the Licensee's investigation, the Licensee terminated Ms. Hinds' employment on September 23, 1993.

The NRC commenced an inspection on July 21, 1993, and determined that, for approximately 10 percent of the lung, liver, bone and gastrointestinal tract imaging studies using technetium-99m and xenon-133 that she performed between October 1988 to June 1993, Ms. Hinds increased the dosages of the radiopharmaceutical by as much as 40 percent above the approved dosage ranges without authorization from a physician authorized user. Further, Ms. Hinds entered false information in the dosage measurement records (*i.e.*, dosages within the approved range were indicated in the records even though the actual administered dosages were higher). In addition, even after Ms. Hinds became Acting Chief Nuclear Medicine Technologist in December 1992, she stated that she requested and received approval from the Radiation Safety Committee to increase dosage amounts for various studies but continued to administer dosages greater than the authorized quantities without physician approval and recorded false information. As a result of the NRC inspection, a Confirmatory Action Letter (CAL) was issued to the Licensee on July 26, 1993, and a Confirmatory Order was issued to the Licensee on October 20, 1993 (EA 93-215). The CAL and Order documented specific procedures and verifications to prevent any further unauthorized increases in patient dosages.

The NRC Office of Investigations (OI) is conducting an investigation of this matter. While the investigation has not been completed, the available information establishes that, since 1988, Ms. Hinds deliberately increased the dosges of NRC-licensed materials used in certain nuclear medicine procedures and attempted to conceal the increase in the dosage by falsifying the dosage measurement records. In a transcribed sworn statement on September 1, 1993, Ms. Hinds stated that she was aware of the authorized radiopharmaceutical dosage limits at Ball and she admitted that, since 1988, she has increased the dosage of radiopharmaceuticals given to some patients without express authorization from a physician authorized user and that she falsified the records of those radiopharmaceutical dosage measurements. Although the NRC investigation is continuing, the following significant violations have been identified to date:

A. Ms. Hinds' deliberate actions caused the Licensee to be in violation of 10 CFR 35.25(a)(2) in that Ms. Hinds failed to follow the instructions of the supervising physician authorized users as contained in the Licensee's procedure, "Approved Dose Ranges of Radiopharmaceutical Use." That procedure specifies the radioisotope, procedures and dosage ranges to be used. Ms. Hinds intentionally increased the dosages beyond the range prescribed by the procedure.

B. Ms. Hinds' deliberate actions caused the Licensee to be in violation of License Condition No. 16, which requires the Licensee to implement the model safety rules published in NRC Regulatory Guide 10.8, appendix I, Item 14. Item 14 requires that each patient dosage be assayed in the dose calibrator and prohibits the use of a dosage if it is more than 10 percent off from the prescribed dosage. Ms. Hinds indicated that she increased some patient dosages by 10-40%.

C. Ms. Hinds' deliberate actions caused the Licensee to be in violation of 10 CFR 30.9(a), which requires that records required to be maintained by a licensee be complete and accurate in all material respects. More specifically, 10 CFR 35.53(c) requires that records of the measurement of radiopharmaceutical dosages contain certain information, including the prescribed dosage and activity of the dosage at the time of measurement. Ms. Hinds admitted that from October 1988 to June 1993, she increased the activity of some radiopharmaceutical dosages after the initial assay was performed and she did not enter into the dosage measurement records the actual activity of the radiopharmaceutical that was given to some patients. Rather, she entered an activity level which was within the dosage range prescribed by the physician authorized users at Ball.

The deliberate actions described in A-C above caused Ms. Hinds to be in violation of 10 CFR 30.10(a)(1), which requires in part that any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission.

III

As the Licensee's Acting Chief Nuclear Medicine Technologist from approximately December 1992 through June 1993, Ms. Hinds supervised the other nuclear medicine technologists employed by Ball and Ms. Hinds was responsible for ensuring that the Commission's rules, regulations, and license conditions in her area of responsibility were met and the records that were created to demonstrate compliance with the Commission's rules, regulations, and license conditions were true and accurate in all material respects.

As set forth above, Ms. Hinds engaged in deliberate misconduct from October 1988 through June 1993, by increasing the dosages of radiopharmaceuticals given to patients at Ball Memorial Hospital without first receiving the approval of a physician authorized user as required by the Commission's regulations. Ms. Hinds further engaged in deliberate misconduct by entering false information into the dosage measurement records for the dosages actually given to patients. These actions constitute violations of 10 CFR 30.9, 35.25(a)(2), 35.53, and Condition No. 16 of NRC Byproduct Materials License No. 13–00951–03 on the part of the Licensee; and violations of 10 CFR 30.10 on the part of Ms. Hinds.

Consequently, I lack the requisite reasonable assurance the NRC-licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Ms. Hinds is permitted at this time to supervise or otherwise reengage in licensed activities. Therefore, the public health, safety and interest require that Ms. Hinds be prohibited from being involved in any NRC-licensed activities for a period of one year from the date of this Order. In addition, for a three year period from the date of the Order, the public health, safety and interest require that Ms. Hinds be required to: (1) Provide a copy of this Order to any prospective employer who engages in NRC-licensed activities at the time that Ms. Hinds solicits or begins negotiating employment with such prospective employer. The purpose of this notice is so that any prospective employer is aware of Ms. Hinds' prohibition from NRC-licensed activities for a period of 1 year from the date of this Order and so that any prospective employer is aware of the Order prior to making a decision regarding Ms. Hinds employment in NRC-licensed activities for a period of 2 years following the 1 year prohibition from NRC-licensed activities, and (2) notify the NRC of the acceptance of employment involving NRC-licensed activities to assure that the NRC can monitor the status of Ms. Hinds' compliance with the Commission's regulatory requirements. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR part 35, It Is Hereby Ordered, Effective Immediately, That:

A. Ms. Kelli J. Hinds is prohibited from engaging in NRC-licensed activities for a period of one year from the date of this Order. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

B. For a period of three years from the date of the Order, Ms. Hinds shall:

1. Provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in A above) at the time that Ms. Hinds solicits or begins negotiating employment with such prospective employer. The purpose of this requirement is to ensure that all prospective employers are aware of Ms. Hinds' prohibition from engaging in NRC-licensed activities for a period of 1 year from the date of this Order and are aware of the Order prior to making a decision regarding Ms. Hinds' employment in NRC-licensed activities for a period of 2 years following the 1 year prohibition from NRC-licensed activities.

2. With 20 days of her acceptance of an employment offer involving NRC-licensed activities, or her becoming involved in NRC-licensed activities, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in the NRC-licensed activities.

C. If Ms. Hinds is currently involved in NRC-licensed activities at any employer or entity, Ms. Hinds shall, in accordance with Paragraph IV.A above, immediately cease involvement in the NRC-licensed activities and, within 20 days of the date of this Order, provide notice to the Director, Office of Enforcement, at the address in Paragraph IV.B.2 above, of the name, address, and telephone number of the employer or entity where the licensed activities were being conducted.

The Director, Office of Enforcement, NRC, may, in writing, relax or rescind any of the above conditions upon demonstration by Ms. Hinds of good cause.

V

In accordance with 10 CFR 2.202, Ms. Kelli J. Hinds must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Hinds or other persons adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532–4351; and to Ms. Hinds, if the answer or hearing request is by a person other than Ms. Hinds. If a person other than Ms. Hinds request a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Hinds or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ms. Hinds, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere

suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order or proceedings. An Answer or a Request for a Hearing Shall Not Stay the Immediate Effectiveness of This Order.

For The Nuclear Regulatory Commission

Dated at Rockville, Maryland, this 23rd day of May 1994.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Supports.

[FR Doc. 94–13251 Filed 5–31–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–316]

Indiana Michigan Power Co. (DC Cook 2); Exemption

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License No. DPR–74 which authorizes operation of the Donald C. Cook Unit 2 Nuclear Plant at steady-state reactor power levels not in excess of 3411 megawatts thermal. The Cook 2 facility is a pressurized water reactor located at the licensee's site in Berrien County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 50.54(o) of 10 CFR part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of appendix J to 10 CFR part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment.

Paragraph III.D.2.(a) of appendix J to 10 CFR part 50 requires, in part, that Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. Type B tests are intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary for certain reactor containment penetrations.

Paragraph III.D.3. of appendix J to 10 CFR part 50 requires that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are intended to measure containment isolation valve leakage rates for certain containment isolation valves.

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated March 9, 1994, and supplemented April 13, 1994, the licensee requested a one-time exemption from the requirements of 10 CFR part 50, appendix J, III.D.2.(a) and III.D.3 for a period of 150 days for the testing of Type B and C penetrations.

The underlying purpose of the requirement to perform Type B and C containment leak rate tests at intervals not to exceed 2 years is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or being unknown, and long enough to allow the tests to be conducted during scheduled refueling outages. This interval was originally published in appendix J when refueling cycles were conducted at approximately annual intervals and has not been changed to reflect 18-month or 2-year operating cycles. It is not the intent of the regulation to require a plant shutdown solely for the purpose of conducting the periodic leak rate tests. Based on historical data at Cook any incremental increase in leakage because of the extension would be expected to be small. Corrective actions taken for several Type C valves that were found with excessive leakage in 1992 provide increased assurance that these components will perform their safety function. In addition, recent as-found leak rates, which were only a small fraction above the previous as-left leak rates, have been 30 percent of the established reference leak rates. Therefore, since the extension is relatively short compared to the 2-year test interval requirement, it is unlikely that substantial degradation of the containment components leading to the failure of the containment to perform its safety function would occur. As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

IV

Based on the above, the NRC staff has concluded that the licensee's proposed increase of the 2-year time interval for performing Type B and C containment leak rate tests will not present an undue risk to the public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR part 50, appendix J, sections III.D.2.(a) and III.D.3. are not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the Commission hereby grants a one-time exemption as described in section III above from the requirement in 10 CFR part 50, appendix J, III.D.2.(a) and III.D.3. to extend the allowed interval between the performance of Type B and C containment leak tests by 150 days.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 22870).

This exemption is effective upon issuance.

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 24th day of May 1994.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 94–13250 Filed 5–31–94; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34103; File No. SR-Amex-93-18]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to Position Limits on Options on the S&P MidCap Index

May 24, 1994.

On April 20, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to options on its S&P MidCap Index ("MID"). Notice of the proposal appeared in the **Federal Register** on June 22, 1993.[3] No comment letters were received on the proposed rule change. The Amex subsequently filed Amendment No. 1 to the proposed rule change on January 7, 1994, Amendment No. 2 on May 5, 1994, and Amendment No. 3 on May 19, 1994.[4] This order approves the Exchange's proposal, as amended.

Since the inception of standardized options trading, the options exchanges have had in place rules imposing limits on the aggregate number of options contracts of the same class that a market participant or market participants acting in concert could hold or exercise. Specifically, these restrictions are known as position and exercise limits.[5] These rules are intended to, among other things, prevent the establishment of large options positions that can be used to manipulate or disrupt the underlying market so as to benefit the holder of an options position.

According to the Amex, active participants in the MID options market have included institutional and professional investors with large stock portfolio holdings who use MID options as a mechanism to hedge those holdings. With trading interest continuing to grow, the Exchange has received some complaints from member firms that current MID position limits are too restrictive and have caused some users to utilize the over-the-counter derivatives market to fashion contracts to meet their needs.[6] The Exchange believes that increasing position and exercise limits for MID options from current limits and allowing a customer facilitation exemption from position and exercise limits will increase institutional use of this product which will benefit not only the beneficiaries of assets managed by these institutions but also the market as a whole through increased liquidity.

Currently, Exchange rules provide for MID position and exercise limits of 25,000 contracts on the same side of the market with a "telescoping" provision that no more than 15,000 of such contracts may be held in series with the nearest expiration month. The Exchange now proposes to: (1) Increase MID position and exercise limits to 45,000 contracts on the same side of the market with a telescoping provision of no more than 25,000 contracts on the same side of the market in series with the nearest expiration month; (2) provide that no more than 25,000 MID options contracts may be used for index arbitrage; and (3) provide an exemption from position and exercise limits for member firms of 75,000 MID contracts on the same side of the market for the facilitation of customer orders for MID options.[7]

As discussed below, the Commission believes that the Amex proposal is consistent with the requirements of Section 6 of the Act, in general, and section 6(b)(5)[8] in particular, in that it should help to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors and public interest.

Initially, the Commission notes that in July and October of 1992, the Commission approved similar increases in position and exercise limits and approved customer facilitation exemptions for the Exchange's Institutional Index ("XII") options[9] and for the Chicago Board Options Exchange, Inc.'s ("CBOE") Standard & Poor's 500 Index ("SPX") options.[10] To the Commission's knowledge, the increased position and exercise limits for XII and SPX options have not resulted in any problems. These increases were made in conjunction with options on both the XII and SPX moving from afternoon settlement (based on closing prices of component stocks) to morning settlement (based on opening prices of component stocks) ("A.M.-Settlement"). Specifically, the change to A.M.-Settlement for options on the XII and SPX were made in response to concerns about stock market volatility experienced on expiration Fridays and particularly on the four Fridays per year (each known as a "triple witching day") when individual

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] See Securities Exchange Act Release No. 32472 (June 16, 1993), 58 FR 33960 (June 22, 1993).

[4] In Amendment Nos. 1 and 2, the Amex proposed changes to the position and exercise limits and hedge exemptions for MID options proposed in the original filing. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Office of Derivatives and Equity Oversight ("ODEO"), Division of Market Regulation ("Division"), Commission, dated January 7, 1994; and Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, ODEO, Division, Commission, dated May 5, 1994. The changes proposed in Amendment Nos. 1 and 2, however, were withdrawn and superseded by the changes proposed in Amendment No. 3. Specifically, in Amendment No. 3 the Amex proposes to: (1) Raise position and exercise limits fro MID options to 45,000 contracts on the same side of the market with no more than 25,000 contracts in series with the near-term month; (2) provide that no more than 25,000 MID options contracts may be used for purposes of taking advantage of any differential in price between the MID and the securities underlying the MID; (3) eliminate its earlier proposal seeking a hedge exemption of 75,000 contracts on the same side of the market; (4) limit the customer facilitation exemption for member organizations to a maximum of 75,000 MID options contracts on the same side of the market; (5) eliminate its earlier proposal seeking a money manager exemption for MID options positions; and (6) amend Rule 904C, Commentary .02, to set forth the index options and the contract limits for which facilitation exemptions have been approved by the Commission. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, ODEO, Division, Commission, dated May 19, 1994 ("Amendment No. 3").

[5] Position limits impose a ceiling on the number of options contracts relating to an underlying instrument which an investor, or group of investors acting in concert, may own or control. Exercise limits prohibit the exercise by an investor, or group of investors acting in concert, of more than a specified number of option contracts on a particular underlying security within five consecutive business days.

[6] See Letter from Bruce Hackett, Managing Director and Member of Executive Committee, Salomon Brothers, to Howard Baker, Vice President, Amex, dated April 12, 1993; Letter from William S. Diskin, Managing Director, Furman Selz Incorporated, to Howard Baker, Vice President, Amex, dated March 19, 1993; Letter from Tom Peters, Managing Director, Susquehanna Investment Group, to Howard Baker, Vice President, Amex, dated March 22, 1993.

[7] The Exchange also originally proposed a position limit hedge exemption for MID options. Amex's position limit hedge exemption for broad-based index options was approved as a one-year pilot program in 1988. See Securities Exchange Act Release No. 25938 (July 22, 1988), 53 FR 28738 (July 29, 1988). The pilot was subsequently extended for one additional year. See Securities Exchange Act Release No. 27326 (October 2, 1989), 54 FR 423121 (October 13, 1989). Because this pilot program lapsed in 1990, however, the Exchange has withdrawn this portion of the proposal. Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Attorney, ODEO, Division, Commission, on May 23, 1994; and see Amendment No. 3, *supra* note 4.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] See Securities Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) ("Exchange Act Release No. 31330").

[10] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

stock options, stock index options, stock index futures, and options on such futures all expire together. The Commission notes, however, that since its introduction in February of 1992,[11] the MID has always had an A.M.-Settlement feature, which, according to the Exchange, negates any "triple witching day" concerns which could be attributed to increased position limits.[12] The Commission further notes that the proposed MID position limits would allow a significantly smaller portfolio to be fully hedged than that allowable pursuant to the position limits approved for options on the SPX and XII,[13] thus further minimizing manipulative concerns. Accordingly, the Commission believes that the A.M.-Settlement of the MID is helpful in insuring that the increased position and exercise limits should not unduly disrupt the market in the securities underlying the MID.

1. Position and Exercise Limit Increase

In analyzing and reviewing specific position and exercise limits proposed by the options exchanges, the Commission has attempted to balance two competing concerns. First, position limits must be sufficiently low to prevent investors from disrupting the underlying cash market. Second, limits must not be established at levels that are so low as to unnecessarily discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain fair and orderly markets.

The Commission believes that the proposed position and exercise limits may increase the depth and liquidity of the MID options market[14] without significantly increasing concerns regarding intermarket manipulations or disruptions of the markets for the options or the underlying securities. Specifically, the Commission notes that the MID is a broad-based index consisting of 400 domestic securities which are highly capitalized, and have large public floats and high trading volume. As the Commission has previously stated, markets that exhibit active and deep trading, as well as broad public ownership, are more difficult to manipulate or disrupt than less active markets with smaller public floats.[15] Additionally, the proposed position limits include a 25,000 contract telescoping provision for near-term series which further minimizes the potential for manipulation of the MID and the securities underlying the MID as expiration of a particular series of MID options approaches. Finally, even with the position limit increased to 45,000 contracts, the proposal limits to 25,000 contracts the number of MID options positions that may be used for purposes of index arbitrage. This is consistent with the proposal previously approved by the Commission regarding options on the XII[16] and serves to further minimize the potential for trading in MID options to disrupt the market for the securities underlying the index. Accordingly, given the size and breadth of the MID, the Commission does not believe that increasing the position and exercise limits for options on the MID as proposed herein will increase the MID's susceptibility to manipulation or increase the potential for disruption in the markets for the underlying securities.

2. Customer Facilitation Exemption

The proposal would also enable a member organization to obtain a position limit exemption of up to 75,000 contracts on the same side of the market in order to facilitiate the execution of large customer orders.[17] The Commission believes that this customer facilitation exemption from MID option position and exercise limit rules for member organizations may further enhance the depth and liquidity of the options and underlying cash markets by providing members greater flexibility in executing large MID options customer orders.[18]

The Commission also believes that the Exchange has proposed several safeguards in connection with the customer facilitation exemption that will serve to minimize any potential disruption or manipulation concerns. First, the member organization must receive approval from the Exchange prior to executing customer facilitation trades. In this regard, the Commission believes that permitting the Amex to grant oral approval of customer facilitation exemptions will not result in trading abuses because of the follow-up documentation required. Second, a member granted a customer facilitation exemption must hedge all exempt options positions that have not been previously liquidated within five business days after the execution of the customer facilitation exemption order, and furnish to the Exchange documentation reflecting the resulting hedged positions. Third, a member granted a customer facilitation exemption is required to provide the exchange with any information or documents requested concerning the exempted options positions and the positions hedging them. Fourth, a member granted a customer facilitation exemption is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. Thus, the Commission concludes that the member organization customer facilitation exemption from position and exercise limits is consistent with the Act and will promote fair and orderly markets.

3. Conclusion

In summary, the Commission believes that the increase in position and exercise limits as well as the addition of the customer facilitation exemption from position and exercise limits may benefit market participants by allowing them to take larger MID options positions in the context of an exchange-traded and regulated product without unnecessarily increasing manipulative concerns. In addition, the customer facilitation exemption is limited and positions established pursuant to it must be liquidated or fully hedged within five business days. Further, the Commission believes that the customer facilitation exemption is appropriate in light of the composition, depth, and liquidity of the S&P MidCap Index, making it less susceptible to manipulation.

Nevertheless, as a result of the significant increase in MID options positions that may result from this proposed rule change, the Commission believes that the Amex should study the market impact of these changes. Specifically, the Commission expects

[11] See Securities Exchange Act Release No. 30290 (January 27, 1992), 57 FR 4072 (February 3, 1992).

[12] The Commission continues to believe that basing the settlement of index options on opening, as opposed to closing prices on expiration Fridays, helps alleviate the stock market volatility once experienced on expiration Fridays. See Securities Exchange Act Release No. 24262 (March 27, 1987), 57 FR 10836 (April 3, 1987).

[13] Based on the closing values of the various indexes on May 2, 1994, the proposed MID position limits would allow a portfolio of approximately $781.695 million to be fully hedged, while the position limits approved for the XII and SPX (excluding applicable position limit hedge exemptions) would allow qualified portfolios of approximately $2.037 billion and $2.039 billion, respectively, to be fully hedged.

[14] The increase in position limits may increase trading activity in MID options and may increase market depth and liquidity by giving market participants wider latitude in trading to manage their portfolios.

[15] See e.g., Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988).

[16] See Exchange Act Release No. 31330, *supra* note 9.

[17] A customer facilitation order is an order which is only executed, in whole or in part, in a cross transaction with an order for a public customer of the member organization. See Amex Rule 950(e)(iv).

[18] The proposed customer facilitation exemption for MID option positions is 25,000 contracts less than the level approved by the Commission for AMEX's XII options. See Exchange Act Release No. 31330, *supra* note 9.

the Amex to report on an annual basis for the next three years on the following matters:

(1) the number of market participants that are at or near the 45,000 contract position limit level;

(2) any market impact concerns or issues raised by the large options positions, such as frontrunning, mini-manipulation, capping and pegging, and other similar trading abuses;

(3) how often the customer facilitation exemption is utilized;

(4) the frequency and size of the customer facilitation exemption utilized;

(5) the number of position limit violations;

(6) any disciplinary actions brought as a result of such violations; and

(7) the number of oral exemption requests, the number of requests granted, and the number of times documentation was not timely filed.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.[19] Specifically, Amendment No. 3: (1) Raises position and exercise limits for MID options to 45,000 contracts on the same side of the market with no more than 25,000 contracts in series with the near-term month; (2) provides that no more than 25,000 MID options contracts may be used for purposes of index arbitrage; (3) reduces the proposed MID customer facilitation exemption to 75,000 contracts on the same side of the market; and (4) eliminates the requested position limit hedge exemption and money manager exemption for MID options positions. For the reasons stated above, the Commission believes that these proposals may increase the market depth and liquidity in MID options while not increasing the susceptibility of the MID to manipulation or the potential for disruption in the markets for the securities underlying the MID. Additionally, the changes proposed in Amendment No. 3 are more restrictive than the position limits and exemptions originally proposed and no comments were received by the Commission concerning the original proposal.

Finally, Amendment No. 3 would amend Rule 904C, Commentary .02, to set forth in the rule the specific indexes for which position limit customer facilitation exemptions have been approved, and the numerical levels of those exemptions. The Commission believes that this amendment will serve to minimize investor confusion as to the availability of the customer facilitation exemption for approved index options and, therefore, is consistent with the Act.

Based on the foregoing, the Commission believes the changes proposed in Amendment No. 3 are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to facilitate transactions in securities. Therefore, it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to the Amex's proposal on an accelerated basis.

Interested person are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–93–18 and should be submitted by June 22, 1994.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Amex–93–18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

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[19] As noted previously, Amendment No. 3 withdraws and supersedes Amendment Nos. 1 and 2. See Amendment No. 3, *supra* note 4.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34104; File Nos. SR–CBOE–93–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Extension of Market Maker Margin and Capital Treatment to Certain Market Maker Orders Entered From Off the Trading Floor

May 25, 1994.

On April 20, 1993, as amended on March 16, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal which would extend market maker capital and margin treatment to orders entered by CBOE market makers from off the Exchange floor, provided that at least 80% of their total transactions on the Exchange are executed in person and not through the use of orders.[3] In addition, the proposal requires all off-floor orders for which a market maker receives market maker treatment to be subject to the obligations of CBOE Rule 8.7(a), "Obligations of Market Makers," and in general to be effected for the purpose of hedging, reducing the risk of, rebalancing or liquidating open positions of the market maker.

The original proposal was published for comment in Securities Exchange Act Release No. 32500 (June 23, 1993), 58 FR 35060 (June 30, 1993). Amendment No. 1 to the proposal was published for comment in Securities Exchange Act Release No. 33853 (April 1, 1994), 59 FR 16869 (April 8, 1994). No comments were received on the original proposal or on Amendment No. 1 to the proposal. This order approves the Exchange's proposal, as amended.

Currently, under CBOE Rule 8.1, "Market Maker Defined," only transactions initiated on the CBOE's floor count as market maker transactions. Thus, only on-floor market maker transactions qualify for favorable capital and margin treatment under the CBOE's rules, even if such orders are entered to adjust or hedge the risk of positions of the market maker that result from his on-floor market making

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b–4 (1993).

[3] The CBOE originally proposed requiring that 75% of a market maker's total transactions be executed in person on the CBOE's floor in order to be eligible for the special off-floor order treatment. In addition, the original proposal did not contain a reference to market making obligations.

activity.[4] The CBOE states that because a market maker cannot effectively adjust his positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without incurring a significant economic penalty, CBOE market makers must either be physically present on the floor at all times while the market is open, or face significant risks of adverse market movements during those times when they must necessarily be absent from the trading floor. The CBOE argues that by imposing costs on certain hedging or risk-adjusting transactions of market makers, the CBOE's current rules may prevent market makers from effectively discharging their market making obligations and expose them to unacceptable levels of risk.

The Exchange states that its proposal is designed to accommodate the needs of market makers occasionally to adjust or hedge options positions in their market maker accounts at times when they are not physically present on the trading floor, without diluting the requirement that the trading activity of market makers must fulfill their market making obligations and must contribute to the maintenance of a fair and orderly market on the Exchange.

Currently, under CBOE Rule 8.7, Interpretation and Policy .03(b), a market maker must execute at least 25% of his total transactions in person on the trading floor and not by entry of orders. The CBOE proposes to amend Exchange Rule 8.7 to allow market makers who elect to meet a more stringent in-person requirement to receive market maker margin and capital treatment for opening transactions executed through off-floor orders. Specifically, the CBOE proposes to amend CBOE Rule 8.7, Interpretation and Policy .03, to allow makers to elect to receive market maker treatment for off-floor opening transactions if the market maker, in addition to satisfying the requirements of Interpretation and Policy .03(a),[5] executes at least 80% of his total transactions for any calendar quarter in person and not through the use of orders. In addition, the off-floor orders for which a market maker receives market maker treatment shall be subject to the obligations of CBOE Rule 8.7(a)[6] and in general shall be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions of the market maker.[7]

CBOE market makers who elect market who elect market maker treatment for off-floor opening transactions but fail to satisfy the proposal's requirements, including the 80% in-person requirement, will be referred to the CBOE's Business Conduct Committee and subject to the disciplinary measures provided in Chapter 17 of the CBOE's rules.[8] Under CBOE Rule 17.1, "Disciplinary Jurisdiction," the Exchange may impose appropriate discipline for violations of the Act and the Exchange's rules, including expulsion, suspension, limitation of activties, functions, and operations, fine, censure, being suspended or barred from being associated with a member or any other fitting sanction.

The CBOE believes that the amended proposal presents a more appropriate and realistic treatment of market maker transactions initiated from off the trading floor than what is provided for under existing Exchange Rule 8.1. The CBOE believes that extending favorable margin and capital treatment for off-floor transactions only to those market makers who submit to an 80% in-person requirement should have the effect of increasing the extent to which market maker transactions contribute to liquidity and to the maintenance of fair and orderly markets on the CBOE by providing for a greater degree of in-person trading by market makers and by enabling market makers to better manage the risk of their market making activities. Thus, the CBOE believes that the proposal is consistent with and in furtherance of the objectives of section 6(b)(5) and section 11(a) of the Act in that it will promote the maintenance of fair and orderly markets on the CBOE and will contribute to the protection of investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[9] In addition, the Commission finds that the proposal is consistent with the requirement under section 11(b) of the Act and the rules thereunder that require market maker transactions to be consistent with the maintenance of fair and orderly markets.[10]

The Commission believes that the proposal is a reasonable effort by the CBOE to accommodate the needs of CBOE market makers to effect off-floor opening transactions while maintaining the requirement under CBOE rule 8.7(a) that market makers' transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Specifically, in order to qualify for market maker treatment for off-floor orders, the proposal requires a market maker to execute at least 80% of his total transactions for any calendar quarter in person and not through the use of orders. In addition, the proposal states that the off-floor orders for which a market maker receives market maker treatment shall be subject to the obligations of CBOE Rule 8.7(a) and in general shall be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions of the market maker. The Commission believes that these requirements, taken together, will help to ensure that all market maker transactions continue to contribute to the maintenance of fair and orderly markets while, at the same time, enabling market makers to better manage the risk of their market making activities.[11]

As the CBOE has noted, under the current requirements market makers who adjust existing positions for hedging purposes while not physically present on the floor cannot receive market maker margin treatment for such orders under any circumstances and must decide whether to close out their positions or place their orders in a customer margin account requiring 50% margin. While the Commission believes

[4] Questions of margin and capital treatment do not arise in connection with closing transactions initiated from off the floor, since they only reduce or eliminate existing positions.

[5] Under Interpretation and Policy .03(a), at least 75% of a market maker's total contract volume in each calendar quarter must be in option classes to which he has been appointed pursuant to CBOE Rule 8.3, "Appointment of Market Makers."

[6] CBOE 8.7(a) states that the "[t]ransactions of a market maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no market maker should enter into transactions or make bids or offers that are inconsistent with such a course of dealings."

[7] See Amendments No. 1, *supra*.

[8] Telephone conversation between Mary Bender, First Vice President, Division of Regulatory Services, CBOE, and Sharon Lawson, Assistant Director, Commission, on May 4, 1994.

[9] 15 U.S.C. 78f(b)(5) (1982).

[10] 15 U.S.C. 78k (1982) and 17 CFR 240.11b–1.

[11] The CBOE believes that the proposal will facilitate the maintenance of fair and orderly markets by reducing risk to market makers and their clearing firms. Specifically, the CBOE believes that allowing market makers to receive market maker treatment for off-floor transactions will encourage market makers to adjust their positions to respond to changing market conditions, thereby helping them to avoid losses. In addition, the ability to manage their positions when away from the floor may help market makers to avoid significant "wind downs" due to planned absences. See Letter from Charles J. Henry, President and Chief Operating Office, CBOE, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated September 22, 1993.

that this may not be an unreasonably result in many cases, the Commission believes that the CBOE has set forth a reasonable proposal that permits market maker treatment for certain off-floor orders under very limited circumstances that ensure that such orders must contribute to the maintenance of fair and orderly markets and that require market makers comply with a heightened 80% in person trading requirement.

By requiring both more stringent in person trading requirements and that off-floor opening transactions be effected only for the purpose of hedging, reducing the risk of, rebalancing or liquidating open positions, the proposal should help to ensure the stability and orderliness of the CBOE's markets.

The Commission expects the CBOE to closely monitor those market makers electing to receive market maker treatment for certain off-floor orders as provided under the proposal to ensure that they are meeting the in person trading requirements in addition to other market making obligations required under the proposal. The CBOE has represented that market makers who choose to receive favorable margin and capital treatment under the proposal but fail to satisfy the proposal's requirements will be subject to full disciplinary proceedings under Chapter 17 of the CBOE's rules. As noted above, the sanctions possible under Chapter 17 include expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member or any other fitting sanction. The Commission expects the Exchange to impose strict sanctions for violations of the rule, particularly in cases of egregious or repeated failures to comply with the rule's requirements.[12]

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System ("Board") has issued a letter raising no objection to the Commission's approval of the proposal based on the Commission's belief that the off-floor transactions of CBOE market makers under the proposal are designed to contribute to the maintenance of a fair and orderly market and are consistent with the obligations of a specialist under Section 11 of the Act.[13]

[12] The CBOE plans to issue a circular to its membership describing the rule change and emphasizing the importance of monitoring off-floor trading activity.

[13] See Letter from Scott Holz, Senior Attorney, Board, to Howard Kramer, Associate Director, Division, Commission, dated March 9, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–CBOE–93–19) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13276 Filed 5–31–94; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20316; 812–8968]

The Alger Fund and Fred Alger & Company, Inc.; Application

May 25, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Alger Fund (the "Fund") and Fred Alger & Company, Inc. ("Alger Inc.").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from sections 2(a) (32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION : Applicants seek an amended order to permit applicants to expand the circumstances under which the Alger Fund may waive its contingent deferred sales charge ("CDSC").

FILING DATE: The application was filed on April 29, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 30 Montgomery Street, Jersey City, New Jersey 07302.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company composed of seven series. Fred Alger Management, Inc. serves as the investment adviser to each series, and Alger Inc. serves as their distributor. Fred Alger Management, Inc. is a wholly-owned subsidiary of Alger Inc., which in turn is a wholly-owned subsidiary of Alger Associates, Inc.

2. Applicants currently assess and, under certain circumstances, waive a CDSC on redemptions of shares pursuant to an existing order (the "Existing Order").[1] In accordance with the Existing Order, applicants may waive the CDSC on redemptions of shares effected: (a) Following death or disability; (b) in connection with certain redemptions from individual retirement accounts ("IRAs") or other qualified retirement plans; (c) pursuant to the Fund's automatic cash withdrawal plan; (d) by (i) employees of Alger Associates, Inc. and its subsidiaries, (ii) IRAs, Keogh plans, and employee benefit plans for those employees, and (iii) spouses, children, siblings, and parents of those employees, and trusts of which those individuals are beneficiaries, as long as orders for the Fund's shares on behalf of those individuals and trusts are placed by the employees; (e) by (i) accounts managed by investment advisory subsidiaries of Alger Associates, Inc. that are registered under the Investment Advisers Act of 1940, (ii) employees, participants, and beneficiaries of those accounts, (iii) IRAs, Keogh plans, and employee benefit plans for those employees, participants, and beneficiaries, and (iv) spouses and minor children of those employees, participants, and beneficiaries as long s orders for the Fund's shares are placed by the employees, participants, and beneficiaries; (f) by directors or trustees of any investment company for which Alger Associates, Inc. or any of its

[1] Investment Company Act Release Nos. 20030 (Jan. 21, 1994) (notice), and 20078 (Feb. 16, 1994).

subsidiaries serves as investment adviser or distributor; (g) by an investment company registered under the Act in connection with the combination of the investment company with the Fund by merger, acquisition of assets, or by any other transaction; (h) pursuant to the Fund's right to liquidate involuntarily a shareholder's account with a current value of less than $250; (i) by defined contribution plans with respect to which Fred Alger Management, Inc. or an affiliate provides certain non-fiduciary services; (j) by registered investment advisers, banks, trust companies, and other financial institutions exercising discretionary authority with respect to the money invested in Fund shares; and (k) by registered investment advisers for their own accounts.

3. Applicants seek to amend the Existing Order to add two waiver categories and to expand one existing category. Applicants propose to waive or reduce the CDSC for redemptions of shares (a) purchased by a broker-dealer, bank, or other financial institution that purchases shares for its customers ("Processing Organization") as shareholder of record on behalf of the following categories of customers: (i) Investment advisers or financial planners trading for their own accounts or the accounts of their clients and who charge a management, consulting, or other fee for their services; and clients of such investment advisers or financial planners trading for their own accounts if the accounts are linked to the master account of the investment adviser or financial planning on the books and records of the Processing Organization, and (ii) retirement and deferred compensation plans and trusts used to fund those plans and (b) purchased by registered representatives of broker-dealers which have entered into dealer agreements with Alger Inc., and their spouses, children, siblings and parents.

4. The Existing Order currently permits a waiver of the CDSC on redemptions of shares of defined contribution plans for which Alger Management or an affiliate provides services. Applicants propose to expand this category to permit a waiver of the CDSC on redemptions of shares held through any defined contribution plan.

5. Applicants request that relief be extended to any future series of the Fund and any registered investment company for which Alger Inc. serves in the future as principal underwriter or for which any person controlling, controlled by, or under common control with Alger Inc. (within the meaning of section 2(a)(9) of the Act) may in the future serve as principal underwriter.

Applicants' Legal Analysis

1. Applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to waive or reduce the CDSC as described above. Applicants submit that the requested exemption, as required by the standards for an exemption under section 6(c) of the Act, is in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

Applicants' Condition

Applicants agree that the order of the Commission granting the requested relief will be subject to the following condition:

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13214 Filed 5–31–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Stratford Capital Group, Inc.; Notice of Issuance of a Small Business Investment Company License

[License No. 06/06–0307]

On December 9, 1993, a notice was published in the **Federal Register** (58 FR 64790) stating that an application has been filed by Stratford Capital Group, Inc., suite 1650, Dallas, Texas 75201 with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business January 8, 1994, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06–0307 on May 19, 1994, to Stratford Capital Group, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 25, 1994.

Robert D. Stillman,

Associate Administrator.

[FR Doc. 94–13240 Filed 5–31–94; 8:45 am]

BILLING CODE 8025–01–M

Fundex Capital Corporation, Inc.; License No. 02/02–0340 Filing of an Application for Transfer of Ownership and Control and Capital Reorganization

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to section 107.601 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Fundex Capital Corporation, 525 Northern Boulevard Great Neck, New York 11021, for transfer of ownership and control and capital reorganization, under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. *et seq.*). The transfer of ownership and control of Fundex Capital Corporation (Fundex) which was licensed May 18, 1978, is subject to prior written approval of SBA.

If approved, Anglo-African Holdings Limited (Anglo) will invest $1.0 million in capital into Fundex Capital Corporation (Fundex). Concomitant with this new investment, Fundex's existing capital will be restructured resulting in the conversion of certain shareholders common stock to nonvoting 3% Cumulative Class B preferred stock. This conversion, subject to adjustment based upon realization of Fundex's assets existing as of June 30, 1994, will result in Anglo holding a direct controlling interest in the voting common stock of Fundex of approximately 58% and control of three of the five Board of Director positions. Furthermore, Anglo may indirectly own an additional 16.3% to 19.5% of the voting common stock of Fundex through an investment made in Liberty Finance Corporation (Liberty) which holds an option to acquire an existing shareholder's interest.

The proposed officers and directors of the Applicant are:

Name and Title

Howard F. Sommer, President and Director, 1852 Muttontown Road, Muttontown, New York 11791

Ivor J. Jacobson, Secretary and Chairman, 200 North Street, Harrison, New York 10528

Gregg Sommer, Assistant Vice President and Treasurer, 124 W. 60th Street, Apt. 33N New York, New York 10023

Lawrence I. Linksman, Assistant Vice President, 54 Richfield Street, Plainview, New York 11803
Peter C. Woodthorpe, Director, 21D Highgate Close, Highgate, London, England N64SD
Timothy P. Bucke, Director, P.O. Box 438, Tropic Isle Building, Road Town, Tortola, British Virgin Islands

The Officers and Directors of Anglo African Holdings Ltd., which is acquiring the controlling interest in Fundex are as follows:

Name and Title

Peter C. Woodthorpe, Managing Director and Director
Timothy P. Bucke, Director
Amanda Chorn, Director, 41 Knox Street, Waverly 2090, Johannesburg, South Africa
Integro Trust (BVI) Limited, Registered Agent, P.O. Box 438, Tropic Isle Building, Road Town, Tortola, British Virgin Island
Ivor J. Jacobson, CEO, North American Operations, 200 North Street, Harrison, New York 10528

The applicant's day to day operations will continue to be overseen by the above listed officers and a subsidiary of Liberty, a proposed affiliate of Fundex, through an assumption of an advisory/management agreement previously approved by SBA. Anglo is also a shareholder in Liberty. As proposed, the applicant will continue operations with private capital of approximately $3.2 million.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3d Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: May 25, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-13241 Filed 5-31-94; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2015]

Announcement of Groundrules for U.S. Initiative on Joint Implementation

ACTION: Final groundrules.

SUMMARY: The U.S. Climate Change Action Plan, announced by President Clinton on October 19, 1993, set forth a series of measures designed to return U.S. greenhouse gas emissions to 1990 levels by the year 2000 through domestic actions alone. Recognizing the enormous potential for cost-effective greenhouse gas emission reductions in other countries, the Administration also called for a pilot program—the U.S. Initiative on Joint Implementation [USIJI]—to help establish an empirical basis for considering approaches to joint implementation internationally and thus help realize the potential of joint implementation both to combat the threat of global warming and to promote sustainable development.

Department of State Public Notice 1918 (58 FR 66057–66059, December 17, 1993) set forth draft Groundrules for the U.S. Initiative on Joint Implementation as directed by the President in the U.S. Climate Change Action Plan, to provide criteria for the operation of a pilot program. This notice provides the final Groundrules, together with a summary of and response to comments on the draft Groundrules.

FOR FURTHER INFORMATION CONTACT: Daniel A. Reifsnyder, Director, Office of Global Change, OES/EGC, room 4333, Department of State, 2201 C Street, Washington, DC 20520–7818, telephone: (202) 647–4069, facsimile: (202) 647–0191.

SUMMARY OF AND RESPONSE TO COMMENTS ON THE DRAFT GROUNDRULES: The Department of State received twelve sets of comments on the draft Groundrules. The discussion below provides a review of the comments received, as well as an explanation of the rationale for making revisions to the Groundrules. Comments are organized according to the outline of the Groundrules themselves: (I) Purpose, (II) evaluation and assessment, (III) eligible participants, (IV) evaluation panel, and (V) criteria for project eligibility.

Section I. Purpose

Only one comment was received on this section. It proposed revising the language to reflect that used in the United Nations Framework Convention on Climate Change. As the intent of the Groundrules is, in part, to provide an empirical basis for use internationally, the Groundrules were modified to maintain appropriate parallelism with the Convention.

Section II. Evaluation and Reassessment

Comments on this section raised two issues: (1) Questions regarding the timing of the evaluation of the pilot program, and (2) recommendations that the evaluation process be open to the public. Regarding the timing of the evaluation, one comment suggested that the first evaluation should be within one year of the issuance of the Groundrules. Section IV, paragraph C(8) of the draft Groundrules called for the preparation of annual reports; this paragraph has been maintained, and in the Department's view, fully covers the need for a one-year interim assessment of the USIJI.

With regard to opening the evaluation to the public, it was decided that the modalities for preparing the evaluation should be left to the discretion of the Evaluation Panel. To this end, a specific responsibility related to "operational modalities" has been added to the Panel's tasks (IV.C.(7)); this new language appropriately covers the specific circumstance referred to in the comment.

Section III. Eligible Participants

Two main issues emerged in comments on this section: (1) Recommendations that "groups" of entities be entitled to submit projects, and (2) recommendations regarding restrictions on foreign participants in the program.

To address the former comment, the text has been revised to allow for groups. This change takes account of the potential for a consortium of companies to coordinate in the preparation and implementation of a JI project.

Comments on the latter point included suggestions for restricting eligibility of foreign participants to (i) countries that are parties to the FCC, or (ii) Annex I Parties only. As the Groundrules are designed to allow for the maximum number of acceptable projects to go forward, additional restrictions such as limitations on project participant eligibility were not incorporated.

Section IV. Evaluation Panel

Comments were received on the Evaluation Panel membership, as well as on its responsibilities. On membership, commenters proposed that non-governmental representatives from both industry and the environmental

community be added to the Evaluation Panel. In the revised Groundrules, language has been added which requires the Evaluation Panel to develop operational modalities for implementing the program, providing the Panel with the opportunity to assure public participation. Furthermore, while the Department recognizes the importance of full public consultations, it supports the existing language which establishes responsibility at the federal level to accept or reject project proposals.

One commenter proposed deleting Evaluation Panel authority to approve or reject a project. The commenter argued that the Evaluation Panel should accept all projects unless they were deficient, putting the onus on the Evaluation Panel to discover deficiencies rather than on the project to demonstrate adequacy. The Department's view is that such a procedure would be inappropriate; project proposers have the information at hand, and the responsibility for compiling information needed is appropriately theirs. The Panel will not have adequate resources to perform such a review.

Original item IV.C(3) has been amended to specify that the Evaluation Panel will be responsible for reviewing and evaluating project submissions, including baseline projections (further discussed under Section V. amendments).

Many of the comments received stressed the importance of the operational aspects of joint implementation. The Department fully agrees that these issues are critical, although the stipulation of such detailed operational guidance is beyond the purview of these Groundrules. For this reason, and to indicate explicitly the important attached to the development of operational criteria, a new section (Section IV.C(7)) has been added to the text to allow the Evaluation Panel to oversee the development of the day-to-day operations of the USIJI, including such tasks as preparing the forms for project submissions, setting internal rules to determine what constitutes a "complete" submission, and the degree of assistance which may be provided by the Evaluation Panel to project applicants.

One commenter suggested requiring the return of project evaluations within 30 days of receipt of a completed application. In the Department's view, a 30-day turnaround would be impossible to meet, and would provide too little time for adequate review of project submissions.

It was recommended that the Panel coordinate with other organizations such as the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Enterprise for the Americas Program. The Department fully agrees with the thrust of this recommendation; however, representation by each of these organizations on the Evaluation Panel is not necessary to assure this coordination, modalities for which can be left to the Evaluation Panel to develop.

It was recommended that the Evaluation Panel be specifically authorized to establish either *ad hoc* or standing sub-committees with technical expertise in areas related to evaluating eligibility requirements to assist the Evaluation Panel in executing its duties. The Department agrees with this recommendation, and believes that such specific operational modalities are covered by the additional language in this section.

Section V. Criteria

Nearly every set of comments referred both generally to this section, and more specifically to the language of individual criteria; to simplify the discussion, each criterion is discussed separately below. In this discussion, criterion numbers refer to those of this new, revised text except where otherwise stated.

Chapeau for Subsection A.

One commenter recommended that the language in the chapeau paragraph be changed from "must find" to "shall consider". The commenter argued that in a pilot phase, the more stringent "must fine" requirement would rule out all projects. However, the Department strongly believes that a credible minimum standard must be set for projects to be included as part of this initiative. Further, in the Department's view, each of the criteria contained in this section is critical to the acceptability of a project submission. The language of this chapeau was therefore left unchanged.

Criterion A.1

Several commenters noted potential difficulties with this criterion, questioning both the uncertain nature of documentation required to assure host government "acceptance", and the value of having such a criterion at all. while the Department agrees that the nature of the documentation that must be provided to determine "acceptability" has not been defined, the Department also believes the criterion—for the host government to find the project acceptable—is essential. Unless the United States, through the USIJI, can begin to examine how other countries' governments treat JI projects during the pilot phase, it will be impossible to develop an empirical database for developing appropriate criteria in the operational phase.

Criteria A.2, A.3 and A.4

Numerous comments were received on these criteria. Issues were raised regarding, for example: How to interpret the requirement; the difference between "actual" and "projected" reductions; the level of certainty required regarding the likelihood of the projected reductions; whether a grandfathering of projects should be allowed; requirements to reject projects that may be mandated but not implemented under host country law; and the need to include the information regarding fiscal year 1993. The Department agrees that the operational modalities for these are complex matters; however, as noted above, language has been added to provide the Evaluation Panel with the authority to develop the appropriate forms and specifications required for projects. However, in addition to this language, the text of these criteria has been amended in several ways from that originally published for public review and comment.

First, a new criterion has been added (Section V.A. (2)):

> To be included in the USIJI, the Evaluation Panel must find that a project submission involves specific measures to reduce or sequester greenhouse gas emissions initiated as the result of the U.S. Initiative on Joint Implementation, or in reasonable anticipation thereof.

As used here, the term "specific measures" is meant to refer to actions to reduce or sequester greenhouse gas emissions that may form a part of a broader project. In some cases, the specific measures may constitute the entire project; in other cases, the specific measures may be a lesser subset of the project.

This criterion is designed to promote "additionality"—that is, actions above and beyond those that would have been taken otherwise. It seeks to do so in two ways:

(1) By establishing a reference date before which it would be difficult to conclude that activities were undertaken as the result of the USIJI; and

(2) By requiring that project participants demonstrate what measures were or will be implemented in response to the USIJI.

With respect to the reference date, the phrase "or in reasonable anticipation thereof" is designed to provide a reasonable "grace period" for

participants and to establish some certainty. The United Nations Framework Convention on Climate Change involved negotiations on joint implementation and provides for joint implementation in Article 4.2. It would thus be reasonable to consider project submissions involving measures initiated after the date of the Convention's adoption—May 9, 1992; although it would be more difficult to reach such a conclusion with respect to measures initiated prior to that date, the Evaluation Panel may do so on a reasonable showing that the measures were undertaken in anticipation of joint implementation.

With respect to the need to demonstrate what measures were or will be implemented in response to the USIJI, the Department acknowledges the difficulty in seeking to gauge why participants undertook or plan to undertake specific measures, since most projects will be implemented for multiple reasons. At the same time, the integrity of the pilot program would be undermined if participants were able simply to repackage activities that would otherwise have been undertaken and submit them for inclusion under the USIJI. In this regard, the Department notes that an issue closely debated at the 9th Session of the Intergovernmental Negotiating Committee for the Framework Convention on Climate Change (February 1994) was the need to assure "additionality" with respect to joint implementation projects. To promote such "additionality", it will be important for project participants to demonstrate to the satisfaction of the Evaluation Panel that the measures undertaken or to be undertaken were implemented in response to the USIJI or in reasonable anticipation thereof. In particular, they will need to demonstrate how these measures are above and beyond what would reasonably have been or be likely to occur otherwise.

The original criteria under Section V. have also been amended to eliminate the tautology that would have been established by original Section V.A.(3). Original Section V.A.(2) has also been amended in this process.

These two amended criteria (new Section V.A.(3) and (4)) are also intended to promote "additionality." In this sense they are similar to the requirement with respect to federally funded activities, i.e., that they be undertaken with funds in excess of those available for such activities in fiscal year 1993.

Under new Section V.A.(3), project submissions will need to include data and methodological information sufficient to establish a baseline of current and future emissions—both in the absence of, and as the result of, the specific measures taken or to be taken to reduce or sequester greenhouse gas emissions. Under new Section V.A.(4), the Evaluation Panel will need to find that the specific measures have reduced or sequestered, or will reduce or sequester, greenhouse gas emissions beyond the baseline of current and future emissions in the absence of the specific measures taken or to be taken. In reaching such a conclusion, the Evaluation Panel will need to pay particular attention to baseline projections in the absence of the project's specific measures. The Evaluation Panel will need to find that such baseline projections are reasonable. Relevant factors the Evaluation Panel may consider include, among others:

—Whether the baseline projections are consistent with the prevailing standard of environmental protection in the country involved
—Whether the baseline projections are consistent with existing business practices within the particular sector or industry
—Whether the baseline projections are consistent with trends and changes in those practices
—Whether a project was altered before or after being implemented to take into account considerations related to joint implementation

As noted, the Evaluation Panel will be able also to consider any other evidence it deems relevant to its assessment of the reasonableness of the baseline projections. The Evaluation Panel will be able to reject project submissions which, in its judgment, do not establish reasonable baseline projections.

With respect to measures already undertaken, participants may be able to demonstrate "additionality" and "reasonable anticipation" in a number of ways. Relevant factors the Evaluation Panel may consider include, among others:

—Evidence that a project was altered before or after implementation to take into account considerations related to joint implementation
—Evidence that a project was specifically undertaken to promote joint implementation
—Contract provisions that specifically allocate among project participants the greenhouse gas emissions reduced or sequestered

Criterion A.5

One commenter suggested requiring the project proposers to include in their submissions a monitoring schedule. While such recommendations may be appropriate to the operational activity, in the Department's view the specific criteria for monitoring cannot be resolved at this time, and should be thoroughly discussed and established by the Evaluation Panel. The addition of language providing the Evaluation Panel with authority to develop operational modalities will assure that this issue can properly be addressed.

Criterion A.6

No comments received.

Criterion A.7

Several commenters proposed that the criterion be deleted as placing too onerous a burden—i.e., for a full environmental impact assessment—on each project. In the Department's view, it is imperative not to move forward with projects which, while leading to greenhouse gas reductions, also lead to potentially significant but unidentified negative non-GHG environmental impacts. Again, however, the details of what will be required to meet this criterion are appropriately left to the Evaluation Panel.

Another commenter proposed that the criterion be strengthened so that project submission would be automatically rejected if any negative impact were found. In the Department's view, the Evaluation Panel itself must be given discretion to evaluate the results—and this is done through Section V.B, which allows other environmental considerations to be used in determining the acceptability of the project.

Criterion A.8

One commenter suggested limiting the time over which the reduction credit could be claimed as part of the assurance that emissions reduced or sequestered were real. The Department believes that this is a matter for individual project participants to determine, and that individual circumstances warrant individual attention from the Evaluation Panel.

Original Criterion A.8 (now deleted)

In the December 17 **Federal Register** notice draft Groundrules, this criterion provided for registration of the project in the national inventory established under section 1605 of the Energy Policy Act of 1992. While the Administration is rapidly moving to develop this registry, guidelines for the program have not yet been completed. Thus, this criterion has been deleted: However, it is the Department's firm expectation that the 1605 registry will be developed

in a manner consistent with these USIJI Groundrules, and that in the future, project participants may be expected to register their projects through the 1605 program.

Criterion A.9

Commenters suggested amending the criterion to limit how the "credit" for the project could be apportioned—with a minimum amount allocated to the host country, and an automatic discounting of total allowable emissions reduced or sequestered based on the uncertainty of the project. In the Department's view, it is most appropriate that the allocation of emissions reduced or sequestered be decided by the participants. Thus this suggestion was not included.

Section V.B

The second category of criteria in the Groundrules contains items that the "Panel shall also consider"—a less stringent formulation than that required for the criteria in Section V.A. The principal comment on this section proposed to delete it as being redundant with Section V.A. As discussed above, in the Department's view, it is essential to establish two categories—one for minimum requirements that must be met to include a project submission; the other with additional items that the Evaluation Panel shall also consider in deciding whether to include a project submission.

General Comments on Language

A number of the comments received addressed the usage of the word "net" throughout the text. The comments expressed concern that the word could be read to require project submitters to total their domestic emissions with their international emissions (and for that total to be reduced through the JI project) to allow the project submission to be included. This reading was not intended. As a consequence, the language has been changed throughout the text, and the words "reduced or sequestered" are now used vice "net." The Department interprets "reduced" also to include "avoided."

Groundrules

The following describes the U.S. Initiative on Joint Implementation (USIJI), which shall be established as a pilot program.

Section I—Purpose

The purpose of the pilot program shall be to:

(1) Encourage the rapid development and implementation of cooperative, multually voluntary, cost-effective projects between U.S. and foreign partners aimed at reducing or sequestering emissions of greenhouse gases, particularly projects promoting technology cooperation with and sustainable development in developing countries and countries with economies in transition to market economies;

(2) Promote a broad range of cooperative, mutually voluntary projects to test and evaluate methodologies for measuring, tracking and verifying costs and benefits;

(3) Establish an empirical basis to contribute to the formulation of international criteria for joint implementation;

(4) Encourage private sector investment and innovation in the development and dissemination of technologies for reducing or sequestering emissions of greenhouse gases; and

(5) Encourage participating countries to adopt more complete climate action programs, including national inventories, baselines, policies and measures, and appropriate specific commitments.

Section II. Evaluation and Reassessment of Pilot Program

The pilot program shall be evaluated and reassessed within two years of its inception or within six months of adoption of international criteria for joint implementation by the Conference of the Parties to the United Nations Framework Convention on Climate Change, whichever is earlier.

Section III—Eligible Participants

A. Domestic

(1) Any U.S. citizen or resident alien;

(2) any company, organization or entity incorporated under or recognized by the laws of the United States, or group thereof; or

(3) any U.S. federal, state or local government entity.

B. Foreign

(1) Any country that has signed, ratified or acceded to the United Nations Framework Convention on Climate Change;

(2) any citizen or resident alien of a country identified in B(1) of this section;

(3) any company, organization or entity incorporated under or recognized by the laws of a country identified in B(1) of this section, or group thereof; or

(4) any national, provincial, state, or local government entity of a country identified in B(1) of this section.

Section IV—Evaluation Panel

A. An Evaluation Panel is hereby established.

B. The Evaluation Panel shall consist of eight members, of whom:

(1) One shall be an employee of the Department of Energy, who shall serve as Co-Chair;

(2) One shall be an employee of the Environmental Protection Agency, who shall serve as Co-Chair;

(3) One shall be an employee of the Agency for International Development;

(4) One shall be an employee of the Department of Agriculture;

(5) One shall be an employee of the Department of Commerce;

(6) One shall be an employee of the Department of the Interior;

(7) One shall be an employee of the Department of State; and

(8) One shall be an employee of the Department of the Treasury.

C. The Panel shall be responsible for:

(1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USIJI;

(2) Accepting project submissions from eligible U.S. participants and their foreign partners;

(3) Reviewing and evaluating project submissions, including baseline projections;

(4) Approving or rejecting project submissions for inclusion in the USIJI, based on criteria contained in section V;

(5) Providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;

(6) Certifying emissions reduced or sequestered estimated to result from projects;

(7) Developing operational modalities for the implementation of the Program; and

(8) Preparing an annual report of its activities, including a summary of approved projects.

Section V—Criteria

A. To be included in the USIJI, the Evaluation Panel must find that a project submission:

(1) Is acceptable to the government of the host country;

(2) Involves specific measures to reduce or sequester greenhouse gas emissions initiated as the result of the U.S. Initiative on Joint Implementation, or in reasonable anticipation thereof;

(3) Provides data and methodological information sufficient to establish a baseline of current and future greenhouse gas emissions:

(a) In the absence of the specific measures referred to in A.(2)— of this section; and

(b) As the result of the specific measures referred to in A.(2) of this section;

(4) Will reduce or sequester greenhouse gas emissions beyond those referred to in A.(3)(a) of this section, and if federally funded, is or will be undertaken with funds in excess of those available for such activities in fiscal year 1993;

(5) Contains adequate provisions for tracking the greenhouse gas emissions reduced or sequestered resulting from the project, and on a periodic basis, for modifying such estimates and for comparing actual results with those originally projected;

(6) Contains adequate provisions for external verification of the greenhouse gas emissions reduced or sequestered by the project;

(7) Identifies any associated non-greenhouse gas environmental impacts/benefits;

(8) Provides adequate assurance that greenhouse gas emissions reduced or sequestered over time will not be lost or reversed; and

(9) Provides for annual reports to the Evaluation Panel on the emissions reduced or sequestered, and on the share of such emissions attributed to each of the participants, domestic and foreign, pursuant to the terms of voluntary agreements among project participants.

B. In determining whether to include projects under the USIJI, the Evaluation Panel shall also consider:

(1) The potential for the project to lead to changes in greenhouse gas emissions elsewhere;

(2) The potential positive and negative effects of the project apart from its effect on greenhouse gas emissions reduced or sequestered;

(3) Whether the U.S. participants are emitters of greenhouse gases within the United States and, if so, whether they are taking measures to reduce or sequester such emissions; and

(4) Whether efforts are underway within the host country to ratify or accede to the United Nations Framework Convention on Climate Change, to develop a national inventory and/or baseline of greenhouse gas emissions by sources and removals by sinks, and whether the host country is taking measures to reduce its emissions and enhance its sinks and reservoirs of greenhouse gases.

Dated: May 24, 1994.

David Colson,

Acting Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 94-13262 Filed 5-31-94; 8:45 am]

BILLING CODE 4710-09-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 104

Wednesday, June 1, 1994

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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 2, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Baby Bath Rings and Seats

The staff will brief the Commission on options for Commission action to address risks of injury and death associated with baby bath rings and seats.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 27, 1994.

Sadye E. Dunn,

Secretary

[FR Doc. 94– Filed 5–27–94; 4:06 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, June 6, 1994.

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: May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–13407 Filed 5–27–94; 12:19 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 7, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open

MATTERS TO BE CONSIDERED:

6125A Highway Accident Report: US Towboat CHRIS Collision With the Judge William Seeber Bridge, New Orleans, Louisiana, May 28, 1993.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: May 27, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–13404 Filed 5–27–94; 12:03 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 30, June 6, 13, and 20, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS OF BE CONSIDERED:

Week of May 30

There are no meetings scheduled for the Week of May 30.

Week of June 6—Tentative

Monday, June 6

10 a.m.
Briefing by DOE on HLW Program (Public meeting)
(Contact: Linda Desell, 202–586–1462)

1 p.m.
Briefing on Proposed Rule on Radiological Criteria for Decommissioning (Public meeting)
(Contact: Chip Cameron, 301–504–1642)

Wednesday, June 8

10 a.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Oulook (Public meeting)
(Contact: Mary Hutzler, 202–586–2222)

Thursday, June 9

10 a.m.
Briefing on Review of Rulemaking Process (Public meeting)
(Contact: William Olmstead, 301–504–1740)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting)
a. Licensee Submittal of Data in Computer—Readable Form
(Contact: R. Gramann, 301–504–2456)
b. Advanced Medical Systems, Inc.—Appeal of LBP–90–17 (Suspension Order Proceeding)
(Contact: Stephen Burns, 301–504–2184)
c. Final Rule on "Timeliness in Decommissioning of Materials Facilities"
(Contact: Mary Thomas, 301–492–3886)
d. Intervention Petitions Challenging Proposed Fuel Shipments to Temelin Reactors in the Czech Republic (Contact: Grace Kim, 301–504–3605)

2 p.m.
Briefing on Final Rule for Protection Against Malevolent Use of Vehicles at Nuclear Power Plants—Part 73 (Public meeting)
(Contact: Phillip Mckee, 301–504–2933)

3:30 p.m.
Update on Design Basis Threat (Closed—Ex. 1)

Friday, June 10

10 a.m.
Briefing on Proposed Rule for License Renewal—Part 54 (Public meeting)
(Contact: William Travers, 301–504–1117)

2 p.m.
Briefing on Status of Nuclear Issues Concerning Russia (Closed—Ex. 1)

Week of June 13—Tentative

Thursday, June 16

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of June 20—Tentative

Monday, June 20

10 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Thursday, June 23

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities
(Contact: Victor McCree, 301–504–1711)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific

subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: May 27, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–13438 Filed 5–27–94; 2:05 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 59, No. 104
Wednesday, June 1, 1994

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 685

[Docket No. 940245-4134; I.D. 012694F]

RIN 0648-AE35

Pelagic Fisheries of the Western Pacific Region

Correction

In rule document 94-12536 beginning on page 26979 in the issue of Wednesday, May 25, 1994, make the following correction:

§ 685.9 [Corrected]

On page 26983, in the third column, in § 685.9(c)(4), in the last line, "September 21, 1994" should read "September 22, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP83-58-020 and TM94-3-7-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 94-12705 appearing on page 27013 in the issue of Wednesday, May 25, 1994, make the following corrections:

1. The Docket number should appear as set forth above.

2. In the third column, at the end of the document, the FR Doc. line was omitted and should appear as follows:

[FR Doc. 94-12705 Filed 5-24-94; 8:45 am]

BILLING CODE 6717-01-M

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[CGD 90-039]
RIN 2115-AD43

Traffic Separation Scheme; In the Approaches to Chesapeake Bay

Correction

In rule document 94-10176 beginning on page 21935 in the issue of Thursday, April 28, 1994, make the following corrections:

1. On page 21937, in the first column, under *Federalism*, in the second full paragraph, in the third line, "across" should read "access".

§ 167.203 [Corrected]

2. On the same page, in the third column, in § 167.203(c), in the first line under *Latitude*, "34°" should read "36°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AGL-17]

Establishment of Class E Airspace Areas; Waukegan, IL, Lafayette, IN, Willoughby, OH, Mosinee, WI, and La Crosse, WI.

Correction

In rule document 94-11720 beginning on page 24911 in the issue of Friday, May 13, 1994, make the following correction:

§ 71.1 [Corrected]

On page 24912, in the second column, in § 71.1, under *Paragraph 6002*, in the second full paragraph, in the first line, "IL" should read "IN".

BILLING CODE 1505-01-D

federal register

Wednesday
June 1, 1994

Part II

Federal Emergency Management Agency

United States Fire Administration

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

United States Fire Administration

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: June 30, 1994.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other changes to the list, see Supplemental Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Monday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Michael B. Hirsch,

Acting General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
ADDITIONS				
Arkansas				
AK0041 Land's End		4786 Homer Spit Rd.	Homer, AK 99603–	(907) 235–2500
Arizona				
AZ0183 Best Western Cottonwood Inn.		993 S. Main Street	Cottonwood, AZ 86326–	(602) 634–5575
AZ0184 Best Western Sunrise Inn.		128 North Main	Eagar AZ 85925–	(602) 333–2540
AZ0182 Howard Johnson Scottsdale.		5101 North Scottsdale Road	Scottsdale, AZ 85253–	(602) 945–4392
California				
CA1146 Best Western Stardust.		1057 W. Ball Road	Anaheim, Ca 92802–	(714) 774–7600
CA1142 Best Western Northwoods Inn.		655 Redwood Hwy. 101, South	Crescent City, CA 95531–	(707) 464–9771
CA1095 Residence Inn Livermore Pleasanton.		1000 Airway Blvd.	Livermore, CA 94550–	(510) 373–1800
CA1141 Best Western Norwalk Inn.		10902 Firestone Blvd.	Norwalk, CA 90650–	(310) 929–8831
CA1094 Residence Inn Ontario Airport.		2025 E. D St.	Ontario, CA 91764–	(909) 983–6788
CA1147 Best Western Shelter Island Marina Inn.		2051 Shelter Island Dr.	San Diego, CA 92106–3194	(619) 222–0561
CA1145 Best Western Canterbury Hotel.		750 Sutter St.	San Francisco, CA 94109–	(415) 474–6464
CA1143 Juliana Hotel		590 Bush St.	San Francisco, CA 94108–	(415) 392–2540
CA1144 The Hotel Majestic		1500 Sutter St.	San Francisco, CA 94109–	(415) 441–1100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
District of Columbia				
DC0046 Capitol Hill Suites		200 C St. SE	Washington, DC 20003–	(202) 543–6000
Delaware				
DE0037 Econo Lodge		4361 Highway One (1)	Rehobath, DE 19971–	(302) 227–0500
Illinois				
IL0501 Best Western Regency Inn.		350 Hwy. 173	Antioch, IL 60002–	(708) 395–3606
IL0502 Best Western Bradbury Suites.		2111 S. Arlington Heights Rd.	Arlington Heights, IL 60005–	(708) 956–1400
IL0498 Forsyth Hampton Inn		1429 Hickory Point Dr.	Decatur, IL 62526–	(217) 877–5577
IL0499 Springfield Courtyard		3462 Freedom Dr.	Springfield, IL 62704–	(217) 793–5300
IL0500 Springfield Sleep Inn		3470 Freedom Dr.	Springfield, IL 62704–	(217) 787–6200
Kansas				
KS0120 Comfort Inn		2225 S. Range Ave.	Colby, KS 67701–	(913) 462–3833
KS0121 Comfort Inn		1214 S. Washington	Junction City, KS 66441–	(913) 238–7887
KS0122 Econo Lodge		2331 S. Cedar Rd.	Ottawa, KS 66067–	(913) 242–3400
KS0123 Comfort Inn		1820 W. Crawford St.	Salina KS 67401–	(913) 826–1711
KS0124 Comfort Inn		4849 S. Laura	Wichita, KS 67216–	(316) 522–1800
KS0125 Comfort Inn at Quail Ridge.		77 North at Quail Ridge	Winfield, KS 67156–	(316) 221–7529
Louisiana				
LA0103 Tante Da's Bed and Breakfast.		2631 SE Evangeline Thruway	Lafayette, LA 70508–	(318) 264–1191
Michigan				
MI0285 Best Western Greenfield Inn.		3000 Enterprice Dr.	Allen PK/Dearborn, MI 48101–	(313) 271–1600
MI0287 Knights Inn South		2595 Capital Ave. S.W.	Battle Creek, MI 49015–4160	(616) 964–2600
MI0286 Best Western Kelly Inn.		3640 E. Cork St.	Kalamazoo, MI 49001–	(616) 381–1900
MI0288 Knights Inn		1250 N. Dixie Highway	Monroe, MI 48161–5223	(313) 243–0597
Minnesota				
MN0238 Crown Sterling Suites Minneapolis Airport.		7901 34th Ave. S.	Bloomington, MN 55425–	(612) 854–1000
MN0240 Best Western Golden Valley House.		4820 Hwy. 55	Minneapolis, MN 55422–	(612) 588–0511
MN0239 Crown Sterling Suites Downtown Minneapolis.		425 S. 7th St.	Minneapolis, MN 55415–	(612) 333–3111
Missouri				
MO0231 Best Western Music Capital Inn.		3257 Shepherd of Hills Expwy	Branson, Mo 65616–	(417) 334–8373
MO0225 Boxcar Willie Motel #1.		3454 W Hwy 76	Branson, MO 65616–	(417) 334–3873
MO0228 Branson Towers		236 Shepherd of Hills Expwy	Branson, MO 65616–	(800) 683–1122
MO0224 Classic Motor Inn		2384 Shepherd of Hills Expwy	Branson, MO 65616–	(417) 334–6991
MO0239 Econo Lodge of Branson.		230 South Wildwood Dr	Branson, MO 65616–	(417) 336–4849
MO0229 Kings Quarters Hotel		580 Shepherd of Hills Expwy	Branson, MO 65616–	(417) 334–5464
MO0218 Ozark Regal Hotel		3010 Green Mt Dr	Branson, MO 65616–	(417) 336–2200
MO0240 Quality Inn—Shepherd of the Hills Expressway.		3269 Shepherd of Hills Expway	Branson, MO 65616–	(417) 335–6776
MO0227 Settle Inn		3050 Green Mountain Dr	Branson, MO 65616–	(417) 335–4700
MO0221 Seven Gables Inn		305 Hwy 165 South	Branson, MO 65616–	(417) 334–7077
MO0226 The Towers Motor Inn.		2825 Green Mountain Drive	Branson, MO 65616–	(417) 335–8990
MO0249 Travelers Inn		1970 West Highway 76	Branson, MO 65616–	(417) 336–1100
MO0250 B/W Acorn Inn		I–35 & US–36	Cameron, MO 64429–	(816) 632–2187
MO0233 Super 8 Motel		1710 N Walnut	Cameron, MO 64429–	(816) 632–8883
MO0241 Econo Lodge		1441 W Central	Carthage, MO 64836–	(417) 358–3900
MO0223 Cuba Super 8		Rt 2 Box 2987 Jct I–44 Hwy 19	Cuba, MO 65453–	(314) 885–2087
MO0242 Comfort Inn		Hwy 84 E	Hayti, MO 63851–	(314) 359–0023
MO0243 Comfort Inn Northeast.		1051 N Cambridge	Kansas City, MO 64120–	(816) 483–7900
MO0232 Historic Suites of America.		612 Central	Kansas City, MO 64105–	(816) 842–6541
MO0219 Southmoreland on the Plaza–an Urban Inn.		116 East 46th St	Kansas City, MO 64112–	(816) 531–7979

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
MO0248 Kirksville Comfort Inn.		2209 North Baltimore	Kirksville, MO 63501–	(816) 665–2205
MO0216 Holiday Inn Lebanon		Business Rt 44 West	Lebanon, MO 65536–	(417) 532–7111
MO0244 Econo Lodge		2808 N Kansas	Springfield, MO 65803–	( ) –
MO0220 Hampton Inn South		3232 S Stewart	Springfield, MO 65802–	(417) 882–6611
MO0245 Econo Lodge MO 058.		3040 W Clay	St Charles, MO 63301–	(314) 946–9992
MO0246 Quality Hotel		9600 Natural Bridge Rd	St Louis, MO 63134–	(314) 427–7600
MO0230 Main Street Inn		221 N Main St	Ste Genevieve, MO 63670–	(314) 883–9199
MO0247 Econo Lodge		204 Cleveland	Warrensburg, MO 64093–	(816) 429–2400
MO0237 Days Inn	HC2 Box 61–50	Jct I–UU & Hwy 28 exit 163	Waynesville, MO 65583–	(314) 336–5556
Mississippi				
MS0066 La Quinta Inn—Jackson North.		616 Briarwood Dr.	Jackson, MS 39236–	(601) 957–1741
Montana				
MT0095 Billings Fairfield Inn		2026 Overland Ave.	Billings, MT 59102–	(406) 652–5330
MT0088 Kelly Inn Motel		5425 Midland Rd.	Billings, MT 59101–	(406) 252–2700
MT0096 City Center Motor Inn		507 W. Main	Bozeman, Mt 59715–	(406) 587–3158
MT0089 War Bonnet Inn		2100 Cornell Ave	Butte, MT 59701–	(406) 494–7800
MT0098 Shilo Inn Helena		2020 Prospect Ave	Helena, MT 59601–	(503) 641–6565
MT0099 Red Lion Motel Kalispell.		1330 Hwy. 2 W	Kalispell, MT 59901–	(406) 775–6700
MT0093 Livingston Comfort Inn.		114 Love Ln.	Livingston, MT 59047–	(406) 222–4400
MT0097 City Center Motel		338 E. Broadway	Missoula, MT 59802–	(406) 543–3193
MT0101 Goldsmith's Bed and Breakfast Inn.		809 E. Front	Missoula, MT 59802–	(406) 721–9732
MT0090 Red Lion Missoula		700 W. Broadway	Missoula, MT 59802–	(406) 728–3300
MT0092 Redwood Lodge		8060 Hwy. 9310	Missoula, MT 59802–	(406) 721–2110
MT0091 Ruby's Reserve St. Inn.		4825 N. Reserve	Missoula, MT 59802–	(406) 721–0990
MT0100 Best Western Kwataqnuk Resort.		303 U.S. Hwy. 93 E	Polson, MT 59860–	(406) 883–3636
MT0094 Comfort Inn		6390 S. Hwy. 93	Whitefish, MT 59937–	(406) 862–4020
North Carolina				
NC0276 Residence Inn by Marriott Tycola Exec. Pk..		5800 Westpark Dr	Charlotte, NC 28217–	(704) 527–8110
NC0313 Luxbury Hotel		9701 E. Independence Blvd	Matthews, NC 28105–	(704) 845–5911
NC0315 Sheraton Grand New Bern (Hotel).	PO Box 130	1 Bicentennial Park	New Bern, NC 28563–	(919) 638–3585
NC0314 Sheraton Inn Winston-Salem.		5790 University Parkway	Winston-Salem, NC 27105–	(910) 767–9595
New York				
NY0573 Best Western Inn of Cobleskill.		Route 7	Cobleskill, NY 12043–	(518) 234–4321
NY0572 Park Plaza Inn		581 Harry L Drive	Johnson City, NY 13790–	(607) 770–9333
NY0574 Best Westen Playmore Farms.		3291 Route 9	Saratoga Springs, NY 12866–	(518) 584–2480
Oregon				
OR0151 Ponderosa Motel		477 W. Monroe	Burns, OR 97720–	(503) 573–2047
OR0147 Cottage Grove Comfort Inn.		845 Gateway Blvd	Cottage Grove, OR 97424–	(503) 942–9747
OR0154 Holiday Inn Express Grants Pass.		105 NE Agness Avenue	Grants Pass, OR 97526–	(503) 471–6144
OR0152 Dreamers Lodge		144 North Canyon Blvd	John Day, OR 97845–	(503) 575–0526
OR0150 Super 8 Motel La Grande.		2407 East R Ave	La Grande, OR 97850–	(503) 963–8080
OR0153 Best Western Rama Inn.		4430 SE Highway 101	Lincoln City, OR 97367–	(503) 994–6060
OR0148 Econo Lodge Airport		9520 NE Sandy Blvd	Portland, OR 97220–	(503) 252–6666
OR0156 Red Lion Hotel/Coliseum.		1225 North Thunderbird Way	Portland, OR 97227–	(503) 235–8211
OR0155 Best Western Garden Villa Motel.		760 NW Garden Valley Blvd	Roseburg, OR 97470–	(503) 672–1601
OR0149 Rodeway Inn		3480 Hutton Street	Springfield, OR 97477–	(503) 746–8471
Pennsylvania				
PA0395 Econo Lodge at Valley Forge.		815 West DeKalb Pike	King of Prussia, PA 19406–	(215) 265–7200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
PA0396 Shannon Inn	RR5 Box 5202	Interstate 80 Exit 52	Stroudsburg, PA 18301–	(717) 424–1951
South Carolina				
SC0204 Best Western Inn		1540 Savannah Hwy	Charleston, SC 29407–	(803) 571–6100
SC0203 Sheraton Hotel and Conference Center.		2100 Bush River Rd	Columbia, SC 29210–	(803) 731–0300
SC0203 Econo Lodge		962 Riverview Rd	Rock Hill, SC 29730–	(803) 329–3232
Virginia				
VA0535 Best Western Thunderbird.		3000 Plank Road	Fredericksburg, VA 22401–0000.	(703) 786–7404
VA0534 Best Western Leesburg—Dulles.		726 E. Market Street	Leesburg, VA 22075–0000	(703) 777–9400
CORRECTIONS/CHANGES				
Arizona				
AZ0026 Best Western Papago Inn & Resort.		7017 E. Mcdowell Rd	Scottsdale, AZ 85257–	(602) 947–7335
California				
CA0136 Best Western Pine Tree Motel.		12018 Central Ave	Chino, CA 91710–	(909) 628–6021
CA0036 Mikado Best Western Hotel.		12600 Riverside Dr	North Hollywood, CA 91607–3496.	(818) 763–9141
Delaware				
DE0036 Econo Lodge		3 Memorial Drive	New Castle, DE 19720–	(302) 654–5400
Hawaii				
HI0096 Best Western Outrigger Waikiki Tower.		200 Lewers St	Honolulu, Oahu, HI 96815–	(808) 922–6424
Illinois				
IL0320 Holiday Inn Alsip		5000 W. 127th St	Alsip, IL 60658–	(708) 371–7300
IL0488 Kankakee Fairfield Inn		1550 St. Rte 50	Bourbonnais, IL 60914–	(815) 935–1334
IL0393 Casey Motel	PO Box 62	Rt. 40 E and NE 13th	Casey, IL 62420–	(217) 932–4044
IL0327 Stouffer Riviere Hotel		1 W. Wacker Dr	Chicago, IL 60601–	(312) 372–7200
IL0485 Danville Fairfield Inn		389 Lynch Dr	Danville, IL 61832–	(217) 443–3388
IL0263 Marriott Suites Downers Grove.		1500 Opus Pl.	Downers Grove, IL 60515–	(708) 852–1500
IL0429 Indian Mound Motel		4700 Collinsville Rd	Fairmont City, IL 62201–	(618) 279–570
IL0486 Fairview Heights Hampton Inn.		140 Ludwig Dr	Fairview Heights, IL 62208–	(618) 397–9705
IL0062 Best Western Quiet House Suites.		9923 US Rt. 20 W	Galena, IL 61036–	(815) 777–2577
IL0374 Chain of Rocks Motel		3228 Chain of Rocks Rd.	Granite City, IL 62040–	(618) 931–6600
IL0236 Best Western Windsor Oaks Inn.		2200 S. Court St	Grayville, IL 62844–	(618) 375–7930
IL0422 2 Acres Motel & Restaurant.		I–70 & Rt. 127	Greenville, IL 62246–	(618) 664–3131
IL0036 Holiday Inn Morris		I–80 & Il. 47	Morris, IL 60450–	(815) 942–6600
IL0482 Peoria Residence Inn		4201 N. War Memorial Dr	Peoria, IL 61614–	(309) 681–9000
IL0097 Plaza One Hotel		Third Ave. and 17th St	Rock Island, IL 61201–	(309) 794–1212
IL0481 Rockford Residence Inn.		7542 Colosseum Dr	Rockford, IL 61107–	(815) 227–0013
IL0110 Best Western at O'Hare.		10300 W. Higgins Rd	Rosemont, IL 60018–	(708) 296–4471
IL0174 Holiday Inn O'Hare International.		5440 N. River Rd	Rosemont, Il 60018–	(708) 671–6350
IL0023 Best Western Sky Harbor Inn.		1701 J. David Jones Pkwy	Springfield, IL 62702–	(217) 753–3446
IL0022 Hampton Inn Springfield.		3185 S. Dirksen Pkwy	Springfield, IL 62703–4501	(217) 529–1100
IL0293 Springfield Fairfield Inn.		3446 Freedom Dr	Springfield, IL 62704–	(217) 793–9277
Kansas				
KS0109 Lansing Econo Lodge		504 N. Main St	Lansing, KS 66043–	(913) 727–2777
Maryland				
MD0043 Comfort Inn West		6700 Security Blvd	Baltimore, MD 21207–	(410) 281–1800
Michigan				
MI0290 Motel 6		3764 S. State St	Ann Arbor, MI 48108–	(313) 665–9900
MI0252 Hampton Inn		1461 N. Opdyke Rd	Auburn Hills, MI 48326–	(313) 370–0044

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
MI0291 Motel 6		830 Royal Dr.	Jackson, MI 49204–	(517) 789–7186
MI0292 Motel 6		7326 W. Saginaw Hwy	Lansing, MI 48917–	(517) 321–1444
MI0289 Motel 6		6361 Dixie Hwy	Saginaw, MI 48722-	(517) 777–2582
Minnesota				
MN0007 Best Western Bradbury Suites.		7770 Johnson Ave	Minneapolis, MN 55435–	(612) 893–9999
MN0208 Best Western Inn		Hwy. 32 S	Thief River Falls, MN 56701–	(218) 681–7555
Missouri				
MO0236 Branson Fairfield Inn		220 Hwy 165 South	Branson, MO 65616–	(417) 336–5665
MO0234 Clarion Fall Creek Resort.		#1 Fall Creek Dr	Branson, MO 65616–	(417) 334–6404
MO0222 Ozark Valley Inn	PO Box 6582	2693 Shepherd of Hills Expwy	Branson, MO 65616–	(417) 336–4666
MO0217 Tara Inn		245 Shepherd of Hills Expwy	Branson, MO 65616–	(417) 334–8272
MO0235 Yellow Rose Motel		3140 Falls Parkway	Branson, MO 65616–	(417) 336–3658
MO0207 Econo Lodge		4575 N. Lindbergh Blvd	Bridgeton, MO 63044–	(314) 731–3000
MO0115 Airport Doubletree Hotel.		8801 NW 112th St	Kansas City, MO 64195–	(816) 891–8900
MO0011 Best Western Country Inn—KCI Airport.		11900 Plaza Circle	Kansas City, MO 64153–	(816) 464–2002
MO0013 Best Western Country Inn—North.		2633 NE 43rd Street	Kansas City, MO 64117–	(816) 459–7222
MO0012 Best Western Country Inn—Worlds of Fun.		7100 NE Parvin Road	Kansas City, MO 64117–	(816) 453–3355
MO0126 Inn Towne Lodge		2650 NE 43rd St	Kansas City, MO 64117–	(816) 453–6550
MO0043 KC Marriott Downtown.		200 W. 12th St	Kansas City, MO 64105–	(816) 421–6800
MO0097 Econo Lodge	PO Box 992	Business Rt 44 West	Lebanon, MO 65536–	(417) 588–3226
MO0170 Best Western Sky-Vue Inn.		Hwy 36 West	Macon, MO 63552–	(816) 385–2125
MO0188 Super 8 Motel	PO Box 513	1420 N. Rutherford Jct 36 & 63	Macon, MO 63552–	(816) 385–5788
MO0238 Holiday In Express at Six Flags.		1400 W. Osage	Pacific, MO 63069–	(314) 257–8400
MO0033 Econo Lodge-East		2611 N. Glenstone	Springfield, MO 65803–	(417) 864–3565
MO0179 Summerfield Suites Hotel.		1855 Craigshire Rd	St. Louis, MO 63146–	(314) 878–1555
Mississippi				
MS0002 Best Western Northgate Inn.	PO Box 6757	Hwy. 49	Hattiesburg, MS 39402–	(601) 268–8816
MS0001 Key West Inn	Rt. 3	Box 659	Iuka, MS 38852–	(601) 423–9221
Montana				
MT0015 Valu Inn Missoula		3001 SW Brooks St	Missoula, MT 59801–	(406) 721–9600
North Carolina				
NC0138 Best Western Cary Inn.		1722 Walnut St	Cary, NC 27511–	(919) 481–1200
NC0067 Best Western Luxbury Inn.		4904 N. I–85 Service Rd	Charlotte, NC 28206–	(704) 596–9229
NC0287 Holiday Inn Bordeaux		1707 Owen Drive	Fayetteville, NC	(910) 323–0111
New York				
NY0050 Best Western Captains Quarters Hotel.		26 E. First St	Oswego, NY 13126–	(315) 342–4040
Oregon				
OR0015 Super 8 Motel Baker City.		250 Campbell St	Baker City, OR 97814–	(503) 523–8282
OR0017 Best Western Entrada Lodge.		19221 Century Dr	Bend, OR 97702–	(503) 382–4080
OR0090 Best Western New Redmond Hotel.		521 S. 6th St	Redmond, OR 97756–	(503) 923–7378
Pennsylvania				
PA0074 Knights Inn	Rd 3 Box 253	I–80 & Rt. 68	Clarion, PA 16214–	(814) 226–4550
PA0129 Knights Inn		1215 S. Main St	Greensburg, PA 15601–	(412) 836–7100
PA0155 The Hershey Lodge & Conv Center.	PO Box 446	W. Chocolate Ave. & University	Hershey, PA 17033–	(717) 543–3006
PA0251 Best Western		11580 Roosevelt Blvd	Philadelphia, PA 19116–	(215) 464–9500
PA0266 Doubletree Hotel		Broad & Locust St	Philadelphia, PA 19107–	(215) 893–1600
PA0390 Residence Inn by Marriott—Phila. Airport.		4630 Island Avenue	Philadelphia, PA 19153–	(215) 492–1611

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
PA0274 Wyndham Franklin Plaza.	.....	Two Franklin Plaza	Philadelphia, PA 19103–	(215) 448–2000
Virginia				
VA0450 Econo Lodge (Airport).	.....	3343 N. Military Hwy	Norfolk, VA 23503–	(804) 480–9611
VA0426 Days Inn Aquia	.....	2868 Jefferson Davis Hwy	Stafford, VA 22554–	(703) 659–0022
VA0529 Residence Inn Tysons Corner.	.....	8616 Westwood Center Drive ..	Vienna, VA 22182–0000–	(703) 893–0120
DELETIONS				
None				

[FR Doc. 94–13212 Filed 5–31–94; 8:45 am]

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Vol. 59, No. 104

Wednesday, June 1, 1994

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28207–28458.....1

CFR PARTS AFFECTED DURING JUNE

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 636/P.L. 103–259

Freedom of Access to Clinic Entrances Act of 1994 (May 26, 1994; 108 Stat. 694; 4 pages)

S. 2024/P.L. 103–260

Airport Improvement Program Temporary Extension Act of 1994 (May 26, 1994; 108 Stat. 698; 7 pages)

S. 2087/P.L. 103–261

To extend the time period for compliance with the Nutrition Labeling and Education Act of 1990 for certain food products packaged prior to August 8, 1994. (May 26, 1994; 108 Stat. 705; 1 page)

Last List May 31, 1994

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 1994

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

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June 3	June 20	July 5	July 18	August 2	September 1
June 6	June 21	July 6	July 21	August 5	September 6
June 7	June 22	July 7	July 22	August 8	September 6
June 8	June 23	July 8	July 25	August 8	September 6
June 9	June 24	July 11	July 25	August 8	September 7
June 10	June 27	July 11	July 25	August 9	September 8
June 13	June 28	July 13	July 28	August 12	September 12
June 14	June 29	July 14	July 29	August 15	September 12
June 15	June 30	July 15	August 1	August 15	September 13
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June 20	July 5	July 20	August 4	August 19	September 19
June 21	July 6	July 21	August 5	August 22	September 19
June 22	July 7	July 22	August 8	August 22	September 20
June 23	July 8	July 25	August 8	August 22	September 21
June 24	July 11	July 25	August 8	August 23	September 22
June 27	July 12	July 27	August 11	August 26	September 26
June 28	July 13	July 28	August 12	August 29	September 26
June 29	July 14	July 29	August 15	August 29	September 27
June 30	July 15	August 1	August 15	August 29	September 28

Public Laws

103d Congress, 2d Session, 1994

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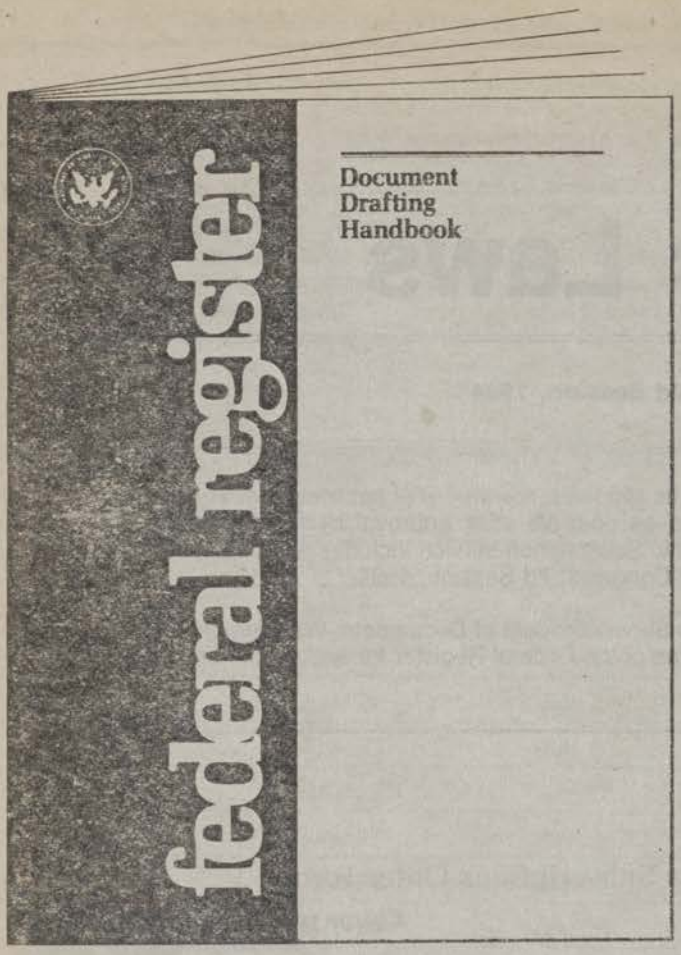
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