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

Contents

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agriculture Department
See Farmers Home Administration
See Forest Service
NOTICES
Agency information collection activities under OMB review, 61392

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blackstone River Valley National Heritage Corridor Commission
NOTICES
Meetings; Sunshine Act, 61488

Bonneville Power Administration
NOTICES
Billing credits contracts:
Decision to sign, 61409

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Native American social and economic development projects, 61516
Runaway and homeless youth program proposed priorities (1993 FY), 61429

Commerce Department
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Textile consultation; review of trade:
Sri Lanka, 61399

Commodity Futures Trading Commission
RULES
Federal claims collection, 61291
Practice and procedure:
No-action, interpretative and exemption letters and other written communications; public availability, 61290

Defense Department
See Navy Department
RULES
Freedom of Information Act; implementation:
Defense Information Systems Agency, 61324
NOTICES
Agency information collection activities under OMB review, 61400
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 61400
Meetings:
Nuclear Weapons Surety Joint Advisory Committee, 61400
Women in Services Advisory Committee, 61400

Education Department
RULES
Elementary and secondary education:
Magnet schools assistance program, 61508
NOTICES
Grants and cooperative agreements; availability, etc.:
Law school clinical experience program, 61402
Magnet schools assistance program, 61508

Employment and Training Administration
NOTICES
Applications, hearings, determinations, etc.:
Coombs Machinery, Inc., 61452
Welltech, Inc., 61452

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Environmental statements; availability, etc.:
Savannah River Plant, SC, 61402
Meetings:
Secretary of Energy Advisory Board, 61408
Natural gas exportation and importation:
Canadian Hydrocarbons Marketing (U.S.) Inc., 61418
Fulton Cogeneration Associates, 61418
Kamine/Besicorp Beaver Falls, L.P., 61418
Kamine/Besicorp Syracuse L.P., 61418
Montana Power Co., 61418

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Wood preserving operations and surface protection processes; drip pads management technical standards, 61492
PROPOSED RULES
Clean Air Act:
Acid rain programs—
Nitrogen oxides emission reduction program; correction, 61489
Hazardous waste:
Environmental media and debris contaminated by other than underground storage tank released petroleum products; suspension of toxicity characteristics, 61542
Hazardous waste management system; "mixture" and "derived from" rules; definitions; meeting, 61376
State underground storage tank program approvals—
Nevada, 61376
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 61421
Weekly receipts, 61424
Pesticide programs:
Confidential business information and data transfer to contractors, 61424

Pesticide registration, cancellation, etc.:
Soap salts, 61423
Sodium hydroxide, 61423
Zinc salts, 61422

Export Administration Bureau
RULES
Commerce control list:
Revisions, clarifications, and corrections, 61259

Farmers Home Administration
RULES
Loan and grant programs:
Elimination of loan cost payments through the "MISPAY" accounting system at the National Finance Center
Correction, 61489

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 61255
VOR Federal airways and jet routes, 61257
PROPOSED RULES
Control zones, 61343
Transition areas, 61344
NOTICES
Airport noise compatibility program:
Noise exposure map—
Greater Pittsburgh International Airport, PA, 61477
Environmental statements; availability, etc.:
Aircraft flight patterns, changes, NJ, 61478
Grants and cooperative agreements:
Airport improvement program, 61479
Meetings:
Aviation Rulemaking Advisory Committee, 61479

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Monsanto Co. et al., 61410
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 61414
El Paso Natural Gas Co., 61414
Questar Pipeline Co., 61415
Texas Eastern Transmission Corp., 61415
U-T Offshore System, 61416, 61417

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 61488

Federal Trade Commission
NOTICES
Prohibited trade practices:
National Association of Social Workers, 61424

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 61447

Food and Drug Administration
RULES
Biological products:
New drug, antibiotic, and biological drug products; accelerated approval procedures
Correction, 61437
Color additives:
Calcium disodium EDTA and disodium EDTA, 61292
NOTICES
Human drugs:
New drugs and antibiotic drugs; adverse drug experiences; postmarketing reporting guideline availability, 61489

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Washington—
West Coast Forest Products, Inc.; wood building products plant, 61395

Forest Service
NOTICES
Environmental statements; availability, etc.:
Custer National Forest et al., ND, 61393
Payette National Forest, ID, 61393
San Bernardino National Forest, CA, 61393
Tahoe National Forest, CA, 61394

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 61400

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
NOTICES
Organization, functions, and authority delegations:
Aging Administration, 61433

Health Resources and Services Administration
See Public Health Service
NOTICES
Meetings; advisory committees:
February, 41347

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 61419
Decisions and orders, 61419

Historic Preservation, Advisory Council
NOTICES
Meetings, 61392

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 61444

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

Internal Revenue Service
RULES
Income taxes:
Election to expense depreciable business assets, 61313

Real estate mortgage investment conduits, 61293
PROPOSED RULES
Estate and gift taxes:
Generation-skipping transfer tax, 61353, 61356
Income taxes:
Property contributed to partnership; allocations reflecting built-in gain or loss, 61345, 61353
Hearing, 61353
Procedure and administration:
Passport and permanent residence applicants; information reporting, 61373

International Trade Administration
NOTICES
Export trade certificates of review, 61395, 61398
Applications, hearings, determinations, etc.:
Marine Biological Laboratory, 61399
Pennsylvania State University et al., 61399
University of—
Alaska-Fairbanks et al., 61399
Vermont, 61399

International Trade Commission
NOTICES
Import investigations:
Ethyl alcohol for fuel use; base quantity determination, 61448

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 61449
Rail carriers:
Cost recovery procedures—
Adjustment factor, 61449
Waybill data; release for use, 61451
Railroad operation, acquisition, construction, etc.:
Kansas City Southern Industries, Inc., et al., 61449
Norfolk Southern Railway Co., 61450
Railroad services abandonment:
CSX Transportation, Inc., 61451

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
New Mexico, 61326
NOTICES
Meetings:
Rock Springs District Advisory Council; correction, 61446
Roswell District Grazing Advisory Board, 61446
Survey plat filings:
Idaho, 61446

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Flame-resistant conveyor belts; requirements for approval, 61538
Underground coal mines—
Machinery and equipment operation and maintenance, 61524

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 61400
Meetings:
Minority Business Resource Advisory Committee, 61460

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 61461

National Commission on Libraries and Information Science
NOTICES
Meetings; Sunshine Act, 61488

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 61461
Meetings:
Media Arts Advisory Panel, 41461

National Highway Traffic Safety Administration
PROPOSED RULES
Fuel economy standards:
Light trucks, 61377

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 61438
National Institute of Diabetes and Digestive and Kidney Diseases, 61438

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 61326
PROPOSED RULES
Fishery conservation and management:
Summer flounder, 61389

National Park Service
NOTICES
Concession contract negotiations:
Independence National Historical Park, PA, 61447
Meetings:
Farmington River Study Committee, 61447
Preservation of Jazz Advisory Commission, 61448
Vancouver Historical Study Commission, 61448

National Science Foundation
NOTICES
Meetings:
Atmospheric Sciences Special Emphasis Panel, 61462
Ocean Sciences Review Panel, 61462
Undergraduate Education Special Emphasis Panel, 61462

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Naval Air Station Chase Field, TX, 61401
Meetings:
Chief of Naval Operations Executive Panel, 61401
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Electronic Health Technologies, Inc., 61402

Nuclear Regulatory Commission
PROPOSED RULES
Early site permits standard design certifications and combined licenses for nuclear power plants:
Standard design certification rulemaking procedures Correction, 61342
NOTICES
Meetings:
Nuclear Safety Research Review Committee, 61462

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Canadian Standards Association, 61452

Pension Benefit Guaranty Corporation
RULES
Internal and administrative rules:
Bylaws; amendments, 61323

Personnel Management Office
RULES
Senior Executive Service:
Retention of benefits for Executive Level V or higher Correction, 61249

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Learning readiness board establishment; core support, 61438
National toxicology program:
Advisory review by Scientific Counselors Board; program response to recommendations, 61439

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
McDowell Property, NM, 61463

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Pacific Stock Exchange, Inc., 61464
Applications, hearings, determinations, etc.:
Sanyo Industries, Inc., 61465

Small Business Administration
RULES
Practice and procedure:
Certificate of competency by regional offices; dollar threshold; revision, 61255
NOTICES
Disaster loan areas:
South Carolina, 61465
Grants and cooperative agreements; availability, etc.:
Microloan demonstration program, 61466
Interest rates; quarterly determinations, 61466
Meetings:
National Advisory Council, 61466
Meetings; regional advisory councils:
Virginia, 61466
Organization, functions, and authority delegations:
Field officers; loan approval authority, 61467
Applications, hearings, determinations, etc.:
Alliance Enterprise Corp., 61467
Power Ventures, Inc., 61467

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 61468
Organization, functions, and authority delegations:
Assistant Secretary for Oceans and International Environmental and Scientific Affairs, 61468

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Depositor Protection Oversight Board
RULES
Privacy Act; implementation, 61251
PROPOSED RULES
Privacy Act; implementation, 61342
NOTICES
Meetings; regional advisory boards:
Regions I through VI, 61468
Privacy Act:
System of records, 61469

Thrift Supervision Office
RULES
Adjustable-rate mortgage index data; reporting requirements, 61249

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

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Edmund S. Muskie fellowship program, 61479
Public and private non-profit organizations in support of international educational and cultural activities, 61481, 61485

Veterans Affairs Department
RULES
Loan guaranty:
Negotiated interest rates, 61325
NOTICES
Meetings:
Geriatrics and Gerontology Advisory Committee, 61486
Structural Safety of Veterans Affairs Department Facilities Advisory Committee, 61487

Separate Parts In This Issue

Part II
Environmental Protection Agency, 61492

Part III
Department of Education, 61508

Part IV
Department of Health and Human Services, Administration for Children and Families, 61516

Part V
Department of Labor, Mine Safety and Health Administration, 61524

Part VI
Department of Labor, Mine Safety and Health Administration, 61538

Part VII
Environmental Protection Agency, 61542

Reader Aids

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

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
317 61249

7 CFR
1965 61489

10 CFR
Proposed Rules:
52 61342

12 CFR
506 61249
563 61249
1503 61251
Proposed Rules:
1503 61342

13 CFR
101 61255

14 CFR
39 61255
71 61257
Proposed Rules:
71 (2 documents) 61343, 61344

15 CFR
771 61259
785 61259
786 61259
799 61259

17 CFR
140 61290
143 61291

21 CFR
73 61292
314 61489
601 61489

26 CFR
1 (2 documents) 61293, 61313
301 61293
602 (2 documents) 61293, 61313
Proposed Rules:
1 (2 documents) 61345, 61353
26 (2 documents) 61353, 61356
301 (2 documents) 61356, 61373

29 CFR
2601 61323

30 CFR
Proposed Rules:
14 61254
18 61254
75 (2 documents) 61254, 61538

32 CFR
287 61234

34 CFR
280 61508

38 CFR
36 61235

40 CFR
261 61492
264 61492
265 61492
302 61492
Proposed Rules:
76 61489
260 61736
261 (2 documents) 61376, 61452
262 61376
264 61376
268 61376
281 61376

43 CFR
Public Land Order:
6954 61236

49 CFR
Proposed Rules:
523 61377
525 61377
533 61377
537 61377

50 CFR
672 61326
675 61326
Proposed Rules:
625 61389

Rules and Regulations

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

RIN 3206-AE06

Retention of Senior Executive Service Provisions; Correction

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: In a final rule under 5 CFR part 317 published on November 20, 1992, at 57 FR 54677, the date listed after the "Dates" caption was not specifically identified as the effective date of the rule. This document clarifies that the date listed, December 21, 1992, is the effective date of the rule. The rule relates to the retroactive election of Senior Executive Service (SES) benefits under Public Law 101-335 and Public Law 102-378 by certain career SES members appointed to positions at level V of the Executive Schedule or higher.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: Neal Harwood at (202) 606-1610.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, the "Dates" caption in OPM's final rule under 5 CFR part 317 published on November 20, 1992, (57 FR 54677, first column) is corrected to read: **EFFECTIVE DATE:** December 21, 1992.

[FR Doc. 92-31104 Filed 12-23-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506 and 563

[No. 92-502]

RIN 1550-AA52

Reporting Requirements for Adjustable-Rate Mortgage Index Data

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its reporting regulation to require any savings association, within the jurisdiction of a Federal Home Loan Bank (FHLBank), to provide the FHLBank with data to calculate and publish an adjustable-rate mortgage index, upon the FHLBank's request. The regulation adopted today will ensure that the adjustable-rate mortgage index data continue to be reported notwithstanding the elimination of the monthly Thrift Financial Report (monthly TFR) effective January 1, 1993.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine Shepard, Senior Attorney, (202) 906-7275, Regulations and Legislation Division, Chief Counsel's Office; Patrick G. Berbakos, Deputy Assistant Director, Supervisory Systems, (202) 906-6720, Thomas A. Loeffler, Assistant Director for Supervisory Operations, (202) 906-5762, Supervisory Operations; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Proposal

On April 4, 1992, the OTS announced its decision to eliminate the monthly TFR as of January 1, 1993.[1] The OTS expects that there will be a significant reduction in the paperwork burden on the thrift industry and that savings associations will realize corresponding financial benefits from the elimination of the monthly TFR.

The monthly TFR has been used for a number of purposes in addition to monitoring the condition of savings associations. One of the important uses of the monthly TFR has been to provide the FHLBanks with data for calculating and publishing adjustable-rate mortgage indices. Eliminating the monthly TFR could, therefore, affect the continued publication of adjustable-rate mortgage indices by the FHLBanks. Of particular concern to commenters on the January, 1992, notice was the potential loss of the Eleventh District Cost of Funds Index published monthly by the FHLBank of San Francisco, which is used as the base index for over $250 billion of adjustable-rate mortgages nationwide.

Section 402(e)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101-73, section 402(e)(3), 103 stat. 183,355 (1989)) directs the OTS to take necessary steps to ensure that pre-FIRREA indices prepared by, *inter alia*, the FHLBanks and used to calculate the interest rate on adjustable-rate mortgage instruments continue to be available.

To preserve and maintain these important adjustable-rate mortgage indices, the OTS proposed to amend its reporting regulation. 57 FR 33,662 (July 30, 1992). Under the proposal, certain adjustable-rate mortgage index data currently extracted from the monthly TFR would continue to be reported to the FHLBanks notwithstanding the elimination of the monthly TFR. A new paragraph would be added to the reporting regulation that would require any savings association, within the jurisdiction of a FHLBank, that reports data from which a FHLBank calculates and publishes an adjustable-rate mortgage index, to continue to provide the FHLBank with such data upon the FHLBank's request. Such data would be limited to the data necessary for a FHLBank to calculate and publish the adjustable-rate mortgage index it published on or before August 9, 1989, the date of enactment of FIRREA.

II. Summary of Comments and Description of Final Regulation

The OTS received ten comment letters on this proposal. Four commenters were savings associations; three commenters

[1] *See* 57 FR 2,314 (Jan. 21, 1992) (notice and request for comment with respect to elimination of the monthly TFR). One of the principal reasons OTS gave for the elimination of the monthly report was that "[t]he quarterly TFR data collection, in conjunction with examinations and other supervisory reports required on a case-by-case basis, provides the OTS with sufficient financial data to assess the condition of . . . savings associations." *Id.*

were FHLBanks; and the Federal Housing Finance Board, a national bank, and a thrift trade association each submitted one comment.

All commenters supported the OTS's effort to ensure that FHLBanks continue to have access to data for calculating and publishing adjustable-rate mortgage indices. Five of the commenters specifically mentioned their reliance on, and the importance of preserving, the Eleventh District Cost of Funds Index. These commenters stated that the loss of this important index would require lenders to convert their adjustable-rate mortgage loans to another index with undesirable results, including borrower confusion and significant conversion costs.

Two commenters thought that the proposed rule might apply only to those savings associations that have actually filed monthly TFRs and that savings associations chartered after January 1, 1993 would thus not be required to report adjustable-rate mortgage index data to the FHLBanks. The OTS does not intend to exclude newly chartered thrifts from the rule and has modified the language of the final rule to clarify that the reporting requirement applies to all savings associations within the jurisdiction of the requesting FHLBank, regardless of chartering date.

Four commenters expressed concern that in calculating its index a FHLBank may find it necessary from time to time to modify its reporting requirements. They argued that the proposed rule did not give the FHLBanks this necessary flexibility. The OTS has added language to the final rule recognizing that the FHLBank may modify, from time to time, the data items that are collected. The OTS stresses, however, that the revised language of the final rule, as modified, does not require savings associations to provide data for any new index created by a FHLBank. The requirement is limited to the data items, as amended or modified, used to publish the adjustable-rate mortgage index that the FHLBank published on or before August 9, 1989.

One commenter suggested that the OTS collect the adjustable-rate mortgage index data and share it with the FHLBanks. Implementation of this suggestion is not practical, however, since after the monthly TFR is eliminated as of January 1, 1993, the OTS will no longer be in possession of the data elements the FHLBanks need for publication of their adjustable-rate mortgage indices. Furthermore, collection of these data merely to transfer them to the FHLBanks would unnecessarily delay the data collection process.

One commenter thought that the purpose of the reporting regulation was to inform savings associations that the OTS would no longer collect data from which it publishes the Monthly Median Cost of Funds Index. The commenter misunderstands the regulation. The purpose of the regulation is to ensure that FHLBanks have continued access to the data that they use to publish adjustable-rate mortgage indices notwithstanding the elimination of the monthly TFR. The OTS is not eliminating publication of its Monthly Median Cost of Funds Index and will still collect data from savings associations for its continued publication.

Accordingly, the OTS is amending its reporting regulation, 12 CFR 563.180, to require, upon the request of any FHLBank, any savings association within the jurisdiction of the FHLBank to provide data from which the FHLBank calculates and published an adjustable-rate mortgage index. This reporting requirement would only cover the data necessary for a FHLBank to calculate and publish the adjustable-rate mortgage index it published on or before August 9, 1989, the date of enactment of FIRREA. A FHLBank may, as it deems necessary, alter or amend the data items it requires savings associations to report for the calculation and publication of an adjustable-rate mortgage index, so long as the resulting adjustable-rate mortgage index is the same index that the FHLBank published on or before August 9, 1989.

III. Executive Order 12291

The OTS has determined that this regulation does not constitute a "major rule" and, therefore, the preparation of a regulatory impact analysis is not required.

IV. Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this regulation will not have a significant impact on a substantial number of small savings associations.

V. Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1550-0079.

The collection of information in this final rule is in 12 CFR 563.180(e). The information will be used by the FHLBanks in the publication of adjustable-rate mortgage indices and will allow the home loan mortgage market to function efficiently.

Comments concerning the collection of information under this final rule should be directed to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and to the Office of Management and Budget, Paperwork Reduction Project 1550-0079.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby amends parts 506 and 563, chapter V, title 12, Code of Federal Regulations as set forth below:

Subchapter A—Organization and Procedures

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding one new entry in numerical order to the table in paragraph (b) to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control no.
* * * * *	
563.180(e)	1550-0079
* * * * *	

Subchapter D—Regulations Applicable to all Savings Associations

PART 563—OPERATIONS

3. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106 Pub. L. 102-242, sec. 306, 105 Stat. 2236, 2355 (1991).

4. Section 563.180 is amended by adding a new paragraph (e) to read as follows:

§ 563.180 Criminal referrals and other reports or statements.

* * * * *

(e) *Adjustable-rate mortgage indices*—(1) *Reporting obligation.* Upon the request of a Federal Home Loan Bank, all savings associations within the jurisdiction of that Federal Home Loan Bank shall report the data items set forth in paragraph (e)(2) of this section for the Federal Home Loan Bank to use in calculating and publishing an adjustable-rate mortgage index.

(2) *Data to be reported.* For purposes of paragraph (e)(1) of this section, the term "data items" means the data items previously collected from the monthly Thrift Financial Report and such data items as may be altered, amended, or substituted by the requesting Federal Home Loan Bank.

(3) *Applicable indices.* For the purpose of this reporting requirement, the term "adjustable-rate mortgage index" means any of the adjustable-rate mortgage indices calculated and published by a Federal Home Loan Bank or the Federal Home Loan Bank Board on or before August 9, 1989.

Dated: December 1, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-31196 Filed 12-23-92; 8:45 am]

BILLING CODE 6720-01-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1503

Privacy Act Procedures

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Final rule.

SUMMARY: This final rule prescribes procedures to implement the Privacy Act of 1974. The Thrift Depositor Protection Oversight Board, which is an agency for the purposes of the Privacy Act, is required to promulgate regulations establishing such procedures. The objective of this rule is to facilitate the exercise of the rights conferred on individuals by the Privacy Act and to ensure that the disclosure of information contained in systems of records maintained by the Board is in compliance with the Privacy Act.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION, CONTACT: Lawrence Hayes, telephone (202) 786-9681.

SUPPLEMENTARY INFORMATION:

Background

The Thrift Depositor Protection Oversight Board ("Board") is a corporate instrumentality of the United States, established as the "Oversight Board" by section 21A(a)(1) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(a)(1), as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The Oversight Board was redesignated as the Thrift Depositor Protection Oversight Board by the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Public Law No. 102-233, sec. 302(a), 105 Stat. 1761, 1767. The Board's principal duty is to oversee the Resolution Trust Corporation ("RTC"), also established under FIRREA, whose principal duty is to manage and resolve cases involving failing and failed thrift institutions.

Pursuant to 12 U.S.C. 1441a(a)(2), the Board is an agency of the United States for the purposes of the Privacy Act of 1974, 5 U.S.C. 552a. The promulgation of regulations establishing procedures for access to and amendment of records pertaining to an individual maintained in a system of records is required by 5 U.S.C. 552a(f).

The Board reviews overall strategies, policies, and goals established by the RTC for its activities, approves its periodic financing requests prior to implementation, and reviews the RTC's regulations, procedures, and overall performance. With respect to case-specific matters involving individual case resolutions, asset dispositions, and its day-to-day operations, the RTC makes determinations and takes such actions as it deems appropriate without any prior review, approval, or disapproval by the Board. As a consequence of the Board's focus on issues of policy and overall review, the files of the Board concerning its basic functions are generally not organized in groups of records from which information about an individual may be retrieved by the use of the individual's name or personal identifier, the "systems of records" that are the concern of the Privacy Act. Board information that is retrievable by use of the name or symbol of an individual person is generally restricted to files concerning Board employees and former employees, applicants for employment, members of advisory boards established by the Board pursuant to 12 U.S.C. 1441a(d) (who are special government employees) and candidates for advisory board membership, individuals who are or have been in litigation with the Board, persons who have corresponded with the Board, members of Congress, and contractors with the Board.

Final Rule

On June 12, 1992, the Board proposed a rule to implement the Privacy Act. The 60-day comment period for the proposed rule ended on August 11, 1992. No comments were received.

The Board's final rule, which is substantially unchanged from the proposed rule, implements Privacy Act requirements with respect to the promulgation and contents of regulations concerning systems of records in which information is retrievable by the name or personal identifier of an individual. Section 1503.3 establishes procedures whereby an individual can be notified in response to his or her request whether any system of records of the Board contains a record pertaining to such individual. Section 1503.4 sets forth reasonable requirements for identifying an individual who requests his or her records. Sections 1503.4, 1503.5, and 1503.6 establish procedures for the disclosure to an individual of records pertaining to such individual that are maintained by the Board. Sections 1503.7, 1503.8, and 1503.9 establish procedures for reviewing a request from an individual concerning the amendment of a record pertaining to such individual maintained by the Board and for an appeal within the agency of an initial adverse determination with respect to such request. Section 1503.11 establishes fees that may be charged an individual for duplicating copies of his or her records, excluding the cost of any search for and review of such records. The regulations as a whole provide the means necessary for an individual to exercise fully his or her rights under the Privacy Act.

This rule is issued pursuant to the requirement of 5 U.S.C. 552a(f) and to implement the provisions and intent of the Privacy Act. The Board finds good cause to make this final rule effective upon publication in that requests and appeals under the Privacy Act may thereby be processed without delay in accordance with agency rules, as required by 5 U.S.C. 552a(f).

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number 3203-0001.

The collections of information in the final rule are in §§ 1503.3, 1503.4, and 1503.7. This information is required by

the Board under §§ 1503.3 and 1503.4 to identify individuals or persons acting on their behalf seeking to know whether a system of records contains information relating to such individuals and to identify individuals or representatives of individuals seeking access to records pertaining to such individuals. Information is required under § 1503.7 for the appropriate amendment or correction of records pertaining to individuals. This information will be used to process such inquiries and requests, amend or correct records, and protect records pertaining to individuals in accordance with the Privacy Act. The likely respondents are individuals or their representatives; Board employees, former employees, applicants for employment, and special government employees providing services for the Board.

The total annual reporting and recordkeeping burden that will result from these sections is estimated not to exceed ten hours. The estimated average burden hours per response is not more than one half hour under §§1503.3 and 1503.4 and one hour under § 1503.7. The annual number of likely respondents is estimated not to exceed fifteen, and the proposed frequency of responses is on occasion.

Executive Order 12291

This rule is not a major rule under Executive Order No. 12291. The economic impact of the rule is minimal.

Regulatory Flexibility Act

The Thrift Depositor Protection Oversight Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Board's systems of records are few, small in size, and generally limited in scope to records concerning Board employees, former employees, applicants for employment, special government employees, correspondents and contractors with the Board, and individuals in litigation with the Board.

Proposed amendment

Elsewhere in this issue of the **Federal Register** the Board is publishing a proposed amendment to this final rule that would exempt from subsections (c)(3), (d), (e)(1), and (e)(4)(G), (H), and (f) of 5 U.S.C. 552a a system of records that is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal employment, to the extent that the disclosure of such information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. This specific exemption may be issued pursuant to 5 U.S.C. 552a(k)(5) if promulgated pursuant to the requirements of 5 U.S.C. 553.

List of Subjects in 12 CFR Part 1503

Privacy.

For the reasons set forth in the preamble, chapter XV of title 12 of the Code of Federal Regulations is amended by adding new part 1503 to subchapter A to read as follows:

PART 1503—PRIVACY ACT PROCEDURES

Sec.

1503.1 Purpose and scope.
1503.2 Definitions.
1503.3 Procedures for determining if an individual's records are contained in a system of records.
1503.4 Requests for disclosure of records.
1503.5 Disclosure of requested records.
1503.6 Special procedure: Medical records.
1503.7 Requests for amendment of records.
1503.8 Board review of requests for amendment of records.
1503.9 Appeal of initial adverse determinations on access or amendment.
1503.10 Disclosure of a record to a person other than the individual to whom it pertains.
1503.11 Fees.
1503.12 Exception.

Authority: 5 U.S.C. 552a; 12 U.S.C. 1441a(a)(2); 12 U.S.C. 1441a(a)(13).

§ 1503.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the provisions of the Privacy Act with regard to access to and review of personal information in systems of records maintained by the Board.

§ 1503.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Board* means the Thrift Depositor Protection Oversight Board.

(b) *Business day* means any day other than a Saturday, Sunday, or legal Federal public holiday.

(c) *Guardian* means the parent of a minor individual or the legal guardian of an individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* means maintain, collect, use, disseminate, or control.

(f) *Privacy Act* means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(g) *Privacy Officer* means an officer or employee of the Board designated by the President of the Board to implement the Privacy Act in accordance with this part.

(h) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(i) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected or created.

(j) *System of records* means a group of any records under the control of the Board from which information is retrievable by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

(k) *Vice President* means a Vice President of the Board designated by the President of the Board to review actions and determinations of the Privacy Officer and to take action on behalf of the Board with respect to appeals under this part.

§ 1503.3 Procedures for determining if an individual's records are contained in a system of records.

(a) An individual or his or her guardian desiring to know if a specific system of records maintained by the Board contains a record pertaining to such individual shall address an inquiry in writing to the Privacy Officer, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Notwithstanding the preceding sentence, an individual employed by the Board is not required while so employed to make such inquiry in writing. The written inquiry shall:

(1) Identify the system of records maintained by the Board or reasonably describe the type of record in sufficient detail to permit the Privacy Officer to identify an existing system of records; and

(2) Identify the individual making the inquiry or on whose behalf the inquiry is made. The Privacy Officer may require such information concerning the identity or authority of an individual or guardian as the Privacy Officer deems appropriate, as provided under § 1503.4(b).

(b) The Privacy Officer shall ordinarily inform an inquirer whether a system of records described in the written inquiry contains a record pertaining to an individual within ten

business days following receipt of the inquiry. If the Privacy Officer is unable to respond to a written inquiry within ten business days following its receipt, the Privacy Officer shall inform the inquirer of the reasons for delay and the anticipated date of response.

(c) An affirmative response shall describe or reference the procedures to be followed in order to gain access to a record.

§ 1503.4 Requests for disclosure of records.

(a) Requests by or on behalf of an individual for access to records pertaining to such individual in a system of records shall be submitted in writing to the Privacy Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, in accordance with the requirements of paragraph (b) of this section. The written request may be mailed, or presented in person on a business day between 9 a.m. and 5 p.m. to the Privacy Officer at the offices of the Board specified in the preceding sentence. The written request and the envelope (if the request is mailed) shall be clearly marked "Privacy Act Request." Notwithstanding the first sentence of this paragraph (a), an individual employed by the Board is not required while so employed to request access to his or her records in writing.

(b) Each written request shall be dated and signed and shall include:

(1) The name, address, and telephone number of the person signing the request;

(2) The name, address, and telephone number of the individual to whom a requested record pertains, if such individual is not the person signing the request, with evidence of authority to act on behalf of the record subject;

(3) Verification of identity, by providing a document, such as a photocopy of a driver's license, bearing the signature of the person signing the request.

(4) Certified or authenticated copies of documents establishing parentage or guardianship if the request is made by the guardian of the individual to whom the requested record pertains;

(5) A statement that the individual whose records are requested is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(6) The name and location of the system of records in which the requested records are contained.

(c) An individual who appears in person at the offices of the Board to submit a written request for access to his or her records shall present two forms of identification, such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) Unless a requested record is publicly available pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Officer may require certification by a notary public attesting to the identity of a requesting individual or other evidence establishing the identity of the requesting individual as a condition of making available or releasing a copy of a record pertaining to such individual. If a request is made by a guardian or another person acting on behalf of the individual, the Privacy Officer may require appropriate evidence of authority to act on behalf of the individual whose records are requested.

(e) Requests by or on behalf of an individual for an accounting made pursuant to 5 U.S.C. 552a(c) of previous disclosures of records pertaining to such individual in a system of records shall also be made and processed in accordance with paragraphs (a) through (d) of this section.

§ 1503.5 Disclosure of requested records.

(a) The Privacy Officer shall ordinarily respond to a request for access to records or an accounting of previous disclosures within ten business days following receipt of a request. If the Privacy Officer is unable to respond within ten business days following receipt of a request, the Privacy Officer shall inform the requester within ten business days following receipt of a request of the reasons for delay and the anticipated date of response.

(b) The Privacy Officer, in responding to a request for access to records, shall inform the requester:

(1) Whether or not a requested record is maintained by the Board in a system of records;

(2) Whether or not access will be granted;

(3) If access is granted, of a reasonable time, place, and procedure for providing access to and copies of the requested records;

(4) Of any fees that may be required pursuant to § 1503.11;

(5) Of any additional information that may be required as a condition of granting access; and

(6) If access to a record is denied, the reason or reasons for denial and the procedures for obtaining a review of such denial.

(c) The requester of records may be accompanied in the inspection and discussion of such records by a person chosen by the requester, provided that the requester submits a written and signed statement authorizing the presence of such person during such inspection and discussion.

§ 1503.6 Special procedure: Medical records.

Medical records requested pursuant to § 1503.4 will be disclosed to the requester unless the disclosure of such records directly to the requester, in the judgment of the Privacy Officer, could have an adverse effect upon the requester. In such case, such information will be forwarded to a licensed physician named by the requester.

§ 1503.7 Requests for amendment of records.

(a) An individual or his or her guardian may request amendment of records pertaining to such individual in accordance with the requirements of this section. Such request shall be in writing and shall be submitted to the Privacy Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW, Washington, DC 20232, by mail, or in person on a business day between 9 a.m. and 5 p.m. The written request and the envelope (if the request is mailed) shall be clearly marked "Privacy Act Record Amendment."

(b) Each request shall be dated and signed and shall:

(1) Identify the system of records containing the record for which amendment or connection is requested;

(2) Specify the record requested to be amended or corrected;

(3) Specify requested additions and deletions;

(4) State the reasons for each requested amendment or correction, with appropriate supporting information or documentation; and

(5) Identify the requester, referring specifically to any previous written request for access submitted pursuant to § 1503.4 or providing the documentation concerning the individual and his or her guardian required by § 1503.4(b).

(c) An individual who appears in person at the offices of the Board to submit a written request for amendment or correction of his or her records shall present two forms of identification such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) The Privacy Officer may require additional evidence of the identity or authority of the requester.

(e) This section does not authorize or permit collateral attack upon the results or findings of a previous judicial or administrative proceeding.

§ 1503.8 Board review of requests for amendment of records.

(a) The Privacy Officer shall acknowledge in writing the receipt of a request made pursuant to § 1503.7 within two business days of such receipt. Such acknowledgment may include a request for additional information necessary for a decision concerning the requested amendment of a record.

(b) The Privacy Officer shall promptly review each request made pursuant to § 1503.7 in light of relevant criteria of the Privacy Act, including, but not limited to, 5 U.S.C. 552a(e) (1) and (5).

(c) Upon completion of such review, the Privacy Officer shall direct amendment of the record as requested, giving notice of such action to the requester, or immediately notify the requester that the request for amendment of a record is denied. If an accounting of disclosures of such record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in such accounting shall be informed of any amendment.

(d) If a request made pursuant to § 1503.7 is denied in whole or in part, the Privacy Officer shall inform the requester of the reasons for such denial, the procedures for obtaining a review of such denial, and the name and business address of the Vice President.

§ 1503.9 Appeal of initial adverse determinations on access or amendment.

(a) A requester may appeal the denial of a request made pursuant to § 1503.4 or § 1503.7 in accordance with the provisions of this section.

(b) An appeal shall be submitted in writing to the Secretary, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, within 60 days following issuance of notice of a denial. The written appeal and the envelope in which it is mailed shall be clearly marked "Privacy Act Appeal." The written appeal shall be dated and signed and shall:

(1) State clearly in summary form the request that was denied, attaching a copy of the Privacy Officer's notice of denial or giving the date of such notice; and

(2) Set forth the reasons why the requester believes that access to a record should be granted or a record should be amended.

(c) The Vice President shall complete review of an appeal and, with the advice of the General Counsel to the Board, make a final determination within 30 business days following the date on which review is requested unless, for good cause shown, the President of the Board extends such period. A requester shall be promptly notified of an extension of the review period and the reasons therefor. The Vice President shall promptly give notice to the requester of the determination to grant access to a record, to amend a record as requested, or to affirm an initial adverse determination.

(d) If on appeal a request for access to a record made pursuant to § 1503.4 is granted, the Vice President's notice shall provide the information described in § 1503.5(b) (3) and (4). If the initial denial of such request is affirmed, the Vice President's notice shall include a statement of the reasons for such determination and advise the requester of the provisions of the Privacy Act concerning judicial review of such determination, as set forth in 5 U.S.C. 552a(g).

(e)(1) If on appeal a request for amendment of a record made pursuant to § 1503.7 is granted, the Vice President shall direct amendment of the record as requested, and the Vice President's notice shall so inform the requester. If an accounting of disclosures of the record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in the accounting shall be informed of the amendment.

(2) If the initial adverse determination of a request pursuant to § 1503.7 is affirmed, the Vice President's notice shall:

(i) Confirm, amplify, or modify the statement of reasons given by the Privacy Officer for denial of the request;

(ii) Advise the requester of the right to file with the Board a concise statement of the requester's reasons for disagreeing with the determination not to amend a record in accordance with the request, as provided by 5 U.S.C. 552a(d)(3); and

(iii) Advise the requester of the provisions of the Privacy Act concerning judicial review of the determination, as set forth in 5 U.S.C. 552a(g).

(f) If a requester seeking amendment of a record ("disputed record") files a concise statement of disagreement pursuant to 5 U.S.C. 552a(d)(3) and paragraph (e)(2)(ii) of this section, a copy of such statement shall be provided by the Board to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement. If an accounting of previous disclosures of such disputed record has been made pursuant to 5 U.S.C. 552a(c), a notation of the disagreement shall be provided by the Board to any person or agency listed in such accounting. If deemed appropriate by the President of the Board, a concise statement of the Board's reasons for not amending the disputed record shall also be provided to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement.

§ 1503.10 Disclosure of a record to a person other than the individual to whom it pertains.

(a) Except as provided in paragraph (b) of this section, the Board shall not disclose by any means of communication any record contained in a system of records to any person or agency except with the prior written consent of the individual to whom the record pertains or of his or her guardian.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to disclosure:

(1) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act, 5 U.S.C. 552;

(3) For a routine use;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(5) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, the record to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its

jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 1503.11 Fees.

(a) Records disclosed to requesters pursuant to the Privacy Act and this part shall be duplicated at a cost of $0.10 per page, except as follows:

(1) If the Privacy Officer determines that access to a record may be provided only by furnishing a copy of the record, no fee will be charged for the first copy of the record or any portion thereof;

(2) If duplication fees do not exceed $2 for one request, the fees will be waived; and

(3) If the Privacy Officer determines it to be in the public interest, the Privacy Officer may waive any duplication fees.

(b) Requesters will not be charged for search or review of a record.

(c) If it is anticipated that duplication fees will exceed $25, the requester shall be notified promptly, and processing of the request shall be suspended until an agreement to pay the requested fees has been provided by the requester.

§ 1503.12 Exception.

Nothing in this part shall allow access to any information compiled in reasonable anticipation of a civil action or proceeding.

Peter H. Monroe,

President.

[FR Doc. 92-31204 Filed 12-23-92; 8:45 am]

BILLING CODE 2222-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Dollar Threshold for Approval/Denial of Certificate of Competency

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby revising the dollar threshold for Approval/Denial of a Certificate of Competency (COC) by SBA's Regional Offices. This action is necessary to reflect internal changes which have occurred in the COC Program. This revision will enhance and streamline SBA's ability to process COC applications.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Program Manager, Certificate of Competency Program, Office of Industrial Assistance, 202/205-6475.

SUPPLEMENTARY INFORMATION: This regulation establishes a uniform $5,000,000 threshold for approval/denial of a COC for SBA's Regional Administrators, Deputy Regional Administrator's and Assistant Regional Administrators for Procurement Assistance. This is a departure from the graduated levels which are currently in effect. In addition, the regulation is being revised to eliminate the $250,000 threshold for approval/denial of COC's by SBA's Regional COC Specialists. COC Specialists have no authority for the approval/denial of COC's. The Agency is making this change to streamline and enhance its internal processing of COC applications at the regional level.

Due to the fact that this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for proposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq), or to do a Federalism Assessment Pursuant to Executive Order 12612. SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35). Finally, for purposes of E.O. 12778, SBA certifies that this rule, is drafted, to the extent practicable, in accordance with standards set forth in section 2 of that order.

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administration.

For the reasons set forth above, part VI of § 101.3-2, part 101 of title 13, Code of Federal Regulations (CFR), is revised as follows:

PART 101—ADMINISTRATION

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

Authority: Secs. 4 and 5, Public Law 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Public Law 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Public Law 93-386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3-2, Part VI is revised to read as follows:

§ 101.3-2 Delegations of authority to conduct program activities in field offices.

* * * * *

Part VI—Procurement Assistance Program (PA) Certificate of Competency Approval Authority

1. To approve applications for a Certificate of Competency (COC) received from small business concerns and issue COC's to those firms located within the region's geographic jurisdiction, subject to the following monetary limitations:

a. Regional Administrator—$5,000,000
b. Deputy Regional Administrator—$5,000,000
c. Assistant Regional Administrator/PA—$5,000,000

2. To deny an application for a Certificate of Competency received from small business concerns located within the region's geographic jurisdiction, subject to the following monetary limitations:

a. Regional Administrator—Unlimited
b. Deputy Regional Administrator—Unlimited
c. Assistant Regional Administrator/PA—Unlimited

* * * * *

Dated: December 7, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-31290 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-227-AD; Amendment 39-8447; AD 92-27-12]

Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires repetitive visual inspections of wire bundles that extend between the P6 and P7 panels to detect damage due to chafing, and repair of damaged wires. This amendment is prompted by a report of an electrical wiring short circuit, smoke in the cockpit, and loss

of flight instruments, which resulted in a rejected take-off. The actions specified in this AD are intended to prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

DATES: Effective January 8, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-227-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: Recently, an electrical wiring short circuit was detected in the cockpit of a Boeing Model 747-300 series airplane. The cockpit filled with smoke, and sounds of electrical arcing and circuit breakers popping were heard during the take-off roll, resulting in a rejected take-off. The reported cause of the smoke, sounds of electrical arcing and circuit breakers popping has been traced to abrasion between wire bundles in the cockpit overhead just aft of the P6 power panel and at approximately stringer two, right-hand side. Numerous cockpit instruments were lost during this incident. The lost systems included the pilot's airspeed indicator, clock, altimeter, vertical speed indicator, VOR/DME displays, and master warning switch. All of the first officer's instruments were lost, except for the flight director computer select switch.

The cockpit of Model 747-100 and -200 series airplanes is similar in design to that of the Model 747-300 series. Investigation by the manufacturer has revealed that all Model 747 series airplanes, except the Model 747-400 series, may be subject to this fault. A partial inspection of the worldwide fleet has revealed 11 cases of wire bundle damage that occurred in the same location as on the airplane that experienced the incident. The affected wire bundles contain wires that carry power and data for all of the captain's and first-officer's instruments (except standby airspeed, compass, and altitude) that are necessary for continued safe flight and landing of the airplane. These instruments could be lost if a fault of the type experienced in the described incident occurs again. This condition, if not corrected, could result in smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane. This AD requires repetitive visual inspections of wire bundles that extend between the P6 and P7 panels to detect damage due to chafing, and repair of damaged wires.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self- addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-227-AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-27-12. Boeing: Amendment 39-8447. Docket 92-NM-227-AD.

Applicability: Model 747 series airplanes, excluding Model 747-400 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and fire in the cockpit emanating from wire bundles and loss of essential cockpit instruments necessary for continued safe flight and landing of the airplane, accomplish the following:

(a) Within 15 days after the effective date of this AD, perform a visual inspection to detect damage due to chafing of the wire bundles that extend between the P6 and P7 panels at station 400, water line 385, right butt line 15, at Stringer 2 on the right-hand side, 6 inches aft of the P6 panel. Pay particular attention to wire bundles W418, W718, W998, and other bundles that cross over these bundles. If any damaged wires are found, prior to further flight, repair them in accordance with Boeing Standard Wiring Practices Document, D6-54446.

(b) Repeat the inspection and repair procedure required by paragraph (a) of this AD at intervals not to exceed 120 days.

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

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

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

(e) This amendment becomes effective on January 8, 1993.

Issued in Renton, Washington, on December 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-31209 Filed 12-23-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASO-21]

Alteration of Airways and Jet Routes; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the descriptions of VOR Federal airways and jet routes located in Miami, FL. The airways and jet routes listed in this document are followup changes to the airways and jet routes in airspace actions taken to restore the necessary traffic flow in the Miami terminal area. The Biscayne Bay very high frequency omnidirectional range (VOR) was rendered inoperative by Hurricane Andrew, and it cannot be relocated at that site. Because this VOR was a critical component to traffic flow in the Miami area, realignment of airways and jet routes in the area based on another navigational aid is urgently needed to maintain a safe and efficient operation. The planned commissioning of a nondirectional beacon (NDB), Andrew, has been delayed indefinitely; consequently, this action is essential to support other actions already taken to improve traffic flow in the Miami area. Most importantly, it is essential to prevent the degradation of safety in the terminal airspace complex that would occur in the absence of this emergency action. This amendment also reflects the action taken in Airspace Docket No. 92-ASO-6, which changes the name of the Knoxville, TN, VOR to the Volunteer, TN, VOR in V-267 and becomes effective at the same time as this docket.

DATES: Effective date—0901 UTC, February 4, 1993. Comments must be received on or before February 5, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 92-ASO-21, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Request for Comment on the Rule

This amendment is in the form of a final rule, which involves changes in the descriptions of several airways and jet routes in the State of Florida due to the destruction of the Biscayne Bay, FL, VOR. The Biscayne Bay VOR was destroyed by Hurricane Andrew and will be replaced by a substitute navigational facility named Andrew NDB. Because the commissioning of Andrew NDB has been delayed indefinitely, the FAA has realigned the airways and jet routes using the Miami, FL, VOR instead of the currently charted routes based on the Andrew NDB. Although this amendment was not preceded by notice and public procedure because of the emergency nature of this action, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will proceed with further rulemaking 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 determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) is to alter the descriptions of several airways and jet routes in the Miami, FL, area to compensate for the unforeseen delay of the commissioning of the Andrew NDB. This delay has created an emergency situation affecting the safe and efficient movement of air traffic as a consequence of the lack of an adequate airspace structure. The FAA must immediately realign the airways and jet routes to the Miami VOR and associated holding fixes. These changes are essential to prevent the degradation of the safe and efficient movement of traffic and increased controller workload. This action also reflects the name change of the Knoxville, TN, VOR to the Volunteer, TN, VOR.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the descriptions of the airways and jet routes to the Miami VOR to prevent the degradation of air traffic

control's ability to separate all aircraft in that area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the pubic interest. The coordinates for this airspace docket are based on North American Datum 83. Domestic VOR Federal airways and jet routes are published in Sections 71.123 and 71.607, respectively, of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airways and jet routes listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. 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

Aviation safety, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71 123 Domestic VOR Federal Airways

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V–3 [Revised]

From Key West, FL; INT Key West 083° and Miami, FL, 205° radials; INT Miami 205° and Lee County, FL, 132° radials. From Ft. Lauderdale, FL; Palm Beach, FL; Vero Beach, FL; Melbourne, FL; Ormond Beach, FL; Brunswick, GA; Savannah, GA; Vance, SC; Florence, SC; Sandhills, NC; Raleigh-Durham, NC; INT Raleigh-Durham 016° and Flat Rock, VA, 214° radials; Flat Rock; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena; Solberg, NJ; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; Hartford, CT; INT Hartford 084° and Boston, MA, 224° radials; Boston; INT Boston 014° and Pease, NH, 185° radials; Pease; INT Pease 004° and Augusta, ME, 233° radials; Augusta; Bangor, ME; INT Bangor 039° and Houlton, ME, 203° radials; Houlton; Presque Isle, ME; to PQ, Canada. The airspace within R–2916, R–2934, R–2935 and within Canada is excluded.

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V–7 [Revised]

From INT Miami, FL, 222° and Lee County, FL, 120° radials; Lee County; INT Lee County 353° and Lakeland, FL, 170° radials; Lakeland; Cross City, FL; Tallahassee, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; Marquette, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

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V–35 [Revised]

From Key West, FL, via INT Key West 083° and Miami, FL, 188° radials. From INT Miami 222° and Collier County, FL, 110° radials; INT Collier County 110° and Lee County, FL, 139° radials; Lee County; INT Lee County 326° and St. Petersburg, FL, 152° radials; St. Petersburg; INT St. Petersburg 350° and Cross City, FL, 168° radials; Cross City, FL; Greenville, FL; Pecan, GA; Macon, GA; INT Macon 005° and Athens, GA, 195° radials; Athens; Electric City, SC; Sugarloaf Mountain, NC; Holston Mountain, TN; Glade Spring, VA; Charleston, WV; INT Charleston 051° and Elkins, WV, 264° radials; Clarksburg, WV; Morgantown, WV; Indian Head, PA; Johnstown, PA; Tyrone, PA; Philipsburg, PA; Stonyfork, PA; Elmira, NY; Syracuse, NY. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit. The airspace within R–2916 is excluded.

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V–51 [Revised]

From Miami, FL; INT Miami 337° and Pahokee, FL, 175° radials; Pahokee; INT Pahokee 009° and Vero Beach, FL, 193° radials; Vero Beach, INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Dublin, GA; Athens, GA; INT Athens, GA, 340° and Harris, GA, 148° radials; Harris; Hinch Mountain, TN; Livingston, TN; Louisville, KY; Nabb, IN; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL.

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V–267 [Revised]

From INT Pahokee, FL, 155° and Miami, FL; 020° radials; Pahokee; Orlando, FL; Craig FL; Dublin, GA; Athens, GA; INT Athens 340° and Harris, GA, 148° radials; Harris; Volunteer, TN.

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V–437 [Revised]

From INT Pahokee, FL, 155° and Miami, FL; 020° radials; Pahokee; Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach; Savannah, GA; Charleston, SC; Florence, SC. The airspace within R–2935 is excluded.

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V–509 [Revised]

From St. Petersburg, FL; to INT St. Petersburg 111° and Lakeland, FL, 142° radials.

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V–511 [Revised]

From Lakeland, FL; INT Lakeland 142° and Pahokee, FL, 204° radials.

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V–529 [Revised]

From INT Miami, FL, 222° and La Belle, FL, 158° radials; to La Belle.

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Section 71.607 Jet Routes

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J–53 [Revised]

From INT Palm Beach, FL, 247° and Orlando, FL, 160° radials; Orlando; Craig, FL; INT Craig 347° and Colliers, SC, 174° radials; Colliers; Spartanburg, SC; Pulaski, VA; INT of Pulaski 015° and Ellwood City, PA, 177° radials; to Ellwood City.

* * * * *

J–58 [Revised]

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Amarillo, TX; Wichita Falls, TX; Dallas-Fort Worth, TX; Alexandria, LA; INT of the Alexandria 126° and the New Orleans, LA, 295° radials; New Orleans; INT of Grand Isle, LA, 104° and Crestview, FL, 201° radials; INT of Grand Isle 104° and Sarasota, FL, 286° radials; Sarasota; Lee County, FL; to the INT Lee County 118° and Palm Beach, FL, 184° radials.

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J–75 [Revised]

From INT Palm Beach, FL, 184° and Lee County, FL, 118° radials; Lee County; INT Lee County 340° and Taylor, FL, 176° radials; Taylor; INT Taylor 019° and Columbia, SC, 203° radials; Columbia; Greensboro, NC; Gordonsville, VA; INT Gordonsville 040° and Modena, PA, 231° radials; Modena; Solberg,

NJ; Carmel, NY; INT Carmel 045° and Boston, MA, 252° radials; to Boston.

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Issued in Washington, DC, on December 16, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-31240 Filed 12-23-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 785, 786 and 799

[Docket No. 910813 2323]

Administrative Exceptions and Favorable Consideration Treatment for Country Group W; Telecommunications Equipment for Country Groups Q and Y; Revisions, Clarifications, and Corrections to the Commerce Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule adds a number of Advisory Notes to the CCL that identify those items that are eligible for administrative exceptions treatment or favorable consideration treatment for exports to Country Group W (*i.e.*, Czechoslovakia and Poland). The Supplementary Information section of this rule identifies a number of items controlled by the telecommunications entries in Category 5 that are eligible for administrative exceptions treatment to Country Groups QWY, effective July 1, 1992. This rule also adds new Export Control Classification Numbers (ECCNs) and revises other ECCN's to clarify the licensing requirements that apply to exports of software and technology. A number of ECCNs are revised and new ECCNs are added to clarify existing foreign policy controls on exports of software and technology to Iran and Syria.

Other ECCNs and related Advisory Notes are revised to clarify when certain items are eligible for export under General License GFW, and a number of ECCNs have been revised to correct typographical errors that appeared in the interim rule that was published in the **Federal Register** on August 29, 1991 (56 FR 42824).

Finally, this rule revises the instructions for completing the Shipper's Export Declaration by requiring exporters to designate the Export Control Classification Number in the appropriate space on the SED when shipping under General Licenses GFW and GCT, as well as GLV.

The result of these extensive revisions to the CCL will be to slightly increase the number of export license applications, and increase the number of items that will likely be approved for export to Country Groups QWY and the PRC.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, the following persons in the Office of Technology and Policy Analysis are available:

Category 1:—Jeff Tripp—(202) 482-1309
Category 2:—Surendra Dhir—(202) 482-5695
Category 3:—Jerald Beiter—(202) 482-1641
Category 4:—Randolph Williams—(202) 482-0708
Category 5:—Dale Jensen—(202) 482-0730
Category 6:—Joseph Chuchla—(202) 482-1641
Categories 7 and 9:—Bruce Webb—(202) 482-3806
Category 8:—Steve Clagett—(202) 482-3550

SUPPLEMENTARY INFORMATION:

Background

This rule adds to the Commerce Control List (CCL) a number of Advisory Notes that provide administrative exceptions treatment or favorable consideration treatment for exports to Country Group W (Czechoslovakia and Poland). These Advisory Notes significantly increase the number of items eligible for administrative exceptions treatment and favorable consideration treatment to Country Group W. Every category on the CCL is affected by this change, except Category 5 (Telecommunications and "information security"), which already contains Advisory Notes for Country Group W, and Category 10 (Miscellaneous). Section 785.2(c) is revised to remove all references to the "Group W Favorable Consideration" paragraphs, since the Advisory Notes that are found in each Category of the CCL now describe which items are eligible for favorable consideration treatment for exports to Country Group W.

The number of items eligible for administrative exceptions treatment to the People's Republic of China is also expanded. Category 4 (Computers) is revised to add an Advisory Note that provides administrative exceptions treatment for exports to the People's Republic of China of certain digital computers and related equipment. Two Advisory Notes are added in the telecommunications section of Category 5 (Telecommunications and "Information Security") to provide administrative exceptions treatment for exports to the People's Republic of China of certain repair facilities for stored program controlled communication switching equipment and certain semiconductor lasers for civil fiber optic communications systems. This rule also amends Category 5 to add an Advisory Note that provides administrative exceptions treatment for exports of certain telecommunications items to the Baltic states (Estonia, Latvia, and Luthuania)

This rule also adds new administrative exceptions procedures for the export of certain Category 5 telecommunications items to Country Groups QWY, established by the Coordinating Committee for Multilateral Export Controls (COCOM) at the June 1992 High-Level meeting. Effective July 1, 1992, the Office of Export Licensing began reviewing license applications to export certain telecommunications items according to these new procedures. Administrative exceptions treatment applies for the following telecommunications items up to the limits and under the conditions described below. Exporters are advised to consult the referenced Advisory Notes for a complete description of all conditions for consideration under this treatment.

A. International links to the West (Advisory Note 19)

For fiber-optic telecommunications transmission systems connecting specific proscribed-country destinations to the West, operating at a "digital transfer rate" at the highest multiplex level that does not exceed 623 Mbit/s, and using optical fibers optimized to operate at a wavelength not exceeding 1,590 nm, and for coaxial cable transmission systems designed to operate at a "digital transfer rate" at the highest multiplex level of 623 Mbit/s or less;

B. Inter-city and Intra-city Domestic links (Advisory Note 20)

1. For optical telecommunication transmission systems, operating at a "digital transfer rate" at the highest multiplex level that does not exceed 156 Mbit/s and using optical fibers

optimized to operate at a wavelength not exceeding 1,590 nm;

2. For microwave transmission systems, operating at a "digital transfer rate" at the highest multiplex level that does not exceed 156 Mbit/s, and employing quadrature amplitude modulation (QAM) techniques not exceeding 16 QAM;

3. For coaxial cable transmission systems, operating at a "digital transfer rate" at the highest multiplex level that does not exceed 156 Mbit's.

C. Procedures Governing International "Common Channel Signalling" (Advisory Note 21)

1. The locations are the same as those for international links;

2. Associated mode of "common channel signalling" only will be allowed;

3. Only East-West international traffic will be permitted (i.e., calls originating in a COCOM-proscribed country will not be rerouted to any COCOM proscribed destination);

4. The "integrated services digital network" (ISDN) user part may be used on the international signalling link, but no general ISDN services shall be provided by the Eastern gateway switch.

D. Data Transmission Protocols

The functions of routing or switching of "fast select" and "datagrams", and "dynamic adaptive routing" for packet switches (Advisory Note 22).

Additional licensing conditions to prevent unauthorized use or diversion also apply.

This rule also amends the Advisory Notes section of Category 6 by renumbering some notes, revising others, and adding Advisory Notes 12 through 22. In Category 7, two new Advisory Notes are added, and in Category 8, the existing Advisory Note was renumbered and two new Advisory Notes were added.

This rule also amends a number of ECCNs to make them conform to corresponding items on the International Industrial List, the International Atomic Energy List, and the International Munitions List. ECCNs 1A02A, 1C10A, and 1E02A are amended to add notes indicating that these entries do not control certain carbon fibrous or filamentary materials, epoxy resins, and related technology for the repair of certain aircraft structures or laminates. ECCN 2A19.c is revised to control certain valves that are 40 mm or more in diameter, and the Advisory Note that formerly applied to valves controlled by 2A19.c is removed, thereby eliminating CFW eligibility for these valves. In Category 4, ECCN 4A03A is revised to correctly redesignate 4A03.f through 4A03.i, and Advisory Notes 4 and 5 (previously Advisory Notes 2 and 3) are revised to reflect the redesignated paragraphs in 4A03A. In Category 5 (telecommunications), ECCN 5A02A is revised by adding a new note. In Category 9, ECCNs 9D01A, 9D02A, 9E01A, and 9E02A are revised to remove controls on software and technology for items controlled by ECCN 9A18A. Software and technology for items described in ECCN 9A18A are now controlled under ECCNs 9D18A and 9E18A, respectively.

This rule revises a number of entries and adds new entries to the CCL to clarify the foreign policy-based validated licensing requirements that apply to exports of certain items to Iran and/or Syria. The changes made by this rule complete implementation of the controls on exports to Iran and Syria established in the August 29, 1991 (56 FR 42824), interim rule that revised and renamed the Commodity Control List (now the Commerce Control List). This rule adds the following software and technology entries for Iran and/or Syria: 1D93F, 1D94F, 1E94F, 2D92F, 2D93F, 2D94F, 2E93F, 2E94F, 3D94F, 3E94F, 4D94F, 4E94F, 5D91F, 5E91F, 6D90F, 6D92F, 6D93F, 6D94F, 6E90F, 6E92F, 6E93F, 6E94F, 9D90F, 9D91F, 9D93F, 9E90F, 9E91F, and 9E93F. This rule also revises a number of Iran/Syria software and technology entries, including the following ECCNs: 5D92F, 5D93F, 5D94F, 5D95F, 5E92F, 5E93F, 5E94F, 5E95F, 7D94F, 7E94F, 8A94F, and 9D94F, and 9E94F. ECCNs 3D91F and 3E91F are removed because the items previously controlled by these entries are now included in new ECCNs 3D94F and 3E94F.

The changes made by this rule also clarify which commodities are subject to foreign policy-based export controls on Iran and/or Syria. Certain telecommunications test equipment previously controlled under ECCN 5A92F is moved to new ECCN 5B94F. ECCN 6A91F is removed because its controls overlap with those of ECCN 6A94F, and ECCN 6A94F is revised to remove certain airborne radar equipment also controlled by ECCN 6A90F. ECCN 8A94F is revised to clarify which commodities are controlled by the entry. ECCN 9A90F is added to control diesel engines for trucks, tractors, and automotive applications and pressurized aircraft breathing equipment previously controlled by ECCN 9A94F, while ECCN 9A94F is revised to control certain aircraft parts and components only. Marine engines and boats previously controlled by 9A94F are now controlled by ECCN 8A94F only.

This rule also adds a new ECCN 3A22B to control radiographic equipment (linear accelerators) previously controlled under ECCN 9B27B. In addition, new ECCNs 3D22B and 3E22B are added to control software and technology for this equipment. These items are subject to the foreign policy controls on missiles described in § 778.7(a). This change is made to ensure consistency of controls on accelerators. Certain pulsed electron accelerators that are currently controlled under ECCN 2A54B for nuclear nonproliferation reasons will be moved to Category 3 during an upcoming revision of CCL entries that are subject to nuclear nonproliferation controls. ECCN 3A51B, which controls mass spectrometers, is revised to more accurately reflect those items that are of concern for nuclear nonproliferation reasons.

This rule also revises many of the software and technology entries on the CCL to clarify which items and destinations are eligible for General License GTDR/GTDU. ECCNs 3D80C and 3E80C, which control software and technology for equipment controlled by 3A80C or 3A81C (*i.e.*, voice print identification and analysis equipment, polygraphs, fingerprint analyzers, automated fingerprint and identification systems, psychological stress analysis equipment, and electronic monitoring restraint devices), are revised to permit shipments under General License GTDU to Australia, Japan, New Zealand, and members of NATO only. ECCN 4D03A is revised to indicate that software controlled by 4D03.e (*i.e.*, software having characteristics or performing functions exceeding the limits specified in the information security entries in Category 5) is not eligible for shipment under General License GTDR.

In Category 5, EECNs 5D11A and 5D13A are revised to clarify that General License GTDR is available for shipments of software that meets the requirements of information security Advisory Note 5. This Advisory Note 5 is also revised to indicate that GTDR shipments are allowed to all eligible destinations, and are not limited to Austria, Finland, Ireland, Switzerland, and members of COCOM. In addition, Advisory Notes 3 and 4 to the information security entries in Category 5 are revised to indicate that General License GFW is available for shipments of equipment that meets the requirements of these notes.

ECCN 4A80C is created to maintain foreign policy-based validated licensing requirements on computerized

fingerprint equipment and on computers for computerized fingerprint equipment that are not controlled by ECCN 4A03A. Software and technology for the items described in 4A80C are controlled by new ECCNs 4D80C and 4E80C, respectively.

A number of CCL entries are also revised to correct typographical errors or omissions contained in the August 29, 1991, interim rule. Most notable among these are the corrections to ECCN 2B51B, which is revised to add a list of controlled items that was inadvertently omitted in the August 29, 1991, rule.

Finally, this rule amends the instructions for completing the Shipper's Export Declaration by requiring exporters to designate the Export Control Classification Number in the appropriate space on the SED when shipping under General Licenses GFW and GCT, as well as GLV.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves several collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) that have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, 0694–0013, 0694–0021, 0694–0023, and 0607–0018. This rule also contains several new reporting and recordkeeping requirements that are being submitted for approval by the Office of Management and Budget under the Paperwork Reduction Act. Public burden for the new requirements varies depending on the requirement and is estimated to average between 1 minute and 2 hours. This includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—(Attn: Paperwork Reduction Project (0694–0005 and 0694–XXXX).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 785

Communist countries, Exports.

15 CFR Parts 771, 786, and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771, 785, 786, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 785 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (5 FR 53979, November 13, 1992).

2. The authority citation for 15 CFR parts 771, 786, and 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 28, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (56 FR 53979, November 13, 1992).

PART 771—[AMENDED]

3. Section 771.23 is amended by adding a new paragraph (d) to read as follows:

§ 771.23 General license GFW; low-level exports to certain countries.

* * * * *

(d) *Special provision.* In addition to the general license designation GFW, the Export Control Classification Number, which in this case identifies a commodity that is eligible to be shipped under General License GFW, shall be shown in parentheses immediately below the Schedule B Number on the SED.

4. Section 771.25 is amended by adding a sentence to the end of paragraph (f)(1) to read as follows:

§ 771.25 General license GCT.

* * * * *

(f) * * *

(1) * * * In addition to the general license designation GCT, the Export Control Classification Number, which in this case identifies a commodity that is eligible to be shipped under General License GCT, shall be shown in parentheses immediately below the Schedule B Number on the SED.

PART 785—[AMENDED]

5. Section 785.2(c) is revised to read as follows:

§ 785.2 Country Groups Q, W, and Y [1]; Geographic area of the former U.S.S.R., Eastern Europe, Mongolian People's Republic, Cambodia, and Laos.

* * * * *

(c) *Country Group W: Favorable consideration policy.* The countries of

[1] See Supplement No. 1 to part 770 for listing of Country Groups.

Czechoslovakia and Poland (Country Group W) have been determined to present a lesser strategic threat, and have adopted safeguard measures to protect against the diversion of COCOM-controlled commodities and technical data. In recognition of these facts, and consistent with COCOM agreement, most exports of COCOM-controlled items to Czechoslovakia and Poland are processed at national discretion, without referral to COCOM, as described in the Advisory Notes indicating likelihood of approval. Certain other items are described in Advisory Notes that indicate favorable consideration for export to satisfactory end-users in Country Group W. Items not eligible for national discretion or favorable consideration will be reviewed in accordance with the general exceptions policy described in paragraph (a) of this section.

6. Section 785.4 is amended by revising the first sentence in paragraph (d)(5) to read as follows:

§ 785.4 Country groups T & V.

* * * * *

(d) * * *

(5) The reexport provisions of part 774 and the parts and components provisions of § 776.12 do not apply to the foreign policy controls on Iran, in paragraph (d)(1) of this section, for ECCNs, 2A94, 3A93, 5A92, 5A95, 6A90, 6A94, 7A94, 8A92, 8A94, 9A90, 9A92, and 9A94. * * *

* * * * *

PART 786—[AMENDED]

7. Section 786.3 is amended by revising the phrase "General License GLV" in paragraph (j)(2) to read "General Licenses GLV, GFW, or GCT".

PART 799—[Amended]

Supplement No. 1 to § 799.1—[Amended]

Make the following amendments to Supplement No. 1 to § 799.1:

1. In Category 1 , ECCN 1A02A is revised to read as follows:

1A02A "Composite" structures or laminates.

Requirements

Validated License Required: QSTVWYZ
Unit: Kilograms
Reason for Control: NS, MT (see Note)
GLV: $1,500
GCT: Yes, except MT (see Note)
GFW: No

Note: MT controls apply to composite structures that are specially designed for military, stealth, or space applications.

List of Items Controlled

a. Having an organic "matrix" and made from materials embargoed by 1C10.c, d or e; *or*

b. Having a metal or carbon "matrix" and made from:

b.1. Carbon "fibrous and filamentary materials" with:

b.1.a. A "specific modulus" exceeding 10.15×10^6 m; *and*

b.1.b. A "specific tensile strength" exceeding 17.7×10^4 m; *or*

b.2. Materials controlled by 1C10.c;

Technical Notes:

1. Specific modulus: Young's modulus in pascals, equivalent to N/m^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2)° C) and a relative humidity of (50±5)%.

2. Specific tensile strength: ultimate tensile strength in pascals, equivalent to N/M^2 divided by specific weight in N/m^3, measured at a temperature of (296±2) K ((23±2)° C) and a relative humidity of (50#5)%.

Note: 1A02A does not control composite structures or laminates made from epoxy resin impregnated carbon "fibrous or filamentary materials" for the repair of aircraft structures or laminates, provided that the size does not exceed one square meter.

2. In Category 1, ECCN 1A49E is revised to read as follows:

1A49E Tantalum sheet of 20 centimeter diameter or greater (or other shapes from which a 20 centimeter diameter circle can be cut) with a thickness of 2.5 millimeters or greater.

Requirements

Validated License Required: SZ, Taiwan, Supp. 4 to Part 778
Unit: Kilograms
Reason for Control: NP
GLV: $1,000
GCT: No
GFW: No

3. In Category 1, ECCN 1B01A is amended by revising the Requirements section to read as follows:

1B01A Equipment for the production of fibers, prepregs, preforms or composites controlled by 1A02 or 1C10, as follows, and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, NP (see Note)
GLV: $5,000
GCT: Yes, except MT (see Note)
GFW: No

Note: MT controls apply, except to 1B01.d.4. NP controls apply to filament winding machines described in 1B01.a that are capable of winding cylindrical rotors having a diameter between 3 inches and 16 inches and a length of 24 inches or greater.

* * * * *

4. In Category 1, ECCN 1B51E is amended by revising the heading of the entry to read as follows:

1B51E Instruments capable of measuring pressures up to 3×10^5 newtons per square meter (44 PSIA) to an accuracy of better than 1%, with corrosion-resistant pressure sensing elements constructed of nickel, nickel alloys, phosphor bronze, stainless steel, aluminum, or aluminum alloys, and such pressure sensing elements if supplied separately.

* * * * *

5. In Category 1, ECCN, 1C10A is amended by revising the List of Items Controlled to read as follows:

1C10A "Fibrous and filamentary materials" that may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminates.

* * * * *

List of Items Controlled

a. Organic "fibrous and filamentary materials", *except* polyethylene, with:

a.1. A "specific modulus" exceeding 12.7×10^6 m; *and*

a.2. A "specific tensile strength" exceeding 23.5×10^4 m;

b. Carbon "fibrous and filamentary materials" with:

b.1. A "specific modulus" exceeding 12.7×10^6 m; *and*

b.2. A "specific tensile strength" exceeding 23.5×10^4 m;

Technical Note: Properties for materials described in 1C10.b should be determined using SACMA recommended methods SRM 12 to 17, or national equivalent tow tests, such as Japanese Industrial Standard JIS–R–7601, Paragraph 6.6.2., and based on lot average.

Note: 1C10.b does not control fabric made from "fibrous or filamentary materials" for the repair of aircraft structures or laminates, in which the size of individual sheets does not exceed 50 cm x 90 cm.

c. Inorganic "fibrous or filamentary materials" with:

c.1. A "specific modulus" exceeding 2.54×10^6 m; *and*

c.2. A melting, decomposition or sublimation point exceeding 1,922 K (1,649° C) in an inert environment; *except*

c.2.a. Discontinuous, multiphase, polycrystalline alumina fibers in chopped fiber or random mat form, containing 3 weight percent or more silica, with a "specific modulus" of less than 10×10^6 m;

c.2.b. Molybdenum and molybdenum alloy fibers;

c.2.c. Boron fibers;

c.2.d. Discontinuous ceramic fibers with a melting, decomposition or

sublimation point lower than 2,043 K (1,770°C) in an inert environment;

d. "Fibrous or filamentary materials":

d.1. composed of any of the following:

d.1.a. Polyetherimides controlled by 1C08.a; *or*

d.1.b. Materials controlled by 1C08.b, .c, .d, .e, or .f; *or*

d.2. Composed of materials controlled by 1C10.d.1 .a or .b and "commingled" with other fibers controlled by 1C10.a, .b, or .c;

e. Resin- or pitch-impregnated fibers (prepregs), metal or carbon-coated fibers (preforms) or "carbon fiber preforms", as follows:

e.1. Made from "fibrous or filamentary materials" controlled by 1C10.a, .b, or .c; *or*

e.2. Made from organic or carbon "fibrous or filamentary materials":

e.2.a. With a "specific tensile strength" exceeding 17.7 x 10^4 m;

e.2.b. With a "specific modulus" exceeding 10.15 x 10^6 m;

e.2.c. Not controlled by 1C10.a or .b; *and*

e.2.d. When impregnated with materials controlled by 1C08 or 1C09.b, or with phenolic or epoxy resins, having a glass transition temperature (T_g) exceeding 383 K (110°C);

Note: 1C10.e does not control epoxy resin matrix impregnated carbon "fibrous or filamentary materials" (prepregs) for the repair of aircraft structures or laminates, in which the size of individual sheets of prepreg does not exceed 50 cm x 90 cm.

7. In Category 1, new ECCNs 1D93F and 1D94F are added immediately following ECCN 1D60C to read as follows:

1D93F "Software" specially designed for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C50E.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1D94F "Software" specially designed for the "development" or "production" of fluorocarbon electronic cooling fluids controlled by 1C94F.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Unit: $ value
Reason for Control: FP
GTDR. No
GTDU: Yes, except destinations listed under *Validated License Required*

8. In Category 1, ECCN 1E02A is amended by revising the List of Items Controlled to read as follows:

1E02A Other technology.

* * * * *

List of Items Controlled

a. Technology for the "development" or "production" of polybenzothiazoles or polybenzoxazoles;

b. Technology for the "development" or "production" of fluoroelastomer compounds containing at least one vinylether monomer;

c. Technology for the design or "production" of the following base materials or non-"composite" ceramic materials:

c.1. Base materials having all the following characteristics:

c.1.a. Any of the following compositions:

c.1.a.1. Single or complex oxides of zirconium and complex oxides of silicon or aluminum;

c.1.a.2. Single nitrides of boron (cubic crystalline forms);

c.1.a.3. Single or complex carbides of silicon or boron; *or*

c.1.a.4. Single or complex nitrides of silicon;

c.1.b. Total metallic impurities, excluding intentional additions, of less than:

c.1.b.1. 1,000 ppm for single oxides or carbides; *or*

c.1.b.2. 5,000 ppm for complex compounds or single nitrides; *and*

c.1.c.1. Average particle size equal to or less than 5 micrometer and no more than 10 percent of the particles larger than 10 micrometer; *or*

N.B.: For zirconia, these limits are 1 micrometer and 5 micrometer respectively;

c.1.c.2.a. Platelets with a length to thickness ratio exceeding 5;

c.1.c.2.b. Whiskers with a length to diameter ratio exceeding 10 for diameters less than 2 micrometer; *and*

c.1.c.2.c. Continuous or chopped fibers less than 10 micrometer in diameter.

c.2. Non-"composite" ceramic materials, *except* abrasives, composed of the materials described in 1E02.c.1;

d. Technology for the "production" of aromatic polyamide fibers;

e. Technology for the installation, maintenance or repair of materials controlled by 1C01.;

f. Technology for the repair of "composite" structures, laminates or materials controlled by 1A02, 1C07.c, or 1C07.d.

Note: 1E02.f does not control technology for the repair of "civil aircraft" structures using carbon "fibrous or filamentary materials" and epoxy resins, contained in aircraft manufacturers' manuals.

9. In Category 1, ECCN 1E70E is revised, a new ECCN 1E94F is added immediately following ECCN 1E70E, and ECCN 1E96G is revised, as follows:

1E70E Technology for the production of commodities described in ECCNs 1B70, 1B71, 1C64, or 1C65 (equipment that can be used in the production of chemical warfare agents or their precursors, or of biological agents).

Requirements

Validated License Required: SZ, Supplement No. 5 to Part 778
Reason for Control: CB
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1E94F Technology for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C50E or fluorocarbon electronic cooling fluids controlled by 1C94F.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1E96G Other technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 1.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

10. In Category 1, the heading "Notes for Category 1" and a new Advisory Note are added immediately following ECCN 1E96G, as follows:

Notes for Category 1

Advisory Note: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 1 for national security reasons, *except:*

a. "Composite" structures or laminates controlled by 1A02.a, when specially designed for stealth or space applications, or by 1A02.b;

b. Filament winding machines controlled by 1B01.a;

c. Tape-laying machines controlled by 1B01.b;

d. "Fibrous or filamentary materials" controlled by 1C10.a, 1C10.c, 1C10.d, or 1C10.e;

e. "Software" specially designed and technology "required" for the equipment or

materials described in this Advisory Note that are controlled for national security reasons by Category 1D or 1E.

11. In Category 2, ECCN 2A19A is amended by revising the Requirements section and the List of Items Controlled and by removing Advisory Notes 1, 2, and 3, as follows:

2A19A Commodities on the International Atomic Energy List.

Requirements

Validated License Required: QSTVWYZ
Unit: Number; $ value for parts and accessories
Reason for Control: NS and NP
GLV: $500: 2A19.a; $0: 2A19.b and c
GCT: No
GEN: No

List of Items Controlled

a. Power generating and/or propulsion equipment specially designed for use with military nuclear reactors;

Note 1: 2A19.a does not control conventional power generating equipment that, although designed for use in a particular nuclear station, could in principle be used in conjunction with conventional systems.

Note 2: 2A19.a does not affect the controls maintained by the Office of Defense Trade Controls, Department of State, as indicated in ITAR Category VI, Part e.

b. Neutron generator systems, including tubes, designed for operation without an external vacuum system, and utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction, and specially designed parts therefor;

Technical Note: Specially designed parts controlled under 2A19.b include deuterated and/or tritiated sources and targets.

c. Valves, specially designed or prepared for gaseous diffusion separation process, that are wholly made of or lined with aluminum, aluminum alloys, nickel, or alloy containing 60 percent or more nickel, 40 mm or more in diameter, with bellows seals, and specially designed parts and accessories therefor.

12. In Category 2, ECCN 2A54B is amended by revising the List of Items Controlled to read as follows:

2A54B Electron accelerators.

* * * * *

List of Items Controlled

Pulsed electron accelerators with a peak energy of 500 keV (thousand electron volts) or greater, as follows, except accelerators that are component parts of devices designed for purposes other than electron beam or x-ray radiation (e.g., electron microscopy), that:

a. Have an accelerator peak electron energy of 500 keV or greater, but less than 25 MeV (million electron volts), and with a figure of merit (K) of 0.25 or greater:

a.1. Where K is defined as: $K = 1.7 \times 10^3 V^{2.65} Q$;

a.2. Where V is the peak electron energy in megavolts; and

a.3. Where Q is:

a.3.a. The total accelerated charge in coulombs, if the accelerator beam pulse duration is less than or equal to 1 microsecond;

a.3.b. The maximum accelerated charge in 1 microsecond, if the accelerator beam pulse duration is greater than 1 microsecond;

Note: Q equals the integral of "i" with respect to "t", over the lesser of 1 microsecond or the time duration of the beam pulse ($Q = \int i dt$), where "i" is beam current in amperes and "t" is time in seconds.

b. Have an accelerator peak electron energy of 25 MeV or greater and a peak power greater than 50 MW.

Note: Peak power=(peak potential in volts)×(peak beam current in amperes).

Technical Note: The formula for "K" can be expressed as a table that shows the accelerated charge "Q", which is related to a specific energy "V" for K=0.25. Any device for which "Q" exceeds the value in the table is subject to control under this ECCN 2A54B.

V (MeV)	Q (coulomb)
0.50	920.0×10^{-6}
0.75	320.0×10^{-6}
1.0	150.0×10^{-6}
3.0	8.0×10^{-6}
5.0	2.0×10^{-6}
8.0	0.6×10^{-6}
10.0	0.3×10^{-6}
15.0	0.1×10^{-6}
20.0	0.05×10^{-6}
25.0	0.03×10^{-6}

13. In Category 2, ECCN 2B01A is amended by revising the List of Items Controlled to read as follows:

2B01A "Numerical control" units, "motion control boards" specially designed for "numerical control" applications on machine tools, machine tools, and specially designed components therefor.

* * * * *

List of Items Controlled

Technical Notes: 1. Secondary parallel contouring axes, e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis, are not counted in the total number of contouring axes.

Note: Rotary axes need not rotate over 360°. A rotary axis can be driven by a linear device, e.g., a screw or a rack-and-pinion.

2. Axis nomenclature shall be in accordance with international Standard ISO 841, "Numerical Control Machines—Axis and Motion Nomenclature".

a. "Numerical control" units for machine tools, as follows, and specially designed components therefor:

a.1. Having more than four interpolating axes that can be coordinated simultaneously for "contouring control"; *or*

a.2. Having two, three or four interpolating axes that can be coordinated simultaneously for "contouring control" and:

a.2.a. Capable of "real-time processing" of data to modify, during the machining operation, tool path, feed rate and spindle data by either:

a.2.a.1. Automatic calculation and modification of part program data for machining in two or more axes by means of measuring cycles and access to source data; *or*

a.2.a.2. "Adaptive control" with more than one physical variable measured and processing by means of a computing model (strategy) to change one or more machining instructions to optimize the process;

a.2.b. Capable of receiving directly (on-line) and processing computer-aided-design (CAD) data for internal preparation of machine instructions; *or*

a.2.c. Capable, without modification, according to the manufacturer's technical specifications, of accepting additional boards which would permit an increase above the control levels specified in 2B01, in the number of interpolating axes that can be coordinated simultaneously for "contouring control", even if they do not contain these additional boards;

Note: 2B01.a does not control "numerical control" units if:

a. Modified for and incorporated in uncontrolled machines; *or*

b. Specially designed for uncontrolled machines.

b. "Motion control boards" specially designed for machine tools and having any of the following characteristics:

b.1. Interpolation in more than four axes;

b.2. Capable of "real time processing" as described in 201.a.2.a; or

b.3. Capable of receiving and processing CAD data as described in 2B01.a.2.b;

c. Machine tools, as follows, for removing or cutting metals, ceramics or composites, that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous "contouring control" in two or more axes:

c.1. Machine tools for turning, grinding, milling or any combination thereof that:

c.1.a. Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*

c.1.b. Have any of the following characteristics:

c.1.b.1. Two or more contouring rotary axes;

Technical Note: The c-axis on jig grinders used to maintain grinding wheels normal to the work surface is not considered a contouring rotary axis.

c.1.b.2. One or more contouring "tilting spindles";

Note: 2B01.c.1.b.2. applies to machine tools for grinding or milling only.

c.1.b.3. "Camming" (axial displacement) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

Note: 2B01.c.1.b.3. applies to machine tools for turning only.

c.1.b.4. "Run out" (out-of-true running) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

c.1.b.5. The "positioning accuracies", with all compensations available, are less (better) than:

c.1.b.5.a. 0.001° on any rotary axis; *or*

c.1.b.5.b.1. 0.004 mm along any linear axis (overall positioning) for grinding machines;

c.1.b.5.b.2. 0.006 mm along any linear axis (overall positioning) for turning or milling machines; *or*

Note: 2B01c.1.b.5 does not control milling or turning machine tools with a positioning accuracy along one axis, with all compensations available, equal to or greater (worse) than 0.005 mm.

Technical Note: The positioning accuracy of "numerically controlled" machine tools is to be determined and presented in accordance with ISO/DIS 230/2, paragraph 2.13, in conjunction with the requirements below:

a. Test conditions (paragraph 3):

1. For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the premeasurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

2. The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

3. Accuracy of measuring equipment for the measurements shall be at least four times more accurate than the expected machine tool accuracy;

4. Power supply for slide drives shall be as follows;

a. Line voltage variation shall not exceed ±10% of nominal rated voltage;

b. Frequency variation shall not exceed ±2 Hz of normal frequency;

c. Lineouts or interrupted service are not permitted.

b. Test program (paragraph 4):

1. Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

Note: In the case of machine tools that generate optical quality surfaces, the feedrate shall be equal to or less than 50 mm per minute.

2. Measurements shall be made in an incremental manner from one limit of the axis travel to the other without retiring to the starting position for each move to the target position;

3. Axes not being measured shall be retained at mid travel during test of an axis.

c. Presentation of test results (paragraph 2): The results of the measurement must include:

1. Positioning accuracy (A); *and*

2. The mean reversal error (B).

c.1.b.6. A "positioning accuracy" less (better) than 0.007 mm; *and*

c.1.b.6.b. A slide motion from rest for all slides within 20% of a motion command input for inputs or less than 0.5 micrometer;

Technical Note: Minimum increment of motion test (slide motion from rest): The test is conducted only if the machine tool is equipped with a control unit the minimum increment of which is less (better) than 0.5 micrometer. Prepare the machine for testing in accordance with ISO 230.2 paragraphs 3.1, 3.2, 3.3. Conduct the test on each axis (slide) of the machine tool as follows:

1. Move the axis over at least 50% of the maximum travel in plus and minus directions twice at maximum feed rate, rapid traverse rate or jog control;

2. Wait at least 10 seconds;

3. With manual data input, input the minimum programmable increment of the control unit;

4. Measure the axis movement;

5. Clear the control unit with the servo null, reset or whatever clears any signal (voltage) in the servo loop;

6. Repeat steps 2 to 5 five times, twice in the same direction of the axis travel and three times in the opposite direction of travel for a total of six test points;

7. If the axis movement is between 80% and 120% of the minimum programmable input for four of the six test points, the machine is controlled. For rotary axes, the measurement is taken 200 mm from the center of rotation.

Note 1: 2B01.c.1 does not control cylindrical external, internal, and external-internal grinding machines having all of the following characteristics:

a. Not centerless (shoe-type) grinding machines;

b. Limited to cylindrical grinding;

c. A maximum workpiece outside diameter or length of 150 mm;

d. Only two axes which can be coordinated simultaneously for "contouring control"; *and*

e. No contouring c axis.

Note 2: 2B01.c.1 does not control machines designed specifically as jig grinders having both of the following characteristics:

a. Axes limited to x, y, c and a, where the c-axis is used to maintain the grinding wheel normal to the work surface and the a-axis is configured to grind barrel cams; *and*

b. A spindle "run out" not less (not better) than 0.0006 mm.

Note 3: 2B01.c.1 does not control tool or cutter grinding machines having all of the following characteristics:

a. Shipped as a complete system with "software" specially designed for the production of tools or cutters;

b. No more than two rotary axes that can be coordinated simultaneously for "contouring control";

c. "Run out" (out-of-true running) in one revolution of the spindle not less (not better) than 0.0006 mm total indicator reading (TIR); *and*

d. The "positioning accuracies", with all compensations available, are not less (not better) than:

1. 0.004 mm along any linear axis for overall positioning; *or*

2. 0.001° on any rotary axis.

c.2. Electrical discharge machines (EDM) of the wire feed type that have five or more axes that can be coordinated simultaneously for "contouring control";

c.3. Electrical discharge machines (EDM) of the non-wire type that have two or more rotary axes that can be coordinated simultaneously for "contouring control";

c.4. Machine tools for removing metals, ceramics or composites;

c.4.a. By means of:

c.4.a.1. Water or other liquid jets, including those employing abrasive additives;

c.4.a.2. Electron beam; *or*

c.4.a.3. "Laser" beam; *and*

c.4.a. Having two or more rotary axes that:

c.4.b.1. Can be coordinated simultaneously for "contouring control"; *and*

c.4.b.2. Have a "positioning accuracy" of less (better) than 0.0003°.

14. In Category 2, ECCN 2B05A is amended by revising the Requirements section and ECCN 2B06A is revised to read as follows:

2B05A Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications, as follows, for non-electronic substrates, by processes shown in the Table and associated Notes following 2E03.d and specially designed automated handling, positioning, manipulation and control components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GLV: $1,000
GCT: Yes
GFW: No

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2B06A Dimensional inspection or measuring systems or equipment.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS and NP (see Note)

GLV: $5,000
GCT: Yes
GFW: 2B06.b.1 only

Note: NP controls apply, for all countries except countries listed in supp. 2 to part 773 of this subchapter, to items described in 2B06.b and c.

List of Items Controlled

a. Computer controlled, "numerically controlled" or "stored program controlled" dimensional inspection machines, having both of the following characteristics:

a.1. Two or more axes; *and*

a.2. A one dimensional length "measurement uncertainty" equal to or less (better) than (1.25 + L/1,000) micrometer tested with a probe with an "accuracy" of less (better) than 0.2 micrometer (L is the measured length in mm);

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear measuring instruments having any of the following characteristics:

b.1.a. Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 micrometer within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems with both of the following characteristics:

b.1.b.1. "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ±1 K; *or*

b.1.c. Measuring systems having both of the following characteristics:

b.1.c.1. Containing a "laser"; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ±1 K around a standard temperature and at a standard pressure:

b.1.c.2.a. A "resolution" over their full scale of 0.1 micrometer or less (better); *and*

b.1.c.2.b. A "measurement uncertainty" equal to or less (better) than (0.2 + L/2,000) micrometer (L is the measured length in mm);

b.2. Angular measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025°;

Note: 2B06.b.2 does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

c. Systems for simultaneous linear-angular inspection of hemishells, having both of the following characteristics:

c.1. "Measurement uncertainty" along any linear axis equal to or less (better) than 3.5 micrometer per 5 mm; *and*

c.2. "Angular position deviation" equal to or less (better) than 0.02°;

d. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better);

Technical Notes: 1. Machine tools that can be used as measuring machines are controlled if they meet or exceed the criteria specified for the machine tool function or the measuring machine function.

2. A machine described in 2B06 is controlled if it exceeds the control threshold anywhere within its operating range.

3. The probe used in determining the "measurement uncertainty" of a dimensional inspection system shall be as described in VDI/VDE 2617 Parts 2, 3, and 4.

4. All measurement values in 2B06 represent permissible positive and negative deviations from the target value, i.e., not total band.

15. In Category 2, ECCN 2B24B is amended by revising the heading of the entry to read as follows:

2B24B "Isostatic presses" capable of achieving a maximum working pressure of 10,000 psi (69 MPa) or greater and having a chamber cavity with an inside diameter in excess of 152 mm (6 inches) and specially designed dies and molds, components, accessories, and controls therefor.

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16. In Category 2, ECCN 2B51B is revised to read as follows:

2B51B Centrifuge rotor assembly and straightening equipment and bellows-forming mandrels and dies.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GLV: No
GCT: No
GFW: No

List of Items Controlled

a. Rotor assembly equipment for the assembly of gas centrifuge rotor tube sections, baffles, and end caps. Such equipment includes specially designed precision mandrels, clamps, and shrink fit machines.

b. Rotor straightening equipment for alignment of gas centrifuge rotor tube sections to a common axis. Normally, such equipment will consist of precision measuring probes linked to a computer that subsequently controls the action of pneumatic rams, for example, that are used for aligning the rotor tube sections.

c. Bellows-forming mandrels and dies for producing single-convolution bellows that:

c.1. Are made of high-strength aluminum alloys, maraging steel, or high-strength filamentary materials; and

c.2. Have all of the following dimensions:

c.2.a. 75 mm to 400 mm (3 in. to 16 in.) inside diameter;

c.2.b. 12.7 mm (0.5 in.) or more in length; and

c.2.c. Single convolution depth more than 2mm (0.08 in.).

17. In Category 2, ECCN 2B91F is amended by revising the List of Items Controlled section to read as follows:

2B91F "Numerical control" units for machine tools and numerically controlled machine tools, n.e.s.

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List of Items Controlled

a. "Numerical control" units for machine tools:

a.1. Having four interpolating axes that can be coordinated simultaneously for "contouring control"; or

a.2. Having two or more axes that can be coordinated simultaneously for "contouring control" *and* a minimum programmable increment better (less) than 0.001 mm (0.00004 in.);

b. Numerically controlled machine tools that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous "contouring control" in two or more axes and that have both of the following characteristics:

b.1. Two or more axes that can be coordinated simultaneously for contouring control; *and*

b.2. "Positioning accuracies", with all compensations available:

b.2.a. Better than 0.020 mm, but no better than 0.004 mm along any linear axis (overall positioning) for grinding machines;

b.2.b. Better than 0.020 mm, but no better than 0.006 mm along any linear axis (overall positioning) for milling machines; or

b.2.c. Better than 0.020 mm, but no better than 0.010 mm along any linear axis (overall positioning) for turning machines.

18. In Category 2, ECCN 2D02A is amended by revising the Requirements section to read as follows:

2D02A Specific "software".

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes
GTDU: No

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19. In Category 2, ECCNs 2D46C and 2D50C are revised to read as follows:

2D46C "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2B46.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: Yes
GTDU: No

2D50C "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A50 or 2A51.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: Yes
GTDU: No

20. In Category 2, ECCN 2D53C is revised, new ECCNs 2D92F, 2D93F, and 2D94F are added immediately following ECCN 2D53C, and ECCN 2D96G is revised to read as follows:

2D53C "Software" specially designed or modified for the "use" of equipment controlled by 2B50.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NP
GTDR: Yes
GTDU: No

2D92F "Software" specially designed for the "development" or "production" of portable electric generators controlled by 2A94F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D93F "Software" specially designed for the "development" or "production" of manual dimensional inspection machines controlled by 2B92F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D94F "Software" specially designed for the "development", "production", or "use" of "numerical control" units and numerically controlled machine tools controlled by 2B91F, gear making and/or finishing machinery controlled by 2B93F, or robots controlled by 2B94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D96G "Software", n.e.s., for the "Development", "production", or "use" of commodities controlled under Category 2.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

21. In category 2, ECCN 2E50C is revised to read as follows:

2E50C Technology specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A50 or 2A51.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NP
GTDR: Yes
GTDU: No

22. In Category 2, new ECCNs 2E93F and 2E94F are added immediately following ECCN 2E52B and ECCN 2E96G is revised to read as follows:

2E93F Technology for the "development", "production", or "use" of portable electric generators controlled by 2A94F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2E94F Technology for the "development", "production", or "use" of "numerical control" units and numerically controlled machine tools controlled by 2B91F, manual dimensional inspection machines controlled by 2B92F, gear making and/or finishing machinery controlled by 2B93F, or robots controlled by 2B94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2E96G Technology, n.e.s., for the "development", "production", or "use" of commodities controlled under Category 2.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

23. In Category 2, the heading "Notes for Category 2" and a new Advisory Notes 1 through 5 are added immediately following ECCN 2E96G, as follows:

Notes for Category 2:

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 2 for national security reasons, *except:*

a. "Numerical control" units, "numerically controlled" machine tools with a positioning accuracy of 2 micrometers or better, and components, specially designed parts or assemblies therefor, controlled by 2B01, 2B08, or 2B09;

b. Non-"numerically controlled" machine tools for generating optical quality surfaces controlled by 2B02;

c. Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications controlled by 2B05;

d. Coating technology for non-electronic devices controlled by 2E03.d;

e. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 1.a, .b, or .c that are controlled by 2D or 2E.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, to satisfactory end-users in the People's Republic of China of machine tools for milling controlled by 2B01.c.1 to civil end-users other than nuclear and aerospace, provided that they are not controlled by 2B01.c.1.b.1, c.1.b.4, c.1.b.5, or c.1.b.6.

Advisory Note 3: Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of turning machines controlled by 2B01.c.1, provided that:

a. They are not intended for use in nuclear related activities; *and*

b. They have all of the following characteristics:

1. Only two axes that can be coordinated simultaneously for "contouring control";

2. The positioning accuracy, with all compensations available, is not less (not better) than 0.002 mm per 300 mm of travel;

3. Geometric alignment of the axes, parallel or perpendicular to each other, is not less (not better) than 0.001 mm per 300 mm of travel;

4. Slide travel in both axes is not longer than 400 mm;

5. "Run out" (out-of-true running) in one revolution of the spindle is more (worse) than 0.0004 mm TIR; *and*

6. "Camming" (axial displacement) in one revolution of the spindle is more (worse) than 0.0004 mm TIR.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 2B06.b.1 to civil end-users not engaged in aerospace or nuclear activities.

Advisory Note 5: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of non-"numerically controlled" machine tools for generating optical quality surfaces controlled by 2B02, and "software" specially designed and technology "required" therefor controlled by 2D or 2E.

24. In Category 3, 3A01A is amended by revising the Requirements section to read as follows:

3A01A Electronic devices and components.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS, MT, NP (see Notes)
GLV: $1,500: 3A01.c; $3,000: 3A01.b.1 to b.3, 3A01.d to 3A01.f; $5,000: 3A01.a, 3A01.b.4 to b.7
GCT: Yes, except 3A01.a.1 and 3A01.e.5 (see Notes)
GFW: Yes, except 3A01.a.1, 3A01.b.1 and b.3 to b.7, 3A01.c to f

Notes: 1. MT controls apply to 3A01.a.1.

2. NP controls apply, for all countries except countries listed in Supp. 2 to Part 773, to items described in 3A01.e.5.

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25. In Category 3, a new ECCN 3A22B is added immediately following ECCN 3A02A to read as follows:

3A22B Radiographic equipment (linear accelerators) capable of delivering electromagnetic radiation produced by "bremsstrahlung" from accelerated electrons of 2 MeV or greater or by using radioactive sources of 1 MeV or greater, except those specially designed for medical purposes.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

26. In Category 3, ECCN 3A51B is revised to read as follows:

3A51B Mass spectrometers

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NP
GLV: No
GCT: No
GFW: No

List of Items Controlled

Mass spectrometers capable of measuring ions of 230 atomic mass units or greater and having a resolution of better than 2 parts in 230, and ion sources therefor, as follows:

a. Inductively coupled plasma mass spectrometers (ICPMS);

b. Glow discharge mass spectrometers (GDMS);

c. Thermal ionization mass spectrometers (TIMS);

d. Electron bombardment mass spectrometers that have a source chamber constructed from, lined with, or plated with materials resistant to UF_6

e. Molecular beam mass spectrometers that have:

e.1. A source chamber constructed from, lined with, or plated with stainless steel or molybdenum and have a cold trap capable of cooling to 193 K (−80° C) or less; or

e.2. A source chamber constructed from, lined with, or plated with materials resistant to UF_6; or

f. Mass spectrometers equipped with a microfluorination ion source designed for use with actinides or actinide fluorides.

Note: Specially designed or prepared magnetic or quadrupole mass spectrometers capable of taking "on-line" samples of feed, product, or tails from UF_6 gas streams and having all of the following characteristics require export authorization from the Nuclear Regulatory Commission (see 10 CFR part 110):

a. Unit resolution for mass greater than 320;

b. Ion sources that are constructed of or lined with nichrome or that are monel or nickle plated;

c. Electron bombardment ionization sources;

d. Having a collector system suitable for isotopic analysis.

27. In Category 3, ECCN 3B01A is amended by revising the Requirements section to read as follows:

3B01A Equipment for the manufacture or testing of semiconductor devices or materials, as follows, and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS
GLV: $500
GCT: Yes
GFW: No

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28. In Category 3, ECCNs 3D01A and 3DO2A are revised and the Requirements section of ECCN 3D03A is revised to read as follows:

3D01A "Software" specially designed for the "development" or "production" of equipment controlled by 3A01.b to 3A01.f, 3A02, and 3B01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes
GTDU: No

3D02A "Software" specially designed for the "use" of "stored program controlled" equipment controlled by 3B01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes
GTDU: No

3D03A Computer-aided-design (CAD) "software" for semiconductor devices or integrated circuits.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes
GTDU: No

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29. In Category 3, a new ECCN 3D22B is added immediately following ECCN 3D21B to read as follows:

3D22B "Software" for the "development", "production", or "use" of radiographic equipment (linear accelerators) controlled by 3A22.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GTDR: No
GTDU: No

30. In Category 3, ECCN 3D80C is revised, ECCN 3D91F is removed, a new ECCN 3D94F is added immediately following ECCN 3D80C, and ECCN 3D96G is revised to read as follows:

3D80C "Software" specially designed for the "development", "production", or "use" of items controlled by 3A80C or 3A81C.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO

Unit: $ value
Reason for Control: FP (Crime control)
GTDR: No
GTDU: Yes, for Australia, Japan, New Zealand, and NATO only

3D94F "Software" specially designed for the "development", "production", or "use" of microcircuits controlled by 3A92F, electronic test equipment controlled by 3A93F, or manufacturing and test equipment controlled by 3B91F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

3D96G "Software", n.e.s., for the "development", "production", or "use" of commodities controlled under Category 3.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

31. In Category 3, in sub-category 3E:

a. ECCN 3E01A is revised;

b. The Requirements section of ECCN 3E02A is revised;

c. A new ECCN 3E22B is added immediately following ECCN 3E02A;

d. ECCNs 3E51B and 3E80C are revised;

e. ECCN 3E91F is removed and a new ECCN 3E94F is added immediately following ECCN 3E80C; and

f. ECCN 3E96G is revised to read as follows:

3E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03, or 3C04.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS and MT (see Note)
GTDR: Yes
GTDU: No

Note 1: MT controls apply to technology specially designed for the "development" or "production" of items described in 3A01.a.1.

Note 2: 3E01 does not control technology for the "development" or "production" of:

a. Microwave transistors operating at frequencies below 31 GHz;

b. Integrated circuits controlled by 3A01.a.3 to a.11, having both of the following characteristics:

1. Using technology of the micrometer or more, *and*

2. Not incorporating multi-layer structures.

N.B.: This Note does not preclude the export of multilayer technology for devices incorporating a maximum of two metal layers and two polysilicon layers.

3E02A Other technology for the "development" or "production" of commodities described in this entry.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS
GTDR: Yes
GTDU: No

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3E22B Technology for the "development", "production", or "use" of radiographic equipment (linear accelerators) controlled by 3A22B.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: MT
GTDR: No
GTDU: No

3E51B Technology specially designed for the "development", "production", or "use" of items controlled by 3A51.

Requirements

Validated License Required: QSTVWYZ and Canada
Reason for Control: NP
GTDR: No
GTDU: No

3E80C Technology for the "development", "production", or "use" of items controlled by 3A80C or 3A81C.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO
Reason for Control: FP (Crime control)
GTDR: No
GTDU: Yes, for Australia, Japan, New Zealand, and NATO only

3E94F Technology for the "development", "production", or "use" of microcircuits controlled by 3A92F, electronic test equipment controlled by 3A93F, or manufacturing and test equipment controlled by 3B91F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

3E96G Technology, n.e.s., for the "development", "production", or "use" of commodities controlled under Category 3.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

32. In Category 3, the Advisory Note under the heading "Notes for Category 3" immediately following ECCN 3E96G is removed and new Advisory Notes 1 through 3 are added to read as follows:

Notes for Category 3:

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 3 for national security reasons, *except* equipment controlled by 3B01.a.2, 3B01.a.3, 3B01.g.1, or 3B01.g.2, and "software" specially designed and technology "required" therefor controlled by 3D or 3E.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of:

a. Analog instrumentation magnetic tape recorders controlled by 3A02.a.1, provided that all of the following conditions are met:

1. Bandwidths do not exceed:

a. 4 MHz per track and have up to 28 tracks; *or*

b. 2 MHz per track and have up to 42 tracks;

2. Tape speed does not exceed 6.1 m/s;

3. They are not designed for underwater use;

4. They are not ruggedized for military use; *and*

5. Recording density does not exceed 653.2 magnetic flux sine waves per mm;

b. Video magnetic tape recorders specially designed for civil television recording;

c. Instrument "frequency synthesizers" or synthesized signal generators controlled by 3A02.b or 3A02.d.2, and specially designed components or accessories therefor, having:

1. A synthesized output frequency of 2.6 GHz or less; *and*

2. A "frequency switching time" of 0.3 ms or more;

d. Epitaxial reactors controlled by 3B01.a.1, *except* those also controlled by 3B01.a.2 or 3B01.a.3;

e. Positive resists not optimized for photolithography at a wavelength of less than 365 nm, provided that they are not controlled by 3C02.b to 3C02.d.

Advisory Note 3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of equipment controlled by 3B01.g.2 and "software" specially designed and technology "required" therefore controlled by 3D or 3E.

33. In Category 4, ECCNs 4A01A and 4A02A are amended by revising the Requirements section in each entry to read as follows:

4A01A Electronic computers and related equipment, as follows, and "assemblies" and specially designed components therefore.

Requirements

Validated License Required: QSTVWYZ

Unit: Computers and peripherals in number; parts and accessories in $ value
Reason For Control: NS, MT, NP (see Notes)
GLV: $5,000 for 4A01.a *only*; $0 for 4A01.b
GCT: Yes, except MT and except electronic computers with a CTP equal to or greater than 195 Mtops (no CTP ceiling for Japan).
GFW: No

Notes: 1. MT controls apply to 4A01.a.
2. NP controls apply to the following:
a. Supercomputers (as defined in 770.3 of this subchapter) to countries listed in Supplements 2 and 8 to Part 773 of this subchapter;
b. Computers with a CTP exceeding 41 Mtops to countries listed in Supplement 3 to Part 773 of this subchapter;
c. Computers with a CTP exceeding 12.5 Mtops to all other destinations.

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4A02A "Hybrid computers", as follows, and "assemblies" and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Computers and peripherals in number; parts and accessories in $ value
Reason For Control: NS, MT, NP (see Notes)
GLV: $5,000
GCT: Yes, *except* MT
GFW: No

Notes: 1. MT controls apply to hybrid computers combined with specially designed "software", for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems described in § 778.7 of this subchapter.
2. NP controls apply to the following:
a. Supercomputers (as defined in § 770.3 of this subchapter) to countries listed in supplements 2 and 8 to part 773 of this subchapter;
b. Computers with a CTP exceeding 41 Mtops to countries listed in supplement 3 part 773 of this subchapter;
c. Computers with a CTP exceeding 12.5 Mtops to all other destinations.

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34. In Category 4, ECCN 4A03A is revised to read as follows:

4A03A "Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Computers and peripherals in number; parts and accessories in $ value
Reason For Control: NS, MT, NP, FP (see Notes)
GLV: $5,000
GCT: Yes, *except* MT or digital computers with a CTP equal to or exceeding 195 Mtops (no CTP ceiling for Japan)
GFW: Yes (Advisory Notes 3 and 4 only)

Notes: 1. MT controls apply to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B05 or 9B06.
2. NP controls apply to the following:
a. Supercomputers (as defined in 770.3) to countries listed in Supplements 2 and 8 to Part 773;
b. Computers with a CTP exceeding 41 Mtops to countries listed in Supplement 3 to Part 773;
c. Computers with a CTP exceeding 12.5 Mtops to all other destinations.

List of Items Controlled

Note 1: 4A03 includes vector processors, array processors, logic processors, and equipment for "image enhancement" or "signal processing".

Note 2: The control status of the "digital computers" or related equipment described in 4A03 is governed by the control status of other equipment or systems provided:
a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;
b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*
N.B.: 1. The control status of "signal processing" or "image enhancement" equipment described in 4A03.g and specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.
2. For the control status of "digital computers" or related equipment for telecommunications equipment, see the telecommunications entries in Category 5.
c. The technology for the "digital computers" and related equipment is governed by 4E.

Note 3: "Digital computers" or related equipment are not controlled by 4A03 provided:
a. They are essential for medical applications;
b. The equipment is substantially restricted to medical applications by nature of its design and performance;
c. The equipment does not have "user-accessible programmability" other than that allowing for insertion of the original or modified "programs" supplied by the original manufacturer;
d. The "composite theoretical performance" of any "digital computer" which is not designed or modified but essential for the medical application does not exceed 20 million composite theoretical operations per second (Mtops); *and*
e. The technology for the "digital computers" or related equipment is governed by 4E.

"Digital computers", "assemblies", and related equipment therefor, as follows, and specially designed components therefor:
a. Designed for combined recognition, understanding and interpretation of image or continuous (connected) speech;
b. Designed or modified for "fault tolerance";

Note: For the purposes of 4A03.b, "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance", if they use:
1. Error detection or correction algorithms in "main storage";
2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;
3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; *or*
4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

c. "Digital computers" having a "composite theoretical performance" exceeding 12.5 million composite theoretical operations per second (Mtops);
d. "Assemblies" specially designed or modified to enhance performance by aggregation of "computing elements", as follows:

Note 1: 4A03.d applies only to "assemblies" and programmable interconnections not exceeding the limits in 4A03.c, when shipped as unintegrated "assemblies". It does not apply to "assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A03.e to 4A03.k.

Note 2: 4A03.d does not control any "assembly" specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A03.c.

d.1. Designed to be capable of aggregation in configurations of 16 or more "computing elements"; *or*
d.2. Having a sum of maximum data rates on all data channels available for connection to associated processors exceeding 40 million Bytes/s;
e. Disk drives and solid state storage equipment:
e.1. Magnetic, erasable optical or magneto-optical disk drives with a "maximum bit transfer rate" exceeding 25 million bit/s;
e.2. Solid state storage equipment, other than "main storage" (also known as solid state disks or RAM disks), with

a "maximum bit transfer rate" exceeding 36 million bit/s;

f. Input/output control units designed for use with equipment controlled by 4A03.e;

g. Equipment for "signal processing" or "image enhancement" having a "composite theoretical performance" exceeding 8.5 million composite theoretical operations per second (Mtops);

h. Graphics accelerators or graphics coprocessors exceeding a "3–D Vector Rate" of 400,000 or, if supported by 2–D vectors only, a "2–D vector rate" of 600,000;

Note: The provisions of 4A03.h do not apply to work stations designed for and limited to:

1. Graphic arts (e.g., printing, publishing); *and*

2. The display of two-dimensional vectors.

i. Color displays or monitors having more than 120 resolvable elements per cm in the direction of the maximum pixel density;

Note 1: 4A03.i does not control displays or monitors not specially designed for electronic computers.

Note 2: Displays specially designed for air traffic control (ATC) systems are treated as specially designed components for ATC systems under Category 6.

j. Equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits in 3A01.a.5;

k. Equipment containing "terminal interface equipment" exceeding the limits in 5A02.c;

Note: For the purposes of 4A03.k, "terminal interface equipment" includes "local area network" interfaces, modems and other communications interfaces. "Local area network" interfaces are evaluated as "network access controllers".

35. In Category 4, a new ECCN 4A80C is added immediately following ECCN 4A21B, as follows:

4A80C Computers for fingerprint equipment, n.e.s.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO
Unit: Number
Reason for Control: FP (see Note)
GLV: No
GCT: No
GFW: No

Note: FP controls apply to the items described in this entry because they can be used for crime control and detection purposes. Applications will generally receive favorable consideration on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights.

36. In Category 4, ECCNs 4D01A and 4D02A are revised and ECCN 4D03A is amended by revising the Requirements to section to read as follows:

4D01A "Software" specially designed or modified for the "development", "production", or "use" of equipment or materials controlled by 4A01, 4A02, 4A03, 4A04, 4B01, 4B02, 4B03, or 4C01 or "software" controlled by 4D01, 4D02, or 4D03.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes
GTDU: No

Note: MT controls apply to "software" specially designed or modified for the "development," "production" or "use" of equipment controlled for MT by 4A01, 4A02, and 4A03.

4D02A "Software" specially designed or modified to support "technology" controlled by 4E01 or 4E02.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes
GTDU: No

Note: MT controls apply to "software" specially designed or modified to support technology for the "development," "production" or "use" of equipment controlled for MT by 4A01, 4A02 and 4A03.

4D03A Specific "software" as follows.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, FP
GTDR: Yes, except 4D03.e
GTDU: No

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37. In Category 4, new ECCNs 4D21B, 4D80C, and 4D94F are added immediately following ECCN 4D03A and ECCN 4D96G is revised to read as follows:

4D21B "Software" specially designed or modified for the "development", "production", or "use" of items controlled by 4A21, or for supporting technology controlled by 4E21 for the "development", "production", or "use" of items controlled by 4A21.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GTDR: No
GTDU: No

4D80C "Software" specially designed for the "development", "production", or "use" of items controlled by 4A80C.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO
Unit: $ value
Reason for Control: FP (Crime control)
GTDR: No
GTDU: Yes, for Australia, Japan, New Zealand, and NATO *only*

4D94F "Software" specially designed for the "development", "production", or "use" of "digital computers" controlled by 4A94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of computer equipment or materials controlled by 4A, 4B, or 4C, and other "software", n.e.s.

Note: Certain "software" must also be evaluated against the performance characteristics of the telecommunications or "information security" entries in Category 5. See Notes 1 and 2 following the heading of Category 4.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

38. In Category 4, ECCNs 4E01A and 4E02A are revised, new ECCNs 4E21B, 4E80C, and 4E94F are added immediately following ECCN 4E02A, and ECCN 4E96G is revised to read as follows:

4E01A Technology, according to the General Technology Note, for the "development", "production", or "use" of equipment or materials controlled by 4A01, 4A02, 4A03, 4A04, 4B01, 4B02, 4B03, or 4C01 or "software" controlled by 4D01, 4D02, or 4D03.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT, FP (see Notes)
GTDR: Yes, except MT and FP (see Notes)
GTDU: No

Notes: 1. MT controls apply to certain items controlled by 4A01, 4A02, 4A03, 4D01,

or 4D02. See *Reason for Control* paragraphs in these entries to determine which items are subject to MT controls.

2. FP controls apply, for all destinations *except* Australia, Japan, New Zealand, and members of NATO, to technology for the "development", "production", or "use" of computers controlled by 4A03 for computerized fingerprint equipment.

4E02A Other technology.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, FP
GTDR: Yes
GTDU: No

List of Items Controlled

a. "Technology" for the "development" or "production" of equipment released under 4A03.h;

b. "Technology" for the "development" or "production" of equipment designed for "multi-data-stream processing";

c. Technology "required" for the "development" or "production" of magnetic hard disk drives with a "maximum bit transfer rate" exceeding 11 million bit/s.

4E21B Technology for the "development", "production", or "use" of items controlled by 4A21.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: MT
GTDR: No
GTDU: No

4E80C Technology for the "development", "production", or "use" of items controlled by 4A80C.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, and NATO
Reason for Control: FP (Crime control)
GTDR: No
GTDU: Yes, for Australia, Japan, New Zealand, and NATO *only*

4E94F Technology for the "development", "production", or "use" of "digital computers" controlled by 4A94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4E96G Technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 4.

Note: Technology for certain equipment of "software" must also be evaluated against the performance characteristics of the telecommunications or "information security" entries in Category 5. See Notes 1 and 2 following the heading of Category 4.

Requirements

Validated License Required: SZ, South African military and police
Reasons for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

39. Category 4 is amended:

a. By adding a new heading "Notes for Category 4" immediately following ECCN 4E96G;

b. By revising Advisory Notes 1, 2, and 3;

c. By adding new Advisory Notes 4, 5, and 6; and

d. By adding a new heading immediately following Advisory Note 6 and immediately preceding the Technical Note, "Composite Theoretical Performance (CTP)", as follows:

Notes for Category 4:

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of the items controlled by Category 4 for national security reasons, *except*:

a. Computers controlled by 4A01 or 4A02;

b. "Digital computers" controlled by 4A03, having a "composite theoretical performance" (CTP) exceeding 41 million theoretical operations per second (Mtops), and specially designed components therefore;

c. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 1.a, .b, or .c that are controlled by 4D or 4E.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for export to satisfactory end-users in the People's Republic of China of "digital computers", specially designed components and related equipment therefor, controlled by 4A03.c, .e, .f, .h, .i, .j, or .k, or "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They are exported as complete systems or enhancements to previously exported systems up to the limits in this Advisory Note 2.d;

c. They have been primarily designed and used for non-strategic applications;

d. The "CTP" of the "digital computers" does not exceed 20 Mtops; *and*

e. Equipment containing "terminal interface equipment" does not exceed:

1. The limits of Advisory Note 4 to Category 5, Section I (Telecommunications);

2. The limits of 5A02.c.2; *or*

3. A "digital transfer rate" of 100 Mbit/s on the common media for "network access controllers" and related equipment controlled by 5A02.c.3;

f. Any controlled "software" is the minimum required for the "use" of the approved "digital computers" and related equipment.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups Q and Y and the People's Republic of China of "digital computers" controlled by 4A03.c, or specially designed components therefor, and "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. The "CTP" of the "digital computers" does not exceed 20 Mtops;

d. They do not contain any related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 3.c;

f. They are not exported as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

Note: This does not preclude the enhancement of such computers when they are used by civil end-users in civil applications.

g. Any controlled "software" is the minimum required for the "use" of the approved "digital computers";

h. Exports of items covered by this Advisory Note 3 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; *and*

2. The equipment will not be used for the design, development, or production of items controlled for national security reasons.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups Q and Y and the People's Republic of China of equipment controlled by 4A03.e or .f provided:

a. The "maximum bit transfer rate" does not exceed 36 million bit/s;

b. They are exported as part of a computer system or as an enhancement to a previously exported system;

c. Exports of items covered by this Advisory Note 4 shall be subject to the following restrictions:

1. The equipment will be used primarily for the specific non-strategic application for which the export has been approved; *and*

2. The equipment will not be used for the design, development or production of items controlled for national security reasons.

Advisory Note 5: (Not eligible for General License GFW) Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups Q and Y and the People's Republic of China of "digital computers" or related equipment therefor controlled by 4A03.c, .e, .f, or .g, or "software" controlled by 4D01, provided that:

a. They will be operated by civil end-users for civil applications;

b. They have been primarily designed and used for non-strategic applications;

c. They do not exceed any of the following limits:

1. "CTP" of the "digital computers"—23 Mtops;

2. "Maximum bit transfer rate" of disk drives or input/output control units controlled by 4A03.e or 4A03.f—36 Mbit/s; *or*

3. "CTP" of the "signal processing" or "image enhancement" equipment—12.5 Mtops;

d. They do not contain any other related equipment controlled for national security reasons;

e. When exported as enhancements, the enhanced "digital computer" does not exceed the limit in this Advisory Note 5.c;

f. They are not shipped as enhancements to computers designed within Country Groups QWY or the People's Republic of China;

g. Any controlled "software" is the minimum required for the "use" of the approved computers" and related equipment;

h. Exports of items covered by this Advisory Note 5 shall be subject to the following restrictions:

1. A signed statement must be submitted by a responsible representative of the end-user(s) or the importing agency certifying that responsible Western representatives of the supplier will:

a. Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; *and*

b. Be furnished information demonstrating continued authorized application of the equipment; *and*

c. These Western representatives will be notified of any significant change of application or of other facts, on which the license was based;

2. The following information must be clearly stated on an export application for equipment controlled by this Advisory Note:

a. A full description of the equipment *and* its intended application and workload; *and*

b. A complete identification of all end-users and their activities.

Advisory Note 6: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of the following:

a. "Hybrid computers" controlled by 4A02, when not combined with specially designed "software" for modelling simulation or design integration for complete rocket systems and unmanned air vehicle systems;

b. Computers controlled by 4A04, and specially designed related equipment, "assemblies" and components therefor;

c. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 6.a or .b that are controlled by 4D or 4E.

Information on How to Calculate Composite Theoretical Performance (CTP):

Technical Note: "Composite theoretical performance" (CTP).

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40. In Category 5, Subcategory I "Telecommunications" ECCN 5A02A is revised to read as follows:

5A02A "Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes for items identified in Telecommunications Advisory Notes 11, 14, 19, 20 and 21 *only*

List of Items Controlled

Note: "Telecommunication transmission equipment"

a. Categorized as follows, or combinations thereof:

1. Radio equipment (e.g., transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical multiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);
10. "Stored program controlled" digital crossconnection equipment;
11. "Gateways" and bridges;
12. "Media access units"; *and*

b. Designed for use in single or multi-channel communication via:

1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation.

"Telecommuncation transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

a. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s.

Note: 5A02.a does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b. Being "stored program controlled" digital cross connect equipment with a "digital transfer rate" exceeding 8.5 Mbit/s per port;

c. Being equipment containing:

c.1. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 9,600 bit/s;

Note: 5A02.c.1 does not control dedicated stand-alone facsimile equipment with a "data signalling rate" not exceeding 14,400 bits per second and that is not controlled by the "Information Security" section of Category 5. In addition, the embedded modem in such equipment must be of the single chip type and it must not be feasible to remove the modem from the dedicated stand-alone equipment.

c.2. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel; *or*

c.3. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A02.c.

d. Employing a "laser" and having any of the following characteristics:

d.1. Having a transmission wavelength exceeding 1,000 nm;

d.2. Employing analog techniques and having a bandwidth exceeding 45 MHz;

d.3. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

d.4. Employing wavelength division multiplexing techniques; *or*

d.5. Performing "optical amplification".

e. Being radio equipment operating at input or output frequencies exceeding:

e.1. 31 GHz for satellite-earth station applications; *or*

e.2. 26.5 GHz for other applications;

Note: 5A02.e.2 does not control equipment for civil use when conforming with an ITU allocated band between 26.5 and 31 GHz.

f. Being radio equipment:

f.1. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

f.2. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

f.3. Employing other digital modulation techniques and having a "spectral efficiency" greater than 3 bit/s/Hz;

Note: 5A02.f.2 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

g. Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

g.1. a. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

g.1.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals

simultaneously at an output power of 1 kW or more in the 1.5 to 30 Mhz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than –80 dB; *or*

g.2. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal;

h. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

h.1. User programmable spreading codes; *or*

h.2. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz.

i. Being digitally controlled radio receivers having more than 1,000 channels, which:

i.1. Search or scan automatically a part of the electromagnetic spectrum;

i.2. Identify the received signals or the type of transmitter; *and*

i.3. Have a "frequency switching time" of less than 1 ms;

j. Providing functions of digital "signal processing" as follows:

j.1. Voice coding at rates of less than 2,400 bit/s;

j.2. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A03.f;

k. Being underwater communications systems having any of the following characteristics;

k.1. An acoustic carrier frequency outside the range of 20 to 60 kHz;

k.2. Using an electromagnetic carrier frequency below 30 kHz; *or*

k.3. Using electronic beam steering techniques.

41. In Category 5, Subcategory I "Telecommunications", ECCN 5A03A is amended by revising the Requirements section to read as follows:

5A03A "Stored program controlled" switching equipment and related signalling systems having any of the following characteristics, functions or features; and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value.
Reason for Control: NS
GLV: $5,000
CCT: Yes
GFW: Yes, for items identified in Telecommunications Advisory Notes 21 and 22 *only*

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42. In Category 5, Subcategory I "Telecommunications", ECCN 5A05A is amended by revising the Requirements section to read as follows:

5A05A Optical fiber communications cables, optical fibers and specially designed components and accessories therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: Meters
Reason for Control: NS
GLV: $3,000
GCT: Yes
GFW: Yes, for items identified in Telecommunications Advisory Notes 12, 19, and 20 *only*

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43. In Category 5, Subcategory I "Telecommunications", ECCN 5B01A is revised to read as follows:

5B01A Equipment specially designed for the "development", "production", or "use" of equipment, materials, or functions controlled by the entries in the telecommunications section of Category 5 for national security reasons.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes, for items identified in Telecommunications Advisory Notes 13, 19, 20, 21, and 22 *only*

List of Items Controlled

Equipment specially designed for:

a. "Development" of equipment, materials, functions or features controlled by the telecommunications entries in this Category, including measuring or test equipment;

b. "Production" of equipment, materials, functions, or features controlled by the telecommunications entries in this Category, including measuring, test, or repair equipment;

c. "Use" of equipment, materials, or functions, exceeding any of the least stringent control criteria applicable in telecommunications entries in this Category, including measuring, test, or repair equipment;

Note: 5B01 does not control optical fibers and "optical fiber preform" characterization equipment not using semiconductor "lasers".

44. In Category 5, Subcategory I "Telecommunications", ECCNs 5D01A and 5D02A are revised and ECCN 5D03A is amended by revising the Requirements section to read as follows:

5D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by telecommunications entries 5A01, 5A02, 5A03, 5A04, 5A05, 5A06, 5B01, 5B02, or 5C01.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, MT, FP (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" designed or modified for the "development", "production" or "use" of items controlled by 5A01.

5D02A "Software" specially designed or modified to support "technology" controlled by telecommunications entries 5E01 or 5E02.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" designed or modified to support technology for the "development", "production" or "use" of items controlled by 5A01.

5D03A Specific "software" as follows:

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT, FP (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" listed below as applicable to the "development", "production" or "use" of equipment controlled by 5A01.

* * * * *

45. In Category 5, Subcategory I "Telecommunications" is amended:

a. By revising Advisory Notes 1 through 11 under the heading "Notes for Telecommunications" at the end of Subcategory I;

b. By removing the heading "Favorable Consideration Notes (Telecommunications)" that follows Advisory Note 11;

c. By revising Advisory Notes 12 through 15; and

d. By adding new Advisory Notes 16, 17, 18, 19, 20, 21, and 22 to read as follows:

Notes for Telecommunications:

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for

exports to satisfactory end-users in Country Group W of equipment or systems controlled by 5A02, 5A03, 5A04, 5A05, or 5A06, and test equipment, "software" and "use" technology therefor, provided that:

a. The equipment or systems:

1. Are designed for and will be used for specific civil applications; *and*

2. Will be operated in the importing country by a civil end-user who has furnished to the supplier a Statement of Ultimate Consignee and Purchaser (Form BXA–629P) certifying that the equipment or systems will be used only for the specific end-use.

b. The information to accompany each application will include:

1. An Import Certificate issued by the government of the importing country;

2. A full description of the equipment or systems to be provided;

3. Specific end-use information including the installation site and intended application.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Estonia, Latvia and Lithuania of equipment or systems controlled by 5A02, 5A03, 5A04, 5A05, or 5A06, and test equipment, "software" and "use" technology therefor, provided that:

a. The equipment or systems:

1. Are designed for and will be used for specific civil applications; *and*

2. Will be operated in the importing country by a civil end-user who has furnished to the supplier a Statement by Ultimate Consignee and Purchaser (Form BXA–629P) certifying that the equipment or systems will be used only for the specific end-use;

b. The information to accompany each application will include:

1. End-use assurances provided by the importer and backed by the importing country;

2. Acceptance of on-site inspection of the equipment or system by the licensee or the designated representative of the licensee from a non-proscribed country;

3. A full description of the equipment or systems to be provided; *and*

4. The end-use information clearly stated including the installation site and intended application.

N.B.: Licenses for export of items covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following communications, measuring or test equipment:

a. "Telecommunications transmission equipment" controlled by 5A02.a, 5A02.b, or 5A02.d provided that:

1. It is intended for general commercial traffic in a civil communication system;

2. It is designed for operation at a "digital transfer rate" at the highest multiplex level of 140 Mbit/s or less and at a "total digital transfer rate" of 168 Mbit/s or less;

3. For equipment controlled by 5A02.d, the transmission wavelength must not exceed 1,370 nm and optical fiber must be used as the communication medium;

4. It is to be installed under the supervision of the seller in a permanent circuit; *and*

5. It is to be operated by the civilian authorities of the importing country;

b. Measuring or test equipment controlled by 5B01.c and 5B02 .a and .b, that is necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the conditions of this Advisory Note, provided that:

1. It is designed for use with communication transmission equipment operating at a "digital transfer rate" of 140 Mbit/s or less, and at a "total digital transfer rate" of 168 Mbit/s or less; *and*

2. It will be supplied in the minimum quantity required for the transmission equipment eligible for administrative exception treatment.

N.B.1: Where possible, built-in test equipment (BITE) will be provided for installation or maintenance of transmission equipment eligible for administrative exception treatment under this Advisory Note rather than individual test equipment.

N.B.2: The license application must include the locations of the connection points, types of equipment being connected and transmission rates.

N.B.3: Licenses for export of equipment covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following "telecommunications transmission equipment";

a. Modems controlled by 5A02.c.1 with a "data signalling rate" not exceeding 19,200 bit/s; *or*

b. "Network access controllers" controlled by 5A02.c.3, when exported under the conditions of Advisory Note 2 to Category 4, with a "digital transfer rate" not exceeding 100 Mbits/s.

Advisory Note 5: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of the following, provided that the associated multiplex equipment is designed for operation at a "digital transfer rate" at the highest multiplex level of 140 million bit/s or less:

a. Digital microwave radio relay equipment controlled by 5A02.a or 5A02.f, for fixed civil installations, operating at fixed frequencies not exceeding 23.6 GHz, with a "total digital transfer rate" not exceeding 168 Mbit/s;

b. Ground communication radio equipment for use with temporarily fixed services operated by civil authorities and designed to be used at fixed frequencies not exceeding 23.6 GHz;

c. Radio transmission media simulators/channel estimators controlled by 5B02.c, designed for testing equipment described in this Advisory Note 9.a or .b.

Advisory Note 6: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of equipment controlled by 5A03.a or "software" for "common channel signalling" controlled by 5D01 or 5D03.c, provided that:

a. The "common channel signalling" is restricted to quasi-associated or associated mode of operation according to CCITT Red Book, Volume X, fascicle X.1;

b. No functions, other than those described in the following recommendations in the Red Book of CCITT: Q.701 to Q.709, Q.721 to Q.725, Q.791 and Q.795, are included;

N.B.: Only functions described in paragraph 2 of Q.795 are to be included. These Q.795 functions may not provide centralized network control having all of the following characteristics:

a. Is based on a network management protocol; *and*

b. Does both of the following:

1. Receives data from the nodes; *and*

2. Processes these data in order to:

a. Control traffic; *and*

b. Directionalize paths;

c. No form of "Integrated Services Digital Network" (ISDN) is provided;

d. Equipment or "software" is restricted to that necessary for the operation within a city or, for "Private Automatic Branch Exchanges", within a radius of 100 km;

e. No means are provided that will allow "common channel signalling" via analog transmission links;

f. All the applicable conditions enumerated in this Advisory Note 10.a to .e are accomplished by:

1. Omission or physical removal of equipment or coding;

2. Over-writing with non-functioning statements; *or*

3. Reasonably non-reversible modifications.

Advisory Note 7: Licenses are likely to be approved, as administrative exceptions, for export to satisfactory end-users in the People's Republic of China of equipment controlled by 5B01.b, as follows:

a. Optical fiber or "optical fiber preform" characterization equipment using semiconductor "lasers" with a wavelength not exceeding 1,370 nm;

b. Equipment for the manufacture of silica-based "optical fiber preforms", optical fibers or cables.

Advisory Note 8: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of repair facilities or "software" controlled by 5B01.c or 5D01 for the repair of "stored program controlled" communication switching equipment or systems, provided that:

a. The repair facilities:

1. Are specially designed equipment for repair;

2. Are to be used to repair controlled equipment authorized for export as an administrative exception under Advisory Note 6 (Notes for Telecommunications) or equipment that is not controlled for national security reasons;

3. Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

4. Do not provide local production facilities; *and*

5. Do not provide for testing of individual electronic components;

b. The repair does not upgrade the equipment or "software";

c. All the records of repair activity are kept by a representative of the Western supplier; *and*

d. The information to accompany each license application shall include:

1. A complete list of equipment to be provided; *and*

2. A clear identification of the users and their activities.

N.B.: Nothing in this Advisory Note 13 shall be construed as overriding controls in other ECCNs contained in the Commerce Control List.

Advisory Note 9: Licenses are likely to be approved, as administrative exceptions, for export to satisfactory end-users in the People's Republic of China of "optical fiber preforms" controlled by 5C01, specially designed for the manufacture of silica-based optical fibers, provided they are specially designed to produce non-militarized silica-based optical fibers that are optimized to operate at a wavelength not exceeding 1,370 nm.

Advisory Note 10: Licenses are likely to be approved, as administrative exceptions, for exports to the People's Republic of China of minimum quantities of semiconductor "lasers" designed and intended for use with a civil fiber optic communication system that would be either not controlled for national security reasons or eligible for administrative exceptions treatment under Advisory Note 3 (Notes for Telecommunications), having an output wavelength not exceeding 1,370 nm and a CW power output not exceeding 100 mW.

Advisory Note 11: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of telecommunications equipment for optical fibers controlled by 5A02.d.1, provided that the transmission wavelength does not exceed 1,370 nm.

Advisory Note 12: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of cables or fibers controlled by 5A05, provided that:

a. Quantities are normal for the envisaged end-use; *and*

b. They are for a specified civil end-use.

Advisory Note 13: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical fiber test equipment controlled by 5B01.c using a transmission wavelength not exceeding 1,370 nm.

Advisory Note 14: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of digital radio equipment or systems controlled by 5A02.a or .f, provided that:

a. The equipment or system is intended for general commercial international traffic in an international civil telecommunication system, one end of which is in a COCOM member country;

b. It is to be installed in a permanent circuit under the supervision of the COCOM member country licensee;

c. No means are to be provided for the transmission of traffic between points in a single proscribed country other than a country in Country Group W;

d. The "digital transfer rate" at the highest multiplex level does not exceed 156 Mbit/s;

e. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above 64 QAM; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6 bit/s/Hz;

f. The equipment is not controlled by 5A02.e or .h or by the "information security" entries in Category 5;

g. Spare parts shall remain under the control of the COCOM member country licensee;

h. The COCOM member country licensee or his designated representative who shall be from a non-proscribed country shall have the right of access to all the equipment;

i. There will be no transfer of technology controlled for national security reasons;

j. Supervision of systems installation and maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel from non-proscribed countries; *and*

N.B. 1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B. 2: This does not require that only nationals from the exporting country should install the system.

k. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. The licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

N.B.: Licenses for exports of items covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 15: Licenses will receive favorable consideration for exports to Country Group W of technology controlled by the telecommunications entries in Category 5, and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by the telecommunications entries in Category 5 or by entries in other Categories on the Commerce Control List, for the modification or "production" of telecommunications equipment or systems eligible for administrative exceptions treatment under Advisory Note 5 in the Notes for Telecommunications (Category 5), provided that:

N.B.: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains governed by Category 4.

a. The characteristics of the telecommunications equipment or systems are limited to those eligible for administrative exceptions treatment under Advisory Note 8 in the Notes for Telecommunications (Category 5);

b. Modifications of the telecommunications equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of Advisory Note 5 in the Notes for Telecommunications (Category 5);

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.2.: Advisory Note 15.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories on the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. All "software" shall be exported in machine executable form only;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or "production" equipment is not reexported or exported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and "production" equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the "production" of the telecommunications equipment or systems;

5. The "production" technology, "production" equipment and produced equipment or systems will be for civil end-use only and not for reexport to Country Groups QSYZ or the People's Republic of China;

h. System integration testing will be performed by the supplier or licensor, if it requires test tools that would provide the licensee with the capability to recover source code or upgrade the system beyond the performance thresholds or features of Advisory Note 5 in the Notes for Telecommunications (Category 5);

i. End-use reporting of the installed telecommunication equipment or systems will be provided in accordance with the provisions of Advisory Note 5 in the Notes for Telecommunications (Category 5);

N.B.: 1. No export under the favorable consideration provisions of this Advisory Note shall establish a precedent for the approval of exports under entries in other Categories on the Commerce Control List.

2. For each license application for export pursuant to this Advisory Note, the exporter must submit the following assurances to be obtained from the importer:

a. An Import Certificate issued by the importer's national authorities;

b. An assurance that the importer will make available information as requested by the Department of Commerce; *and*

c. An assurance that the importer will allow on-site inspection if requested by the Department of Commerce.

Advisory Note 16: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of radio relay communications equipment, specially designed components and accessories, specially designed test equipment, "software" and technology for the "use" or equipment or materials therefor, controlled by the telecommunications entries in this Category, provided that:

a. It is for fixed installation and civil application;

b. It is designed for operation at a total "digital transfer rate" not exceeding 156 Mbit/s;

c. The equipment does not employ either of the following:

1. Quadrature Amplitude Modulation (QAM) techniques above 64 QAM; *or*

2. Other digital modulation techniques with a "spectral efficiency" exceeding 6.3 bit/s/Hz;

d. It operates at fixed frequencies not exceeding 9 GHz;

e. A license application for export under the provisions of this Advisory Note provides the following information:

1. A complete list of the equipment or system to be provided;

2. Specific end-use information including intended application; *and*

3. The location of the equipment.

Advisory Note 17: Licenses will receive favorable consideration for the export to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical fiber cables and optical fiber transmission equipment or systems controlled by 5A02 or 5A05, provided that:

a. The equipment or system is intended for general commercial international traffic in an international civil submarine optical fiber telecommunication system linking the importing country with a COCOM member country;

b. It is to be installed in a permanent circuit under the supervision of the COCOM member country licensee;

c. No means are to be provided for the transmission of traffic between points in one or more proscribed countries other than those in Country Group W;

d. The total length of optical fiber cable to be installed within the proscribed country, excluding cable in territorial waters, does not exceed 10 km or the shortest distance that is practical for installation;

e. The "digital transfer rate" at the highest multiplex level does not exceed 565 Mbit/s;

f. The "laser" transmission wavelength does not exceed 1,550 nm;

g. The equipment is not controlled by 5A02.d.2 to d.5 above or by the "information security" entries in Category 5;

h. Spare parts shall remain under control of the COCOM member country licensee;

i. The COCOM member country licensee or his designated representative, who shall be from a non-proscribed country, shall have the right of access to all the equipment;

j. There will be no transfer of controlled technology;

k. Supervision of systems installation and maintenance shall be performed by the licensee or the licensee's designated representative, who shall be from a non-proscribed country, using only personnel and non-proscribed countries; *and*

N.B.1: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2: This does not require that only nationals from the exporting country should install the system.

1. Upon request, the licensee shall carry out an inspection to establish that:

1. The system is being used for the intended civil purpose;

2. All the equipment exported under the provisions of this Advisory Note is being used for the stated purpose and is still located at the installation sites. the licensee shall report the findings from the inspection to the Office of Export Licensing within one month after completing the inspection.

Advisory Note 18: Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of technology controlled by the telecommunications entries in Category 5 and of instrumentation, test equipment, components and specially designed "software" therefor, and materials and components controlled by the telecommunications entries in Category 5 or by entries in other Categories of the Commerce Control List, for modification or production of "stored program controlled" circuit switching equipment or systems provided that:

NB.: Technology for general purpose computers is not eligible for treatment under this Advisory Note, i.e., it remains governed by Category 4.

a. The characteristics of the "stored program controlled" circuit switching equipment or systems are limited to those that release them from control or make them eligible under Advisory Notes that provide administrative exceptions treatment;

b. Modification of the "stored program controlled" circuit switching equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of the relevant Advisory Notes that provide administrative exceptions treatment;

c. Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

N.B.: Advisory Note 18.c does not preclude exports of equipment or technology that would be possible in accordance with the provisions of other Categories on the Commerce Control List.

d. The specially designed "software" is that necessary to use the transferred technology, instrumentation and test equipment;

e. The manufacturing of the load tape by the licensee is limited to the addition to the generic "software" of the specific customer data and site parameters;

f. "Development" technology is not included;

g. The contract includes explicit conditions to ensure that:

1. The "production" technology or "production" equipment is not reexported or exported, either directly or indirectly, to another proscribed destination;

2. The supplier or licensor may appoint a representative who is entitled to verify that the "production" technology and "production" equipment or systems serve their intended use;

3. Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

4. The supplier's or licensor's personnel have right of access to all the facilities directly involved in the "production" of the "stored program controlled" circuit switching equipment or systems;

5. The "production" technology, "production" equipment and produced equipment or systems will be for civil end-use only;

h. System integration testing will be performed by the supplier or licensor if it requires test tools that provide the licensee with the capability to recover "source code" or upgrade the system beyond the performance thresholds or features of the relevant Advisory Notes that provide administrative exceptions treatment.

N.B.: No export under the favorable consideration provisions of this Note shall establish a precedent for the approval of exports under other Categories on the Commerce Control List.

Advisory Note 19: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of fiber optic telecommunication transmission system or equipment controlled by 5A02.a and 5A02.d.1, fiber optic cables controlled by 5A05, or coaxial cable telecommunications transmission systems controlled by 5A02.a, and the test equipment, specially designed components, accessories, "software" and technology, necessary for the "use" thereof, provided that:

a. They are intended for international telecommunications links dedicated to international civil traffic between the following locations:

1.a. *From the following countries:* Belgium, Czechoslovakia, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey, United Kingdom, Austria, Finland, Ireland, Sweden, or Switzerland;

b. *To the following cities:* Tirana (Albania), Yerevan (Armenia), Baku (Azerbaijan), Sophia, Varna (Bulgaria), Minsk (Byelorus), Tbilissi (Georgia), Alma-Ata (Kazakhstan), Bishkek (Kyrgyzstan), Chisinau (Moldova), Bucharest, Constanza (Romania), Moscow, Novorossiisk, Rostov-on-Don, St. Petersburg, Volgograd (Russia), Dushanbe (Tajikistan), Ashgabat (Turkmenistan), Kiev, Odessa, Sebastopol (Ukraine), Tashkent (Uzbekistan) *or:*

2.a. *From the following countries:* Australia, Canada, Hong Kong, Japan, New Zealand, South Korea, or the United States;

b. *To the following cities:* Shanghai, Guangzhou (People's Republic of China), Khabarovsk, Nkhodka, Vladivostok, Yuzhno-Sadhalinsk (Russia), Hanoi, Ho Chi Minh City (Vietnam);

N.B.: No traffic shall be carried between points in proscribed countries, except in Czechoslovakia, Estonia, Latvia, Lithuania, and Poland.

b.1. No portion of the system is installed in the region:

a. East of 38° longitude East;

b. West of 130° longitude East; *and*

c. North of 45° latitude North;

2. *Except*, portions of the system may be installed in the region:

a. South of 50° latitude North;

b. West of 58° longitude East; *and*

c. Southwest of the great circle arc connecting 50° North/50° East and 45° North/58° East;

c. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 623 Mbit/s or less;

d. The "laser" transmission wavelength does not exceed 1,590 nm;

e. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e. ANSI or CCITT);

f. Supervision of systems installation and maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment which would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B.1.: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2.: This is not meant to require that only nationals from the exporting country should install the system.

g. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be affected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

h. The COCOM member country licensee or his designated representative who must be from a non-proscribed country must have the right of access to all the equipment;

i. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Note is being used for the stated end purpose and is still located at the installation sites. After each inspection, the licensee must report his findings to his authorities within one month.

j. The licensee application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to its licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route;

N.B.1.: License applications for the export of fiber optic telecommunications transmission systems or equipment are subject to 30 day COCOM notification before the license is issued under the provisions of this Note.

N.B.2.: License applications for the export of coaxial cable telecommunications transmission systems or equipment are subject to a 45 day COCOM notification before the license is issued under the provisions of this Note.

N.B.3.: Destinations other than those listed in subparagraph (a) of this Note may be approved after a 45 day COCOM review. Applications for other destinations must be accompanied by a detailed justification for the additional link. Approved destinations for international telecommunications links will be included in sub-paragraph (a) of this Note.

Advisory Note 20: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY of fiber optic telecommunication transmission systems or equipment controlled by 5A02.a and 5A02.d.1, digital radio equipment or systems controlled by 5A02.a and 5A02.f.1, coaxial cable telecommunications transmission equipment or systems controlled by 5A02.a, or optical fiber cables controlled by 5A05 and the test equipment, specially designed components, accessories, "software" and technology, necessary for the "use thereof," provided that:

a. They are intended for:

1. Intra-city or inter-city links within Albania, Armenia, Azerbaijan, Bulgaria, Byelorus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, or Vietnam.

N.B.: Intra-city links provide service within a local service area which must not extend beyond a circle with a diameter of 50 km and with the city in the middle.

2. Inter-city links between cities in Albania, Armenia, Azerbaijan, Bulgaria, Byelorus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan;

b. They are designed to operate at a "digital transfer rate" at the highest multiplex level of 156 Mbit/s or less;

c. The "laser" transmission wavelength does not exceed 1590 nm;

d. The radio transmission system does not employ Quadrature Amplitude Modulation (QAM) techniques above 16 QAM;

e. The equipment or systems are designed and intended to be used for fixed civil applications directly connected to the civilian network;

f. The equipment, if employing synchronous transmission techniques, must conform to one of the approved SONET or SDH standards or recommendations (i.e., ANSI or CCITT);

g. Supervision of systems installation and of maintenance of controlled transmission equipment must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled transmission equipment which would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B.1.: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2.: This is not meant to require that only nationals from the exporting country should install the system.

h. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

i. The COCOM member country licensee or his designated representative, who must be from a non-proscribed country, must have the right of access to all the equipment;

j. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Note is being used for the stated end purpose and is still located at the installation sites.

3. After each inspection, the licensee must report his findings to his authorities within one month; and

k. The license application must include a system plan containing equipment quantities and approximate locations for the proposed system. After final installation, unless already provided, the applicant must provide to its licensing authorities the final location of the installed equipment to the greatest degree of precision available and a map of the final cable route.

N.B.1: License applications for the export of fiber optic or radio telecommunications transmission systems or equipment for intra-city systems are subject to a 45 day COCOM notification before the license is issued under the provisions of this Note.

N.B.2.: License applications for the export of coaxial cable telecommunications transmission systems or equipment for intra-city systems are subject to a 45 day COCOM notification before the license is issued under the provisions of this Note.

N.B.3.: License applications for the export of telecommunications transmission systems or equipment for inter-city links are subject to a 45 day COCOM notification before the license is issued under the provisions of this Note. Consideration will be given to:

a. The use of specific carrier media in specific locations;

b. The concentration of strategic facilities, including military sites, along the proposed route(s);

c. Evidence which would indicate that the end-use(s) are directly related to significant strategic activities, including intelligence or diversion; *and*

d. The political/strategic situation in the importing country at a given time.

Advisory Note 21: Licenses are likely to be approved, as administrative exceptions, for the export of systems to County Groups QWY and the People's Republic of China for equipment controlled by 5A03.a or 5A03.b, or "software" for "common channel signalling" controlled by 5D01 or 5D03.c, and the test equipment, specially designed components, accessories and technology, necessary for the "use" thereof, provided that:

a. They are intended for fiber optic, radio, or coaxial cable international telecommunication links fulfilling the provisions of Note 19.a and .b.;

b. The "common channel signalling" (CCS) is restricted to associated mode of operation. Signalling channels and all related traffic channels must be carried on the same transmission system. Only international traffic between the locations listed in Note 19.a is permitted (i.e. calls originating in a proscribed country will not be rerouted to any proscribed destination);

c. No general service of "Integrated Service Digital Network" (ISDN) is provided by the proscribed country gateway switch, *except*:

1. ISDN user part (ISUP) may be used on the international signalling link;

2. ISDN service may be provided for specified subscribers on the proscribed countries gateway switch;

d. Supervision of systems installation and of maintenance of controlled equipment and "software" must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled equipment and "software" which would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries;

N.B.1.: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2.: This is not meant to require that only nationals from the exporting country should install the system.

e. Controlled test equipment and controlled spare parts must remain under the supervision of the COCOM member country licensee;

N.B.: The supervision of the test equipment and spare parts by the licensee may be effected by stock inventory procedures and does not require the permanent on-site presence of a representative of the licensee.

f. All CCS equipment, including spares, is operational in such a form that any removal from or manipulation on the end in a proscribed country is immediately recognized by the operator (e.g. through remote maintenance and monitoring procedures);

g. The licensee or operator takes immediate action to ensure that non-operational equipment is repaired or replaced within a week of the failure;

h. The COCOM member country licensee or his designated representative, who must be from a non-proscribed country, must have the right of access to all the equipment;

i. Proscribed country nationals are not given tools or training allowing them to modify the approved configuration or divert equipment or "software" to non-approved uses.

j. Upon request of the government of the exporting country, the licensee or operator must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Note is being used for the stated end purpose and is still located at the installation sites.

3. After each inspection, the licensee must report his findings to his authorities within one month;

k. The operator informs the exporting government immediately of any sign of misuse or diversion of CCS hardware or "software" on the other end of the international link, or of any failure of the operator at the other end to allow the operator to comply with the terms of the export license; and

l. Contractual agreements between the licensee and the operators on both end of the link require that the operator at the other end of the international link complies fully with all the conditions stipulated in the export license and that, in the event of failure by the latter to comply, the operator will inform his authorities and the exporting government.

N.B.1.: Operators must be from the countries list in subparagraphs a.1.a. or a.2.a of Advisory Note 19.

N.B.2.: License applications for the export of systems, equipment, or "software" for "common channel signalling" intended for new fiber optic international telecommunication links are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

N.B.3.: License applications for ISDN services for specified subscribers, or systems, equipment or "software" for "common channel signalling" intended for new non-fiber optic international telecommunications links or existing links are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note.

Advisory Note 22: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China for the export of systems or equipment controlled by 5A03.d, 5A03.e, or 5A03.f, "software" controlled by 5D03.c that provides features described in 5A03.d, 5A03.e, or 5A03.f, specially designed components and accessories therefor, and test equipment, "software" and technology necessary for the "use" thereof, provided:

a. The equipment or "software" will be used for a specified civil end-use by a civil end-user only;

b. The equipment or "software" does not perform circuit switching or circuit switching functions;

c. Supervision of systems installation and of maintenance of controlled equipment or "software" must be performed by the licensee or the licensee's designated representative, who must be from a non-proscribed country. Any portion of the installation of controlled equipment or "software" that would require the transfer of controlled technology must be performed by the licensee or the licensee's designated representative using only personnel from non-proscribed countries.

N.B.1.: Supervision of maintenance includes preventive maintenance at periodic intervals and intervention for major malfunctions.

N.B.2.: This is not meant to require that only nationals from the exporting country should install the system.

N.B.3.: This does not apply if the equipment or "software" is designed for installation by the user without further substantial support by the supplier.

d. The COCOM member country licensee or his designated representative, who must be from a non-proscribed country, must have the right of access to all the equipment and may carry out inspections;

e. Upon request of the government of the exporting country, the licensee must carry out an inspection to establish that:

1. The system is being used for the intended civil purpose; *and*

2. All the equipment exported under the provisions of this Note is being used for the stated end purpose and is still located at the installation sites.

3. After each inspection, the licensee must report his findings to his authorities within one month.

N.B.: Licenses for exports of items covered by this Note are subject to a 30 day COCOM notification before the license is issued under the provisions of this Note. The notification will include the equipment or "software" locations and the network topology.

46. In Category 5, Subcategory II, "Information Security", ECCN 5A11A is amended by revising the Requirements section to read as follows:

5A11A Systems, equipment, application specific "assemblies", modules or integrated circuits for "information security", as follows, and other specifically designed components therefor.

Requirements

Validated License Required: QSTVWYZ

Unit: $ value

Reason for Control: NS

GLV: $0

GCT: No

GFW: Yes, for "Information Security" Advisory Note 4 *only*

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47. In Category 5, Subcategory II "Information Security", ECCN 5D11A is revised, ECCN 5D12A is amended by revising the heading of the entry, and ECCN 5D13A is amended by revising the Requirements section to read as follows:

5D11A "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by "information security" entries 5A11, 5B11, 5B12, or 5B13 or "software" controlled by "information security" entries 5D11, 5D12, or 5D13.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes, for "Information Security" Advisory Note 5 *only*
GTDU: No

5D12A "Software" specially designed or modified to support technology controlled by "information security" entry 5E11.

* * * * *

5D13A Specific "software" as follows.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GTDR: Yes, for software described in Advisory Note 5 *only*. Also, see note following this section.
GTDU: No

Note: Exporter must have determined that the software is not controlled by the Office of Defense Trade Control, Department of State, before using this general license.

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48. In Category 5, Subcategory II "Information Security", ECCN 5E11A is revised to read as follows:

5E11A Technology according to the General Technology Note for the "development", "production", or "use" of equipment controlled by "information Security" entries 5A11, 5B11, 5B12, or 5B13 or "software" controlled by "information security" entries 5D11, 5D12, or 5D13.

Requirements

Validated License Required: QSTVWYZ
Reason For Control: NS
GTDR: No
GTDU: No.

49. In Category 5, Subcategory II "Information Security", the Notes for "Information Security" that follow ECCN 5E11A are revised to read as follows:

Notes for "Information Security":

Note 1: "Information security" entries in this Category do not control:

a. "Personalized smart cards" using "cryptography" restricted for use only in equipment or systems released from control under 5A11.c.1 to c.6, by this Note or as described in "Information Security" Advisory Notes 3 and 4 below;

b. Equipment containing "fixed" data compression or coding techniques;

c. Receiving equipment for radio broadcast, pay television or similar restricted audience television of the consumer type, without digital encryption and where digital decryption is limited to the video, audio or management functions;

d. Portable (personal) or mobile radiotelephones for civil use, e.g., for use with commercial civil cellular radiocommunications systems, containing encryption, when accompanying their users;

e. Decryption functions specially designed to allow the execution of copy-protected "software", provided that the decryption functions are not user-accessible.

Note 2: "Information security" entries in this Category do not control:

a. "Software" "required" for the "use" of equipment released by "Information Security" Note 1;

b. "Software" providing any of the functions of equipment released by "Information Security" Note 1.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to Country Group W of cellular radio equipment or systems specially designed for cryptographic operation, provided any message traffic encryption capability that is within the scope of the control of the "information security" entries in Category 5 and that is contained in such equipment or systems is irreversibly disabled.

N.B.: Provided message traffic encryption is not possible within such a system, the export of mobile or portable cellular radio subscriber equipment containing cryptographic capabilities is permitted under this Advisory Note.

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the PRC of the following cryptographic equipment, provided that the equipment is intended for civil use:

a. Access control equipment, such as automatic teller machines, self-service statement printers or point of sale terminals, that protects password or personal identification numbers (PIN) or similar data to prevent unauthorized access to facilities, but does not allow for encryption of files or text, except as directly related to the password of PIN protection;

b. Data authentication equipment that calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication;

c. Cryptographic equipment specially designed, developed or modified for use in machines for banking or money transactions, such as automatic teller machines, self-service statement printers, point of sale terminals or equipment for the encryption of interbanking transactions, and intended for use only in such applications.

Advisory Note 5: (Eligible for GTDR). Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the PRC of the following cryptographic "software":

a. "Software" required for the "use" of equipment eligible for administrative exceptions treatment under Advisory Notes 3 and 4 in the Notes for "Information Security" (Category 5);

b. "Software" providing any of the functions of equipment eligible for administrative exceptions treatment under Advisory Notes 3 and 4 in the Notes for "Information Security" (Category 5).

50. In Category 5, Subcategory III "Other Equipment, Materials, 'Software' and Technology", ECCN 5A92F is revised to read as follows:

5A92F Mobile communications equipment, n.e.s., and "assemblies" and components therefor.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

51. In Category 5, Subcategory III, ECCNs 5A95F and 5A96G are amended by revising the heading of each entry to read as follows:

5A95F "Information security" equipment, n.e.s. (e.g., cryptographic, cryptoanalytic, and cryptologic equipment, n.e.s.), and components therefor.

* * * * *

5A96G Telecommunications equipment, "assemblies", and components, n.e.s.

* * * * *

52. In Category 5, Subcategory III, a new ECCN 5B94F is added immediately following the heading "B. Test, Inspection and Production Equipment" and ECCN 5B96G is amended by revising the heading of the entry to read as follows:

5B94F Telecommunications test equipment, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: No
GCT: No
GFW: No

Note: General License G–TEST is available for shipment to Syria valued at $1,000 or less.

5B96G Telecommunications and "information security" production equipment, n.e.s.

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53. In Category 5, Subcategory III, a new ECCN 5D91F is added immediately following ECCN 5D20B, as follows:

5D91F "Software" specially designed or modified for the "development", "production", or "use" of telecommunications test equipment controlled by 5B94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

54. In Category 5, Subcategory III, ECCNs 5D92F, 5D93F, and 5D94F are revised to read as follows:

5D92F "Software" specially designed or modified for the "development", "production" or "use" of mobile communications equipment controlled by 5A92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D93F "Software" specially designed or modified for the "development", "production" or "use" of radio relay communication equipment controlled by 5A93.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D94F "Software" specially designed or modified for the "development", "production" or "use" of "data (message) switching" equipment controlled by 5A94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

55. In Category 5, Subcategory III, ECCN 5D95G is removed and a new ECCN 5D95F is added immediately following ECCN 5D94F, as follows:

5D95F "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of "information security" or cryptologic equipment (e.g., equipment controlled by 5A95).

Requirements

Validated License Required: SZ, Iran, South African military and police.
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

56. In Category 5, Subcategory III, ECCN 5D96G is revised to read as follows:

5D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of telecommunications equipment.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

57. In Category 5, Subcategory III, a new ECCN 5E91F is added immediately following ECCN 5E20B, as follows:

5E91F Technology for the "development", "production", or "use" of telecommunications test equipment controlled by 5B94, or "software" controlled by 5D91.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

58. In Category 5, Subcategory III, ECCNs, 5E92F, 5E93F, 5E94F, 5E95F, and 5E96G are revised to read as follows:

5E92F Technology for the "development", "production", or "use" of mobile communications equipment controlled by 5A92, or "software" controlled by 5D92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E93F Technology for the "development", "production", or "use" of radio relay communication equipment controlled by 5A93, or "software" controlled by 5D93.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E94F Technology for the "development", "production", or "use" of "data (message) switching" equipment controlled by 5A94, or "software" controlled by 5D94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E95F Technology, n.e.s., for the "development", "production", or "use" of "information security" or cryptologic equipment (e.g., equipment controlled by 5A95), or "software" controlled by 5D95.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E96G Technology, n.e.s., for the "development", "production", or "use" of telecommunications equipment.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

59. In Category 6, ECCN 6A01A is amended by revising the Requirements section and ECCNs 6A02A are revised to read as follows:

6A01A Acoustics.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS
GLV: $3,000
GCT: Yes
GFW: Yes, for 6A01.a.1.b.4 only (see Advisory Note 3 to Category 6)

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6A02A Optical Sensors.

Requirements

Validated License Required: QSTVWYZ

Unit: Number; $ value for parts and accessories
Reason for Control: NS, FP, MT, and NP (see Notes)
GLV: $3,000, except $0 for 6A01.a.1, a.2, a.3, and c
GCT: Yes, except MT and FP (see Notes)
GFW: Yes (Advisory Notes 6 and 7 to Category 6 only)

Notes: 1. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

2. MT controls apply to optical detectors described in 6A02.a.1, a.3, and a.4 that are specially designed or rated as electromagnetic (including "laser") and ionized-particle radiation resistant.

3. NP controls apply to all countries, except countries listed in supp. no. 2 to part 773 of this subchapter, for image intensifier tubes and specially designed components described in 6A02.a.2.

List of Items Controlled

a. Optical detectors, as follows:

Note: 6A02.a does not control germanium or silicon photodevices.

a.1 "Space-qualified" single-element or focal plane array (linear or two dimensional) elements having any of the following:

a.1.a.1. A peak response at a wavelength shorter than 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response "time constant" of 95 ns or less; *or*

a.1.c. A peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all the following:

a.2.a.1. A peak response in wavelength range exceeding 400 nm, but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of less than 25 micrometers; *and*

a.2.a.3.a. An S–20, S–25 or multialkali photocathode; *or*

a.2.a.3.b. A GaAs or GaInAs photocathode;

a.2.b. Specially designed components as follows:

a.2.b.1. Fiber optic image inverters;

a.2.b.2. Microchannel plates having both of the following characteristics:

a.2.b.2.a. 15,000 or more hollow tubes per plate; *and*

a.2.b.2.b. Hole pitch (center-to-center spacing) of less than 25 micrometers; *or*

a.2.b.3. GaAs or GaInAs photocathodes.

a.3. Non-"space-qualified" linear or two dimensional focal plane arrays, having any of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 90 nm, but not exceeding 1,050 nm; *and*

a.3.a.2. A response "time constant" of less than 0.5 ns;

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm, but not exceeding 1,200 nm; *and*

a.3.b.2. response "time constant" of 95 ns or less; *or*

a.3.c. Individual elements with a peak response in the wavelength range exceeding 1,200 nm, but not exceeding 30,000 nm;

Notes: 1. 6A02.a.3 includes photoconductive arrays and photovoltaic arrays.

2. 6A02.a.3 does not control silicon focal plane arrays, multi-element (not to exceed 16 elements) encapsulated photoconductive cells or pyroelectric detectors using any of the following:

a. Lead sulphide;
b. Triglycine sulphate and variants;
c. Lead-lanthanum-zirconium titanate and variants;
d. Lithium tantalate;
e. Polyvinylidene fluoride and variants;
f. Strontium barium niobate and variants; *or*
g. Lead selenide.

a.4. Non-"space-qualified" single-element or non-focal plane multi-element semiconductor photodiodes or phototransistors having both of the following:

a.4.a. A peak response at a wavelength exceeding 1,200 nm; *and*

a.4.b. A response "time constant" of 0.5 ns or less; b. "Multispectral Imaging Sensors" designed for remote sensing applications, having either of the following characteristics:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 microradians; *or*

b.2. Specified for operation in the wavelength range exceeding 400 nm, but not exceeding 30,000 nm; *and*

b.2.a. Providing output imaging data in digital format; *and*

b.2.b.1. "Space-qualified"; *or*

b.2.b.2. Designed for airborne operation and using other than silicon detectors;

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating either of the following:

c.1. Image intensifier tubes controlled by 6A02.a.2 *or*

c.2. Focal plane arrays controlled by 6A02.a.3;

Note: 6A02.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;
b. Medical equipment;
c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;
d. Flame detectors for industrial furnaces;
e. Equipment specially designed for laboratory use;

Technical Note: Direct view refers to imaging equipment operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically, or by any other means.

d. Special support components for optical sensors, as follows;

d.1. "Space-qualified" cryocoolers;

d.2. Non-"Space-qualified" cryocoolers, as follows:

d.2.a. Closed cycle with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers with bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers:

d.3.a. Specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive; *or*

d.3.b. Modified structurally to have a "beat length" of less than 50 mm (high birefringence);

Related ECCNs: * * *

6A03A Cameras.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS and NP (NP controls apply to 6A03.a.2 through a.5 and b.1 only)
GLV: $1,500
GCT: Yes, except 6A03.a.2, a.3, a.4, a.5, and b.1
GFW: No

List of Items Controlled

a. Instrumentation cameras, as follows:

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames per second;

Note: 6A03.a.1 does not control cinema recording cameras for normal civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames per second for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras with writing speeds exceeding 10 mm/microsecond;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames per second;

a.5. Electronic cameras having both of the following:

a.5.a An elecrtronic shutter speed (gating capability) of less than 1 microsecond per full frame; *and*

a.5.b. A readout time allowing a framing rate of more than 125 full frames per second;

b. Imaging cameras, as follows:

Note: 6A03.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4×10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4×10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.c. More than 12×10^6 "active pixels" for solid state array color cameras incorporating one solid state array;

b.2. Scanning cameras and scanning camera systems:

b.2.a. Incorporating linear detector arrays with more than 8,192 elements per array; *and*

b.2.b. Having mechanical scanning in one direction;

b.3. Incorporating image intensifiers controlled by 6A02.a.2.a;

b.4. Incorporating focal plane arrays controlled by 6A02.a.3;

(For cameras specially designed or modified for underwater use, see 8A02.d and 8A02.e)

RELATED ECCNs: * * *

60. In Category 6, ECCNs 6A07A and 6A08A are amended by revising the Requirements section for each entry to read as follows:

6A07A Gravity meters (gravimeters) and gravity gradiometers, as follows.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT (see Note)
GLV: $3,000
GCT: Yes, except MT (see Note)
GFW: No

Note: MT controls apply to gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, as follows:

a. Designed or modified for airborne or marine use; *and*

b. Having a static or operational accuracy of 0.7 milligal or better, with a time to steady-state registration of two minutes or less.

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6A08A Radar systems, equipment and assemblies having any of the following characteristics, and specially designed components therefor.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT and FP (see Notes)
GLV: $5,000
GCT: Yes, except MT (see Notes)
GFW: Yes, for Advisory Note 21 to Category 6 *only*

Notes: 1. MT controls apply to items that are designed for airborne aplications and that are usable in the systems described in § 778.7(a).

2. FP controls apply to Iran, Libya and Syria for items described in 6A08.g.

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61. In Category 6, ECCN 6A28B is revised to read as follows:

6A28B Radar and laser radar systems (including altimeters), and specially designed components therefor, for airborne applications.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT and FP (see Notes)
GLV: $5,000
GCT: No
GFW: No

Notes: 1. FP controls apply to Iran, Libya, and Syria for all items controlled by this entry.

2. This entry does not control airborne civil weather radar conforming to international standards for civil weather radars provided that they do not incorporate any of the following:

a. Phased array antennas;

b. "Frequency agility";

c. "Spread spectrum"; or

d. Signal processing specially designed for tracking of vehicles.

3. Laser radar systems embody specialized transmission, scanning, receiving and signal processing techniques for utilization of lasers for echo ranging, direction finding and discrimination of targets by location, radial speed and body reflection characteristics.

62. In Category 6, ECCN 6A43B is amended by revising the heading of the entry to read as follows:

6A43B Cameras and components not controlled by ECCN 6A03.

* * * * *

63. In Category 6, ECCN 6A91F is removed.

64. In Category 6, ECCN 6A94F is revised to read as follows:

6A94F Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and specially designed components, n.e.s.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GLV: No
GCT: No
GFW: No

65. In Category 6, ECCNs 6D01A and 6D02A are revised and ECCN 6D03A is amended by revising the Requirements section to read as follows:

6D01A "Software" specially designed for the "development" or "production" of equipment controlled by 6A04, 6A05, 6A08, or 6B08.

Requirements

Validated License Required: QSTVWYZ
Unit: value
Reason for Control: NS and MT (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" for the "development" or "production" of equipment controlled by ECCN 6A08 that is designed for airborne applications and that is usable in the systems described in § 778.7(a).

RELATED ECCNS: 8 * * *

6D02A "Software" specially designed for the "use" of equipment controlled by 6A02.b, 6A08, or 6B08.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS and MT (see Note)
GTDR: Yes, except MT (see Note)
GTDU: No

Note: MT controls apply to "software" for the "use" of equipment controlled by ECCN 6A08 that is designed for airborne applications and that is usable in the systems described in § 778.7(a).

RELATED ECCNs: * * *.

6D03A Other "software", as follows.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS

GTDR: Yes

GTDU: No

* * * * *

66. In Category 6, new ECCNs 6D90F, 6D92F, 6D93F, and 6D94F are added immediately following ECCN 6D29B and ECCN 6D96G is revised to read as follows:

6D90F "Software" specially designed for the "development", "production", or "use" of airborne radar equipment controlled by 6A90F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

6D92F "Software" specially designed for the "development", "production", or "use" of gravity meters (gravimeters) controlled by 6A92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

6D93F "Software" specially designed for the "development", "production", or "use" of "magnetometers" controlled by 6A94.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

6D94F "Software" specially designed for the "development", "production", or "use" of marine or terrestrial acoustic equipment controlled by 6A94.

Requirements

Validated License Required: SZ, Iran, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

6D96G "Software", n.e.s., specially designed for the "development", "production", or "use" of equipment described in Category 6.

Requirements

Validated License Required: SZ, South African military and police

Unit: $ value

Reason for Control: FP

GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

67. In Category 6, ECCNs 6E01A and 6E02A are revised and ECCN 6E03A is amended by revising the Requirements section to read as follows:

6E01A Technology according to the General Technology Note for the "development" of equipment, materials or "software" controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, 6C05, 6D01, 6D02, or 6D03.

Requirements

Validated License Required: QSTVWYZ

Reason for Control: NS, MT, and FP (see Notes)

GTDR: Yes, except MT and FP (see Notes)

GTDU: No

Notes: 1. MT controls apply to technology for the "development" of equipment controlled by 6A02.a.1, a.3, and a.4, 6A07. b and c, and 6A08. MT controls on technology for 6A08 equipment apply only when the equipment is designated for airborne applications and is unable in the systems described in § 778.7(a).

2. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for technology for the "development" of police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

RELATED ECCN: * * *

6E02A Technology according to the General Technology Note for the "production" of equipment or materials controlled by 6A01, 6A02, 6A03, 6A04, 6A05, 6A06, 6A07, 6A08, 6B04, 6B05, 6B07, 6B08, 6C02, 6C04, or 6C05.

Requirements

Validated License Required: QSTVWYZ

Reason for Control: NS, MT, and FP (see Notes)

GTDR: Yes, except MT and FP (see Notes)

GTDU: No

Notes: 1. MT controls apply to technology for the "production" of equipment controlled by 6A02. a.1, a.3, and a.4, 6A07. b and c, and 6A08. MT controls on technology for 6A08 equipment apply only when the equipment is designed for airborne applications and is usable in the systems described in § 778.7(a) of this subchapter.

2. FP controls for human rights apply to all destinations except Australia, Japan, New Zealand, and members of NATO for technology for the "production" of police-model infrared viewers controlled by 6A02.c (see § 776.14 of this subchapter).

RELATED ECCNs: * * *

6E03A Other technology.

Requirements

Validated License Required: QSTVWYZ

Reason for Control: NS

GTDR: Yes

GTDU: No

* * * * *

68. In Category 6, new ECCNs 6E90F, 6E92F, 6E93F, and 6E94F are added immediately following ECCN 6E23B and 6E96G is revised to read as follows:

6E90F Technology for the "development", "production", or "use" of airborne radar equipment controlled by 6A90F

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Reason for Control: FP

GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

6E92F Technology for the "development", "production", or "use" of gravity meters (gravimeters) controlled by 6A92F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Reason for Control: FP

GTDR: No.

GTDU: Yes, except destinations listed under *Validated License Required*

6E93F Technology for the "development", "production", or "use" of "magnetometers" controlled by 6A93F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police

Reason for Control: FP

GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

6E94F Technology for the "development", "production", or "use" of marine or terrestrial acoustic equipment controlled by 6A94F.

Requirements

Validated License Required: SZ, Iran, South African military and police

Reason for Control: FP

GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

6E96G Technology, n.e.s., for the "development", "production", or "use" of equipment, materials or "software" controlled under Category 6.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

69. In Category 6, under the heading "Notes for Category 6" that follows ECCN 6E96G, Advisory Notes 1 through 11 are revised and new Advisory Notes 12 through 22 are added to read as follows:

Notes for Category 6

Acoustics

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of equipment:

a. Controlled by 6A01.b or 6A01.c, and "software" specially designed and technology "required" therefor controlled by 6D or 6E;

b. Eligible for administrative exceptions treatment under Advisory Note 2 for Category 6.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of acoustic systems or equipment for determining the position of surface vessels or underwater vehicles, provided that:

a. They are not capable of processing responses from more than 8 beacons in the calculation of a point;

b. They do not have devices for correcting automatically speed-of-sound propagation errors for calculation of a point;

c. They do not use coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle; and

d. Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressures at depths exceeding 1,000 m.

Advisory Note 3: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of equipment controlled by 6A01.a.1.b.4 for use in civil research or civil exploration work.

Optical Sensors

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of non-ruggedized equipment operating in the visible spectrum, controlled by 6A02.c, and containing image intensifier tubes controlled by 6A02.a.2.a.3.a, provided that they are to be used for civil certified end-uses by civil end-users.

Advisory Note 5: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of image intensifier tubes incorporating microchannel-plates, not specially designed for cameras controlled by 6A03.

N.B.: Advisory Note 5 does not apply to tubes incorporating a gallium arsenide (or similar semiconductor) photocathode.

Advisory Note 6: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "multispectral imaging sensors" controlled by 6A02.b.2.a or 6A02.b.2.b.2, provided that the Instantaneous-Field-of-View (IFOV) of the "multispectral imaging sensor" is equal to or more than 2.5 milliradians.

Advisory Note 7: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of reasonable quantities of non-ruggedized image intensifier tubes controlled by 6A02.a.2.a.3.a for bona fide medical use.

Advisory Note 8: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of items controlled by 6A02, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 9: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of reasonable quantities of image intensifier tubes controlled by 6A02.a.2.a.3.a that are non-ruggedized and intended for equipment listed in the Note to 6A02.c.

Cameras

Advisory Note 10: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of cameras controlled by 6A03.a.1 or 6A03.a.5, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Advisory Note 11: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of framing cameras controlled by 6A03.a.2 designed for civil purposes (i.e., non-nuclear use) with a framing speed of not more than 2 million frames per second.

Optics

Advisory Note 12: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of the following items for installation and use at ground-based bona fide academic or civilian astronomical research sites or in international air- or space-based bona fide academic or civilian astronomical research projects. For the end-use stated in this Advisory Note, the following limits apply:

a. One optical mirror controlled by 6A04.a.1;

b. Three optical mirrors controlled by 6A04.a.2;

c. Three optical mirrors controlled by 6A04.a.4;

d. Three optical mirrors controlled by 6A04.b;

e. Ten optical filters controlled by 6A04.d.1.a;

f. One piece of optical control equipment controlled by 6A04.e.2 for each operational mirror;

g. Four pieces of optical control equipment controlled by 6A04.e.4;

h. Three "substrate blanks" controlled by 6C04.a;

i. A reasonable quantity of the bulk fluoride glass controlled by 6C04.e.2;

j. A reasonable quantity of the materials controlled by 6C04.f.

N.B.: The quantity limitations listed in Advisory Note 12 refer to specific projects.

Advisory Note 13: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of items controlled by 6A04, and "software" specially designed and technology "required" therefor controlled by 6D or 6E.

Lasers

Advisory Note 14: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following and specially designed components therefor:

1. An output wavelength less than 800 nm;

2. A "pulse duration" not exceeding 100 ns; *and*

3. A peak output power not exceeding 15 MW;

b. CO_2 or CO/OC_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having either:

1. A pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; *or*

2. A CW maximum rated single or multimode output power not exceeding 10 kW;

c. CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10 kW.

Advisory Note 15: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of:

a. "Tunable" pulsed flowing-dye "lasers" having all of the following, and specially designed components therefor:

1. An output wavelength less than 800 nm;

2. A "pulse duration" not exceeding 100 ns; *and*

3. A peak output power not exceeding 15 MW;

b. CO_2 or CO/CO_2 "lasers" having an output wavelength in the range from 9,000 to 11,000 nm and having either:

1. A pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; *or*

2. A CW maximum rated single or multimode output not exceeding 10 kW;

c. CO "lasers" having a CW maximum rated single or multimode output power not exceeding 10kW;

d. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 15.a, .b, or .c that are controlled by 6D or 6E.

Advisory Note 16: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of "lasers", for civil applications, as follows:

a. Neodymium-doped (other than glass), pulse-excited, "Q-switched lasers" controlled by 6A05.c.2.c.2.b having:

1. A pulse duration equal to or more than 1 ns; *and*

2. A multiple-transverse mode output with a "peak power" not exceeding 400 MW;

b. Neodymium-doped (other than glass) "lasers" controlled by 6A05.c.2.c.3.b or 6A05.c.2.c.4.b:

1 Having:

a. An output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; *and*

b. An average or CW output power not exceeding 2 kW; *and*

2. Being;

a. Pulse-excited; non-"Q-switched" multiple-tranverse mode; *or*

b. Continuously excited, multiple-tranverse mode;

c. Carbon dioxide "lasers" controlled by 6A05.a.4:

1. Being in CW multiple-tranverse mode; *and*

2. Having a CW output power not exceeding 15 kW.

Advisory Note 17: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of optical equipment controlled by 6A05.g that is destined for use with "lasers" that are not controlled or controlled "lasers" that have been approved for export.

Mangnetometers

Advisory Note 18: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A06, and "software" specially designed and technology "required" therefor that are controlled by 6D or 6E.

Gravimeters

Advisory Note 19: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled by 6A07 or 6B07, and "software" specially designed and technology "required" therefore that are controlled by 6D or 6E.

Radar

Advisory Note 20: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W, for purposes such as air traffic control, of radar equipment controlled by 6A08 or 6B08, and "software" specially designed and technology "required" therefor that are controlled 6D or 6E.

Advisory Note 21: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of ground radar equipment specially designed for enroute air traffic control (ATC), and "software" specially designed for the "use" thereof, provided that:

a. It is controlled by 6A08.i;

b. It has a maximum "instrumented range" of 500 km or less;

c. It is configured so that the radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;

d. It contains no provisions for remote control of the radar scan rate from the enroute ATC center; *and*

e. It is to be permanently installed under the supervision of the exporter or the exporter's Western representative, so that the "instrument range" and volumetric coverage of the radar encompasses an ICAO air route.

N.B.: The "use" "software" must be limited to "object code" and the minimum amount of "source code" necessary for installation, operation or maintenance.

Advisory Note 22: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of ATC "software" application "programs" controlled by 6D03.d.1, provided that:

a. The number of "system tracks" does not exceed 700;

b. The number of primary radar inputs does not exceed 32; *and*

c. The "software" is further limited to "object code" and the minimum amount of "source code" necessary for installation, operation or maintenance.

70. In Category 7, ECCN 7A02A is amended by revising the List of Items Controlled to read as follows:

7A02A Gyros having any of the following characteristics, and specially designed components therefor.

* * * * *

List of Items Controlled

a. A "drift rate" "stability", when measured in a 1 g environment over a period of three months and with respect to a fixed calibration value, of:

a.1. Less (better than 0.1° per hour when specified to function at linear acceleration levels below 10 g; *or*

a.2. Less (better) than 0.5° per hour when specified to function at linear acceleration levels from 10 to 100 g inclusive;

b. Specified to function at linear acceleration levels above 100 g;

Related ECCNs: * * *

71. In Category 7, ECCN 7A26B is revised to read as follows:

7A26B Avionics equipment and components usable in "missile" systems.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

List of Items Controlled

a. Avionics equipment and components including, but not limited to:

a.1. Terrain contour mapping equipment;

a.2. Scene mapping and correlation (both digital and analog) equipment;

a.3. Doppler navigation radar equipment;

a.4. Passive interferometer equipment; *and*

a.5. Imaging sensor equipment (both active and passive).

b. Reserved.

72. In Category 7, ECCN 7A94F is amended by revising the heading of the entry to read as follows:

7A94F Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems, and other avionic equipment, including parts and components, n.e.s.

* * * * *

73. In Category 7, ECCN 7D94F is revised to read as follows:

7D94F "Software", n.e.s., for the "development", "production", or "use" of navigation, airborne communication, and other avionics equipment.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

73. In Category 7, ECCN 7E94F is revised to read as follows:

7E94F Technology, n.e.s., for the "development", "production", or "use" of navigation, airborne communication, and other avionics equipment.

Requirements

Validated License Required: SZ, Iran, Syria, and South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

75. In Category 7, the heading "Notes for Category 7" and new Advisory Notes 1 and 2 are added immediately following ECCN 7E94F, as follows:

Notes for Category 7

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled for national security reasons by Category 7, *except:*

a. Inertial navigation systems controlled by 7A03, and "software" specially designed and

technology "required" therefor that are controlled by 7D or 7E;

b. Technology controlled by 7E for accelerometers and gyros controlled by 7A01 and 7A02;

c. Technology controlled by 7E04.a.4.

Advisory Note 2: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of:

a. Technology controlled by 7E for the accelerometers and gyros controlled by 7A01 and 7A02;

b. Technology controlled by 7E04.a.4.

76. In Category 8, ECCNs 8A01A and 8A02A are amended by revising the Requirements section of each entry to read as follows:

8A01A Submersible vehicles or surface vessels.

Requirements

Validated License Required: QSTVWYZ
Unit: Vessels or vehicles in number; parts and accessories in $ value
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: No

* * * * *

8A02A Systems or equipment.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes, for 8A02.i.2 *only* (see Advisory Note 2)

* * * * *

77. In Category 8, ECCN 8A94F is amended by revising the heading of the entry to read as follows:

8A94F Boats, n.e.s., including inflatable boats; marine engines (both inboard and outboard) and submarine engines, n.e.s.; and specially designed parts therefor, n.e.s.

* * * * *

78. In Category 8, ECCNs 8D01A, 8D02A, 8D92F, 8D93F, and 8D96G are revised to read as follows:

8D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by 8A01A, 8A02A, 8A18A, 8B01A, or 8C01A.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, FP
GTDR: Yes
GTDU: No

8D02A Specific "software" specially designed or modified for the "development", "production", repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: NS, FP
GTDR: Yes
GTDU: No

8D92F "Software" specially designed or modified for the "development", "production" or "use" of commodities controlled by 8A92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason For Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8D93F "Software" specially designed or modified for the "development", "production" or "use" of commodities controlled by 8A93 or 8A94.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason For Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of marine equipment or materials.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason For Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

79. In Category 8, ECCNs 8E01A, 8E02A, 8E92F, 8E93F, and 8E96G are revised to read as follows:

8E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 8A01A, 8A02A, 8A18A, 8B01A, or 8C01A.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, FP
GTDR: Yes
GTDU: No

8E02A Other technology.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, FP
GTDR: Yes
GTDU: No

List of Items Controlled

a. Technology for the "development", "production", repair, overhaul or refurbishing (re-machining) of propellers specially designed for underwater noise reduction;

b. Technology for the overhaul or refurbishing of equipment controlled by 8A01 or 8A02.b, j, o, or p.

8E92F Technology for the "development", "production" or "use" of commodities controlled by 8A92.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8E93F Technology for the "development", "production" or "use" of commodities controlled by 8A93 or 8A94.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8E96G Technology, n.e.s., for "development", "production" or "use" of items controlled by Category 8.

Requirements

Validated License Required: SZ, South African military and police
Reason For Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

80. In Category 8, the Advisory Note for Category 8 that follows ECCN 8E96G is removed and the heading "Notes for Category 8" and new Advisory Notes 1 through 3 are added immediately following ECCN 8E96G as follows:

Notes for Category 8

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled for national security reasons by Category 8, *except:*

a. Submersible vehicles controlled by 8A01.a, 8A01.b, 8A01.c, or 8A01.d;

b. Submersible systems or equipment controlled by 8A02.a, 8A02.b, 8A02.c, 8A02.i, or 8A02.j;

c. "Software" specially designed and technology "required" for the submersible vehicles, systems or equipment described in this Advisory Note 1.a or .b that are controlled by 8D or 8E;

d. Other technology for submersible vehicles, systems or equipment controlled by 8E02.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and the People's Republic of China of manipulators, for civil end-uses (e.g., underwater oil, gas or mining operations), that are controlled by 8A02.i.2 and have 5 degrees of freedom of movement.

Advisory Note 3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of air independent power systems controlled by 8A02.j, and "software" specially designed and technology "required" therefor that are controlled by 8D and 8E.

81. In Category 9, a new ECCN 9A90F is added immediately following ECCN 9A80B, as follows:

9A90F Diesel engines, n.e.s., for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 kPa and 25°); pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

82. In Category 9, ECCN 9A94F is revised to read as follows:

9A94F Aircraft parts and components, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control. FP
GLV: $0
GCT: No
GFW: No

83. In Category 9, ECCN 9B27B is revised to read as follows:

9B27B Test benches or stands that have the capacity to handle solid or liquid propellant rockets or rocket motors of more than 90 KN (20,000 lbs.) of thrust, or that are capable of simultaneously measuring the three axial thrust components.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

84. In Category 9, ECCNs 9D01A and 9D02A are amended by revising the Requirements section and 9D03A is revised to read as follows:

9D01A "Software" "required" for the "development" of equipment controlled by 9A01, 9A02, 9A03, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09, or technology controlled by 9E03.

* * * * *

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Note: MT controls apply to "software" "required" for the "development" of equipment for test, inspection and production of small lightweight turbine engines described in 9A21, equipment controlled by 9B02, 9B03, and 9B04, vibration test equipment controlled by 9B06, and radiographic equipment controlled by 9B07.

9D02A "Software" "required" for the "production" of equipment controlled by 9A01, 9A02, 9A03, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09.

* * * * *

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Note: MT control apply to "software" "required" for the "production" of equipment for test, inspection and production of small lighweight turbine engines described in 9A21, equipment controlled by 9B02, 9B03, and 9B04, vibration test equipment controlled by 9B06, and radiographic equipment controlled by 9B07.

9D03A "Software" "required" for the "use" of full authority digital electronic engine control (FADEC) for propulsion systems controlled by 9A01, 9A02, 9A03, or equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Note: MT controls apply to "software" "required" for the "use" of FADEC for gas turbine aero engines controlled under ECCN 9B21 (see related ECCN 9A01).

List of Items Controlled

a. "Software" in digital electronic controls for propulsion systems, aerospace test facilities or air breathing aero-engine test facilities;

b. Fault-tolerant "software" used in FADEC systems for propulsion system and associated test facilities.

85. In, Category 9, a new ECCN 9D18A is added immedicately following ECCN 9D04A, as follows:

9D18A "Software" for the "development", "production", or "use" of equipment controlled by 9A18A.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, NATO
Unit: $ Value
Reason for Control: NS
GTDR: Yes, for Australia, Japan, New Zealand, and NATO *only*
GTDU: No

86. In Category 9, new ECCNs 9D90F, 9D91F, and 9D93F are added immediately following ECCN 9D24B and ECCNs 9D94F and 9D96G are revised to read as follows:

9D90F "Software", n.e.s., for the "development" or "production" of diesel engines and pressurized aircraft breathing equipment controlled by 9A90F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D91F "Software", n.e.s., for the "development" or "production" of "aircraft" and aero gas turbine engines controlled by 9A91F or aircraft parts and components controlled by 9A94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D93F "Software" for the "production" or "development" of off-highway wheel tractors controlled by 9A92F or on-highway tractors controlled by 9A93F.

Requirements

Validated License Requirement: SZ, Iran, Syria, South African military and police
Unit: $ value

Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D94F "Software" for the "development", "production", or "use" of vibration test equipment controlled by 9B94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of propulsion systems or transportation equipment.

Requirements

Validated License Required: SZ, South African military and police
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

87. In Category 9, ECCN 9E01A is amended by revising the Requirements section and ECCN 9E02A is amended by revising the heading and requirements section to read as follows:

9E01A Technology according to the General Technology Note for the "development" of equipment controlled by 9A01.c, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, 9B09, or "software" controlled by 9D01, 9D02, 9D03, or 9D04.

* * * * *

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Related ECCNs: * * *

Note: MT controls apply to technology according to the General Technology Note for the "development" of equipment controlled by 9B02, 9B03, and 9B04, vibration test equipment controlled by 9B06, radiographic equipment controlled by 9B07, and software controlled by 9D01, 9D02, 9D03, and 9D04 for MT reasons.

9E02A Technology according to the General Technology Note for the "production" of equipment controlled by 9A01.c, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09.

* * * * *

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, MT (See Note)
GTDR: No
GTDU: No

Note 1: "Development" or "production" technology controlled by 9E for gas turbine engines remains controlled when used as "use" technology for repair, rebuild and overhaul. Excluded from control are: technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units, including replacement of whole engines or engine modules.

Note 2: MT controls apply to technology according to the General Technology Note for the "development" of equipment controlled by 9B02, 9B03, and 9B04, vibration test equipment controlled by 9B06, radiographic equipment controlled by 9B07, and software controlled by 9D01, 9D02, 9D03, and 9D04 for MT reasons.

88. In Category 9, new ECCN 9E18A is added immediately following ECCN 9E03A to read as follows:

9E18A Technology for the "development", "production", or "use" of equipment controlled by 9A18A.

Requirements

Validated License Required: QSTVWYZ, except Australia, Japan, New Zealand, NATO
Reason for Control: NS
GTDR: Yes, for Australia, Japan, New Zealand, and NATO *only*
GTDU: No

89. In Category 9, new ECCNs 9E90F, 9E91F, and 9E93F are added immediately following ECCN 9E21B and ECCNs 9E94F and 9E96G are revised to read as follows:

9E90F Technology, n.e.s., for the "development", "production", or "use" of diesel engines and pressurized aircraft breathing equipment controlled by 9A90F.

Requirements

Validated License Required: SZ, Iran, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9E91F Technology, n.e.s., for the "development", "production", or "use" of "aircraft" and aero gas turbine engines controlled by 9A91F or aircraft parts and components controlled by 9A94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes except destinations listed under *Validated License Required*

9E93F Technology for the "production", "development", or "use" of off-highway wheel tractors controlled by 9A92F or on-highway tractors controlled by 9A93F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes except destinations listed under *Validated License Required*

9E94F Technology for the "development", "production", or "use" of vibration test equipment controlled by 9B94F.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes except destinations listed under *Validated License Required*

9E96G Technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 9.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDR: No
GTDU: Yes except destinations listed under *Validated License Required*

90. In Category 9, under the heading "Advisory Notes for Category 9" that follows ECCN 9E96G, the Advisory Note is removed and new Advisory Notes 1 through 3 are added to read as follows:

Advisory Notes for Category 9

Advisory Note 1: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Group W of items controlled for national security reasons by Category 9, *except:*

a. Test facilities or equipment controlled by 9B01, 9B02, 9B03, 9B05, or 9B08;

b. "Software" specially designed and technology "required" for the equipment described in this Advisory Note 1.a that are controlled by 9D or 9E;

c. Other technology controlled by 9E03.a, and "software" specially designed therefor that is controlled by 9D.

Advisory Note 2: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in Country Groups QWY and People's Republic of China of marine gas turbine engines controlled by 9A02, for installation in civil marine vessels for civil end-use, provided that their specific fuel consumption exceeds 0.23 kg/kW-hr. and their continuous ISO rating is less than 20,000 kW.

Advisory Note 3: Licenses will receive favorable consideration for exports to satisfactory end-users in Country Group W of technology controlled by 9E03.a, and

"software" specially designed therefor that is controlled by 9D.

91. In Category 10, ECCNs OE18A, OE84C, and OE96G are revised to read as follows:

OE18A Technology for the "development," "production," or "use" of items controlled by OA18.b through OA18.e.

Requirements

Validated License Required: QSTVWYZ
Reason for Control: NS, FP (see Note)
GTDR: Yes
GTDU: No

Note: FP controls apply to all exports of technology controlled under this entry to South Africa (see supp. 2 to part 779 of this subchapter).

OE84C Technology for the "development" or "production" of shotguns controlled by OA84 and shotgun shells.

Requirements

Validated License Required: QSTVWYZ, except for Australia, Japan, New Zeland, and members of NATO
Reason for Control: FP (see Note)
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

Note: FP controls based on the UN arms embargo apply to all exports to South Africa of technology controlled under this entry (see supp. 2 to part 779 of this subchapter).

OE96G Technology for the "development," "production," or "use" of items controlled by Category O, n.e.s.

Requirements

Validated License Required: SZ, South African military and police
Reason for Control: FP
GTDU: No
GTDU: Yes, except destinations listed under *Validated License Required*

Dated: December 17, 1992.

Daniel E. Cook,

Acting Director, Office of Technology and Policy Analysis, Bureau of Export Administration.

[FR Doc. 92-30966 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Procedures Regarding Public Availability of No-Action, Interpretative and Exemption Letters and Other Written Communications

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting 140.97 (17 CFR 140.97) to implement new procedures for the publication of no-action, interpretative and exemption letters issued by the Commission or its staff together with the incoming letters or other written communications to which they respond.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Donald H. Heitman, Counsel to the Office of Communication and Education Services, (202) 254-8390.

SUPPLEMENTARY INFORMATION:

I. The Rule

The Commission and its staff regularly provide responses to written requests from persons seeking interpretative advice concerning, or no-action or exemptive relief from, provisions of the Commodity Exchange Act ("Act") or the Commission's rules, regulations or orders issued thereunder. Interpretative letters provide advice and guidance by interpreting a specific provision of the Act, or a Commission rule, regulation or order in the context of an specific factual situation. No-action letters express the staff's decision not to recommend an enforcement action to the Commission if a particular transaction, business practice or other course of conduct is engaged in. Exemption letters grant an exemption from a specific provision or provisions of the Act or from specified Commission rules, regulations or orders.

The Commission is of the view that there is a public interest in, and the public generally benefits from, timely publication of its views and those of its staff as expressed in interpretative, no-action and exemption letters. In this regard, the Commission understands that interpretative letters represent a valuable source of the Commission's and staff's views on the application of this body of law,[1] and no-action and exemption letters may assist members of the public in formulating their own requests for relief. As a result, the Commission has determined to formalize its procedures for the public dissemination of this correspondence with the adoption of new Rule 140.97.

Subsection (a) of the rule generally establishes that no-action, interpretative and exemption letters issued by the Commission or its staff, together with the incoming letters or other written communications to which they respond, will be made publicly available as soon as practicable after the Commission or staff letter has been issued. The provisions of subsection (a), however, will not apply to applications for orders granting exemptions that are submitted pursuant to section 4(c) of the Act or to any written Commission responses thereto.[2] Subsection (b) of the rule provides that, in particular cases where it appears that a delay in publication would be appropriate, the Commission or staff letter together with the incoming letter will be given confidential treatment for a reasonable period (not exceeding 120 days from the date the Commission or staff letter issued) upon application therefore. The burden will be on the person requesting the issuance of an interpretative, no-action or exemptive letter to establish the need for confidential treatment and it will not be granted unless the need is clearly demonstrated. Moreover, requests for confidential treatment should be limited to the minimum period necessary under the circumstances. Only in exceptional situations will the full 120-day period be allowed. Finally, subsection (c) of the rule makes clear that information of the type which Section 8 of the Act, 7 U.S.C. 12, generally prohibits the Commission from publishing will not be made public except in accordance with the provisions of Section 8.

The rule will operate prospectively and will apply to all no-action, interpretative and exemption letters issued by the Commission or its staff on or after January 25, 1993 and to the letters or other written communications to which the Commission or staff letters respond. Persons who have letters or other written communications requesting the issuance of no-action, interpretative or exemptive letters pending on this date may avail themselves of the confidential treatment procedures set forth in subsection (b) of the rule or may otherwise promptly withdraw their requests.

The Commission intends to publish once each month in the CFTC Weekly

[1] Of course, unless adopted by the Commission itself, any opinion or position taken by the staff in such correspondence reflects only the views of the Office or Division that issued it, and does not necessarily bind the Commission or any other Office or Division of the Commission.

[2] Section 4(c), which was recently added to the Act by section 502 of the Futures Trading Practices Act of 1992, Public Law No. 102-564, provides, among other things, that the Commission by order may exempt any agreement, contract or transaction from any of the provisions of the Act upon the application of any person for such exemptive relief. That section also provides that the Commission may temporarily limit the public availability of applications for the issuance of such exemptive orders under certain circumstances. The Commission intends in the near future to issue procedural regulations in this regard.

The provisions of subsection (a) also will not apply to routine correspondence issued by the Commission or its staff, or to any incoming letters or other written communications to which such correspondence responds.

Advisory a list and description of all no-action letters, interpretative letters and exemption letters issued by the Commission or its staff during the month. Copies of these letters and of the written correspondence to which they respond will be available after publication of the list from the Commission's Office of Communication and Education Services.

II. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates regulations. Section 553(b), however, sets forth an exemption to this notice-and-comment requirement for rules of agency organization, procedure or practice. The Commission finds that notice and public comment on the rule promulgated herein are unnecessary because the rule pertains exclusively to agency procedure or practice.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96–354, 94 stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of Rule 140.97 which relates solely to agency procedure or practice.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1989, ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that new Rule 140.97 does not impose any information collection requirements as defined by the PRA.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Conflict of interest, Organization and functions (Government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular in Section 8a of the Act, 7 U.S.C. 12a, the Commission hereby amends part 140 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140 is revised to read as follows:

Authority: 7 U.S.C. 7a(j) and 12a.

2. Section 140.98 is added to read as follows:

§ 140.98 Publication of No-Action, Interpretative and Exemption Letters and Other Written Communications.

(a) Except as provided in paragraphs (b) and (c) of this section, and except for applications for orders granting exemptions submitted pursuant to section 4(c) of the Commodity Exchange Act and any written responses thereto, each written response by the Commission or its staff to a letter or other written communication requesting:

(1) Interpretative legal advice with respect to the Commodity Exchange Act or any rule, regulation or order issued or adopted by the Commission thereunder;

(2) A statement that, on the basis of the facts stated in such letter or other communication, the staff would not recommend that the Commission take any enforcement action; or

(3) An exemption, on the basis of the facts stated in such letter or other communication, from the provisions of the Commodity Exchange Act or any rules, or regulations or orders issued or adopted by the Commission thereunder; shall be made available, together with the letter or other written communication making the request, for inspection and copying by any person as soon as practicable after the response has been sent or given to the person requesting it.

(b) Any person submitting a letter or other written communication making such a request may also submit therewith a request that the letter or other written communication, as well as any Commission or staff response thereto, be accorded confidential treatment for a specified period of time, not exceeding 120 days from the date of the response thereto, together with a statement setting forth the considerations upon which the request for such treatment is based. If the staff determines that the request is reasonable and appropriate it will be granted and the letter or other written communication as well as the response thereto will not be made available for public inspection or copying until the expiration of the specified period. If it appears to the staff that the request for confidential treatment should be denied, the staff shall so advise the person making the request and such person may withdraw the letter or other written communication within 30 days thereafter. In such case, no response will be sent or given and the letter or other written communication shall remain in the Commission's files but will not be made public pursuant to this section. If such letter or other written communication is not so withdrawn, it shall be deemed to be available for public inspection and copying together with any written response thereto.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no portion of a letter or other written communication received by the Commission or its staff of the type described in paragraph (a) of this section, or any written response thereto, shall be made available for inspection and copying or otherwise published which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, except in accordance with the provisions of Section 8 of the Commodity Exchange Act.

Issued in Washington, DC on December 17, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31122 Filed 12–23–92; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 143

Collection of Claims Owed the United States Arising from Activities Under the Commission's Jurisdiction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rules relating to collection of claims owed the United States arising from activities under the Commission's jurisdiction to increase the maximum amount of such claims that the Commission itself may settle by compromise from $20,000 to $100,000. This amendment will conform the Commission's rules to amendments enacted to the Federal Claims Collection Act.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Esq., Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, which is codified at 31 U.S.C. 3701–3719, directs all federal agencies to pursue unsatisfied, overdue claims or debts and to afford notice and other protections to the debtor prior to agency use of certain collection procedures. The Department of Justice and General Accounting Office have interpreted these statutes in the Federal Claims Collection Standards, the government-wide debt collection rules originally authorized by the Federal Claims Collection Act. See 4 CFR parts 101–105. These rules provide agencies with general guidance on sound debt collection principles and are incorporated by reference in the Commission's rules relating to collection of claims owed the United States arising from activities under the Commission's jurisdiction. Such procedures include the use of administrative offset and compromise and are intended to ensure fair and expeditious collection of unpaid claims.

The Commission published its rules relating to collection of claims owed the United States arising from activities under the Commission's jurisdiction on February 8, 1985 (50 FR 5383). These rules included rule 143.5, 17 CFR 143.5, which authorized the Commission itself to settle claims not exceeding $20,000 by compromise at less than the principal amount of the claim provided one of four contingencies enumerated in the rule exists.[1] The $20,000 ceiling was consistent with the Federal Claims Collection Act in 1985. However, since the adoption of Rule 143.5, the Federal Claims Collection Act was amended by the Administrative Dispute Resolution Act, enacted on November 15, 1990. Section 8(b) of the latter statute amended 31 U.S.C. 3711(a)(2) by striking out "$20,000 (excluding interest)" as the ceiling for compromise by an executive or legislative agency and inserting in lieu thereof "$100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe." In light of this change in the law, the Commission has determined to amend the dollar amount set forth in Rule 143.5 to read $100,000 instead of the current $20,000.

The Commission notes that Rule 143.5 governs compromise of claims which the Commission itself may approve. Claims in excess of $100,000 could be subject to compromise under the Federal Claims Collection Standards and the authority to accept compromise of any such claims rests solely with the Department of Justice. See generally 4 CFR part 103.[2]

The amendment of Rule 143.5 reflects a statutory change regarding agency procedure within the meaning of 5 U.S.C. 553(b)(3)(A) and, therefore, does not require notice and opportunity for public comment. Further, the Commission for good cause finds that any such notice and opportunity for public comment is also unnecessary under 5 U.S.C. 553(b)(3)(B) because the rule amendment is authorized by a statutory amendment that was not proposed by the Commission.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman certifies that this rule amendment will not have a significant economic impact on a substantial number of small entities. Since the amendment allocates discretion previously held by the Department of Justice to the Commission and does not create any new authority, any economic impact on small entities will be minimal.

This rule does not call for collection of information from the general public and is therefore not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subject in 17 CFR Part 143

Claims.

In consideration of the foregoing, and pursuant to the authority contained in Sections 6(c), 6(e), 6b and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 9, 9a, 13a and 12a(5), and 31 U.S.C. 3711(a)(2), the Commission hereby amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for part 143 is revised to read as follows:

Authority: 7 U.S.C. 9, 9a, 12a(5) and 13a; 31 U.S.C. 3701–3719.

2. Section 143.5 is amended by revising the introductory text to read as follows:

§ 143.5 Collection by compromise.

The Commission may settle claims not exceeding $100,000 (excluding interest) by compromise at less than the principal amount of the claim if—

* * * * *

Issued in Washington, DC on December 17, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–31123 Filed 12–23–92; 8:45 am]

BILLING CODE 6351–01–M

[1] These contingencies include:

(a) The debtor shows an inability to pay the full amount within a reasonable period of time;

(b) The Government would be unable to enforce collection in full through litigation or administrative means within a reasonable period of time;

(c) The cost of collecting the claim in full is not justified by the amount of the claim; or

(d) The Commission's enforcement policy would be served by settlement of the claim for less than the full amount.

[2] Justice Department approval is not required if the Commission wishes to reject a compromise offer. 4 CFR 103.1(b).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 89C–0506]

Listing of Color Additives Exempt From Certification; Diluents for Color Additive Mixtures: Calcium Disodium EDTA (Calcium Disodium Ethylenediaminetetraacetate) and Disodium EDTA (Disodium Ethylenediaminetetraacetate); Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 21, 1992, for the final rule that amended the color additive regulations to provide for the safe use of calcium disodium EDTA (calcium disodium ethylenediaminetetraacetate) and disodium EDTA (disodium ethylenediaminetetraacetate) as diluents in color additive mixtures for use in food and ingested drugs.

DATES: Effective date confirmed: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Emily Florio, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 1992 (57 FR 32173), FDA issued a final rule amending 21 CFR 73.1(a)(3) of the color additive regulations to provide for the safe use of calcium disodium EDTA and disodium EDTA as diluents in color additive mixtures for food and ingested drug use.

FDA gave interested persons until August 20, 1992, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of July 21, 1992, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) notice is given that no objections or requests for a hearing were filed in response to the July 21, 1992, final rule. Accordingly, the amendments promulgated thereby became effective August 21, 1992.

Dated: December 16, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-31330 Filed 12-23-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[T.D. 8458]

RIN 1545-AJ35

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to real estate mortgage investment conduits, or REMICs. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. The regulations contained in this document provide guidance to REMICs and their investors.

EFFECTIVE DATES: These regulations are effective November 12, 1991, except as otherwise specified in § 1.860A-1(b).

FOR FURTHER INFORMATION CONTACT: Carol A. Schwartz (telephone 202-622-3920) (not a toll-free number) of the Office of Assistant Chief Counsel, Financial Institutions and Products, 1111 Constitution Avenue, NW., Washington, DC 20224 Attention CC:FI&P (FI-88-86).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1276. The estimated annual burden per respondent or recordkeeper varies from .25 hours to 1.5 hours with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Report Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document adopts income tax regulations (26 CFR parts 1, 301, and 602) under sections 860A through 860G of the Internal Revenue Code of 1986 (Code) and adopts conforming amendments to other sections of the income tax regulations. Proposed regulations were published in the **Federal Register** on September 30, 1991 (56 FR 49526) and April 20, 1992 (57 FR 14369). Following publication of the proposed regulations on September 30, 1991, written comments were received and a public hearing was held on December 5, 1991. Following publication of the proposed regulations on April 20, 1992, no comments or requests to appear were received.

After consideration of all of the comments relating to the proposed regulations, they are adopted by this Treasury decision as final regulations. The comments and revisions relating to the proposed regulations are discussed below.

Explanation of Provisions

I. Qualification as a REMIC

In general, a REMIC is a pool of assets, in which investors hold interests, for which a REMIC election is filed, and which satisfies certain requirements concerning the composition of its assets and the nature of its investors' interests. A REMIC must also make arrangements to prevent entities not subject to tax from holding certain of its interests. A REMIC may, for state law purposes, be a corporation, partnership, trust, or segregated pool of assets that is not a separate legal entity.

A. Asset Test

To qualify for REMIC treatment, an organization must, among other things, satisfy certain tests concerning the assets it holds. Specifically, except during an initial startup period and during a limited liquidation period, substantially all of the organization's assets must consist of qualified mortgages and permitted investments (qualified reserve assets, cash flow investments, and foreclosure property). The initial startup period extends from the startup day to the end of the third calendar month beginning after the startup day. Generally, the startup day is the day on which the REMIC issues all of its regular and residual interests.

1. *Qualified Mortgages.* The term "qualified mortgage" includes any obligation (including any participation or certificate of beneficial ownership in an obligation) that is principally secured by an interest in real property and that is either transferred to the REMIC on the startup day in exchange for regular or residual interests or purchased by the REMIC within a three-month startup period pursuant to a fixed price contract in effect on the startup day.

The final regulations define the terms "interests in real property" and "real property" for purposes of the REMIC rules by referencing the definitions of those terms set out in the real estate investment trust (REIT) regulations. See § 1.856-3. These final regulations also modify the definition of interests in real property set out in § 1.856-3(c) to include certain timeshare interests and shares held by a tenant stockholder in a cooperative housing corporation.

The proposed regulations explained that an obligation is principally secured by an interest in real property if the fair market value of the real property that secures the obligation at least equals 80 percent of the adjusted issue price of the obligation (a 125% loan-to-value ratio) at one of two times. The 80-percent test must be satisfied either at the time the obligation was originated, or at the time the obligation is contributed to the entity seeking REMIC status.

The proposed regulations provided that the principally secured requirement is satisfied so long as the REMIC

sponsor reasonably believes that the obligation satisfies the 80-percent test. The proposed regulations also provided that a sponsor could base a reasonable belief upon representations or warranties given by the originator of the obligation.

The final regulations retain the 80-percent test and the reasonable belief safe harbor. The final regulations, however, also amend the proposed "principally secured" standard in three ways.

First, in addition to the current 80-percent test, the final regulations provide an alternative test for determining whether an obligation is principally secured by an interest in real property. Under the alternative test, an obligation is considered to be principally secured by an interest in real property if substantially all of the loan proceeds were used to acquire or to improve or protect an interest in real property and the interest in real property is the only property securing the loan. Thus, for example, a home improvement loan made in accordance with Title I of the National Housing Act would be considered to satisfy the principally secured standard even though one cannot readily demonstrate that the loan satisfies the 80-percent test because a property appraisal was not required at the time the loan was originated.

Second, the regulations make it clear that a modification of a loan before it is contributed to the REMIC is treated as the origination of a new loan on the date of the modification only if the modification is a significant one. Thus, for example, if an obligation satisfied the principally secured standard at the time it was originated, but the terms of the obligation were subsequently modified in a workout occasioned by the mortgagor's likely default, that modification would not affect the principally secured status of the obligation.

Finally, the final regulations expand the "reasonable belief" safe harbor to provide that a sponsor can base a reasonable belief on evidence indicating that (i) the originator of the obligation typically made loans in accordance with a set of established parameters, and (ii) any loan originated in accordance with those established parameters would satisfy the principally secured standard. Of course, the sponsor cannot avail itself of the safe harbor if the sponsor had actual knowledge or had reason to know that a particular obligation did not satisfy that standard at the time it was originated.

The proposed regulations provided that mortgage pass-thru certificates, such as those guaranteed by GNMA, FNMA, and FHLMC, are treated as obligations secured by an interest in real property. The final regulations provide that in addition to those securities, pass-thru certificates guaranteed by the Canada Mortgage and Housing Corporation (CMHC) are obligations secured by interests in real property. The final regulations also make it clear that other investment trust interests can qualify as obligations secured by interests in real property even if the investment trust holds, in addition to real estate mortgages, related assets that would be permitted investments if the investment trust were a REMIC.

The final regulations define the term "obligation" for purposes of the REMIC provisions to include any instrument that provides for total noncontingent principal payments that at least equal the instrument's issue price even if that instrument also provides for contingent payments. Thus, for example, an instrument that was issued for $100*x* and that provides for (i) noncontingent principal payments of $100*x*, (ii) interest payments at a fixed rate, and (iii) contingent payment based on a percentage of the mortgagor's gross receipts, is an obligation.

The final regulations also amend the proposed regulations concerning the treatment of income on residual interests held by REITs. The final regulations make it clear that a REIT cannot avoid the limitations imposed by section 856(f) (concerning interest based on mortgagor net profits) and 856(j) (concerning shared appreciation provisions) by forming a wholly owned REMIC to hold an obligation that provides for interest payments based on net profits or an obligation that contains a shared appreciation provision.

2. *Mortgage Modifications.* The proposed regulations provided, as a general rule, that if an obligation is modified following its contribution to or acquisition by a REMIC, the modification is treated as the REMIC's acquisition of the modified obligation in exchange for the unmodified obligation. An obligation is modified for purposes of this rule if its new terms differ materially either in kind or in extent, within the meaning of § 1.1001–1(a), from its former terms. The proposed regulations provided, however, that certain changes in the terms of an obligation are not treated as modifications even if those changes would be sufficient to trigger the "differ materially" standard of section 1001. The excepted changes include changes occasioned by (i) default or reasonably foreseeable default on a mortgage, (ii) assumption of a mortgage, (iii) waiver of a due-on-sale clause, or (iv) adjustment of the interest rate on a convertible mortgage.

The final regulations make certain clarifying changes to the language of the proposed regulations and provide that an exchange of obligations will be deemed to occur only if an obligation is significantly modified. The final regulations explain that, generally, a significant modification is any change in the terms of an obligation that would be treated as an exchange of obligations under section 1001 and the related regulations. The final regulations also add the waiver of a due on encumbrance clause to the list of exceptions to the general rule that were set out in the proposed regulations.

3. *Defective Obligations.* The proposed regulations defined the term "defective obligation" as a qualified mortgage that is in default or with respect to which default is reasonably foreseeable, that was fraudulently procured by the mortgagor, or that does not conform to customary representations or warranties. A mortgage is also a defective obligation if, despite the reasonable belief of the sponsor at the time the obligation was contributed to the REMIC, it does not in fact meet the principally secured standard. If it is discovered that an obligation is defective, and the defect is one that, had it been discovered before the startup day, would have prevented the obligation from being a qualified mortgage, then, unless the REMIC either causes the defect to be cured or disposes of the obligation within 90 days of the discovery, the obligation ceases to be a qualified mortgage at the end of the 90-day period.

The final regulations make it clear that a defective obligation held beyond the 90-day period following discovery of the defect can still be exchanged for a qualified replacement mortgage if the exchange occurs within two years of the startup day. Further, the final regulations make it clear that it is the REMIC's discovery of the defect that determines when the 90-day period starts to run.

4. *Defeasance.* Commercial mortgages often contain defeasance provisions whereby the mortgagee may release its lien on the real property securing the mortgage in return for the mortgagor's pledge of substitute collateral. The proposed regulations provided that the defeasance of a qualified mortgage does not affect its status as a qualified mortgage only if certain conditions are satisfied. Specifically, the substitute collateral must be government securities, the defeasance must be undertaken pursuant to the terms of the

mortgage, the defeasance must not occur within two years of the startup day, and the lien must be released to facilitate the mortgagor's disposition of the encumbered property.

The final regulations retain the first three limitations. The final regulations provide, however, that the lien on real property can be released for reasons other than a mortgagor's disposition of the encumbered real property if the defeasance transaction is undertaken as part of a customary commercial transaction, and not as part of an arrangement to collateralize a REMIC offering with obligations that are not real estate mortgages.

5. *Credit Enhancement.* Some form of credit enhancement is employed in most REMIC offerings to improve the marketability of the REMIC interests. The function of credit enhancement arrangements is, in general, to provide payments to replace defaulted or delinquent payments on qualified mortgages and thereby ensure timely payments to REMIC interest holders. Credit enhancement contracts can take many forms, such as mortgage pool insurance contracts, certificate insurance contracts, third party guarantee arrangements, and bank letters of credit.

The proposed regulations provided that for purposes of the asset test in section 860D(a)(4), all forms of credit enhancement are treated as incidents of the pooled mortgages and not as separate assets of the REMIC. Thus, payments received under credit enhancement arrangements are treated as payments on the qualified mortgages. Similarly, the credit enhancer's right to be reimbursed or the right to be subrogated to the REMIC's claim on a defaulted mortgage is not viewed as an interest in the REMIC.

The final regulations retain the rules set out in the proposed regulations concerning the treatment of credit enhancement contracts. The final regulations, however, clarify the definition of "credit enhancement contract" in five ways.

First, the final regulations make it clear that the term "credit enhancement contract" includes arrangements that provide support for residual interests in a REMIC.

Second, the term "credit enhancement contract" includes an agreement between the REMIC and a third party whereby the third party agrees to make up cash flow shortfalls occasioned by lower than expected returns on cash flow investments.

Third, the final regulations make it clear that certain arrangements to make advances to the REMIC are credit enhancement contracts even if those arrangements are between the REMIC and a third party other than the mortgage servicer.

Fourth, the final regulations provide that certain agreements between a REMIC and a third party whereby the third party agrees to advance amounts to the REMIC to provide for the orderly administration of the REMIC, although technically not providing credit support, nonetheless are considered credit enhancement contracts.

Finally, the final regulations make it clear that a guarantee or insurance arrangement does not fail to qualify as a credit enhancement contract solely because the guarantor or insurer has the right to defer the guarantee or insurance payment that is to substitute for the amounts due on a defaulted mortgage, together with interest, according to the original payment schedule of the mortgage, or according to some other deferred payment schedule. Any deferred payments are payments pursuant to a credit enhancement contract (and therefore treated as payments on a mortgage) even if the mortgage is foreclosed upon and the guarantor is entitled to receive immediately the proceeds of foreclosure.

6. *Cash Flow Investments.* A cash flow investment is any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC. Because a cash flow investment is intended to be a temporary investment, the proposed regulations provided that the period between receipt of amounts from qualified mortgages and distribution of those amounts to interest holders may not exceed thirteen months.

The final regulations adopt the definition set out in the proposed regulations, and explain that in determining the length of time that a REMIC has held an investment that is part of a commingled account or fund, the REMIC may employ any reasonable method of accounting.

7. *Qualified Reserve Funds.* The proposed regulations provided that a qualified reserve fund is any reasonably required reserve to provide for (i) full payment of expenses of the REMIC, or (ii) amounts due on regular or residual interests in the event of defaults or delinquencies on qualified mortgages, lower than expected returns on cash flow investments, or interest shortfalls on qualified mortgages caused by prepayments of those mortgages between scheduled payment dates. The final regulations retain the language of the proposed regulations and further explain that a qualified reserve can be maintained to provide for any contingency that could be provided for under a credit enhancement contract.

8. *Outside Reserve Funds.* The proposed regulations provided that the assets of certain outside reserve funds that are maintained to pay expenses of the REMIC or to provide credit support for REMIC interest holders are not assets of the REMIC. For a fund to be respected as an outside reserve fund, the REMIC's organizational documents must clearly and expressly (i) provide that the reserve fund is an outside reserve fund and not an asset of the REMIC, (ii) identify the owner(s) of the reserve fund, and (iii) provide that, for all federal tax purposes, amounts transferred by the REMIC to the fund are treated as amounts distributed by the REMIC to the designated owner(s) or transferee(s) of such owner(s). These requirements are intended to ensure that a person other than the REMIC is the true owner of the reserve fund. So long as these requirements are satisfied, a reserve fund will be respected as an outside reserve fund even if it is maintained by the same trustee that holds the REMIC's qualified mortgages and permitted investments.

The final regulations provide that any reserve fund that satisfies the three requirements set out above is an outside reserve fund and not an asset of the REMIC even if the fund protects the REMIC interest holders against risks other than credit risk.

B. Investors' Interests

For an organization to qualify as a REMIC, all interests in the organization must be designated as either residual interests or regular interests. The REMIC must issue one, and only one, class of residual interests. A REMIC may issue one or more classes of regular interests.

1. *Regular Interests.* A regular interest is one that is designated as a regular interest and that is issued on the startup day with fixed terms. The regular interest must (except for certain interest-only regular interests) unconditionally entitle the holder to receive a specified principal amount (or other similar amount). Any interest payments (or other similar payments) at or before maturity must be based either on a fixed rate of interest or (to the extent provided in regulations) a variable rate of interest, or consist of a specified portion of interest payments on qualified mortgages, which portion does not vary during the period the regular interest is outstanding.

Under the proposed regulations a rate is a permissible variable rate if it is based on an objective interest index or

based on a weighted average of the interest rates on some or all of the mortgages held by the REMIC. In addition, an otherwise permissible variable rate is not disqualified because it is subject to periodic or permanent caps or floors. Finally, an interest is considered to bear interest at a variable rate if it provides for interest at one permissible rate during one or more accrual or payment periods and a different permissible rate or rates for other accrual or payment periods.

The final regulations clarify the variable rate definition in the proposed regulations in two ways. First, the final regulations make it clear that a rate is considered to be based on a weighted average rate even if, in determining that rate, the interest rate on some or all of the qualified mortgages is first subject to a cap or a floor, or is first reduced by a number of basis points or a fixed percentage. Second, the final regulations provide that a rate does not fail to qualify as a variable rate because it is subject to a funds-available cap.

A "funds-available cap" is a limit on the amount of interest to be paid on a regular interest in any payment period that is based on the current funds that a REMIC has available for distribution. The term "funds-available cap" does not, however, include any cap or limit used as a device to avoid the purposes of the otherwise applicable standard for a permissible variable rate.

The proposed regulations defined "specified portion" to mean a right to receive interest payments that can be expressed as (1) a fixed percentage of the interest payable on qualified mortgages, or (2) a fixed number of basis points of the interest payable on qualified mortgages. The final regulations expand the definition of "specified portion" to include a portion that can be expressed as the interest payable on some or all of the qualified mortgages in excess of a fixed number of basis points or in excess of a variable rate.

The proposed regulations provided that, except for certain specified contingencies, a regular interest's principal amount and latest possible maturity date must not be contingent. The final regulations adopt the proposed rule and the list of specified contingencies that was set out in the proposed regulations with minor clarifying changes. In addition, the final regulations also make it clear that an interest will not be denied status as a regular interest solely because the payments on that interest are subject to remote and incidental contingencies.

Prepayment penalty provisions are typically found in commercial mortgage loans. The proposed regulations allowed a REMIC to pass through to regular interest holders customary prepayment penalties received when a qualified mortgage prepays. The final regulations make it clear that a REMIC may allocate a prepayment penalty among its classes of interest in any manner.

2. *Other Rights That Are Not Interests.* Not every right to receive a payment from a REMIC is an interest in the REMIC. The proposed regulations contained a non-exclusive list of certain rights that are not interests in the REMIC. The final regulations adopt the list set out in the proposed regulations with minor clarifying changes.

The proposed regulations provided that certain de minimis interests issued by an entity that elects REMIC status to facilitate creation of the entity are not interests in the REMIC. The final regulations make it clear that this rule applies only if the interests are not designated as either regular or residual interests.

The final regulations also make it clear that certain obligations that contain contingent payment provisions can be stripped of the contingent payment rights and the holder of those rights will not be considered to hold an interest in the REMIC. Thus, for example, if a loan not only has a fixed principal amount and provides for interest at a fixed rate, but also contains a shared appreciation provision, the holder of the loan can contribute the fixed payment rights to a REMIC and retain the shared appreciation rights and those retained rights will not be considered to be an interest in the REMIC. Of course, the owner could have contributed the entire loan to the REMIC and taken back a residual interest that consisted of the right to the contingent payments.

II. Formation and Liquidation of the REMIC

A regular interest in a REMIC can be used to collateralize a second REMIC because regular interests can be qualified mortgages. The proposed regulations provided that two or more REMICs can be formed pursuant to a single set of organizational documents even if, for state law purposes or for Federal securities law purposes, only one entity exists.

The final regulations adopt the position set out in the proposed regulations concerning tiered REMICs. In addition, the final regulations make it clear that a REMIC and one or more investment trusts can be created pursuant to a single set of organizational documents even if, for state law purposes or for Federal securities law purposes, only one entity exists. Thus, a sponsor can create a REMIC and an investment trust under one set of documents, and the investment trust can hold both an interest in the REMIC and a notional principal contract for the benefit of the trust certificate holders.

A qualified liquidation is a transaction in which a REMIC adopts a plan of liquidation and then disposes of its assets and distributes the proceeds of disposition in the 90-day period following the adoption of the plan. The date on which the plan is adopted is important because it marks the beginning of a 90-day period during which certain of the restrictions that limit the nature of a REMIC's assets and operations are inapplicable. The proposed regulations indicated that a REMIC is considered to adopt a plan of liquidation on the date that it is signed by a person authorized to sign the REMIC's tax return. The final regulations provide that a plan of liquidation need not be in any special form, and that a REMIC may specify the first day in the 90-day liquidation period in a statement attached to its final return and the REMIC will be considered to have adopted a plan of liquidation on the date specified.

III. The Excess Inclusion Rules

A. Generally

A portion of the income allocable to a residual interest, referred to as an excess inclusion, is, with an exception for thrift institutions, subject to Federal income taxation in all events. Residual interest holders other than thrift institutions may not offset excess inclusions with otherwise allowable deductions. An excess inclusion is treated as unrelated business taxable income (UBTI) if the residual interest holder is an exempt organization that is subject to the tax imposed under section 511 on UBTI.

B. Special Rule for Thrift Institutions

Thrift institutions to which section 593 applies are excepted from the general rule that excess inclusions are, in all events, subject to taxation. Thus, a thrift with NOLs can apply those losses to offset excess inclusions. The Service is given express authority to provide regulations that render this special thrift exception inapplicable where necessary or appropriate to prevent tax avoidance.

The proposed regulations provided that the exception for thrift institutions applies only if the residual interest has significant value. A residual interest has significant value only if the aggregate of the issue prices of the residual interests

in the REMIC is at least two percent of the aggregate of the issue prices of all interests in the REMIC, and only if the anticipated weighted average life of the residual interest is at least 20 percent of the anticipated life of the REMIC.

The final regulations retain the two-percent of issue price test of the proposed regulations, but modify the anticipated-life test. Under the final regulations, the anticipated-life test is satisfied if the anticipated weighted average life of the residual interest equals at least 20 percent of the anticipated weighted average life of the REMIC.

The regulations explain that the anticipated weighted average life of a REMIC is a weighted average of the anticipated weighted average lives of all classes of interests in the REMIC. The final regulations also clarify the procedures for computing the weighted average life of an interest in a REMIC.

The above described significant value test applies only for purposes of the special rule for thrifts. In adopting this test, the Service has not exercised the regulatory authority provided in section 860E(c)(1) to treat all income allocated to the residual interest as an excess inclusion if the residual interest lacks significant value.

C. Tax on Transfer to Disqualified Organization

If a residual interest holder transfers its residual interest to a disqualified organization, a tax is imposed on the transferor (unless the transfer is through an agent, in which case the tax is imposed on the agent). The amount of tax is equal to the sum of the present values of the anticipated excess inclusions attributable to the interest multiplied by the highest corporate rate. The proposed regulations explain how to compute the present value of the anticipated excess inclusions and require that the REMIC provide to the transferor information needed to compute the amount of tax due.

The final regulations clarify the proposed regulations by providing that a REMIC does not have any obligation to ascertain whether a residual interest has been transferred to a disqualified organization. The REMIC's only obligation is to provide information upon request.

If a disqualified organization is a record holder of an interest in a pass-thru entity that holds a residual interest, then the pass-thru entity is taxed on the amount of income allocable to the disqualified organization. A pass-thru entity is any partnership, trust, estate, regulated investment company (RIC), REIT, common trust fund, or subchapter T cooperative.

The proposed regulations provided that any tax imposed on a pass-thru entity, such as a RIC or a REIT, would be deductible against its ordinary income in determining the amount of its required distributions. The final regulations explain further that a RIC's or a REIT's dividends are not preferential dividends solely because the RIC or REIT allocates any tax expense incurred under section 860E(e)(6) only to the shares held by disqualified organizations.

D. Noneconomic Residual Interests

To qualify as a residual interest in a REMIC, the interest must be designated as such, and it must be issued on the startup day. The residual interest holder need not be entitled to any distributions. The residual interest holder must, however, include in income the amounts allocated to it under section 860C, and to the extent those amounts represent excess inclusions, they are subject to the rules of section 860E.

If a REMIC will have taxable income over the course of its life, the residual interest represents a future tax liability to the residual interest holder because the residual interest holder must include in gross income the REMIC's taxable income, and the excess inclusion portion of that taxable income cannot be offset with deductions. If, in addition, the residual interest holder is not entitled to any distributions, the interest also represents a net economic liability.

The proposed regulations set forth a rule that is intended to discourage transfers of noneconomic residual interests for the purpose of avoiding the tax on excess inclusions. Under this rule, the transfer of a noneconomic residual interest is disregarded unless no significant purpose of the transfer was to impede the assessment or collection of tax.

The proposed regulations provide that a residual interest is a noneconomic residual interest unless (1) the present value of the expected distributions on the residual interest at least equals the present value of the expected tax on the excess inclusions, and (2) the transferor reasonably expects that the transferee will receive distributions with respect to the residual interest at or after the time the taxes accrue on the anticipated excess inclusions in an amount sufficient to satisfy the accrued taxes.

The final regulations provide that a significant purpose to impede the assessment or collection of tax exists if the transferor, at the time of the transfer, has "improper knowledge" (*i.e.*, either knew or should have known that the transferee would be unwilling or unable to pay taxes due on its share of the taxable income of the REMIC). The final regulations explain that a transferor of a noneconomic residual interest can establish a presumptive lack of improper knowledge by satisfying two conditions. First, the transferor conducts a reasonable investigation of the transferee and, as a result of that investigation, finds that the transferee has historically paid its debts as they come due and finds no significant evidence to indicate that the transferee will not continue to pay its debts as they come due in the future. Second, the transferor obtains from the transferee a representation that the transferee understands that the residual interest may generate tax liabilities in excess of cash flows and that the transferee intends to pay those tax liabilities as they come due.

Section 860G(b)(1) sets out special rules for the tax treatment of foreign persons that hold residual interests. These rules provide that, unlike other residual interest holders, nonresident alien individuals and foreign corporations are to take into account the income attributable to their residual interests only when they receive distributions or when they dispose of their interests.

The proposed regulations set forth an anti-abuse rule that is similar to the general anti-abuse rule described above in that it is intended to discourage the transfer of residual interests to foreign persons for the purpose of avoiding tax on excess inclusions. The rule here provides that the transfer of a residual interest to a foreign transferee is disregarded if the residual interest has tax avoidance potential. A residual interest has tax avoidance potential unless at the time of the transfer, the transferor reasonably expects that the REMIC will distribute to the transferee residual interest holder amounts that will equal at least 30 percent of each excess inclusion, and that such amounts will be distributed at or after the time which the excess inclusion accrues and not later than the close of the calendar year following the calendar year of accrual.

The final regulations retain the "tax avoidance potential" rules.

IV. Other Issues

The Service recognizes that these final regulations do not address all of the issues that arise in connection with the formation and operation of a REMIC. The Service may, however, provide

future guidance on the seven items listed below.

(1) Regulations under section 1272(a)(6) concerning the application and scope of the OID rules to regular interests, qualified mortgages, and other obligations.

(2) Rules concerning the proper tax treatment of a payment made by a transferor of a noneconomic residual interest to induce the transferee to acquire the interest.

(3) Regulations concerning the allocation of excess inclusions among interest holders in RICs and REITS.

(4) Clarification of the "improper knowledge" standard in § 1.856–6(b)(3) for purposes of determining whether property acquired by a REMIC or a REIT in foreclosure will qualify as foreclosure property.

(5) Regulations that (i) finalize the temporary and proposed REMIC reporting regulations that allow issuers 41 days instead of 30 days after the close of a quarter to report financial information with respect to the regular interests they have issued, or (ii) propose a new system that may allow issuers less than 41 days to report information, but that would also allow issuers to use estimated data in fulfilling their reporting obligations.

(6) Modification of § 1.860F–4(d) to expand the class of persons that may be designated as tax matters person.

(7) Regulations concerning withholding on distributions to foreign holders of residual interests to satisfy accrued tax liability due to excess inclusions.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these proposed regulations are Carol A. Schwartz and Tom Lyden, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in the development of the proposed regulations.

List of Subjects

26 CFR 1.591–1 through 1.1.596–1

Banks, Banking, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.856–0 through 1.860–5

Income taxes, Investments, Trusts and trustees.

26 CFR 1.860D–1 through 1.860F–4

Income taxes, Investments, Mortgages, Reporting and recordkeeping requirements.

26 CFR 1.6031–1 through 1.6060–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 1.860D–1 also issued under 26 U.S.C. 860G(e). Section 1.860E–1 also issued under 26 U.S.C. 860E and 860G(e). Section 1.860E–2 also issued under 26 U.S.C. 860E(e). Section 1.860F–2 also issued under 26 U.S.C. 860G(e). Section 1.860G–1 also issued under 26 U.S.C. 860G(a)(1)(B) and (e). Section 1.860G–3 also issued under 26 U.S.C. 860G(b) and 26 U.S.C. 860G(e). * * *

Par. 2. Section 1.593–11 is amended by adding a sentence at the end of paragraph (b)(1) and by adding paragraph (e) to read as follows:

§ 1.593–11 Qualifying real property loan and nonqualifying loan defined.

* * * * *

(b) * * *

(1) * * * See paragraph (e) of this section for the treatment of a REMIC interest as a qualifying real property loan.

* * * * *

(e) *Treatment of REMIC interests as qualifying real property loans*—(1) *In general.* For purposes of section 593 and §§ 1.593–4 through 1.593–10, if, for any calendar quarter, at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3)) are qualifying real property loans (as defined in paragraph (b) of this section), then, for that calendar quarter, all the regular and residual interests in that REMIC are treated as qualifying real property loans. If less than 95 percent of a REMIC's assets are qualifying real property loans, then a percentage of each regular or residual interest is treated as a qualifying real property loan. The percentage equals the percentage of the REMIC's assets that are qualifying real property loans. See § 1.860F–4(e)(1)(ii)(B) and § 1.6049–7(f)(3) for information required to be provided to regular and residual interest holders if the 95-percent test is not met.

(2) *Treatment of REMIC assets for section 593 purposes*—(i) *Manufactured housing treated as qualifying real property.* For purposes of paragraph (e)(1) of this section, the term "qualifying real property" includes manufactured housing treated as a single family residence under section 25(e)(10).

(ii) *Status of cash flow investments.* For purposes of paragraph (e)(1) of this section, cash flow investments (as defined in section 860G(a)(6) and § 1.860G–2(g)(1)) are treated as qualifying real property loans.

Par. 3. Section 1.856–3 is amended as follows:

1. The text of paragraph (b) is redesignated as paragraph (b)(1).
2. A heading is added for new paragraph (b)(1).
3. Paragraph (b)(2) is added.
4. Paragraph (c) is revised.
5. The additions and revisions read as follows:

§ 1.856–3 Definitions.

* * * * *

(b) *Real estate assets*—(1) *In general.* * * *

(2) *Treatment of REMIC interests as real estate assets*—(i) *In general.* If, for any calendar quarter, at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3)) are real estate assets (as defined in paragraph (b)(1) of this section), then, for that calendar quarter, all the regular and residual interests in that REMIC are treated as real estate assets and, except as provided in

paragraph (b)(2)(iii) of this section, any amount includible in gross income with respect to those interests is treated as interest on obligations secured by mortgages on real property. If less than 95 percent of a REMIC's assets are real estate assets, then the real estate investment trust is treated as holding directly its proportionate share of the assets and as receiving directly its proportionate share of the income of the REMIC. See §§ 1.860F–4(e)(1)(ii)(B) and 1.6049–7(f)(3) for information required to be provided to regular and residual interest holders if the 95-percent test is not met.

(ii) *Treatment of REMIC assets for section 856 purposes*—(A) *Manufactured housing treated as real estate asset.* For purposes of paragraphs (b) (1) and (2) of this section, the term "real estate asset" includes manufactured housing treated as a single family residence under section 25(e)(10).

(B) *Status of cash flow investments.* For purposes of this paragraph (b)(2), cash flow investments (as defined in section 860G(a)(6) and § 1.860G–2(g)(1)) are real estate assets.

(iii) *Certain contingent interest payment obligations held by a REIT.* If a REIT holds a residual interest in a REMIC for a principal purpose of avoiding the limitation set out in section 856(f) (concerning interest based on mortgagor net profits) or section 856(j) (concerning shared appreciation provisions), then, even if the REMIC satisfies the 95-percent test of paragraph (b)(i) of this section, the REIT is treated as receiving directly the REMIC's items of income for purposes of section 856.

(c) *Interests in real property.* The term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon. The term also includes timeshare interests that represent an undivided fractional fee interest, or undivided leasehold interest, in real property, and that entitle the holders of the interests to the use and enjoyment of the property for a specified period of time each year. The term also includes stock held by a person as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216). Such term does not, however, include mineral, oil, or gas royalty interests, such as a retained economic interest in coal or iron ore with respect to which the special provisions of section 631(c) apply.

Par. 4. Sections 1.860A–0, 1.860A–1, 1.860C–1 and 1.860C–2 are added to read as follows:

§ 1.860A–0 Outline of REMIC provisions.

This section lists the paragraphs contained in §§ 1.860A–1 through 1.860G–3.

Section 1.860A–1 Effective dates and transition rules.

(a) In general.
(b) Exceptions.
(1) Reporting regulations.
(2) Tax avoidance rules.
(i) Transfers of certain residual interests.
(ii) Transfers to foreign holders.
(iii) Residual interests that lack significant value.
(3) Excise taxes.

Section 1.860C–1 Taxation of holders of residual interests.

(a) Pass-thru of income or loss.
(b) Adjustments to basis of residual interests.
(1) Increase in basis.
(2) Decrease in basis.
(3) Adjustments made before disposition.
(c) Counting conventions.

Section 1.860C–2 Determination of REMIC taxable income or net loss.

(a) Treatment of gain or loss.
(b) Deductions allowable to a REMIC.
(1) In general.
(2) Deduction allowable under section 163.
(3) Deduction allowable under section 166.
(4) Deduction allowable under section 212.
(5) Expenses and interest relating to tax-exempt income.

Section 1.860D–1 Definition of a REMIC.

(a) In general.
(b) Specific requirements.
(1) Interests in a REMIC.
(i) In general.
(ii) De minimis interests.
(2) Certain rights not treated as interests.
(i) Payments for services.
(ii) Stripped interests.
(iii) Reimbursement rights under credit enhancement contracts.
(iv) Rights to acquire mortgages.
(3) Asset test.
(i) In general.
(ii) Safe harbor.
(4) Arrangements test.
(5) Reasonable arrangements.
(i) Arrangements to prevent disqualified organizations from holding residual interests.
(ii) Arrangements to ensure that information will be provided.
(6) Calendar year requirement.
(c) Segregated pool of assets.
(1) Formation of REMIC.
(2) Identification of assets.
(3) Qualified entity defined.
(d) Election to be treated as a real estate mortgage investment conduit.
(1) In general.
(2) Information required to be reported in the REMIC's first taxable year.
(3) Requirement to keep sufficient records.

Section 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

(a) Excess inclusion cannot be offset by otherwise allowable deductions.
(1) In general.
(2) Affiliated groups.
(3) Special rule for certain financial institutions.
(i) In general.
(ii) Ordering rule.
(A) In general.
(B) Example.
(iii) Significant value.
(iv) Determining anticipated weighted average life.
(A) Anticipated weighted average life of the REMIC.
(B) Regular interests that have a specified principal amount.
(C) Regular interests that have no specified principal amount or that have only a nominal principal amount, and all residual interests.
(D) Anticipated payments.
(b) Treatment of a residual interest held by REITs, RICs, common trust funds, and subchapter T cooperatives. [Reserved]
(c) Transfers of noneconomic residual interests.
(1) In general.
(2) Noneconomic residual interest.
(3) Computations.
(4) Safe harbor for establishing lack of improper knowledge.
(d) Transfers to foreign persons.

Section 1.860E–2 Tax on transfers of residual interest to certain organizations.

(a) Transfers to disqualified organizations.
(1) Payment of tax.
(2) Transitory ownership.
(3) Anticipated excess inclusions.
(4) Present value computation.
(5) Obligation of REMIC to furnish information.
(6) Agent.
(7) Relief from liability.
(i) Transferee furnishes information under penalties of perjury.
(ii) Amount required to be paid.
(b) Tax on pass-thru entities.
(1) Tax on excess inclusions.
(2) Record holder furnishes information under penalties of perjury.
(3) Deductibility of tax.
(4) Allocation of tax.

Section 1.860F–1 Qualified liquidations.

Section 1.860F–2 Transfers to a REMIC.

(a) Formation of a REMIC.
(1) In general.
(2) Tiered arrangements.
(i) Two or more REMICs formed pursuant to a single set of organizational documents.
(ii) A REMIC and one or more investment trusts formed pursuant to a single set of documents.
(b) Treatment of sponsor.
(1) Sponsor defined.
(2) Nonrecognition of gain or loss.
(3) Basis of contributed assets allocated among interests.
(i) In general.
(ii) Organizational expenses.
(A) Organizational expense defined.
(B) Syndication expenses.

(iii) Pricing date.
(4) Treatment of unrecognized gain or loss.
(i) Unrecognized gain on regular interests.
(ii) Unrecognized loss on regular interests.
(iii) Unrecognized gain on residual interests.
(iv) Unrecognized loss on residual interests.
(5) Additions to or reductions of the sponsor's basis.
(6) Transferred basis property.
(c) REMIC's basis in contributed assets.

Section 1.860F–4 REMIC reporting requirements and other administrative rules.

(a) In general.
(b) REMIC tax return.
(1) In general.
(2) Income tax return.
(c) Signing of REMIC return.
(1) In general.
(2) REMIC whose startup day is before November 10, 1988.
(i) In general.
(ii) Startup day.
(iii) Exception.
(d) Designation of tax matters person.
(e) Notice to holders of residual interests.
(1) Information required.
(i) In general.
(ii) Information with respect to REMIC assets.
(A) 95 percent asset test.
(B) Additional information required if the 95 percent test not met.
(C) For calendar quarters in 1987.
(D) For calendar quarters in 1988 and 1989.
(iii) Special provisions.
(2) Quarterly notice required.
(i) In general.
(ii) Special rule for 1987.
(3) Nominee reporting.
(i) In general.
(ii) Time for furnishing statement.
(4) Reports to the Internal Revenue Service.
(f) Information returns for persons engaged in a trade or business.

Section 1.860G–1 Definition of regular and residual interests.

(a) Regular interest.
(1) Designation as a regular interest.
(2) Specified portion of the interest payments on qualified mortgages.
(i) In general.
(ii) Specified portion cannot vary.
(iii) Defaulted or delinquent mortgages.
(iv) No minimum specified principal amount is required.
(v) Examples.
(3) Variable rate.
(i) Rate based on index.
(ii) Weighted average rate.
(A) In general.
(B) Reduction in underlying rate.
(iii) Additions, subtractions, and multiplications.
(iv) Caps and floors.
(v) Funds-available caps.
(A) In general.
(B) Facts and circumstances test.
(C) Examples.
(vi) Combination of rates.
(4) Fixed terms on the startup day.
(5) Contingencies prohibited.
(b) Special rules for regular interests.
(1) Call premium.
(2) Customary prepayment penalties received with respect to qualified mortgages.
(3) Certain contingencies disregarded.
(i) Prepayments, income, and expenses.
(ii) Credit losses.
(iii) Subordinated interests.
(iv) Deferral of interest.
(v) Prepayment interest shortfalls.
(vi) Remote and incidental contingencies.
(4) Form of regular interest.
(5) Interest disproportionate to principal.
(i) In general.
(ii) Exception.
(6) Regular interest treated as a debt instrument for all Federal income tax purposes.
(c) Residual interest.
(d) Issue price of regular and residual interests.
(1) In general.
(2) The public.

Section 1.860G–2 Other rules.

(a) Obligations principally secured by an interest in real property.
(1) Tests for determining whether an obligation is principally secured.
(i) The 80 percent test.
(ii) Alternative test.
(2) Treatment of liens.
(3) Safe harbor.
(i) Reasonable belief that an obligation is principally secured.
(ii) Basis for reasonable belief.
(iii) Later discovery that an obligation is not principally secured.
(4) Interests in real property; real property.
(5) Obligations secured by an interest in real property.
(6) Obligations secured by other obligations; residual interests.
(7) Certain instruments that call for contingent payments are obligations.
(8) Defeasance.
(9) Stripped bonds and coupons.
(b) Assumptions and modifications.
(1) Significant modifications are treated as exchanges of obligations.
(2) Significant modification defined.
(3) Exceptions.
(4) Modifications that are not significant modifications.
(5) Assumption defined.
(6) Pass-thru certificates.
(c) Treatment of certain credit enhancement contracts.
(1) In general.
(2) Credit enhancement contracts.
(3) Arrangements to make certain advances.
(i) Advances of delinquent principal and interest.
(ii) Advances of taxes, insurance payments and expenses.
(iii) Advances to ease REMIC administration.
(4) Deferred payment under a guarantee arrangement.
(d) Treatment of certain purchase agreements with respect to convertible mortgages.
(1) In general.
(2) Treatment of amounts received under purchase agreements.
(3) Purchase agreement.
(4) Default by the person obligated to purchase a convertible mortgage.
(5) Convertible mortgage.
(e) Prepayment interest shortfalls.
(f) Defective obligations.
(1) Defective obligation defined.
(2) Effect of discovery of defect.
(g) Permitted investments.
(1) Cash flow investment.
(i) In general.
(ii) Payments received on qualified mortgages.
(iii) Temporary period.
(2) Qualified reserve funds
(3) Qualified reserve asset.
(i) In general.
(ii) Reasonably required reserve.
(A) In general.
(B) Presumption that a reserve is reasonably required.
(C) Presumption may be rebutted.
(h) Outside reserve funds.
(i) Contractual rights coupled with regular interests in tiered arrangements.
(1) In general.
(2) Example.
(j) Clean-up call.
(1) In general.
(2) Interest rate changes.
(3) Safe harbor.
(k) Startup day.

Section 1.860G–3 Treatment of foreign persons.

(a) Transfer of a residual interest with tax avoidance potential.
(1) In general.
(2) Tax avoidance potential.
(i) Defined.
(ii) Safe harbor.
(3) Effectively connected income.
(4) Transfer by a foreign holder.
(b) [Reserved]

§ 1.860A–1 Effective dates and transition rules.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section, the regulations under sections 860A through 860G are effective only for a qualified entity (as defined in § 1.860D–1(c)(3)) whose startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)) is on or after November 12, 1991.

(b) *Exceptions*—(1) *Reporting regulations*—(i) Sections 1.860D–1(c) (1) and (3), and § 1.860D–1(d) (1) through (3) are effective after December 31, 1986.

(ii) Sections 1.860F–4 (a) through (e) are effective after December 31, 1986 and are applicable after that date except as follows:

(A) Section 1.860F–4(c)(1) is effective for REMICs with a startup day on or after November 10, 1988.

(B) Sections 1.860F–4(e)(1)(ii) (A) and (B) are effective for calendar quarters and calendar years beginning after December 31, 1988.

(C) Section 1.860F–4(e)(1)(ii)(C) is effective for calendar quarters and calendar years beginning after December

31, 1986 and ending before January 1, 1988.

(D) Section 1.860F–4(e)(1)(ii)(D) is effective for calendar quarters and calendar years beginning after December 31, 1987 and ending before January 1, 1990.

(2) *Tax avoidance rules*—(i) *Transfers of certain residual interests.* Section 1.860E–1(c) (concerning transfers of noneconomic residual interests) and § 1.860G–3(a)(4) (concerning transfers by a foreign holder to a United States person) are effective for transfers of residual interests on or after September 27, 1991.

(ii) *Transfers to foreign holders.* Generally, § 1.860G–3(a) (concerning transfers of residual interests to foreign holders) is effective for transfers of residual interests after April 20, 1992. However § 1.860G–3(a) does not apply to a transfer of a residual interest in a REMIC by the REMIC's sponsor (or by another transferor contemporaneously with formation of the REMIC) on or before June 30, 1992 if—

(A) The terms of the regular interests and the prices at which regular interests were offered had been fixed on or before April 20, 1992;

(B) On or before June 30, 1992, a substantial portion of the regular interests in the REMIC were transferred, with the terms and at the prices that were fixed on or before April 20, 1992, to investors who were unrelated to the REMIC's sponsor at the time of the transfer; and

(C) At the time of the transfer of the residual interest, the expected future distributions on the residual interest were equal to at least 30 percent of the anticipated excess inclusions (as defined in § 1.860E–2(a)(3)), and the transferor reasonably expected that the transferee would receive sufficient distributions from the REMIC at or after the time at which the excess inclusions accrue in an amount sufficient to satisfy the taxes on the excess inclusions.

(iii) *Residual interests that lack significant value.* The significant value requirement in § 1.860E–1(a) (1) and (3) (concerning excess inclusions accruing to organizations to which section 593 applies) generally is effective for residual interests acquired on or after September 27, 1991. The significant value requirement in § 1.860E–(a) (1) and (3) does not apply, however, to residual interests acquired by an organization to which section 593 applies as a sponsor at formation of a REMIC in a transaction described in § 1.860F–2(a)(1) if more than 50 percent of the interests in the REMIC (determined by reference to issue price) were sold to unrelated investors before November 12, 1991. The exception from the significant value requirement provided by the preceding sentence applies only so long as the sponsor owns the residual interests.

(3) *Excise taxes.* Section 1.860E–2(a)(1) is effective for transfers of residual interests to disqualified organizations after March 31, 1988. Section 1.860E–2(b)(1) is effective for excess inclusions accruing to pass-thru entities after March 31, 1988.

§ 1.860C–1 Taxation of holders of residual interests.

(a) *Pass-thru of income or loss.* Any holder of a residual interest in a REMIC must take into account the holder's daily portion of the taxable income or net loss of the REMIC for each day during the taxable year on which the holder owned the residual interest.

(b) *Adjustments to basis of residual interests*—(1) *Increase in basis.* A holder's basis in a residual interest is increased by—

(i) The daily portions of taxable income taken into account by that holder under section 860C(a) with respect to that interest; and

(ii) The amount of any contribution described in section 860G(d)(2) made by that holder.

(2) *Decrease in basis.* A holder's basis in a residual interest is reduced (but not below zero) by—

(i) First, the amount of any cash or the fair market value of any property distributed to that holder with respect to that interest; and

(ii) Second, the daily portions of net loss of the REMIC taken into account under section 860C(a) by that holder with respect to that interest.

(3) *Adjustments made before disposition.* If any person disposes of a residual interest, the adjustments to basis prescribed in paragraph (b) (1) and (2) of this section are deemed to occur immediately before the disposition.

(c) *Counting conventions.* For purposes of determining the daily portion of REMIC taxable income or net loss under section 860C(a)(2), any reasonable convention may be used. An example of a reasonable convention is "30 days per month/90 days per quarter/360 days per year."

§ 1.860C–2 Determination of REMIC taxable income or net loss.

(a) *Treatment of gain or loss.* For purposes of determining the taxable income or net loss of a REMIC under section 860C(b), any gain or loss from the disposition of any asset, including a qualified mortgage (as defined in section 860G(a)(3)) or a permitted investment (as defined in section 860G(a)(5) and § 1.860G–2(g)), is treated as gain or loss from the sale or exchange of property that is not a capital asset.

(b) *Deductions allowable to a REMIC*—(1) *In general.* Except as otherwise provided in section 860C(b) and in paragraph (b) (2) through (5) of this section, the deductions allowable to a REMIC for purposes of determining its taxable income or net loss are those deductions that would be allowable to an individual, determined by taking into account the same limitations that apply to an individual.

(2) *Deduction allowable under section 163.* A REMIC is allowed a deduction, determined without regard to section 163(d), for any interest expense accrued during the taxable year.

(3) *Deduction allowable under section 166.* For purposes of determining a REMIC's bad debt deduction under section 166, debt owed to the REMIC is not treated as nonbusiness debt under section 166(d).

(4) *Deduction allowable under section 212.* A REMIC is not treated as carrying on a trade or business for purposes of section 162. Ordinary and necessary operating expenses paid or incurred by the REMIC during the taxable year are deductible under section 212, without regard to section 67. Any expenses that are incurred in connection with the formation of the REMIC and that relate to the organization of the REMIC and the issuance of regular and residual interests are not treated as expenses of the REMIC for which a deduction is allowable under section 212. See § 1.860F–2(b)(3)(ii) for treatment of those expenses.

(5) *Expenses and interest relating to tax-exempt income.* Pursuant to section 265(a), a REMIC is not allowed a deduction for expenses and interest allocable to tax-exempt income. The portion of a REMIC's interest expense that is allocable to tax-exempt interest is determined in the manner prescribed in section 265(b)(2), without regard to section 265(b)(3).

Par. 5. Section 1.860D–1 is amended by adding the text of paragraphs (a) and (b), and by revising paragraph (c)(2) to read as follows:

§ 1.860D–1 Definition of a REMIC.

(a) *In general.* A real estate mortgage investment conduit (or REMIC) is a qualified entity, as defined in paragraph (c)(3) of this section, that satisfies the requirements of section 860D(a). See paragraph (d)(1) of this section for the manner of electing REMIC status.

(b) *Specific requirements*—(1) *Interests in a REMIC*—(i) *In general.* A REMIC must have one class, and only one class, of residual interests. Except as

provided in paragraph (b)(1)(ii) of this section, every interest in a REMIC must be either a regular interest (as defined in section 860G(a)(1) and § 1.860G–1(a)) or a residual interest (as defined in section 860G(a)(2) and § 1.860G–1(c)).

(ii) *De minimis interests.* If, to facilitate the creation of an entity that elects REMIC status, an interest in the entity is created and, as of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)), the fair market value of that interest is less than the lesser of $1,000 or 1/1,000 of one percent of the aggregate fair market value of all the regular and residual interests in the REMIC, then, unless that interest is specifically designated as an interest in the REMIC, the interest is not treated as an interest in the REMIC for purposes of section 860D(a) (2) and (3) and paragraph (B)(1)(i) of this section.

(2) *Certain rights not treated as interests.* Certain rights are not treated as interests in a REMIC. Although not an exclusive list, the following rights are not interests in a REMIC.

(i) *Payments for services.* The right to receive from the REMIC payments that represent reasonable compensation for services provided to the REMIC in the ordinary course of its operation is not an interest in the REMIC. Payments made by the REMIC in exchange for services may be expressed as a specified percentage of interest payments due on qualified mortgages or as a specified percentage of earnings from permitted investments. For example, a mortgage servicer's right to receive reasonable compensation for servicing the mortgages owned by the REMIC is not an interest in the REMIC.

(ii) *Stripped interests.* Stripped bonds or stripped coupons not held by the REMIC are not interests in the REMIC even if, in a transaction preceding or contemporaneous with the formation of the REMIC, they and the REMIC's qualified mortgages were created from the same mortgage obligation. For example, the right of a mortgage servicer to receive a servicing fee in excess of reasonable compensation from payments it receives on mortgages held by a REMIC is not an interest in the REMIC. Further, if an obligation with a fixed principal amount provides for interest at a fixed or variable rate and for certain contingent payment rights (*e.g.*, a shared appreciation provision or a percentage of mortgagor profits provision), and the owner of the obligation contributes the fixed payment rights to a REMIC and retains the contingent payment rights, the retained contingent payment rights are not an interest in the REMIC

(iii) *Reimbursement rights under credit enhancement contracts.* A credit enhancer's right to be reimbursed for amounts advanced to a REMIC pursuant to the terms of a credit enhancement contract (as defined in § 1.860G–2 (c)(2)) is not an interest in the REMIC even if the credit enhancer is entitled to receive interest on the amounts advanced.

(iv) *Rights to acquire mortgages.* The right to acquire or the obligation to purchase mortgages and other assets from a REMIC pursuant to a clean-up call (as defined in § 1.860G–2(j)) or a qualified liquidation (as defined in section 860F(a)(4)), or on conversion of a convertible mortgage (as defined in § 1.860G–2(d)(5)), is not an interest in the REMIC.

(3) *Asset test*—(i) *In general.* For purposes of the asset test of section 860D(a)(4), substantially all of a qualified entity's assets are qualified mortgages and permitted investments if the qualified entity owns no more than a de minimis amount of other assets.

(ii) *Safe harbor.* The amount of assets other than qualified mortgages and permitted investments is de minimis if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the REMIC's assets. Nonetheless, a qualified entity that does not meet this safe harbor may demonstrate that it owns no more than a de minimis amount of other assets.

(4) *Arrangements test.* Generally, a qualified entity must adopt reasonable arrangements designed to ensure that—

(i) Disqualified organizations (as defined in section 860E(e)(5)) do not hold residual interests in the qualified entity; and

(ii) If a residual interest is acquired by a disqualified organization, the qualified entity will provide to the Internal Revenue Service, and to the persons specified in section 860E(e)(3), information needed to compute the tax imposed under section 860E(e) on transfers of residual interests to disqualified organizations.

(5) *Reasonable arrangements*—(i) *Arrangements to prevent disqualified organizations from holding residual interests.* A qualified entity is considered to have adopted reasonable arrangements to ensure that a disqualified organization (as defined in section 860E(e)(5)) will not hold a residual interest if—

(A) The residual interest is in registered form (as defined in § 5f.103–1(c) of this chapter); and

(B) The qualified entity's organizational documents clearly and expressly prohibit a disqualified organization from acquiring beneficial ownership of a residual interest, and notice of the prohibition is provided through a legend on the document that evidences ownership of the residual interest or through a conspicuous statement in a prospectus or private offering document used to offer the residual interest for sale.

(ii) *Arrangements to ensure that information will be provided.* A qualified entity is considered to have made reasonable arrangements to ensure that the Internal Revenue Service and persons specified in section 860E(e)(3) as liable for the tax imposed under section 860E(e) receive the information needed to compute the tax if the qualified entity's organizational documents require that it provide to the Internal Revenue Service and those persons a computation showing the present value of the total anticipated excess inclusions with respect to the residual interest for periods after the transfer. See § 1.860E–2(a)(5) for the obligation to furnish information on request.

(6) *Calendar year requirement.* A REMIC's taxable year is the calendar year. The first taxable year of a REMIC begins on the startup day and ends on December 31 of the same year. If the startup day is other than January 1, the REMIC has a short first taxable year.

(c) * * *

(2) *Identification of assets.* Formation of the REMIC does not occur until—

(i) The sponsor identifies the assets of the REMIC, such as through execution of an indenture with respect to the assets; and

(ii) The REMIC issues the regular and residual interests in the REMIC.

* * * * *

Par. 6. Sections 1.860E–1, 1.860E–2, 1.860F–1, and 1.860F–2 are added to read as follows:

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

(a) *Excess inclusion cannot be offset by otherwise allowable deductions*—(1) *In general.* Except as provided in paragraph (a)(3) of this section, the taxable income of any holder of a residual interest for any taxable year is in no event less than the sum of the excess inclusions attributable to that holder's residual interests for that taxable year. In computing the amount of a net operating loss (as defined in section 172(c)) or the amount of any net operating loss carryover (as defined in section 172(b)(2)), the amount of any excess inclusion is not included in gross income or taxable income. Thus, for example, if a residual interest holder has $100 of gross income, $25 of which

is an excess inclusion, and $90 of business deductions, the holder has taxable income of $25, the amount of the excess inclusion, and a net operating loss of $15 ($75 of other income—$90 of business deductions).

(2) *Affiliated groups.* If a holder of a REMIC residual interest is a member of an affiliated group filing a consolidated income tax return, the taxable income of the affiliated group cannot be less than the sum of the excess inclusions attributable to all residual interests held by members of the affiliated group.

(3) *Special rule for certain financial institutions*—(i) *In general.* If an organization to which section 593 applies holds a residual interest that has significant value (as defined in paragraph (a)(3)(iii) of this section), section 860E(a)(1) and paragraph (a)(1) of this section do not apply to that organization with respect to that interest. Consequently, an organization to which section 593 applies may use its allowable deductions to offset an excess inclusion attributable to a residual interest that has significant value, but, except as provided in section 860E(a)(4)(A), may not use its allowable deductions to offset an excess inclusion attributable to a residual interest held by any other member of an affiliated group, if any, of which the organization is a member. Further, a net operating loss of any other member of an affiliated group of which the organization is a member may not be used to offset an excess inclusion attributable to a residual interest held by that organization.

(ii) *Ordering rule*—(A) *In general.* In computing taxable income for any year, an organization to which section 593 applies is treated as having applied its allowable deductions for the year first to offset that portion of its gross income that is not an excess inclusion and then to offset that portion of its income that is an excess inclusion.

(B) *Example.* The following example illustrates the provisions of paragraph (a)(3)(ii) of this section:

Example. Corp. *X*, a corporation to which section 593 applies, is a member of an affiliated group that files a consolidated return. For a particular taxable year, Corp. *X* has gross income of $1,000, and of this amount, $150 is an excess inclusion attributable to a residual interest that has significant value. Corp. *X* has $975 of allowable deductions for the taxable year. Corp. *X* must apply its allowable deductions first to offset the $850 of gross income that is not an excess inclusion, and then to offset the portion of its gross income that is an excess inclusion. Thus, Corp. *X* has $25 of taxable income ($1,000–$975), and that $25 is an excess inclusion that may not be offset by losses sustained by other members of the affiliated group.

(iii) *Significant value.* A residual interest has significant value if—

(A) The aggregate of the issue prices of the residual interests in the REMIC is at least 2 percent of the aggregate of the issue prices of all residual and regular interests in the REMIC; and

(B) The anticipated weighted average life of the residual interests is at least 20 percent of the anticipated weighted average life of the REMIC.

(iv) *Determining anticipated weighted average life*—(A) *Anticipated weighted average life of the REMIC.* The anticipated weighted average life of a REMIC is the weighted average of the anticipated weighted average lives of all classes of interests in the REMIC. This weighted average is determined under the formula in paragraph (a)(3)(iv)(B) of this section, applied by treating all payments taken into account in computing the anticipated weighted average lives of regular and residual interests in the REMIC as principal payments on a single regular interest.

(B) *Regular interests that have a specified principal amount.* Generally, the anticipated weighted average life of a regular interest is determined by—

(*1*) Multiplying the amount of each anticipated principal payment to be made on the interest by the number of years (including fractions thereof) from the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)) to the related principal payment date;

(*2*) Adding the results; and

(*3*) Dividing the sum by the total principal paid on the regular interest.

(C) *Regular interests that have no specified principal amount or that have only a nominal principal amount, and all residual interests.* If a regular interest has no specified principal amount, or if the interest payments to be made on a regular interest are disproportionately high relative to its specified principal amount (as determined by reference to § 1.860G–1(b)(5)(i)), then, for purposes of computing the anticipated weighted average life of the interest, all anticipated payments on that interest, regardless of their designation as principal or interest, must be taken into account in applying the formula set out in paragraph (a)(3)(iv)(B) of this section. Moreover, for purposes of computing the weighted average life of a residual interest, all anticipated payments on that interest, regardless of their designation as principal or interest, must be taken into account in applying the formula set out in paragraph (a)(3)(iv)(B) of this section.

(D) *Anticipated payments.* The anticipated principal payments to be made on a regular interest subject to paragraph (a)(3)(iv)(B) of this section, and the anticipated payments to be made on a regular interest subject to paragraph (a)(3)(iv)(C) of this section or on a residual interest, must be determined based on—

(*1*) The prepayment and reinvestment assumptions adopted under section 1272(a)(6), or that would have been adopted had the REMIC's regular interests been issued with original issue discount; and

(*2*) Any required or permitted clean up calls or any required qualified liquidation provided for in the REMIC's organizational documents.

(b) *Treatment of residual interests held by REITs, RICs, common trust funds, and subchapter T cooperatives.* [Reserved]

(c) *Transfers of noneconomic residual interests*—(1) *In general.* A transfer of a noneconomic residual interest is disregarded for all Federal tax purposes if a significant purpose of the transfer was to enable the transferor to impede the assessment or collection of tax. A significant purpose to impede the assessment or collection of tax exists if the transferor, at the time of the transfer, either knew or should have known (had "improper knowledge") that the transferee would be unwilling or unable to pay taxes due on its share of the taxable income of the REMIC.

(2) *Noneconomic residual interest.* A residual interest is a noneconomic residual interest unless, at the time of the transfer—

(i) The present value of the expected future distributions on the residual interest at least equals the product of the present value of the anticipated excess inclusions and the highest rate of tax specified in section 11(b)(1) for the year in which the transfer occurs; and

(ii) The transferor reasonably expects that, for each anticipated excess inclusion, the transferee will receive distributions from the REMIC at or after the time at which the taxes accrue on the anticipated excess inclusion in an amount sufficient to satisfy the accrued taxes.

(3) *Computations.* The present value of the expected future distributions and the present value of the anticipated excess inclusions must be computed under the procedure specified in § 1.860E–2(a)(4) for determining the present value of anticipated excess inclusions in connection with the transfer of a residual interest to a disqualified organization.

(4) *Safe harbor for establishing lack of improper knowledge.* A transferor is presumed not to have improper knowledge if—

(i) The transferor conducted, at the time of the transfer, a reasonable

investigation of the financial condition of the transferee and, as a result of the investigation, the transferor found that the transferee had historically paid its debts as they came due and found no significant evidence to indicate that the transferee will not continue to pay its debts as they come due in the future; and

(ii) The transferee represents to the transferor that it understands that, as the holder of the noneconomic residual interest, the transferee may incur tax liabilities in excess of any cash flows generated by the interest and that the transferee intends to pay taxes associated with holding the residual interest as they become due.

(d) *Transfers to foreign persons.* Paragraph (c) of this section does not apply to transfers of residual interests to which § 1.860G–3(a)(1), concerning transfers to certain foreign persons, applies.

§ 1.860E–2 Tax on transfers of residual interests to certain organizations.

(a) *Transfers to disqualified organizations*—(1) *Payment of tax.* Any excise tax due under section 860E(e)(1) must be paid by the later of March 24, 1993, or April 15th of the year following the calendar year in which the residual interest is transferred to a disqualified organization. The Commissioner may prescribe rules for the manner and method of collecting the tax.

(2) *Transitory ownership.* For purposes of section 860E (e) and this section, a transfer of a residual interest to a disqualified organization in connection with the formation of a REMIC is disregarded if the disqualified organization has a binding contract to sell the interest and the sale occurs within 7 days of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)).

(3) *Anticipated excess inclusions.* The anticipated excess inclusions are the excess inclusions that are expected to accrue in each calendar quarter (or portion thereof) following the transfer of the residual interest. The anticipated excess inclusions must be determined as of the date the residual interest is transferred and must be based on—

(i) Events that have occurred up to the time of the transfer;

(ii) The prepayment and reinvestment assumptions adopted under section 1272(a)(6), or that would have been adopted had the REMIC's regular interests been issued with original issue discount; and

(iii) Any required or permitted clean up calls, or required qualified liquidation provided for in the REMIC's organizational documents.

(4) *Present value computation.* The present value of the anticipated excess inclusions is determined by discounting the anticipated excess inclusions from the end of each remaining calendar quarter in which those excess inclusions are expected to accrue to the date the disqualified organization acquires the residual interest. The discount rate to be used for this present value computation is the applicable Federal rate (as specified in section 1274(d)(1)) that would apply to a debt instrument that was issued on the date the disqualified organization acquired the residual interest and whose term ended on the close of the last quarter in which excess inclusions were expected to accrue with respect to the residual interest.

(5) *Obligation of REMIC to furnish information.* A REMIC is not obligated to determine if its residual interests have been transferred to a disqualified organization. However, upon request of a person designated in section 860E(e)(3), the REMIC must furnish information sufficient to compute the present value of the anticipated excess inclusions. The information must be furnished to the requesting party and to the Internal Revenue Service within 60 days of the request. A reasonable fee charged to the requestor is not income derived from a prohibited transaction within the meaning of section 860F(a).

(6) *Agent.* For purposes of section 860E(e)(3), the term "agent" includes a broker (as defined in section 6045(c) and § 1.6045–1(a)(1)), nominee, or other middleman.

(7) *Relief from liability*—(i) *Transferee furnishes information under penalties of perjury.* For purposes of section 860E(e)(4), a transferee is treated as having furnished an affidavit if the transferee furnishes—

(A) A social security number, and states under penalties of perjury that the social security number is that of the transferee; or

(B) A statement under penalties of perjury that it is not a disqualified organization.

(ii) *Amount required to be paid.* The amount required to be paid under section 860E(e)(7)(B) is equal to the product of the highest rate specified in section 11(b)(1) for the taxable year in which the transfer described in section 860E(e)(1) occurs and the amount of excess inclusions that accrued and were allocable to the residual interest during the period that the disqualified organization held the interest.

(b) *Tax on pass-thru entities*—(1) *Tax on excess inclusions.* Any tax due under section 860E(e)(6) must be paid by the later of March 24, 1993, or by the fifteenth day of the fourth month following the close of the taxable year of the pass-thru entity in which the disqualified person is a record holder. The Commissioner may prescribe rules for the manner and method of collecting the tax.

(2) *Record holder furnishes information under penalties of perjury.* For purposes of section 860E(e)(6)(D), a record holder is treated as having furnished an affidavit if the record holder furnishes—

(i) A social security number and states, under penalties of perjury, that the social security number is that of the record holder; or

(ii) A statement under penalties of perjury that it is not a disqualified organization.

(3) *Deductibility of tax.* Any tax imposed on a pass-thru entity pursuant to section 860E(e)(6)(A) is deductible against the gross amount of ordinary income of the pass-thru entity. For example, in the case of a REIT, the tax is deductible in determining real estate investment trust taxable income under section 857(b)(2).

(4) *Allocation of tax.* Dividends paid by a RIC or by a REIT are not preferential dividends within the meaning of section 562(c) solely because the tax expense incurred by the RIC or REIT under section 860E(e)(6) is allocated solely to the shares held by disqualified organizations.

§ 1.860F–1 Qualified liquidations.

A plan of liquidation need not be in any special form. If a REMIC specifies the first day in the 90-day liquidation period in a statement attached to its final return, then the REMIC will be considered to have adopted a plan of liquidation on the specified date.

§ 1.860F–2 Transfers to a REMIC.

(a) *Formation of a REMIC*—(1) *In general.* For Federal income tax purposes, a REMIC formation is characterized as the contribution of assets by a sponsor (as defined in paragraph (b)(1) of this section) to a REMIC in exchange for REMIC regular and residual interests. If, instead of exchanging its interest in mortgages and related assets for regular and residual interests, the sponsor arranges to have the REMIC issue some or all of the regular and residual interests for cash, after which the sponsor sells its interests in mortgages and related assets to the REMIC, the transaction is, nevertheless, viewed for Federal income tax purposes as the sponsor's exchange of mortgages and related assets for regular and residual interests, followed by a sale of some or all of those interests. The purpose of this rule is to

ensure that the tax consequences associated with the formation of a REMIC are not affected by the actual sequence of steps taken by the sponsor.

(2) *Tiered arrangements*—(i) *Two or more REMICs formed pursuant to a single set of organizational documents.* Two or more REMICs can be created pursuant to a single set of organizational documents even if for state law purposes or for Federal securities law purposes those documents create only one organization. The organizational documents must, however, clearly and expressly identify the assets of, and the interests in, each REMIC, and each REMIC must satisfy all of the requirements of section 860D and the related regulations.

(ii) *A REMIC and one or more investment trusts formed pursuant to a single set of documents.* A REMIC (or two or more REMICs) and one or more investment trusts can be created pursuant to a single set of organizational documents and the separate existence of the REMIC(s) and the investment trust(s) will be respected for Federal income tax purposes even if for state law purposes or for Federal securities law purposes those documents create only one organization. The organizational documents for the REMIC(s) and the investment trust(s) must, however, require both the REMIC(s) and the investment trust(s) to account for items of income and ownership of assets for Federal tax purposes in a manner that respects the separate existence of the multiple entities. See § 1.860G–2(i) concerning issuance of regular interests coupled with other contractual rights for an illustration of the provisions of this paragraph.

(b) *Treatment of sponsor*—(1) *Sponsor defined.* A sponsor is a person who directly or indirectly exchanges qualified mortgages and related assets for regular and residual interests in a REMIC. A person indirectly exchanges interests in qualified mortgages and related assets for regular and residual interests in a REMIC if the person transfers, other than in a nonrecognition transaction, the mortgages and related assets to another person who acquires a transitory ownership interest in those assets before exchanging them for interests in the REMIC, after which the transitory owner then transfers some or all of the interests in the REMIC to the first person.

(2) *Nonrecognition of gain or loss.* The sponsor does not recognize gain or loss on the direct or indirect transfer of any property to a REMIC in exchange for regular or residual interests in the REMIC. However, the sponsor, upon a subsequent sale of the REMIC regular or residual interests, may recognize gain or loss with respect to those interests.

(3) *Basis of contributed assets allocated among interests*—(i) *In general.* The aggregate of the adjusted bases of the regular and residual interests received by the sponsor in the exchange described in paragraph (a) of this section is equal to the aggregate of the adjusted bases of the property transferred by the sponsor in the exchange, increased by the amount of organizational expenses (as described in paragraph (b)(3)(ii) of this section). That total is allocated among all the interests received in proportion to their fair market values on the pricing date (as defined in paragraph (b)(3)(iii) of this section) if any, or, if none, the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)).

(ii) *Organizational expenses*—(A) *Organizational expense defined.* An organizational expense is an expense that is incurred by the sponsor or by the REMIC and that is directly related to the creation of the REMIC. Further, the organizational expense must be incurred during a period beginning a reasonable time before the startup day and ending before the date prescribed by law for filing the first REMIC tax return (determined without regard to any extensions of time to file). The following are examples of organizational expenses: legal fees for services related to the formation of the REMIC, such as preparation of a pooling and servicing agreement and trust indenture; accounting fees related to the formation of the REMIC; and other administrative costs related to the formation of the REMIC.

(B) *Syndication expenses.* Syndication expenses are not organizational expenses. Syndication expenses are those expenses incurred by the sponsor or other person to market the interests in a REMIC, and, thus, are applied to reduce the amount realized on the sale of the interests. Examples of syndication expenses are brokerage fees, registration fees, fees of an underwriter or placement agent, and printing costs of the prospectus or placement memorandum and other selling or promotional material.

(iii) *Pricing date.* The term "pricing date" means the date on which the terms of the regular and residual interests are fixed and the prices at which a substantial portion of the regular interests will be sold are fixed.

(4) *Treatment of unrecognized gain or loss*—(i) *Unrecognized gain on regular interests.* For purposes of section 860F(b)(1)(C)(i), the sponsor must include in gross income the excess of the issue price of a regular interest over the sponsor's basis in the interest as if the excess were market discount (as defined in section 1278(a)(2)) on a bond and the sponsor had made an election under section 1278(b) to include this market discount currently in gross income. The sponsor is not, however, by reason of this paragraph (b)(4)(i), deemed to have made an election under section 1278(b) with respect to any other bonds.

(ii) *Unrecognized loss on regular interests.* For purposes of section 860F(b)(1)(D)(i), the sponsor treats the excess of the sponsor's basis in a regular interest over the issue price of the interest as if that excess were amortizable bond premium (as defined in section 171(b)) on a taxable bond and the sponsor had made an election under section 171(c). The sponsor is not, however, by reason of this paragraph (b)(4)(ii), deemed to have made an election under section 171(c) with respect to any other bonds.

(iii) *Unrecognized gain on residual interests.* For purposes of section 860F(b)(1)(C)(ii), the sponsor must include in gross income the excess of the issue price of a residual interest over the sponsor's basis in the interest ratably over the anticipated weighted average life of the REMIC (as defined in § 1.860E–1(a)(3)(iv)).

(iv) *Unrecognized loss on residual interests.* For purposes of section 860F(b)(1)(D)(ii), the sponsor deducts the excess of the sponsor's basis in a residual interest over the issue price of the interest ratably over the anticipated weighted average life of the REMIC.

(5) *Additions to or reductions of the sponsor's basis.* The sponsor's basis in a regular or residual interest is increased by any amount included in the sponsor's gross income under paragraph (b)(4) of this section. The sponsor's basis in a regular or residual interest is decreased by any amount allowed as a deduction and by any amount applied to reduce interest payments to the sponsor under paragraph (b)(4)(ii) of this section.

(6) *Transferred basis property.* For purposes of paragraph (b)(4) of this section, a transferee of a regular or residual interest is treated in the same manner as the sponsor to the extent that the basis of the transferee in the interest is determined in whole or in part by reference to the basis of the interest in the hands of the sponsor.

(c) *REMIC's basis in contributed assets.* For purposes of section 860F(b)(2), the aggregate of the REMIC's bases in the assets contributed by the sponsor to the REMIC in a transaction described in paragraph (a) of this section is equal to the aggregate of the

issue prices (determined under section 860G(a)(10) and § 1.86G–1(d)) of all regular and residual interests in REMIC.

Par. 7. Section 1.860F–4 is amended by adding paragraph (f) and sections 1.860G–1 through 1.860G–3 are added to read as follows:

§ 1.860F–4 REMIC reporting requirements and other administrative rules.

* * * * *

(f) *Information returns for person engaged in a trade or business.* See § 1.6041–(b)(2) for the treatment of a REMIC under sections 6041 and 6041A.

§ 1.860G–1 Definition of regular and residual interests.

(a) *Regular interest*—(1) *Designation as a regular interest.* For purposes of section 860G(a)(1), a REMIC designates an interest as a regular interest by providing to the Internal Revenue Service the information specified in § 1.860D–1(d)(2)(ii) in the time and manner specified in § 1.860D–1(d)(2).

(2) *Specified portion of the interest payments on qualified mortgages*—(i) *In general.* For purposes of section 860G(a)(1)(B)(ii), a specified portion of the interest payments on qualified mortgages means a portion of the interest payable on qualified mortgages, but only if the portion can be expressed as—

(A) A fixed percentage of the interest that is payable at either a fixed rate or at a variable rate described in paragraph (a)(3) of this section on some or all of the qualified mortgages;

(B) A fixed number of basis points of the interest payable on some or all of the qualified mortgages; or

(C) The interest payable at either a fixed rate or at a variable rate described in paragraph (a)(3) of this section on some or all of the qualified mortgages in excess of a fixed number of basis points or in excess of a variable rate described in paragraph (a)(3) of this section.

(ii) *Specified portion cannot vary.* The portion must be established as of the startup day (as defined in section 860G(a)(9) and § 1.860G–2(k)) and, except as provided in paragraph (a)(2)(iii) of this section, it cannot vary over the period that begins on the startup day and ends on the day that the interest holder is no longer entitled to receive payments.

(iii) *Defaulted or delinquent mortgages.* A portion is not treated as varying over time if an interest holder's entitlement to a portion of the interest on some or all of the qualified mortgages is dependent on the absence of defaults or delinquencies on those mortgages.

(iv) *No minimum specified principal amount is required.* If an interest in a REMIC consists of a specified portion of the interest payments on the REMIC's qualified mortgages, no minimum specified principal amount need be assigned to that interest. The specified principal amount can be zero.

(v) *Examples.* The following examples, each of which describes a pass-thru trust that is intended to qualify as a REMIC, illustrate the provisions of this paragraph (a)(2).

Example 1. (i) A sponsor transferred a pool of fixed rate mortgages to a trustee in exchange for two classes of certificates. The Class A certificate holders are entitled to all principal payments on the mortgages and to interest on outstanding principal at a variable rate based on the current value of One-Month LIBOR, subject to a lifetime cap equal to the weighted average rate payable on the mortgages. The Class B certificate holders are entitled to all interest payable on the mortgages in excess of the interest paid on the Class A certificates. The Class B certificates are subordinate to the Class A certificates so that cash flow shortfalls due to defaults or delinquencies on the mortgages will be borne first by the Class B certificate holders.

(ii) The Class B certificate holders are entitled to all interest payable on the pooled mortgages in excess of a variable rate described in paragraph (a)(3)(vi) of this section. Moreover, the portion of the interest payable to the Class B certificate holders is not treated as varying over time solely because payments on the Class B certificates may be reduced as a result of defaults or delinquencies on the pooled mortgages. Thus, the Class B certificates provide for interest payments that consist of a specified portion of the interest payable on the pooled mortgages under paragraph (a)(2)(i)(C) of this section.

Example 2. (i) A sponsor transferred a pool of variable rate mortgages to a trustee in exchange for two classes of certificates. The mortgages call for interest payments at a variable rate based on the current value of the One-Year Constant Maturity Treasury Index (hereinafter "CMTI") plus 200 basis points, subject to a lifetime cap of 12 percent. Class C certificate holders are entitled to all principal payments on the mortgages and interest on the outstanding principal at a variable rate based on the One-Year CMTI plus 100 basis points, subject to a lifetime cap of 12 percent. The interest rate on the Class C certificates is reset at the same time the rate is reset on the pooled mortgages.

(ii) The Class D certificate holders are entitled to all interest payments on the mortgages in excess of the interest paid on the Class C certificates. So long as the One-Year CMTI is at 10 percent or lower, the Class D certificate holders are entitled to 100 basis points of interest on the pooled mortgages. If, however, the index exceeds 10 percent on a reset date, the Class D certificate holders' entitlement shrinks, and it disappears if the index is at 11 percent or higher.

(iii) The Class D certificate holders are entitled to all interest payable on the pooled mortgages in excess of a qualified variable rate described in paragraph (a)(3) of this section. Thus, the Class D certificates provide for interest payments that consist of a specified portion of the interest payable on the qualified mortgages under paragraph (a)(2)(i)(C) of this section.

Example 3. (i) A sponsor transferred a pool of fixed rate mortgages to a trustee in exchange for two classes of certificates. The fixed interest rate payable on the mortgages varies from mortgage to mortgage, but all rates are between 8 and 10 percent. The Class E certificate holders are entitled to receive all principal payments on the mortgages and interest on outstanding principal at 7 percent. The Class F certificate holders are entitled to receive all interest on the mortgages in excess of the interest paid on the Class E certificates.

(ii) The Class F certificates provide for interest payments that consist of a specified portion of the interest payable on the mortgages under paragraph (a)(2)(i) of this section. Although the portion of the interest payable to the Class F certificate holders varies from mortgage to mortgage, the interest payable can be expressed as a fixed percentage of the interest payable on each particular mortgage.

(3) *Variable rate.* A regular interest may bear interest at a variable rate. For purposes of section 860G(a)(1)(B)(i), a variable rate of interest is a rate described in this paragraph (a)(3).

(i) *Rate based on index.* A rate that is a qualifying variable rate for purposes of sections 1271 through 1275 and the related regulations is a variable rate. For example, a rate based on the average cost of funds of one or more financial institutions is a variable rate. Further, a rate equal to the highest, lowest, or average of two or more objective interest indices is a variable rate for purposes of this section.

(ii) *Weighted average rate*—(A) *In general.* A rate based on a weighted average of the interest rates on some or all of the qualified mortgages held by a REMIC is a variable rate. The qualified mortgages taken into account must, however, bear interest at a fixed rate or at a rate described in this paragraph (a)(3). Generally, a weighted average interest rate is a rate that, if applied to the aggregate outstanding principal balance of a pool of mortgage loans for an accrual period, produces an amount of interest that equals the sum of the interest payable on the pooled loans for that accrual period. Thus, for an accrual period in which a pool of mortgage loans comprises $300,000 of loans bearing a 7 percent interest rate and $700,000 of loans bearing a 9.5 percent interest rate, the weighted average rate for the pool of loans is 8.75 percent.

(B) *Reduction in underlying rate.* For purposes of paragraph (a)(3)(ii)(A) of this section, an interest rate is considered to be based on a weighted

average rate even if, in determining that rate, the interest rate on some or all of the qualified mortgages is first subject to a cap or a floor, or is first reduced by a number of basis points or a fixed percentage. A rate determined by taking a weighted average of the interest rates on the qualified mortgage loans net of any servicing spread, credit enhancement fees, or other expenses of the REMIC is a rate based on a weighted average rate for the qualified mortgages. Further, the amount of any rate reduction described above may vary from mortgage to mortgage.

(iii) *Additions, subtractions, and multiplications.* A rate is a variable rate if it is—

(A) Expressed as the product of a rate described in paragraph (a)(3)(i) or (ii) of this section and a fixed multiplier;

(B) Expressed as a constant number of basis points more or less than a rate described in paragraph (a)(3)(i) or (ii) of this section; or

(C) Expressed as the product, plus or minus a constant number of basis points, of a rate described in paragraph (a)(3)(i) or (ii) of this section and a fixed multiplier (which may be either a positive or a negative number).

(iv) *Caps and floors.* A rate is a variable rate if it is a rate that would be described in paragraph (a)(3)(i) through (iii) of this section except that it is—

(A) Limited by a cap or ceiling that establishes either a maximum rate or a maximum number of basis points by which the rate may increase from one accrual or payment period to another or over the term of the interest; or

(B) Limited by a floor that establishes either a minimum rate or a maximum number of basis points by which the rate may decrease from one accrual or payment period to another or over the term of the interest.

(v) *Funds-available caps*—(A) *In general.* A rate is a variable rate if it is a rate that would be described in paragraph (a)(3)(i) through (iv) of this section except that it is subject to a "funds-available" cap. A funds-available cap is a limit on the amount of interest to be paid on an instrument in any accrual or payment period that is based on total amount available for distribution, including both principal and interest received by an issuing entity on some or all of its qualified mortgages as well as amounts held in a reserve fund. The term "funds-available cap" does not, however, include any cap or limit on interest payments used as a device to avoid the standards of paragraph (a)(3)(i) through (iv) of this section.

(B) *Facts and circumstances test.* In determining whether a cap or limit on interest payments is a funds-available cap within the meaning of this section and not a device used to avoid the standards of paragraph (a)(3)(i) through (iv) of this section, one must consider all of the facts and circumstances. Facts and circumstances that must be taken into consideration are—

(*1*) Whether the rate of the interest payable to the regular interest holders is below the rate payable on the REMIC's qualified mortgages on the start-up day; and

(*2*) Whether, historically, the rate of interest payable to the regular interest holders has been consistently below that payable on the qualified mortgages.

(C) *Examples.* The following examples, both of which describe a pass-thru trust that is intended to qualify as a REMIC, illustrate the provisions of this paragraph (a)(3)(v).

Example 1. (i) A sponsor transferred a pool of mortgages to a trustee in exchange for two classes of certificates. The pool of mortgages has an aggregate principal balance of $100*x*. Each mortgage in the pool provides for interest payments based on the eleventh district cost of funds index (hereinafter COFI) plus a margin. The initial weighted average rate for the pool is COFI plus 200 basis points. The trust issued a Class X certificate that has a principal amount of $100*x* and that provides for interest payments at a rate equal to One-Year LIBOR plus 100 basis points, subject to a cap described below. The Class R certificate, which the sponsor designated as the residual interest, entitles its holder to all funds left in the trust after the Class X certificates have been retired. The Class R certificate holder is not entitled to current distributions.

(ii) At the time the certificates were issued, COFI equalled 4.874 percent and One-Year LIBOR equalled 3.375 percent. Thus, the initial weighted average pool rate was 6.874 percent and the Class X certificate rate was 4.375 percent. Based on historical data, the sponsor does not expect the rate paid on the Class X certificate to exceed the weighted average rate on the pool.

(iii) Initially, under the terms of the trust instrument, the excess of COFI plus 200 over One-Year LIBOR plus 100 (excess interest) will be applied to pay expenses of the trust, to fund any required reserves, and then to reduce the principal balance on the Class X certificate. Consequently, although the aggregate principal balance of the mortgages initially matched the principal balance of the Class X certificate, the principal balance on the Class X certificate will pay down faster than the principal balance on the mortgages as long as the weighted average rate on the mortgages is greater than One-Year LIBOR plus 100. If, however, the rate on the Class X certificate (One-Year LIBOR plus 100) ever exceeds the weighted average rate on the mortgages, then the Class X certificate holders will receive One-Year LIBOR plus 100 subject to a cap based on the current funds that are available for distribution.

(iv) The funds available cap here is not a device used to avoid the standards of paragraph (a)(3) (i) through (iv) of this section. First, on the date the Class X certificates were issued, a significant spread existed between the weighted average rate payable on the mortgages and the rate payable on the Class X certificate. Second, historical data suggest that the weighted average rate payable on the mortgages will continue to exceed the rate payable on the Class X certificate. Finally, because the excess interest will be applied to reduce the outstanding principal balance of the Class X certificate more rapidly than the outstanding principal balance on the mortgages is reduced, One-Year LIBOR plus 100 basis points would have to exceed the weighted average rate on the mortgages by an increasingly larger amount before the funds available cap would be triggered. Accordingly, the rate paid on the Class X certificates is a variable rate.

Example 2. (i) The facts are the same as those in *Example 1*, except that the pooled mortgages are commercial mortgages that provide for interest payments based on the gross profits of the mortgagors, and the rate on the Class X certificates is 400 percent on One-Year LIBOR (a variable rate under paragraph (a)(3)(iii) of this section), subject to a cap equal to current funds available to the trustee for distribution.

(ii) Initially, 400 percent of One-Year LIBOR exceeds the weighted average rate payable on the mortgages. Furthermore, historical data suggest that there is a significant possibility that, in the future, 400 percent of One-Year LIBOR will exceed the weighted average rate on the mortgages.

(iii) The facts and circumstances here indicate that the use of 400 percent of One-Year LIBOR with the above-described cap is a device to pass through to the Class X certificate holder contingent interest based on mortgagor profits. Consequently, the rate paid on the Class X certificate here is not a variable rate.

(vi) *Combination of rates.* A rate is a variable rate if it is based on—

(A) One fixed rate during one or more accrual or payment periods and a different fixed rate or rates, or a rate or rates described in paragraph (a)(3) (i) through (v) of this section, during other accrual or payment periods; or

(B) A rate described in paragraph (a)(3) (i) through (v) of this section during one or more accrual or payment periods and a fixed rate or rates, or a different rate or rates described in paragraph (a)(3) (i) through (v) of this section in other periods.

(4) *Fixed terms on the startup day.* For purposes of section 860G(a)(1), a regular interest in a REMIC has fixed terms on the startup day if, on the startup day, the REMIC's organizational documents irrevocably specify—

(i) The principal amount (or other similar amount) of the regular interest;

(ii) The interest rate or rates used to compute any interest payments (or other similar amounts) on the regular interest; and

(iii) The latest possible maturity date of the interest.

(5) *Contingencies prohibited.* Except for the contingencies specified in paragraph (b)(3) of this section, the principal amount (or other similar amount) and the latest possible maturity date of the interest must not be contingent.

(b) *Special rules for regular interests*—(1) *Call premium.* An interest in a REMIC does not qualify as a regular interest if the terms of the interest entitle the holder of that interest to the payment of any premium that is determined with reference to the length of time that the regular interest is outstanding and is not described in paragraph (b)(2) of this section.

(2) *Customary prepayment penalties received with respect to qualified mortgages.* An interest in a REMIC does not fail to qualify as a regular interest solely because the REMIC's organizational documents provide that the REMIC must allocate among and pay to its regular interest holders any customary prepayment penalties that the REMIC receives with respect to its qualified mortgages. Moreover, a REMIC may allocate prepayment penalties among its classes of interests in any manner specified in the REMIC'S organizational documents. For example, a REMIC could allocate all or substantially all of a prepayment penalty that it receives to holders of an interest-only class of interests because that class would be most significantly affected by prepayments.

(3) *Certain contingencies disregarded.* An interest in a REMIC does not fail to qualify as a regular interest solely because it is issued subject to some or all of the contingencies described in paragraph (b)(3) (i) through (vi) of this section.

(i) *Prepayments, income, and expenses.* An interest does not fail to qualify as a regular interest solely because—

(A) The timing of (but not the right to or amount of) principal payments (or other similar amounts) is affected by the extent of prepayments on some or all of the qualified mortgages held by the REMIC or the amount of income from permitted investments (as defined in § 1.860G–2(g)); or

(B) The timing of interest and principal payments is affected by the payment of expenses incurred by the REMIC.

(ii) *Credit losses.* An interest does not fail to qualify as a regular interest solely because the amount or the timing of payments of principal or interest (or other similar amounts) with respect to a regular interest is affected by defaults on qualified mortgages and permitted investments, unanticipated expenses incurred by the REMIC, or lower than expected returns on permitted investments.

(iii) *Subordinated interests.* An interest does not fail to qualify as a regular interest solely because that interest bears all, or a disproportionate share, of the losses stemming from cash flow shortfalls due to defaults or delinquencies on qualified mortgages or permitted investments, unanticipated expenses incurred by the REMIC, lower than expected returns on permitted investments, or prepayment interest shortfalls before other regular interests or the residual interest bear losses occasioned by those shortfalls.

(iv) *Deferral of interest.* An interest does not fail to qualify as a regular interest solely because that interest, by its terms, provides for deferral of interest payments.

(v) *Prepayment interest shortfalls.* An interest does not fail to qualify as a regular interest solely because the amount of interest payments is affected by prepayments of the underlying mortgages.

(vi) *Remote and incidental contingencies.* An interest does not fail to qualify as a regular interest solely because the amount or timing of payments of principal or interest (or other similar amounts) with respect to the interest is subject to a contingency if there is only a remote likelihood that the contingency will occur. For example, an interest could qualify as a regular interest even though full payment of principal and interest on that interest is contingent upon the absence of significant cash flow shortfalls due to the operation of the Soldiers and Sailors Civil Relief Act, 50 U.S.C. app. 526 (1988).

(4) *Form of regular interest.* A regular interest in a REMIC may be issued in the form of debt, stock, an interest in a partnership or trust, or any other form permitted by state law. If a regular interest in a REMIC is not in the form of debt, it must, except as provided in paragraph (a)(2)(iv) of this section, entitle the holder to a specified amount that would, were the interest issued in debt form, be identified as the principal amount of the debt.

(5) *Interest disproportionate to princpal*—(i) *In general.* An interest in a REMIC does not qualify as a regular interest if the amount of interest (or other similar amount) payable to the holder is disproportionately high relative to the principal amount or other specified amount described in paragraph (b)(4) of this section (specified principal amount). Interest payments (or other similar amounts) are considered disproportionately high if the issue price (as determined under paragraph (d) of this section) of the interest in the REMIC exceeds 125 percent of its specified principal amount.

(ii) *Exception.* A regular interest in a REMIC that entitles the holder to interest payments consisting of a specified portion of interest payments on qualified mortgages qualifies as a regular interest even if the amount of interest is disproportionately high relative to the specified principal amount.

(6) *Regular interest treated as a debt instrument for all Federal income tax purposes.* In determining the tax under chapter 1 of the Internal Revenue Code, a REMIC regular interest (as defined in section 860G(a)(1)) is treated as a debt instrument that is an obligation of the REMIC. Thus, sections 1271 through 1288, relating to bonds and other debt instruments, apply to a regular interest. For special rules relating to the accrual of original issue discount on regular interests, see section 1272(a)(6).

(c) *Residual interest.* A residual interest is an interest in a REMIC that is issued on the startup day and that is designated as a residual interest by providing the information specified in § 1.860D–1(d)(2)(ii) at the time and in the manner provided in § 1.860D–1(d)(2). A residual interest need not entitle the holder to any distributions from the REMIC.

(d) *Issue price of regular and residual interests*—(1) *In general.* The issue price of any REMIC regular or residual interest is determined under section 1273(b) as if the interest were a debt instrument and, if issued for property, as if the requirements of section 1273(b)(3) were met. Thus, if a class of interests is publicly offered, then the issue price of an interest in that class is the initial offering price to the public at which a substantial amount of the class is sold. If the interest is in a class that is not publicly offered, the issue price is the price paid by the first buyer of that interest regardless of the price paid for the remainder of the class. If the interest is in a class that is retained by the sponsor, the issue price is its fair market value on the pricing date (as defined in § 1.860F–2(b)(3)(iii)), if any, or, if none, the startup day, regardless of whether the property exchanged therefor is publicly traded.

(2) *The public.* The term "the public" for purposes of this section does not include brokers or other middlemen, nor does it include the sponsor who acquires all of the regular and residual interests from the REMIC on the startup

day in a transaction described in § 1.860F–2(a).

§ 1.860G–2 Other rules.

(a) *Obligations principally secured by an interest in real property*—(1) *Tests for determining whether an obligation is principally secured.* For purposes of section 860G(a)(3)(A), an obligation is principally secured by an interest in real property only if it satisfies either the test set out in paragraph (a)(1)(i) or the test set out in paragraph (a)(1)(ii) of this section.

(i) *The 80-percent test.* An obligation is principally secured by an interest in real property if the fair market value of the interest in real property securing the obligation—

(A) Was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated (see paragraph (b)(1) of this section concerning the origination date for obligations that have been significantly modified); or

(B) Is at least equal to 80 percent of the adjusted issue price of the obligation at the time the sponsor contributes the obligation to the REMIC.

(ii) *Alternative test.* For purposes of section 860G(a)(3)(A), an obligation is principally secured by an interest in real property if substantially all of the proceeds of the obligation were used to acquire or to improve or protect an interest in real property that, at the origination date, is the only security for the obligation. For purposes of this test, loan guarantees made by the United States or any state (or any political subdivision, agency, or instrumentality of the United States or of any state), or other third party credit enhancement are not viewed as additional security for a loan. An obligation is not considered to be secured by property other than real property solely because the obligor is personally liable on the obligation.

(2) *Treatment of liens.* For purposes of paragraph (a)(1)(i) of this section, the fair market value of the real property interest must be first reduced by the amount of any lien on the real property interest that is senior to the obligation being tested, and must be further reduced by a proportionate amount of any lien that is in parity with the obligation being tested.

(3) *Safe harbor*—(i) *Reasonable belief that an obligation is principally secured.* If, at the time the sponsor contributes an obligation to a REMIC, the sponsor reasonably believes that the obligation is principally secured by an interest in real property within the meaning of paragraph (a)(1) of this section, then the obligation is deemed to be so secured for purposes of section 860G(a)(3). A sponsor cannot avail itself of this safe harbor with respect to an obligation if the sponsor actually knows or has reason to know that the obligation fails both of the tests set out in paragraph (a)(1) of this section.

(ii) *Basis for reasonable belief.* For purposes of paragraph (a)(3)(i) of this section, a sponsor may base a reasonable belief concerning any obligation on—

(A) Representations and warranties made by the originator of the obligation; or

(B) Evidence indicating that the originator of the obligation typically made mortgage loans in accordance with an established set of parameters, and that any mortgage loan originated in accordance with those parameters would satisfy at least one of the tests set out in paragraph (a)(1) of this section.

(iii) *Later discovery that an obligation is not principally secured.* If, despite the sponsor's reasonable belief concerning an obligation at the time it contributed the obligation to the REMIC, the REMIC later discovers that the obligation is not principally secured by an interest in real property, the obligation is a defective obligation and loses its status as a qualified mortgage 90 days after the date of discovery. See paragraph (f) of this section, relating to defective obligations.

(4) *Interests in real property; real property.* The definition of "interests in real property" set out in § 1.856–3(c), and the definition of "real property" set out in § 1.856–3(d), apply to define those terms for purposes of section 860G(a)(3) and paragraph (a) of this section.

(5) *Obligations secured by an interest in real property.* Obligations secured by interests in real property include the following: mortgages, deeds of trust, and installment land contracts; mortgage pass-thru certificates guaranteed by GNMA, FNMA, FHLMC, or CMHC (Canada Mortgage and Housing Corporation); other investment trust interests that represent undivided beneficial ownership in a pool of obligations principally secured by interests in real property and related assets that would be considered to be permitted investments if the investment trust were a REMIC, and provided the investment trust is classified as a trust under § 301.7701–4(c) of this chapter; and obligations secured by manufactured housing treated as single family residences under section 25(e)(10) without regard to the treatment of the obligations or the properties under state law).

(6) *Obligations secured by other obligations; residual interests.* Obligations (other than regular interests in a REMIC) that are secured by other obligations are not principally secured by interests in real property even if the underlying obligations are secured by interests in real property. Thus, for example, a collateralized mortgage obligation issued by an issuer that is not a REMIC is not an obligation principally secured by an interest in real property. A residual interest (as defined in section 860G(a)(2) is not an obligation principally secured by an interest in real property.

(7) *Certain instruments that call for contingent payments are obligations.* For purposes of section 860G(a)(3) and (4), the term "obligation" includes any instrument that provides for total noncontingent principal payments that at least equal the instrument's issue price even if that instrument also provides for contingent payments. Thus, for example, an instrument that was issued for $100*x* and that provides for noncontingent principal payments of $100*x*, interest payments at a fixed rate, and contingent payments based on a percentage of the mortgagor's gross receipts, is an obligation.

(8) *Defeasance.* If a REMIC releases its lien on real property that secures a qualified mortgage, that mortgage ceases to be a qualified mortgage on the date the lien is released unless—

(i) The mortgagor pledges substitute collateral that consists solely of government securities (as defined in section 2(a)(16) of the Investment Company Act of 1940 as amended (15 U.S.C. 80a–1));

(ii) The mortgage documents allow such a substitution;

(iii) The lien is released to facilitate the disposition of the property or any other customary commercial transaction, and not as part of an arrangement to collateralize a REMIC offering with obligations that are not real estate mortgages; and

(iv) The release is not within 2 years of the startup day.

(9) *Stripped bonds and coupons.* The term "qualified mortgage" includes stripped bonds and stripped coupons (as defined in section 1286(e) (2) and (3)) if the bonds (as defined in section 1286(e)(1) from which such stripped bonds or stripped coupons arose would have been qualified mortgages.

(b) *Assumptions and modifications*—(1) *Significant modifications are treated as exchanges of obligations.* If an obligation is significantly modified in a manner or under circumstances other than those described in paragraph (b)(3) of this section, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. Consequently—

(i) If such a significant modification occurs after the obligation has been contributed to the REMIC and the modified obligation is not a qualified replacement mortgage, the modified obligation will not be a qualified mortgage and the deemed disposition of the unmodified obligation will be a prohibited transaction under section 860F(a)(2); and

(ii) If such a significant modification occurs before the obligation is contributed to the REMIC, the modified obligation will be viewed as having been originated on the date the modification occurs for purposes of the tests set out in paragraph (a)(1) of this section.

(2) *Significant modification defined.* For purposes of paragraph (b)(1) of this section, a "significant modification" is any change in the terms of an obligation that would be treated as an exchange of obligations under section 1001 and the related regulations.

(3) *Exceptions.* For purposes of paragraph (b)(1) of this section, the following changes in the terms of an obligation are not significant modifications regardless of whether they would be significant modifications under paragraph (b)(2) of this section—

(i) Changes in the terms of the obligation occasioned by default or a reasonably foreseeable default;

(ii) Assumption of the obligation;

(iii) Waiver of a due-on-sale clause or a due on encumbrance clause; and

(iv) Conversion of an interest rate by a mortgagor pursuant to the terms of a convertible mortgage.

(4) *Modifications that are not significant modifications.* If an obligation is modified and the modification is not a significant modification for purposes of paragraph (b)(1) of this section, then the modified obligation is not treated as one that was newly originated on the date of modification.

(5) *Assumption defined.* For purposes of paragraph (b)(3) of this section, a mortgage has been assumed if—

(i) The buyer of the mortgaged property acquires the property subject to the mortgage, without assuming any personal liability;

(ii) The buyer becomes liable for the debt but the seller also remains liable; or

(iii) The buyer becomes liable for the debt and the seller is released by the lender.

(6) *Pass-thru certificates.* If a REMIC holds as a qualified mortgage a pass-thru certificate or other investment trust interest of the type described in paragraph (a)(5) of this section, the modification of a mortgage loan that backs the pass-thru certificate or other interest is not a modification of the pass-thru certificate or other interest unless the investment trust structure was created to avoid the prohibited transaction rules of section 860F(a).

(c) *Treatment of certain credit enhancement contracts*—(1) *In general.* A credit enhancement contract (as defined in paragraph (c) (2) and (3) of this section) is not treated as a separate asset of the REMIC for purposes of the asset test set out in section 860D(a)(4) and § 1.860D–1(b)(3), but instead is treated as part of the mortgage or pool of mortgages to which it relates. Furthermore, any collateral supporting a credit enhancement contract is not treated as an asset of the REMIC solely because it supports the guarantee represented by that contract. See paragraph (g)(1)(ii) of this section for the treatment of payments made pursuant to credit enhancement contracts as payments received under a qualified mortgage.

(2) *Credit enhancement contracts.* For purposes of this section, a credit enhancement contract is any arrangement whereby a person agrees to guarantee full or partial payment of the principal or interest payable on a qualified mortgage or on a pool of such mortgages, or full or partial payment on one or more classes of regular interests or on the class of residual interests, in the event of defaults or delinquencies on qualified mortgages, unanticipated losses or expenses incurred by the REMIC, or lower than expected returns on cash flow investments. Types of credit enhancement contracts may include, but are not limited to, pool insurance contracts, certificate guarantee insurance contracts, letters of credit, guarantees, or agreements whereby the REMIC sponsor, a mortgage servicer, or other third party agrees to make advances described in paragraph (c)(3) of this section.

(3) *Arrangements to make certain advances.* The arrangements described in this paragraph (c)(3) are credit enhancement contracts regardless of whether, under the terms of the arrangement, the payor is obligated, or merely permitted, to advance funds to the REMIC.

(i) *Advances of delinquent principal and interest.* An arrangement by a REMIC sponsor, mortgage servicer, or other third party to advance to the REMIC out of its own funds an amount to make up for delinquent payments on qualified mortgages is a credit enhancement contract.

(ii) *Advances of taxes, insurance payments, and expenses.* An arrangement by a REMIC sponsor, mortgage servicer, or other third party to pay taxes and hazard insurance premiums on, or other expenses incurred to protect the REMIC's security interest in, property securing a qualified mortgage in the event that the mortgagor fails to pay such taxes, insurance premiums, or other expenses is a credit enhancement contract.

(iii) *Advances to ease REMIC administration.* An agreement by a REMIC sponsor, mortgage servicer, or other third party to advance temporarily to a REMIC amounts payable on qualified mortgages before such amounts are actually due to level out the stream of cash flows to the REMIC or to provide for orderly administration of the REMIC is a credit enhancement contract. For example, if two mortgages in a pool have payment due dates on the twentieth of the month, and all the other mortgages have payment due dates on the first of each month, an agreement by the mortgage servicer to advance to the REMIC on the fifteenth of each month the payments not yet received on the two mortgages together with the amounts received on the other mortgages is a credit enhancement contract.

(4) *Deferred payment under a guarantee arrangement.* A guarantee arrangement does not fail to qualify as a credit enhancement contract solely because the guarantor, in the event of a default on a qualified mortgage, has the option of immediately paying to the REMIC the full amount of mortgage principal due on acceleration of the defaulted mortgage, or paying principal and interest to the REMIC according to the original payment schedule for the defaulted mortgage, or according to some other deferred payment schedule. Any deferred payments are payments pursuant to a credit enhancement contract even if the mortgage is foreclosed upon and the guarantor, pursuant to subrogation rights set out in the guarantee arrangement, is entitled to receive immediately the proceeds of foreclosure.

(d) *Treatment of certain purchase agreements with respect to convertible mortgages*—(1) *In general.* For purposes of sections 860D(a)(4) and 860G(a)(3), a purchase agreement (as described in paragraph (d)(3) of this section) with respect to a convertible mortgage (as described in paragraph (d)(5) of this section) is treated as incidental to the convertible mortgage to which it relates. Consequently, the purchase agreement is part of the mortgage or pool of mortgages and is not a separate asset of the REMIC.

(2) *Treatment of amounts received under purchase agreements.* For

purposes of sections 860A through 860G and for purposes of determining the accrual of original issue discount and market discount under sections 1272(a)(6) and 1276, respectively, a payment under a purchase agreement described in paragraph (d)(3) of this section is treated as a prepayment in full of the mortgage to which it relates. Thus, for example, a payment under a purchase agreement with respect to a qualified mortgage is considered a payment received under a qualified mortgage within the meaning of section 860G(a)(6) and the transfer of the mortgage is not a disposition of the mortgage within the meaning of section 860F(a)(2)(A).

(3) *Purchase agreement.* A purchase agreement is a contract between the holder of a convertible mortgage and a third party under which the holder agrees to sell and the third party agrees to buy the mortgage for an amount equal to its current principal balance plus accrued but unpaid interest if and when the mortgagor elects to convert the terms of the mortgage.

(4) *Default by the person obligated to purchase a convertible mortgage.* If the person required to purchase a convertible mortgage defaults on its obligation to purchase the mortgage upon conversion, the REMIC may sell the mortgage in a market transaction and the proceeds of the sale will be treated as amounts paid pursuant to a purchase agreement.

(5) *Convertible mortgage.* A convertible mortgage is a mortgage that gives the obligor the right at one or more times during the term of the mortgage to elect to convert from one interest rate to another. The new rate of interest must be determined pursuant to the terms of the instrument and must be intended to approximate a market rate of interest for newly originated mortgages at the time of the conversion.

(e) *Prepayment interest shortfalls.* An agreement by a mortgage servicer or other third party to make payments to the REMIC to make up prepayment interest shortfalls is not treated as a separate asset of the REMIC and payments made pursuant to such an agreement are treated as payments on the qualified mortgages. With respect to any mortgage that prepays, the prepayment interest shortfall for the accrual period in which the mortgage prepays is an amount equal to the excess of the interest that would have accrued on the mortgage during that accrual period had it not prepaid, over the interest that accrued from the beginning of that accrual period up to the date of the prepayment.

(f) *Defective obligations*—(1) *Defective obligation defined.* For purposes of sections 860G(a)(4)(B)(ii) and 860F(a)(2), a defective obligation is a mortgage subject to any of the following defects.

(i) The mortgage is in default, or a default with respect to the mortgage is reasonably foreseeable.

(ii) The mortgage was fraudulently procured by the mortgagor.

(iii) The mortgage was not in fact principally secured by an interest in real property within the meaning of paragraph (a)(1) of this section.

(iv) The mortgage does not conform to a customary representation or warranty given by the sponsor or prior owner of the mortgage regarding the characteristics of the mortgage, or the characteristics of the pool of mortgages of which the mortgage is a part. A representation that payments on a qualified mortgage will be received at a rate no less than a specified minimum or no greater than a specified maximum is not customary for this purpose.

(2) *Effect of discovery of defect.* If a REMIC discovers that an obligation is a defective obligation, and if the defect is one that, had it been discovered before the startup day, would have prevented the obligation from being a qualified mortgage, then, unless the REMIC either causes the defect to be cured or disposes of the defective obligation within 90 days of discovering the defect, the obligation ceases to be a qualified mortgage at the end of that 90 day period. Even if the defect is not cured, the defective obligation is, nevertheless, a qualified mortgage from the startup day through the end of the 90 day period. Moreover, even if the REMIC holds the defective obligation beyond the 90 day period, the REMIC may, nevertheless, exchange the defective obligation for a qualified replacement mortgage so long as the requirements of section 860G(a)(4)(B) are satisfied. If the defect is one that does not affect the status of an obligation as a qualified mortgage, then the obligation is always a qualified mortgage regardless of whether the defect is or can be cured. For example, if a sponsor represented that all mortgages transferred to a REMIC had a 10 percent interest rate, but it was later discovered that one mortgage had a 9 percent interest rate, the 9 percent mortgage is defective, but the defect does not affect the status of that obligation as a qualified mortgage.

(g) *Permitted investments*—(1) *Cash flow investment*—(i) *In general.* For purposes of section 860G(a)(6) and this section, a cash flow investment is an investment of payments received on qualified mortgages for a temporary period between receipt of those payments and the regularly scheduled date for distribution of those payments to REMIC interest holders. Cash flow investments must be passive investments earning a return in the nature of interest.

(ii) *Payments received on qualified mortgages.* For purposes of paragraph (g)(1) of this section, the term "payments received on qualified mortgages" includes—

(A) Payments of interest and principal on qualified mortgages, including prepayments of principal and payments under credit enhancement contracts described in paragraph (c)(2) of this action;

(B) Proceeds from the disposition of qualified mortgages;

(C) Cash flows from foreclosure property and proceeds from the disposition of such property;

(D) A payment by a sponsor or prior owner in lieu of the sponsor's or prior owner's repurchase of a defective obligation, as defined in paragraph (f) of this section, that was transferred to the REMIC in breach of a customary warranty; and

(E) Prepayment penalties required to be paid under the terms of a qualified mortgage when the mortgagor prepays the obligation.

(iii) *Temporary period.* For purposes of section 860G(a)(6) and this paragraph (g)(1), a temporary period generally is that period from the time a REMIC receives payments on qualified mortgages and permitted investments to the time the REMIC distributes the payments to interest holders. A temporary period may not exceed 13 months. Thus, an investment held by a REMIC for more than 13 months is not a cash flow investment. In determining the length of time that a REMIC has held an investment that is part of a commingled fund or account, the REMIC may employ any reasonable method of accounting. For example, if a REMIC holds mortgage cash flows in a commingled account pending distribution, the first-in, first-out method of accounting is a reasonable method for determining whether all or part of the account satisfies the 13 month limitation.

(2) *Qualified reserve funds.* The term qualified reserve fund means any reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular or residual interests in the event of defaults on qualified mortgages, prepayment interest shortfalls (as defined in paragraph (e) of this section), lower than expected returns on cash flow investments, or any other contingency that could be provided for

under a credit enhancement contract (as defined in paragraph (c) (2) and (3) of this section).

(3) *Qualified reserve asset*—(i) *In general.* The term "qualified reserve asset" means any intangible property (other than a REMIC residual interest) that is held both for investment and as part of a qualified reserve fund. An asset need not generate any income to be a qualified reserve asset.

(ii) *Reasonably required reserve*—(A) *In general.* In determining whether the amount of a reserve is reasonable, it is appropriate to consider the credit quality of the qualified mortgages, the extent and nature of any guarantees relating to either the qualified mortgages or the regular and residual interests, the expected amount of expenses of the REMIC, and the expected availability of proceeds from qualified mortgages to pay the expenses. To the extent that a reserve exceeds a reasonably required amount, the amount of the reserve must be promptly and appropriately reduced. If at any time, however, the amount of the reserve fund is less than is reasonably required, the amount of the reserve fund may be increased by the addition of payments received on qualified mortgages or by contributions from holders of residual interests.

(B) *Presumption that a reserve is reasonably required.* The amount of a reserve fund is presumed to be reasonable (and an excessive reserve is presumed to have been promptly and appropriately reduced) if it does not exceed—

(*1*) The amount required by a nationally recognized independent rating agency as a condition of providing the rating for REMIC interests desired by the sponsor; or

(*2*) The amount required by a third party insurer or guarantor, who does not own directly or indirectly (within the meaning of section 267(c)) an interest in the REMIC (as defined in § 1.860D-1(b)(1)), as a condition of providing credit enhancement.

(C) *Presumption may be rebutted.* The presumption in paragraph (g)(3)(ii)(B) of this section may be rebutted if the amounts required by the rating agency or by the third party insurer are not commercially reasonable considering the factors described in paragraph (g)(3)(ii)(A) of this section.

(h) *Outside reserve funds.* A reserve fund that is maintained to pay expenses of the REMIC, or to make payments to REMIC interest holders is an outside reserve fund and not an asset of the REMIC only if the REMIC's organizational documents clearly and expressly—

(1) Provide that the reserve fund is an outside reserve fund and not an asset of the REMIC;

(2) Identify the owner(s) of the reserve fund, either by name, or by description of the class (*e.g.*, subordinated regular interest holders) whose membership comprises the owners of the fund; and

(3) Provide that, for all Federal tax purposes, amounts transferred by the REMIC to the fund are treated as amounts distributed by the REMIC to the designated owner(s) or transferees of the designated owner(s).

(i) *Contractual rights coupled with regular interests in tiered arrangements*—(1) *In general.* If a REMIC issues a regular interest to a trustee of an investment trust for the benefit of the trust certificate holders and the trustee also holds for the benefit of those certificate holders certain other contractual rights, those other rights are not treated as assets of the REMIC even if the investment trust and the REMIC were created contemporaneously pursuant to a single set of organizational documents. The organizational documents must, however, require that the trustee account for the contractual rights as property that the trustee holds separate and apart from the regular interest.

(2) *Example.* The following example, which describes a tiered arrangement involving a pass-thru trust that is intended to qualify as a REMIC and a pass-thru trust that is intended to be classified as a trust under § 301.7701-4(c) of this chapter, illustrates the provisions of paragraph (i)(1) of this section.

Example. (i) A sponsor transferred a pool of mortgages to a trustee in exchange for two classes of certificates. The pool of mortgages has an aggregate principal balance of $100*x*. Each mortgage in the pool provides for interest payments based on the eleventh district cost of funds index (hereinafter COFI) plus a margin. The trust (hereinafter REMIC trust) issued a Class N bond, which the sponsor designates as a regular interest, that has a principal amount of $100*x* and that provides for interest payments at a rate equal to One-Year LIBOR plus 100 basis points, subject to a cap equal to the weighted average pool rate. The Class R interest, which the sponsor designated as the residual interest, entitles its holder to all funds left in the trust after the Class N bond has been retired. The Class R interest holder is not entitled to current distributions.

(ii) On the same day, and under the same set of documents, the sponsor also created an investment trust. The sponsor contributed to the investment trust the Class N bond together with an interest rate cap contract. Under the interest rate cap contract, the issuer of the cap contract agrees to pay to the trustee for the benefit of the investment trust certificate holders the excess of One-Year LIBOR plus 100 basis points over the weighted average pool rate (COFI plus a margin) times the outstanding principal balance of the Class N bond in the event One-Year LIBOR plus 100 basis points ever exceeds the weighted average pool rate. The trustee (the same institution that serves as REMIC trust trustee), in exchange for the contributed assets, gave the sponsor certificates representing undivided beneficial ownership interests in the Class N bond and the interest rate cap contract. The organizational documents require the trustee to account for the regular interest and the cap contract as discrete property rights.

(iii) The separate existence of the REMIC trust and the investment trust are respected for all Federal income tax purposes. Thus, the interest rate cap contract is an asset beneficially owned by the several certificate holders and is not an asset of the REMIC trust. Consequently, each certificate holder must allocate its purchase price for the certificate between its undivided interest in the Class N bond and its undivided interest in the interest rate cap contract in accordance with the relative fair market values of those two property rights.

(j) *Clean-up call*—(1) *In general.* For purposes of section 860F(a)(5)(B), a clean-up call is the redemption of a class of regular interests when, by reason of prior payments with respect to those interests, the administrative costs associated with servicing that class outweigh the benefits of maintaining the class. Factors to consider in making this determination include—

(i) The number of holders of that class of regular interests;

(ii) The frequency of payments to holders of that class;

(iii) The effect the redemption will have on the yield of that class of regular interests;

(iv) The outstanding principal balance of that class; and

(v) The percentage of the original principal balance of that class still outstanding.

(2) *Interest rate changes.* The redemption of a class of regular interests undertaken to profit from a change in interest rates is not a clean-up call.

(3) *Safe harbor.* Although the outstanding principal balance is only one factor to consider, the redemption of a class of regular interests with an outstanding principal balance of no more than 10 percent of its original principal balance is always a clean-up call.

(k) *Startup day.* The term "startup day" means the day on which the REMIC issues all of its regular and residual interests. A sponsor may, however, contribute property to a REMIC in exchange for regular and residual interests over any period of 10 consecutive days and the REMIC may designate any one of those 10 days as its

startup day. The day so designated is then the startup day, and all interests are treated as issued on that day.

§ 1.860G–3 Treatment of foreign persons.

(a) *Transfer of a residual interest with tax avoidance potential*—(1) *In general.* A transfer of a residual interest that has tax avoidance potential is disregarded for all Federal tax purposes if the transferee is a foreign person. Thus, if a residual interest with tax avoidance potential is transferred to a foreign holder at formation of the REMIC, the sponsor is liable for the tax on any excess inclusion that accrues with respect to that residual interest.

(2) *Tax avoidance potential*—(i) *Defined.* A residual interest has tax avoidance potential for purposes of this section unless, at the time of the transfer, the transferor reasonably expects that, for each excess inclusion, the REMIC will distribute to the transferee residual interest holder an amount that will equal at least 30 percent of the excess inclusion, and that each such amount will be distributed at or after the time at which the excess inclusion accrues and not later than the close of the calendar year following the calendar year of accrual.

(ii) *Safe harbor.* For purposes of paragraph (a)(2)(i) of this section, a transferor has a reasonable expectation if the 30-percent test would be satisfied were the REMIC's qualified mortgages to prepay at each rate within a range of rates from 50 percent to 200 percent of the rate assumed under section 1272(a)(6) with respect to the qualified mortgages (or the rate that would have been assumed had the mortgages been issued with original issue discount).

(3) *Effectively connected income.* Paragraph (a)(1) of this section will not apply if the transferee's income from the residual interest is subject to tax under section 871(b) or section 882.

(4) *Transfer by a foreign holder.* If a foreign person transfers a residual interest to a United States person or a foreign holder in whose hands the income from a residual interest would be effectively connected income, and if the transfer has the effect of allowing the transferor to avoid tax on accrued excess inclusions, then the transfer is disregarded and the transferor continues to be treated as the owner of the residual interest for purposes of section 871(a), 881, 1441, or 1442.

(b) [Reserved]

Par. 8. Section 1.6041–1 is amended by redesignating the text of paragraph (b) as paragraph (b)(1) and adding a heading for new paragraph (b)(1), and adding a new paragraph (b)(2) to read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more.

* * * * *

(b) *Persons engaged in trade or business*—(1) *In general.* * * *

(2) *Special rule for REMICs.* For purposes of chapter 1 subtitle F, chapter 61A, part IIIB, the terms "all persons engaged in a trade or business" and "any service-recipient engaged in a trade or business" includes a real estate mortgage investment conduit or REMIC (as defined in section 860D).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 10. Section 301.7701–13A is amended by adding a new paragraph (e)(12) to read as follows:

§ 301.7701–13A Post–1969 domestic building and loan association.

* * * * *

(e) * * *

(12) *Regular or residual interest in a REMIC*—(i) *In general.* If for any calendar quarter at least 95 percent of a REMIC's assets (as determined in accordance with § 1.860F–4(e)(1)(ii) or § 1.6049–7(f)(3) of this chapter) are assets defined in paragraph (e)(1) through (e)(11) of this section, then for that calendar quarter all the regular and residual interests in that REMIC are treated as assets defined in this paragraph (e). If less than 95 percent of a REMIC's assets are assets defined in paragraph (e)(1) through (e)(11) of this section, the percentage of each REMIC regular or residual interest treated as an asset defined in this paragraph (e) is equal to the percentage of the REMIC's assets that are assets defined in paragraph (e)(1) through (e)(11) of this section. See §§ 1.860F–4(e)(1)(ii)(B) and 1.6049–7(f)(3) of this chapter for information required to be provided to regular and residual interest holders if the 95 percent test is not met.

(ii) *Loans secured by manufactured housing.* For purposes of paragraph (e)(12)(i) of this section, a loan secured by manufactured housing treated as a single family residence under section 25(e)(10) is an asset defined in paragraph (e)(1) through (e)(11) of this section.

* * * * *

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 12. Section 602.101(c) is amended by adding the following entries to the table:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
1.860E–2 (a) (5)	1545–1276
1.860E–2 (a) (7)	1545–1276
1.860E–2 (b) (2)	1545–1276
* * * *	*

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: November 23, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–30944 Filed 12–23–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[T.D. 8455]

RIN 1545–AL74

Election to Expense Certain Depreciable Business Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to final regulations on the election to expense certain depreciable business assets. The final regulations in this document reflect changes to the applicable tax law that were made by the Revenue Reconciliation Act of 1990, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Reform Act of 1986. The regulations provide the public with the guidance needed when making an election to expense certain depreciable business assets.

EFFECTIVE DATE: The provisions of these regulations are effective January 25, 1993. See "**SUPPLEMENTARY INFORMATION**" for further details.

FOR FURTHER INFORMATION CONTACT: Winston H. Douglas, 202–622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1201. The estimated annual burden per respondent/recordkeeper varies from .50 hour to 1 hour, depending on individual circumstances, with an estimated average of .75 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 179 of the Internal Revenue Code (Code). These amendments reflect the amendments made by section 11813 of the Revenue Reconciliation Act of 1990, section 1002(b) of the Technical and Miscellaneous Revenue Act of 1988, and section 202 of the Tax Reform Act of 1986. On March 28, 1991, the Internal Revenue Service published in the **Federal Register** (56 FR 12868) a Notice of Proposed Rulemaking proposing amendments to the Income Tax Regulations under section 179. The preamble to that notice contains an explanation of the proposed amendments. A public hearing was held on August 8, 1991. After considering all comments regarding the proposed amendments, the amendments as proposed are adopted as revised by this Treasury decision.

Explanation of Provisions

In General

Section 179, as amended by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1990, retains the election, as enacted by the Economic Recovery Tax Act of 1981, for taxpayers (other than trusts, estates, and certain noncorporate lessors) to treat the cost or a portion of the cost of certain depreciable business assets (section 179 property) as a currently deductible expense. Taxpayers who do not elect under section 179 to expense the cost of section 179 property must capitalize this cost. A section 179 expense election is made for the taxable year in which the section 179 property is placed in service. See § 1.179–4 (a) and (e) of the regulations, respectively, for definitions of the terms "section 179 property" and "placed in service." Final regulations under section 179, as amended by the Economic Recovery Tax Act of 1981, were published in the **Federal Register** on January 6, 1987.

General Description of Changes Made to Section 179 by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1990

The Tax Reform Act of 1986, as amended by the Technical and Miscellaneous Revenue Act of 1988 and the Revenue Reconciliation Act of 1990, made certain changes to section 179, as amended by the Economic Recovery Tax Act of 1981. Under these changes, the $10,000 limit on the amount that a taxpayer may elect to expense for a taxable year is reduced (but not to less than zero) by one dollar for every dollar of investment in excess of $200,000 in section 179 property placed in service during the taxable year ("amended dollar limitation"). See sections 179(b)(1) and (2) of the Code. In addition, the amount that may be deducted for any taxable year is limited to the taxable income derived from the active conduct of any trade or business during the taxable year ("taxable income limitation"). See section 179(b)(3)(A). Section 179 expense deductions disallowed solely as a result of the taxable income limitation are carried forward to the succeeding taxable year ("carryover of disallowed deduction"). See section 179(b)(3)(B). Further, the definition of section 179 property was amended to require that the property be purchased for use in "the active conduct of" a trade or business. Finally, recapture of the section 179 deductions is required if the section 179 property is converted to a nonbusiness use at any time before the end of its recovery period (instead of during a limited recapture period). See section 179(d)(10). Section 179, as so amended, generally applies to property placed in service after December 31, 1986.

Changes to the Proposed Regulations

This document adopts the rules in the proposed regulations, with certain amendments. The amendments are discussed below.

Taxable Income of Partnerships and S Corporations.

For purposes of the taxable income limitation of section 179(b)(3) of the Code, proposed § 1.179–2(c)(4) provides that the aggregate amount of taxable income derived from the active conduct by a partnership or an S corporation of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the partnership or S corporation during the taxable year. Commentators noted that proposed § 1.179–2(c)(4) does not specifically address how to compute the net income (or loss) of partnerships and S corporations for purposes of the taxable income limitations and suggested how the Service could amend the proposed regulations to specifically address the computation of the taxable income of partnerships and S corporations. One commentator suggested using the definition of "partnership net income" and "S corporation net income" provided in section 7519(d) of the Code and § 1.7519–1T(b)(5) of the temporary Income Tax Regulations.

The final regulations adopt the commentator's suggestion by incorporating a modified version of the section 7519 definition of "partnership net income" and "S corporation net income" into the regulations under section 179. Under section 7519, the calculation of a required payment for a partnership or an S corporation electing to have a taxable year other than the required taxable year is based on the entity's net income. Partnership net income is generally defined for this purpose as the aggregate amount of the partnership's items described in section 702(a), other than credits, tax-exempt income, and guaranteed payments under section 707(c). The final section 179 regulations adopt this definition of "partnership net income."

The section 7519 definition of "S corporation net income" is the aggregate amount of the S corporation's items described in section 1366(a), other than credits and tax-exempt income. The final section 179 regulations adopt this definition with one modification. To avoid inconsistent results between the treatment of the S corporation compensation paid to S corporation shareholder-employees and the treatment of the partnership guaranteed payments to partners under section

707(c), the final regulations provide that the net income of an S corporation is determined without deducting compensation paid to an S corporation's shareholder-employees.

Taxable Income—Deductions and Losses

For purposes of the taxable income limitation of section 179(b)(3) of the Code, proposed § 1.179–2(c)(4) provides that the aggregate amount of taxable income derived from the active conduct by an individual of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the individual during the taxable year. For calculating taxable income under section 179, a commentator requested clarification on whether an individual taxpayer should include the amount of suspended deductions (e.g., a deduction suspended under section 704(d)). The final regulations clarify that, in computing taxable income for section 179 purposes, deductions suspended under any section of the Code are not taken into account until the year in which the deductions are allowed.

Active Conduct of a Trade or Business

Proposed § 1.179–2(c)(5) provides that the purpose of the active conduct requirement is to prevent a passive investor in a trade or business from deducting section 179 expenses against taxable income derived from that trade or business. Commentators stated that the section should state more specifically in the regulations that the terms "active" and "passive" do not have the same meaning as in section 469 of the Code and the regulations thereunder. The definition of the active conduct standard under section 179 is a different standard than the material participation standard under section 469; however, it was not deemed necessary to modify the regulations to so state specifically.

Unreimbursed Employee Business Expenses

A commentator requested that the final regulations should state how unreimbursed employee business expenses are handled when computing the taxable income limitation. Proposed § 1.179–2(c)(5)(iv) provides that wages, salaries, tips, and other compensation derived by taxpayers in the active conduct of the trade or business of their employment are included in the aggregate amount of taxable income. The final regulations clarify that unreimbursed employee business expenses, incurred by the taxpayer as an employee, are not included in the calculation of taxable income.

Carryover of Disallowed Deduction—Transfer at Death

A commentator requested that the final regulations specifically address the question of whether the death of a partner or an S corporation shareholder is considered a disposition that would allow the use of a partner's or an S corporation shareholder's outstanding carryover of disallowed deduction by a transferee (e.g., the estate of the taxpayer).

Under proposed § 1.179–3(f)(1), a taxpayer who transfers section 179 property for which a carryover of disallowed deduction is outstanding must increase the basis of the property by the amount of any carryover for that property immediately before the transfer. A similar rule under proposed § 1.179–3(h)(2) applies to transfers of a partner's interest in a partnership, if a carryover of disallowed deduction of section 179 expenses allocated from the partnership is outstanding. The rules with respect to S corporation shareholders are similar to those applicable to partners. Under the proposed regulations, the carryover of disallowed deduction is not available as a deduction to the transferee of section 179 property.

In response to this comment, the final regulations clarify that the principles, set forth in proposed § 1.179–3(f)(1) and § 1.179–3(h)(2), apply to transfers at death.

Thus, upon the death of a taxpayer, the transferee (e.g., the estate of the taxpayer) is not permitted to succeed to the taxpayer's carryover of disallowed deduction.

Carryover of Disallowed Deduction—Section 381 Transaction

Proposed § 1.179–3(f)(1) provides that, if property is transferred in a nonrecognition transaction, the transferee of section 179 property is not permitted to succeed to the transferor's carryover of disallowed deduction with respect to the property. A commentator asked how this rule relates to transactions described in section 381 of the Code. Section 381 provides rules allowing for the preservation of certain tax attributes by the acquiring corporation if the assets of the transferor or distributing corporation are acquired by the acquiring corporation in a nonrecognition transaction described in section 381(a). The final regulations retain the rule that, in a nonrecognition transaction, such as one described in section 381(a), the transferee (i.e., the acquiring corporation) is not permitted to succeed to the transferor's carryover of disallowed deduction with respect to the property.

Dates

Although these regulations are effective January 25, 1993, a taxpayer may apply the provisions of §§ 1.179–1 through 1.179–5 to property placed in service after December 31, 1986, in taxable years ending on or before January 25, 1993. Otherwise, for property placed in service after December 31, 1986, in taxable years ending on or before January 25, 1993, the final regulations under section 179 as in effect for the year the property was placed in service apply, except to the extent modified by the changes made to section 179 by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1990. For that property, a taxpayer may apply any reasonable method that clearly reflects income in applying the changes to section 179, provided the taxpayer consistently applies the method to the property.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Winston H. Douglas of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.161–1 Through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, title 26, chapter I, parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph. 1. The authority citation for part 1 is amended by revising the citation for § 1.179–1 and adding a citation for § 1.179–6 to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.179–1 also issued under 26 U.S.C. 179(d)(6) and (10). * * * Section 1.179–6 also issued under 26 U.S.C. 179(c). * * *

Par. 2. Section 1.179–0 is added to read as follows:

§ 1.179–0 Table of contents for section 179 expensing rules.

This section lists captioned paragraphs contained in §§ 1.179–1 through 1.179–6.

§ 1.179–1 Election to Expense Certain Depreciable Assets

(a) In general.
(b) Cost subject to expense.
(c) Proration not required.
  (1) In general.
  (2) Example.
(d) Partial business use.
  (1) In general.
  (2) Example.
  (3) Additional rules that may apply.
(e) Change in use; recapture.
  (1) In general.
  (2) Predominant use.
  (3) Basis; application with section 1245.
  (4) Carryover of disallowed deduction.
  (5) Example.
(f) Basis.
  (1) In general.
  (2) Special rules for partnerships and S corporations.
  (3) Special rules with respect to trusts and estates which are partners or S corporation shareholders.
(g) Disallowance of the section 38 credit.
(h) Partnerships and S corporations.
  (1) In general.
  (2) Example.
(i) Leasing of section 179 property.
  (1) In general.
  (2) Noncorporate lessor.
(j) Application of sections 263 and 263A.
(k) Cross references.

§ 1.179–2 Limitations on Amount Subject to Section 179 Election

(a) In general.
(b) Dollar limitation.
  (1) In general.
  (2) Excess section 179 property.
  (3) Application to partnerships.
  (i) In general.
  (ii) Example.
  (iii) Partner's share of section 179 expenses.
  (iv) Taxable year.
  (v) Example.
  (4) S corporations.
  (5) Joint returns.
  (i) In general.
  (ii) Joint returns filed after separate returns.
  (iii) Example.
  (6) Married individuals filing separately.
  (i) In general.
  (ii) Example.
  (7) Component members of a controlled group.
  (i) In general.
  (ii) Statement to be filed.
  (iii) Revocation.
(c) Taxable income limitation.
  (1) In general.
  (2) Application to partnerships and partners.
  (i) In general.
  (ii) Taxable year.
  (iii) Example.
  (iv) Taxable income of a partnership.
  (v) Partner's share of partnership taxable income.
  (3) S corporations and S corporation shareholders.
  (i) In general.
  (ii) Taxable income of an S corporation.
  (iii) Shareholder's share of S corporation taxable income.
  (4) Taxable income of a corporation other than an S corporation.
  (5) Ordering rule for certain circular problems.
  (i) In general.
  (ii) Example.
  (6) Active conduct by the taxpayer of a trade or business.
  (i) Trade or business.
  (ii) Active conduct.
  (iii) Example.
  (iv) Employees.
  (7) Joint returns.
  (i) In general.
  (ii) Joint returns filed after separate returns.
  (8) Married individuals filing separately.
(d) Examples.

§ 1.179–3 Carryover of Disallowed Deduction

(a) In general.
(b) Deduction of carryover of disallowed deduction.
  (1) In general.
  (2) Cross references.
(c) Unused section 179 expense allowance.
(d) Example.
(e) Recordkeeping requirement and ordering rule.
(f) Dispositions and other transfers of section 179 property.
  (1) In general.
  (2) Recapture under section 179(d)(10).
(g) Special rules for partnerships and S corporations.
  (1) In general.
  (2) Basis adjustment.
  (3) Dispositions and other transfers of section 179 property by a partnership or an S corporation.
  (4) Example.
(h) Special rules for partners and S corporation shareholders.
  (1) In general.
  (2) Dispositions and other transfers of a partner's interest in a partnership or a shareholder's interest in an S corporation.
  (3) Examples.

§ 1.179–4 Definitions

(a) Section 179 property.
(b) Section 38 property.
(c) Purchase.
(d) Cost.
(e) Placed in service.
(f) Controlled group of corporations and component member of controlled group.

§ 1.179–5 Time and Manner of Making Election

(a) Election.
(b) Revocation.

§ 1.179–6 Effective Date

Par. 3. Section 1.179–1 is amended as follows:

1. Paragraphs (a), (b), (c), and (d) are revised.
2. The first and the last two sentences of paragraph (e)(1) are revised.
3. Paragraph (e)(4) is revised.
4. Paragraph (e)(5) is added.
5. Paragraph (f)(1) is revised.
6. The second sentence of (f)(2) is revised and a third sentence is added.
7. The last sentence of (f)(3) is revised
8. Paragraph (h) is revised.
9. Paragraph (i)(2) is revised.
10. Paragraph (j) is redesignated as paragraph (k) and the second sentence is removed, and a new paragraph (j) is added.
11. The added and revised provisions read as follows:

§ 1.179–1 Election to expense certain depreciable assets.

(a) *In general.* Section 179(a) allows a taxpayer to elect to expense the cost (as defined in § 1.179–4(d)), or a portion of the cost, of section 179 property (as defined in § 1.179–4(a)) for the taxable year in which the property is placed in service (as defined in § 1.179–4(e)). The election is not available for trusts, estates, and certain noncorporate lessors. See paragraph (i)(2) of this section for rules concerning noncorporate lessors. However, section 179(b) provides certain limitations on the amount that a taxpayer may elect to expense in any one taxable year. See §§ 1.179–2 and 1.179–3 for rules relating to the dollar and taxable income limitations and the carryover of disallowed deduction rules. For rules describing the time and manner of making an election under section 179, see § 1.179–5. For the effective date, see § 1.179–6.

(b) *Cost subject to expense.* The expense deduction under section 179 is allowed for the entire cost or a portion of the cost of one or more items of section 179 property. This expense deduction is subject to the limitations of section 179(b) and § 1.179–2. The taxpayer may select the properties that are subject to the election as well as the portion of each property's cost to expense.

(c) *Proration not required*—(1) *In general.* The expense deduction under

section 179 is determined without any proration based on—

(i) The period of time the section 179 property has been in service during the taxable year; or

(ii) The length of the taxable year in which the property is placed in service.

(2) *Example.* The following example illustrates the provisions of paragraph (c)(1) of this section.

Example. On December 1, 1991, X, a calendar-year corporation, purchases and places in service section 179 property costing $20,000. For the taxable year ending December 31, 1991, X may elect to claim a section 179 expense deduction on the property (subject to the limitations imposed under section 179(b)) without proration of its cost for the number of days in 1991 during which the property was in service.

(d) *Partial business use*—(1) *In general.* If a taxpayer uses section 179 property for trade or business as well as other purposes, the portion of the cost of the property attributable to the trade or business use is eligible for expensing under section 179 provided that more than 50 percent of the property's use in the taxable year is for trade or business purposes. The limitations of section179(b) and § 1.179–2 are applied to the portion of the cost attributable to the trade or business use.

(2) *Example.* The following example illustrates the provisions of paragraph (d)(1) of this section.

Example. A purchases section 179 property costing $10,000 in 1991 for which 80 percent of its use will be in A's trade or business. The cost of the property adjusted to reflect the business use of the property is $8,000 (80 percent × $10,000). Thus, A may elect to expense up to $8,000 of the cost of the property (subject to the limitations imposed under section 179(b) and § 1.179–2).

(3) *Additional rules that may apply.* If a section 179 election is made for "listed property" within the meaning of section 280F(d)(4) and there is personal use of the property, section 280F(d)(1), which provides rules that coordinate section 179 with the section 280F limitation on the amount of depreciation, may apply. If section 179 property is no longer predominantly used in the taxpayer's trade or business, paragraphs (e) (1) through (4) of this section, relating to recapture of the section 179 deduction, may apply.

(e) * * * (1) *In general.* If a taxpayer's section 179 property is not used predominantly in a trade or business of the taxpayer at any time before the end of the property's recovery period, the taxpayer must recapture in the taxable year in which the section 179 property is not used predominantly in a trade or business any benefit derived from expensing such property * * * However, see section 280F(d)(1) relating to the coordination of section 179 with the limitation on the amount of depreciation for luxury automobiles and where certain property is used for personal purposes. If the recapture rules of both section 280F(b)(2) and this paragraph (e)(1) apply to an item of section 179 property, the amount of recapture for such property shall be determined only under the rules of section 280F(b)(2).

* * * * *

(4) *Carryover of disallowed deduction.* See § 1.179–3 for rules on applying the recapture provisions of this paragraph (e) when a taxpayer has a carryover of disallowed deduction.

(5) *Example.* The following example illustrates the provisions of paragraphs (e)(1) through (e)(4) of this section.

Example. A, a calendar-year taxpayer, purchases and places in service on January 1, 1991, section 179 property costing $15,000. The property is 5-year property for section 168 purposes and is the only item of depreciable property placed in service by A during 1991. A properly elects to expense $10,000 of the cost and elects under section 168(b)(5) to depreciate the remaining cost under the straight-line method. On January 1, 1992, A converts the property from use in A's business to use for the production of income, and A uses the property in the latter capacity for the entire year. A elects to itemize deductions for 1992. Because the property was not predominantly used in A's trade or business in 1992, A must recapture any benefit derived from expensing the property under section 179. Had A not elected to expense the $10,000 in 1991, A would have been entitled to deduct, under section 168, 10 percent of the $10,000 in 1991, and 20 percent of the $10,000 in 1992. Therefore, A must include $7,000 in ordinary income for the 1992 taxable year, the excess of $10,000 (the section 179 expense amount) over $3,000 (30 percent of $10,000).

(f) * * * (1) *In general.* A taxpayer who elects to expense under section 179 must reduce the depreciable basis of the section 179 property by the amount of the section 179 expense deduction.

(2) * * * This reduction must be made in the basis of partnership or S corporation property even if the limitations of section 179(b) and § 1.179–2 prevent a partner in a partnership or a shareholder in an S corporation from deducting all or a portion of the amount of the section 179 expense allocated by the partnership or S corporation. See § 1.179–3 for rules on applying the basis provisions of this paragraph (f) when a person has a carryover of disallowed deduction.

(3) * * * Accordingly, the partnership or S corporation may claim a depreciation deduction under section 168 or a section 38 credit (if available) with respect to any depreciable basis resulting from the trust or estate's inability to claim its allocable portion of the section 179 expense.

* * * * *

(h) *Partnerships and S corporations*—(1) *In general.* In the case of property purchased and placed in service by a partnership or an S corporation, the determination of whether the property is section 179 property is made at the partnership or S corporation level. The election to expense the cost of section 179 property is made by the partnership or the S corporation. See sections 703(b), 1363(c), 6221, 6231(a)(3), 6241, and 6245.

(2) *Example.* The following example illustrates the provisions of paragraph (h)(1) of this section.

Example. A owns certain residential rental property as an investment. A and others form ABC partnership whose function is to rent and manage such property. A and ABC partnership file their income tax returns on a calendar-year basis. In 1991, ABC partnership purchases and places in service office furniture costing $20,000 to be used in the active conduct of ABC's business. Although the office furniture is used with respect to an investment activity of A, the furniture is being used in the active conduct of ABC's trade or business. Therefore, because the determination of whether property is section 179 property is made at the partnership level, the office furniture is section 179 property and ABC may elect to expense a portion of its cost under section 179.

(i) * * *

(2) *Noncorporate lessor.* In determining the class of taxpayers (other than an estate or trust) for which section 179 is applicable, section 179(d)(5) provides that if a taxpayer is a noncorporate lessor (*i.e.*, a person who is not a corporation and is a lessor), the taxpayer shall not be entitled to claim a section 179 expense for section 179 property purchased and leased by the taxpayer unless the taxpayer has satisfied all of the requirements of section 179(d)(5) (A) or (B).

(j) *Application of sections 263 and 263A.* Under section 263(a)(1)(G), expenditures for which a deduction is allowed under section 179 and this section are excluded from capitalization under section 263(a). Under this paragraph (j), amounts allowed as a deduction under section 179 and this section are excluded from the application of the uniform capitalization rules of section 263A.

* * * * *

Par. 4. Section 1.179–2 is revised to read as follows:

§ 1.179–2 Limitations on amount subject to section 179 election.

(a) *In general.* Sections 179(b) (1) and (2) limit the aggregate cost of section 179 property that a taxpayer may elect to expense under section 179 for any one taxable year (dollar limitation). See paragraph (b) of this section. Section 179(b)(3)(A) limits the aggregate cost of section 179 property that a taxpayer may deduct in any taxable year (taxable income limitation). See paragraph (c) of this section. Any cost that is elected to be expensed but that is not currently deductible because of the taxable income limitation may be carried forward to the next taxable year (carryover of disallowed deduction). See § 1.179–3 for rules relating to carryovers of disallowed deductions. See also sections 280F(a), (b), and (d)(1) relating to the coordination of section 179 with the limitations on the amount of depreciation for luxury automobiles and other listed property. The dollar and taxable income limitations apply to each taxpayer and not to each trade or business in which the taxpayer has an interest.

(b) *Dollar limitation.*—(1) *In general.* The aggregate cost of section 179 property that a taxpayer may elect to expense under section 179 for any taxable year is $10,000 reduced (but not below zero) by the amount of any excess section 179 property (described in paragraph (b)(2) of this section) placed in service during the taxable year.

(2) *Excess section 179 property.* The amount of any excess section 179 property for a taxable year equals the excess (if any) of—

(i) The cost of section 179 property placed in service by the taxpayer in the taxable year; over

(ii) $200,000.

(3) *Application to partnerships*— (i) *In general.* The dollar limitation of this paragraph (b) applies to the partnership as well as to each partner. In applying the dollar limitation to a taxpayer that is a partner in one or more partnerships, the partner's share of section 179 expenses allocated to the partner from each partnership is aggregated with any nonpartnership section 179 expenses of the taxpayer for the taxable year. However, in determining the excess section 179 property placed in service by a partner in a taxable year, the cost of section 179 property placed in service by the partnership is not attributed to any partner.

(ii) *Example.* The following example illustrates the provisions of paragraph (b)(3)(i) of this section.

Example. During 1991, CD, a calendar-year partnership, purchases and places in service section 179 property costing $150,000 and elects under section 179(c) and § 1.179–5 to expense $10,000 of the cost of that property. CD properly allocates to C, a calendar-year taxpayer and a partner in CD, $5,000 of section 179 expenses (C's distributive share of CD's section 179 expenses for 1991). In applying the dollar limitation to C for 1991, C must include the $5,000 of section 179 expenses allocated from CD. However, in determining the amount of any excess section 179 property C placed in service during 1991, C does not include any of the cost of section 179 property placed in service by CD, including the $5,000 of cost represented by the $5,000 of section 179 expenses allocated to C by the partnership.

(iii) *Partner's share of section 179 expenses.* Section 704 and the regulations thereunder govern the determination of a partner's share of a partnership's section 179 expenses for any taxable year. However, no allocation among partners of the section 179 expenses may be modified after the due date of the partnership return (without regard to extensions of time) for the taxable year for which the election under section 179 is made.

(iv) *Taxable year.* If the taxable years of a partner and the partnership do not coincide, then for purposes of section 179, the amount of the partnership's section 179 expenses attributable to a partner for a taxable year is determined under section 706 and the regulations thereunder (generally the partner's distributive share of partnership section 179 expenses for the partnership year that ends with or within the partner's taxable year).

(v) *Example.* The following example illustrates the provisions of paragraph (b)(3)(iv) of this section.

Example. AB partnership has a taxable year ending January 31. A, a partner of AB, has a taxable year ending December 31. AB purchases and places in service section 179 property on March 10, 1991, and elects to expense a portion of the cost of that property under section 179. Under section 706 and § 1.706–1(a)(1), A will be unable to claim A's distributive share of any of AB's section 179 expenses attributable to the property placed in service on March 10, 1991, until A's taxable year ending December 31, 1992.

(4) *S Corporations.* Rules similar to those contained in paragraph (b)(3) of this section apply in the case of S corporations (as defined in section 1361(a)) and their shareholders. Each shareholder's share of the section 179 expenses of an S corporation is determined under section 1366.

(5) *Joint returns*— (i) *In General.* A husband and wife who file a joint income tax return under section 6013(a) are treated as one taxpayer in determining the amount of the dollar limitation under paragraph (b)(1) of this section, regardless of which spouse purchased the property or placed it in service.

(ii) *Joint returns filed after separate returns.* In the case of a husband and wife who elect under section 6013(b) to file a joint income tax return for a taxable year after the time prescribed by law for filing the return for such taxable year has expired, the dollar limitation under paragraph (b)(1) of this section is the lesser of—

(A) The dollar limitation (as determined under paragraph (b)(5)(i) of this section); or

(B) The aggregate cost of section 179 property elected to be expensed by the husband and wife on their separate returns.

(iii) *Example.* The following example illustrates the provisions of paragraph (b)(5)(ii) of this section.

Example. During 1991, Mr. and Mrs. B, both calendar-year taxpayers, purchase and place in service section 179 property costing $100,000. On their separate returns for 1991, Mr. B elects to expense $3,000 of section 179 property as an expense and Mrs. B elects to expense $4,000. After the due date of the return they elect under section 6013(b) to file a joint income tax return for 1991. The dollar limitation for their joint income tax return is $7,000, the lesser of the dollar limitation ($10,000) or the aggregate cost elected to be expensed under section 179 on their separate returns ($3,000 elected by Mr. B plus $4,000 elected by Mrs. B, or $7,000).

(6) *Married individuals filing separately*—(i) *In general.* In the case of an individual who is married but files a separate income tax return for a taxable year, the dollar limitation of this paragraph (b) for such taxable year is the amount that would be determined under paragraph (b)(5)(i) of this section if the individual filed a joint income tax return under section 6013(a) multiplied by either the percentage elected by the individual under this paragraph (b)(6) or 50 percent. The election in the preceding sentence is made in accordance with the requirements of section 179(c) and § 1.179–5. However, the amount determined under paragraph (b)(5)(i) of this section must be multiplied by 50 percent if either the individual or the individual's spouse does not elect a percentage under this paragraph (b)(6) or the sum of the percentages elected by the individual and the individual's spouse does not equal 100 percent. For purposes of this paragraph (b)(6), marital status is determined under section 7703 and the regulations thereunder.

(ii) *Example.* The following example illustrates the provisions of paragraph (b)(6)(i) of this section.

Example. Mr. and Mrs. D, both calendar-year taxpayers, file separate income tax returns for 1991. During 1991, Mr. D places $195,000 of section 179 property in service and Mrs. D places $9,000 of section 179 property in service. Neither of them elects a percentage under paragraph (b)(6)(i) of this section. The 1991 dollar limitation for both Mr. D and Mrs. D is determined by multiplying by 50 percent the dollar limitation that would apply had they filed a joint income tax return. Had Mr. and Mrs. D filed a joint return for 1991, the dollar limitation would have been $6,000, $10,000 reduced by the excess section 179 property they placed in service during 1991 ($195,000 placed in service by Mr. D plus $9,000 placed in service by Mrs. D less $200,000, or $4,000). Thus, the 1991 dollar limitation for Mr. and Mrs. D is $3,000 each ($6,000 multiplied by 50 percent).

(7) *Component members of a controlled group*—(i) *In general.* Component members of a controlled group (as defined in § 1.179–4(f)) on December 31 are treated as one taxpayer in applying the dollar limitation of sections 179(b) (1) and (2) and this paragraph (b). The expense deduction may be taken by any one component member or allocated (for the taxable year of each member that includes that December 31) among the several members in any manner. Any allocation of the expense deduction must be pursuant to an allocation by the common parent corporation if a consolidated return is filed for all component members of the group, or in accordance with an agreement entered into by the members of the group if separate returns are filed. If a consolidated return is filed by some component members of the group and separate returns are filed by other component members, the common parent of the group filing the consolidated return must enter into an agreement with those members that do not join in filing the consolidated return allocating the amount between the group filing the consolidated return and the other component members of the controlled group that do not join in filing the consolidated return. The amount of the expense allocated to any component member, however, may not exceed the cost of section 179 property actually purchased and placed in service by the member in the taxable year. If the component members have different taxable years, the term "taxable year" in sections 179(b) (1) and (2) means the taxable year of the member whose taxable year begins on the earliest date.

(ii) *Statement to be filed.* If a consolidated return is filed, the common parent corporation must file a separate statement attached to the income tax return on which the election is made to claim an expense deduction under section 179. See § 1.179–5. If separate returns are filed by some or all component members of the group, each component member not included in a consolidated return must file a separate statement attached to the income tax return on which an election is made to claim a deduction under section 179. The statement must include the name, address, employer identification number, and the taxable year of each component member of the controlled group, a copy of the allocation agreement signed by persons duly authorized to act on behalf of the component members, and a description of the manner in which the deduction under section 179 has been divided among the component members.

(iii) *Revocation.* If a consolidated return is filed for all component members of the group, an allocation among such members of the expense deduction under section 179 may not be revoked after the due date of the return (including extensions of time) of the common parent corporation for the taxable year for which an election to take an expense deduction is made. If some or all of the component members of the controlled group file separate returns for taxable years including a particular December 31 for which an election to take the expense deduction is made, the allocation as to all members of the group may not be revoked after the due date of the return (including extensions of time) of the component member of the controlled group whose taxable year that includes such December 31 ends on the latest date.

(c) *Taxable income limitation*—(1) *In general.* The aggregate cost of section 179 property elected to be expensed under section 179 that may be deducted for any taxable year may not exceed the aggregate amount of taxable income of the taxpayer for such taxable year that is derived from the active conduct by the taxpayer of any trade or business during the taxable year. For purposes of section 179(b)(3) and this paragraph (c), the aggregate amount of taxable income derived from the active conduct by an individual, a partnership, or an S corporation of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the individual, partnership, or S corporation during the taxable year. Items of income that are derived from the active conduct of a trade or business include section 1231 gains (or losses) from the trade or business and interest from working capital of the trade or business. Taxable income derived from the active conduct of a trade or business is computed without regard to the deduction allowable under section 179, any section 164(f) deduction, any net operating loss carryback or carryforward, and deductions suspended under any section of the Code. See paragraph (c)(6) of this section for rules on determining whether a taxpayer is engaged in the active conduct of a trade or business for this purpose.

(2) *Application to partnerships and partners*—(i) *In general.* The taxable income limitation of this paragraph (c) applies to the partnership as well as to each partner. Thus, the partnership may not allocate to its partners as a section 179 expense deduction for any taxable year more than the partnership's taxable income limitation for that taxable year, and a partner may not deduct as a section 179 expense deduction for any taxable year more than the partner's taxable income limitation for that taxable year.

(ii) *Taxable year.* If the taxable year of a partner and the partnership do not coincide, then for purposes of section 179, the amount of the partnership's taxable income attributable to a partner for a taxable year is determined under section 706 and the regulations thereunder (generally the partner's distributive share of partnership taxable income for the partnership year that ends with or within the partner's taxable year).

(iii) *Example.* The following example illustrates the provisions of paragraph (c)(2)(ii) of this section.

Example. AB partnership has a taxable year ending January 31. A, a partner of AB, has a taxable year ending December 31. For AB's taxable year ending January 31, 1992, AB has taxable income from the active conduct of its trade or business of $100,000, $90,000 of which was earned during 1991. Under section 706 and § 1.706–1(a)(1), A includes A's entire share of partnership taxable income in computing A's taxable income limitation for A's taxable year ending December 31, 1992.

(iv) *Taxable income of a partnership.* The taxable income (or loss) derived from the active conduct by a partnership of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the partnership during the taxable year. The net income (or loss) from a trade or business actively conducted by the partnership is determined by taking into account the aggregate amount of the partnership's items described in section 702(a) (other than credits, tax-exempt income, and guaranteed payments under section 707(c)) derived from that trade or

business. For purposes of determining the aggregate amount of partnership items, deductions and losses are treated as negative income. Any limitation on the amount of a partnership item described in section 702(a) which may be taken into account for purposes of computing the taxable income of a partner shall be disregarded in computing the taxable income of the partnership.

(v) *Partner's share of partnership taxable income.* A taxpayer who is a partner in a partnership and is engaged in the active conduct of at least one of the partnership's trades or businesses includes as taxable income derived from the active conduct of a trade or business the amount of the taxpayer's allocable share of taxable income derived from the active conduct by the partnership of any trade or business (as determined under paragraph (c)(2)(iv) of this section).

(3) *S corporations and S corporation shareholders*—(i) *In general.* Rules similar to those contained in paragraphs (c)(2) (i) and (ii) of this section apply in the case of S corporations (as defined in section 1361(a)) and their shareholders. Each shareholder's share of the taxable income of an S corporation is determined under section 1366.

(ii) *Taxable income of an S corporation.* The taxable income (or loss) derived from the active conduct by an S corporation of any trade or business is computed by aggregating the net income (or loss) from all of the trades or businesses actively conducted by the S corporation during the taxable year. The net income (or loss) from a trade or business actively conducted by an S corporation is determined by taking into account the aggregate amount of the S corporation's items described in section 1366(a) (other than credits, tax-exempt income, and deductions for compensation paid to an S corporation's shareholder-employees) derived from that trade or business. For purposes of determining the aggregate amount of S corporation items, deductions and losses are treated as negative income. Any limitation on the amount of an S corporation item described in section 1366(a) which may be taken into account for purposes of computing the taxable income of a shareholder shall be disregarded in computing the taxable income of the S corporation.

(iii) *Shareholder's share of S corporation taxable income.* Rules similar to those contained in paragraph (c)(2)(v) and (c)(6)(ii) of this section apply to a taxpayer who is a shareholder in an S corporation and is engaged in the active conduct of the S corporation's trades or businesses.

(4) *Taxable income of a corporation other than an S corporation.* The aggregate amount of taxable income derived from the active conduct by a corporation other than an S corporation of any trade or business is the amount of the corporation's taxable income before deducting its net operating loss deduction and special deductions (as reported on the corporation's income tax return), adjusted to reflect those items of income or deduction included in that amount that were not derived by the corporation from a trade or business actively conducted by the corporation during the taxable year.

(5) *Ordering rule for certain circular problems*—(i) *In general.* A taxpayer who elects to expense the cost of section 179 property (the deduction of which is subject to the taxable income limitation) also may have to apply another Internal Revenue Code section that has a limitation based on the taxpayer's taxable income. Except as provided in paragraph (c)(1) of this section, this section provides rules for applying the taxable income limitation under section 179 in such a case. First, taxable income is computed for the other section of the Internal Revenue Code. In computing the taxable income of the taxpayer for the other section of the Internal Revenue Code, the taxpayer's section 179 deduction is computed by assuming that the taxpayer's taxable income is determined without regard to the deduction under the other Internal Revenue Code section. Next, after reducing taxable income by the amount of the section 179 deduction so computed, a hypothetical amount of deduction is determined for the other section of the Internal Revenue Code. The taxable income limitation of the taxpayer under section 179(b)(3) and this paragraph (c) then is computed by including that hypothetical amount in determining taxable income.

(ii) *Example.* The following example illustrates the ordering rule described in paragraph (c)(5)(i) of this section.

Example. X, a calendar-year corporation, elects to expense $10,000 of the cost of section 179 property purchased and placed in service during 1991. Assume X's dollar limitation is $10,000. X also gives a charitable contribution of $5,000 during the taxable year. X's taxable income for purposes of both sections 179 and 170(b)(2), but without regard to any deduction allowable under either section 179 or section 170, is $11,000. In determining X's taxable income limitation under section 179(b)(3) and this paragraph (c), X must first compute its section 170 deduction. However, section 170(b)(2) limits X's charitable contribution to 10 percent of its taxable income determined by taking into account its section 179 deduction. Paragraph (c)(5)(i) of this section provides that in determining X's section 179 deduction for 1991, X first computes a hypothetical section 170 deduction by assuming that its section 179 deduction is not affected by the section 170 deduction. Thus, in computing X's hypothetical section 170 deduction, X's taxable income limitation under section 179 is $11,000 and its section 179 deduction is $10,000. X's hypothetical section 170 deduction is $100 (10 percent of $1,000 ($11,000 less $10,000 section 179 deduction)). X's taxable income limitation for section 179 purposes is then computed by deducting the hypothetical charitable contribution of $100 for 1991. Thus, X's section 179 taxable income limitation is $10,900 ($11,000 less hypothetical $100 section 170 deduction), and its section 179 deduction for 1991 is $10,000. X's section 179 deduction so calculated applies for all purposes of the Code, including the computation of its actual section 170 deduction.

(6) *Active conduct by the taxpayer of a trade or business*—(i) *Trade or business.* For purposes of this section and § 1.179–4(a), the term "trade or business" has the same meaning as in section 162 and the regulations thereunder. Thus, property held merely for the production of income or used in an activity not engaged in for profit (as described in section 183) does not qualify as section 179 property and taxable income derived from property held for the production of income or from an activity not engaged in for profit is not taken into account in determining the taxable income limitation.

(ii) *Active conduct.* For purposes of this section, the determination of whether a trade or business is actively conducted by the taxpayer is to be made from all the facts and circumstances and is to be applied in light of the purpose of the active conduct requirement of section 179(b)(3)(A). In the context of section 179, the purpose of the active conduct requirement is to prevent a passive investor in a trade or business from deducting section 179 expenses against taxable income derived from that trade or business. Consistent with this purpose, a taxpayer generally is considered to actively conduct a trade or business if the taxpayer meaningfully participates in the management or operations of the trade or business. Generally, a partner is considered to actively conduct a trade or business of the partnership if the partner meaningfully participates in the management or operations of the trade or business. A mere passive investor in a trade or business does not actively conduct the trade or business.

(iii) *Example.* The following example illustrates the provisions of paragraph (c)(6)(ii) of this section.

Example. A owns a salon as a sole proprietorship and employs B to operate it. A periodically meets with B to review developments relating to the business. A also approves the salon's annual budget that is prepared by B. B performs all the necessary operating functions, including hiring beauticians, acquiring the necessary beauty supplies, and writing the checks to pay all bills and the beauticians' salaries. In 1991, B purchased, as provided for in the salon's annual budget, equipment costing $9,500 for use in the active conduct of the salon. There were no other purchases of section 179 property during 1991. A's net income from the salon, before any section 179 deduction, totaled $8,000. A also is a partner in PRS, a calendar-year partnership, which owns a grocery store. C, a partner in PRS, runs the grocery store for the partnership, making all the management and operating decisions. PRS did not purchase any section 179 property during 1991. A's allocable share of partnership net income was $6,000. Based on the facts and circumstances, A meaningfully participates in the management of the salon. However, A does not meaningfully participate in the management or operations of the trade or business of PRS. Under section 179(b)(3)(A) and this paragraph (c), A's aggregate taxable income derived from the active conduct by A of any trade or business is $8,000, the net income from the salon.

(iv) *Employees.* For purposes of this section, employees are considered to be engaged in the active conduct of the trade or business of their employment. Thus, wages, salaries, tips, and other compensation (not reduced by unreimbursed employee business expenses) derived by a taxpayer as an employee are included in the aggregate amount of taxable income of the taxpayer under paragraph (c)(1) of this section.

(7) *Joint returns*—(i) *In general.* The taxable income limitation of this paragraph (c) is applied to a husband and wife who file a joint income tax return under section 6013(a) by aggregating the taxable income of each spouse (as determined under paragraph (c)(1) of this section).

(ii) *Joint returns filed after separate returns.* In the case of a husband and wife who elect under section 6013(b) to file a joint income tax return for a taxable year after the time prescribed by law for filing the return for such taxable year, the taxable income limitation of this paragraph (c) for the taxable year for which the joint return is filed is determined under paragraph (c)(7)(i) of this section.

(8) *Married individuals filing separately.* In the case of an individual who is married but files a separate tax return for a taxable year, the taxable income limitation for that individual is determined under paragraph (c)(1) of this section by treating the husband and wife as separate taxpayers.

(d) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section.

Example 1. (i) During 1991, PRS, a calendar-year partnership, purchases and places in service $50,000 of section 179 property. The taxable income of PRS derived from the active conduct of all its trades or businesses (as determined under paragraph (c)(1) of this section) is $8,000.

(ii) Under the dollar limitation of paragraph (b) of this section, PRS may elect to expense $10,000 of the cost of section 179 property purchased in 1991. Assume PRS elects under section 179(c) and § 1.179–5 to expense $10,000 of the cost of section 179 property purchased in 1991.

(iii) Under the taxable income limitation of paragraph (c) of this section, PRS may allocate to its partners as a deduction only $8,000 of the cost of section 179 property in 1991. Under section 179(b)(3)(B) and § 1.179–3(a), PRS may carry forward the remaining $2,000 it elected to expense, which would have been deductible under section 179(a) for 1991 absent the taxable income limitation.

Example 2. (i) The facts are the same as in *Example 1*, except that on December 31, 1991, PRS allocates to A, a calendar-year taxpayer and a partner in PRS, $7,000 of section 179 expenses and $2,000 of taxable income. A was engaged in the active conduct of a trade or business of PRS during 1991.

(ii) In addition to being a partner in PRS, A conducts a business as a sole proprietor. During 1991, A purchases and places in service $201,000 of section 179 property in connection with the sole proprietorship. A's 1991 taxable income derived from the active conduct of this business is $6,000.

(iii) Under the dollar limitation, A may elect to expense only $9,000 of the cost of section 179 property purchased in 1991, the $10,000 limit reduced by $1,000 (the amount by which the cost of section 179 property placed in service during 1991 ($201,000) exceeds $200,000). Under paragraph (b)(3)(i) of this section, the $7,000 of section 179 expenses allocated from PRS is subject to the $9,000 limit. Assume that A elects to expense $2,000 of the cost of section 179 property purchased by A's sole proprietorship in 1991. Thus, A has elected to expense under section 179 an amount equal to the dollar limitation for 1991 ($2,000 elected to be expensed by A's sole proprietorship plus $7,000, the amount of PRS's section 179 expenses allocated to A in 1991).

(iv) Under the taxable income limitation, A may only deduct $8,000 of the cost of section 179 property elected to be expensed in 1991, the aggregate taxable income derived from the active conduct of A's trades or businesses in 1991 ($2,000 from PRS and $6,000 from A's sole proprietorship). The entire $2,000 of taxable income allocated from PRS is included by A as taxable income derived from the active conduct by A of a trade or business because it was derived from the active conduct of a trade or business by PRS and A was engaged in the active conduct of a trade or business of PRS during 1991. Under section 179(b)(3)(B) and § 1.179–3(a), A may carry forward the remaining $1,000 A elected to expense, which would have been deductible under section 179(a) for 1991 absent the taxable income limitation.

Par. 5. Sections 1.179–3, 1.179–4, and 1.179–5 are redesignated as §§ 1.179–4, 1.179–5, and 1.179–6, respectively, and new § 1.179–3 is added to read as follows:

§ 1.179–3 Carryover of disallowed deduction.

(a) *In general.* Under section 179(b)(3)(B), a taxpayer may carry forward for an unlimited number of years the amount of any cost of section 179 property elected to be expensed in a taxable year but disallowed as a deduction in that taxable year because of the taxable income limitation of section 179(b)(3)(A) and § 1.179–2(c) ("carryover of disallowed deduction"). This carryover of disallowed deduction may be deducted under section 179(a) and § 1.179–1(a) in a future taxable year as provided in paragraph (b) of this section.

(b) *Deduction of carryover of disallowed deduction*—(1) *In general.* The amount allowable as a deduction under section 179(a) and § 1.179–1(a) for any taxable year is increased by the lesser of—

(i) The aggregate amount disallowed under section 179(b)(3)(A) and § 1.179–2(c) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this section); or

(ii) The amount of any unused section 179 expense allowance for the taxable year (as described in paragraph (c) of this section).

(2) *Cross references.* See paragraph (f) of this section for rules that apply when a taxpayer disposes of or otherwise transfers section 179 property for which a carryover of disallowed deduction is outstanding. See paragraph (g) of this section for special rules that apply to partnerships and S corporations and paragraph (h) of this section for special rules that apply to partners and S corporation shareholders.

(c) *Unused section 179 expense allowance.* The amount of any unused section 179 expense allowance for a taxable year equals the excess (if any) of—

(1) The maximum cost of section 179 property that the taxpayer may deduct under section 179 and § 1.179–1 for the taxable year after applying the limitations of section 179(b) and § 1.179–2; over

(2) The amount of section 179 property that the taxpayer actually elected to expense under section 179 and § 1.179–1(a) for the taxable year.

(d) *Example.* The following example illustrates the provisions of paragraphs (b) and (c) of this section.

Example. A, a calendar-year taxpayer, has a $3,000 carryover of disallowed deduction for an item of section 179 property purchased and placed in service in 1991. In 1992, A purchases and places in service an item of section 179 property costing $25,000. A's 1992 taxable income from the active conduct of all A's trades or businesses is $100,000. A elects, under section 179(c) and § 1.179–5, to expense $8,000 of the cost of the item of section 179 property purchased in 1992. Under paragraph (b) of this section, A may deduct $2,000 of A's carryover of disallowed deduction from 1991 (the lesser of A's total outstanding carryover of disallowed deductions ($3,000), or the amount of any unused section 179 expense allowance for 1992 ($10,000 limit less $8,000 elected to be expensed, or $2,000)). For 1993, A has a $1,000 carryover of disallowed deduction for the item of section 179 property purchased and placed in service in 1991.

(e) *Recordkeeping requirement and ordering rule.* The properties and the apportionment of cost that will be subject to a carryover of disallowed deduction are selected by the taxpayer in the year the properties are placed in service. This selection must be evidenced on the taxpayer's books and records and be applied consistently in subsequent years. If no selection is made, the total carryover of disallowed deduction is apportioned equally over the items of section 179 property elected to be expensed for the taxable year. For this purpose, the taxpayer treats any section 179 expense amount allocated from a partnership (or an S corporation) for a taxable year as one item of section 179 property. If the taxpayer is allowed to deduct a portion of the total carryover of disallowed deduction under paragraph (b) of this section, the taxpayer must deduct the cost of section 179 property carried forward from the earliest taxable year.

(f) *Dispositions and other transfers of section 179 property.*—(1) *In general.* Upon a sale or other disposition of section 179 property, or a transfer of section 179 property in a transaction in which gain or loss is not recognized in whole or in part (including transfers at death), immediately before the transfer the adjusted basis of the section 179 property is increased by the amount of any outstanding carryover of disallowed deduction with respect to the property. This carryover of disallowed deduction is not available as a deduction to the transferor or the transferee of the section 179 property.

(2) *Recapture under section 179(d)(10).* Under § 1.179–1(e), if a taxpayer's section 179 property is subject to recapture under section 179(d)(10), the taxpayer must recapture the benefit derived from expensing the property. Upon recapture, any outstanding carryover of disallowed deduction with respect to the property is no longer available for expensing. In determining the amount subject to recapture under section 179(d)(10) and § 1.179–1(e), any outstanding carryover of disallowed deduction with respect to that property is not treated as an amount expensed under section 179.

(g) *Special rules for partnerships and S corporations*—(1) *In general.* Under section 179(d)(8) and § 1.179–2(c), the taxable income limitation applies at the partnership level as well as at the partner level. Therefore, a partnership may have a carryover of disallowed deduction with respect to the cost of its section 179 property. Similar rules apply to S corporations. This paragraph (g) provides special rules that apply when a partnership or an S corporation has a carryover of disallowed deduction.

(2) *Basis adjustment.* Under § 1.179–1(f)(2), the basis of a partnership's section 179 property must be reduced to reflect the amount of section 179 expense elected by the partnership. This reduction must be made for the taxable year for which the election is made even if the section 179 expense amount, or a portion thereof, must be carried forward by the partnership. Similar rules apply to S corporations.

(3) *Dispositions and other transfers of section 179 property by a partnership or an S corporation.* The provisions of paragraph (f) of this section apply in determining the treatment of any outstanding carryover of disallowed deduction with respect to section 179 property disposed of, or transferred in a nonrecognition transaction, by a partnership or an S corporation.

(4) *Example.* The following example illustrates the provisions of this paragraph (g).

Example. ABC, a calendar-year partnership, owns and operates a restaurant business. During 1992, ABC purchases and places in service two items of section 179 property—a cash register costing $4,000 and office furniture costing $6,000. ABC elects to expense under section 179(c) the full cost of the cash register and the office furniture. For 1992, ABC has $6,000 of taxable income derived from the active conduct of its restaurant business. Therefore, ABC may deduct only $6,000 of section 179 expenses and must carry forward the remaining $4,000 of section 179 expenses at the partnership level. ABC must reduce the adjusted basis of the section 179 property by the full amount elected to be expensed. However, ABC may not allocate to its partners any portion of the carryover of disallowed deduction until ABC is able to deduct it under paragraph (b) of this section.

(h) *Special rules for partners and S corporation shareholders*—(1) *In general.* Under section 179(d)(8) and § 1.179–2(c), a partner may have a carryover of disallowed deduction with respect to the cost of section 179 property elected to be expensed by the partnership and allocated to the partner. A partner who is allocated section 179 expenses from a partnership must reduce the basis of his or her partnership interest by the full amount allocated regardless of whether the partner may deduct for the taxable year the allocated section 179 expenses or is required to carry forward all or a portion of the expenses. Similar rules apply to S corporation shareholders.

(2) *Dispositions and other transfers of a partner's interest in a partnership or a shareholder's interest in an S corporation.* A partner who disposes of a partnership interest, or transfers a partnership interest in a transaction in which gain or loss is not recognized in whole or in part (including transfers of a partnership interest at death), may have an outstanding carryover of disallowed deduction of section 179 expenses allocated from the partnership. In such a case, immediately before the transfer the partner's basis in the partnership interest is increased by the amount of the partner's outstanding carryover of disallowed deduction with respect to the partnership interest. This carryover of disallowed deduction is not available as a deduction to the transferor or transferee partner of the section 179 property. Similar rules apply to S corporation shareholders.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (h).

Example 1. (i) G is a general partner in GD, a calendar-year partnership, and is engaged in the active conduct of GD's business. During 1991, GD purchases and places section 179 property in service and elects to expense a portion of the cost of the property under section 179. GD allocates $2,500 of section 179 expenses and $15,000 of taxable income (determined without regard to the section 179 deduction) to G. The income was derived from the active conduct by GD of a trade or business.

(ii) In addition to being a partner in GD, G conducts a business as a sole proprietor. During 1991, G purchases and places in service office equipment costing $25,000 and a computer costing $10,000 in connection with the sole proprietorship. G elects under section 179(c) and § 1.179–5 to expense $7,500 of the cost of the office equipment. G has a taxable loss (determined without regard to the section 179 deduction) derived from the active conduct of this business of $12,500.

(iii) G has no other taxable income (or loss) derived from the active conduct of a trade or business during 1991. G's taxable income limitation for 1991 is $2,500 ($15,000 taxable income allocated from GD less $12,500 taxable loss from the sole proprietorship).

Therefore, G may deduct during 1991 only $2,500 of the $10,000 of section 179 expenses. G notes on the appropriate books and records that G expenses the $2,500 of section 179 expenses allocated from GD and carries forward the $7,500 of section 179 expenses with respect to the office equipment purchased by G's sole proprietorship.

(iv) On January 1, 1992, G sells the office equipment G's sole proprietorship purchased and placed in service in 1991. Under paragraph (f) of this section, immediately before the sale G increases the adjusted basis of the office equipment by $7,500, the amount of the outstanding carryover of disallowed deduction with respect to the office equipment.

Example 2. (i) Assume the same facts as in *Example 1*, except that G notes on the appropriate books and records that G expenses $2,500 of section 179 expenses relating to G's sole proprietorship and carries forward the remaining $5,000 of section 179 expenses relating to G's sole proprietorship and $2,500 of section 179 expenses allocated from GD.

(ii) On January 1, 1992, G sells G's partnership interest to A. Under paragraph (h)(2) of this section, immediately before the sale G increases the adjusted basis of G's partnership interest by $2,500, the amount of the outstanding carryover of disallowed deduction with respect to the partnership interest.

Par. 6. Newly designated section 1.179–4 is amended as follows:

1. The introductory text and paragraph (a) are revised.
2. Paragraph (b) is removed and paragraphs (c) through (g) are redesignated as paragraphs (b) through (f), respectively.
3. The revised provision reads as follows:

§ 1.179–4 Definitions.

The following definitions apply for purposes of section 179 and §§ 1.179–1 through 1.179–6:

(a) *Section 179 property.* The term "section 179 property" means any tangible property described in section 179(d)(1) that is acquired by purchase for use in the active conduct of the taxpayer's trade or business (as described in § 1.179–2(c)(6)). For purposes of this paragraph (a), the term "trade or business" has the same meaning as in section 162 and the regulations thereunder.

* * * * *

Par. 7. Newly designated § 1.179–5 is amended by adding a sentence immediately after the first sentence of paragraph (a) concluding text to read as follows:

§ 1.179–5 Time and manner of making election.

(a) * * *

* * * * *

* * * However, for this purpose a partner (or an S corporation shareholder) treats partnership (or S corporation) section 179 property for which section 179 expenses are allocated from a partnership (or an S corporation) as one item of section 179 property. * * *

* * * * *

Par. 8. Newly designated § 1.179–6 is revised to read as follows:

§ 1.179–6 Effective date.

The provisions of §§ 1.179–1 through 1.179–5 are effective for property placed in service in taxable years ending after January 25, 1993. However, a taxpayer may apply the provisions of §§ 1.179–1 through 1.179–5 to property placed in service after December 31, 1986, in taxable years ending on or before January 25, 1993. Otherwise, for property placed in service after December 31, 1986, in taxable years ending on or before January 25, 1993, the final regulations under section 179 as in effect for the year the property was placed in service apply, except to the extent modified by the changes made to section 179 by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1990. For that property, a taxpayer may apply any reasonable method that clearly reflects income in applying the changes to section 179, provided the taxpayer consistently applies the method to the property.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by removing the entries for "§ 1.179–2" and "§ 1.179–4" in the table and by adding the following entries to the table:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.179–2	1545–1201
1.179–3	1545–1201
1.179–5	1545–0172
* * * * *	

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: November 20, 1992.

Alan J. Wilensky,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 92–30942 Filed 12–23–92; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2601

Bylaws of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of two amendments to the bylaws of the Pension Benefit Guaranty Corporation that changed the delegations of authority with regard to the approval of regulations.

EFFECTIVE DATES: The amendment to § 2601.3(b)(1) was effective on April 17, 1986. The amendment to § 2601.3(c) was effective on August 21, 1987. The amendment to the authority citation for part 2601 is effective December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500), 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1001 *et seq.*). In carrying out its functions, the PBGC is administered by the Chairman of its Board of Directors in accordance with policy established by the Board (29 U.S.C. 1302). Among other things, the agency has the power to adopt, repeal, and amend bylaws of the PBGC, which are to be published in the **Federal Register**. In view of their continuing interest to members of the public, the PBGC has included the bylaws in the Code of Federal Regulations as part 2601 (29 CFR part 2601).

In Resolutions 86–7 and 87–6, the PBGC's Board of Directors amended the delegations of authority in the bylaws with regard to the approval of regulations. It also authorized the Executive Director to cause the bylaws, as amended, to be published.

Under paragraphs (b)(1) and (c), respectively, of § 2601.3 of the amended bylaws, the Executive Director is responsible for: (1) The approval of amendments to the regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal establishing new interest rates and factors (amendments to 29 CFR parts 2619 and 2676, respectively), and (2) the approval of all final non-substantive regulations and all proposed regulations prior to their publication in the **Federal Register**, but a proposed substantive regulation may be issued only after circulating it for review to the Board of Directors, or Board member designees, for a 21-day period and responding to any comments made during that period. Paragraph (b)(1) continues to reserve to the Board of Directors the power to approve all final substantive regulations prior to publication except for the amendments to parts 2619 and 2676 referred to in the preceding sentence. It previously was limited to amendments to part 2619. Paragraph (c) previously required that proposed substantive regulations be approved by the Board of Directors prior to publication, authorized Directors to delegate their authority for such approval to an official at a level not below that of Assistant Secretary, and required that the delegation be in writing and be effective until withdrawn or a date specified therein.

While the PBGC inadvertently did not publish these amendments when they were adopted, the agency is now conforming the bylaws, as set forth in part 2601, to reflect the changes made by the Board of Directors. Since this action involves agency management and organization, it is not subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553).

List of Subjects in 29 CFR Part 2601

Organization and functions (Government agencies), Authority delegations (Government agencies).

For the reasons set forth above, the PBGC is amending 29 CFR part 2601 as follows:

PART 2601—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

1. The authority citation for part 2601 is revised to read as follows:

Authority: 29 U.S.C. 1302(f).

2. Paragraph (b)(1) of § 2601.3 is amended by adding "in Single-Employer Plans and Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal" after "Valuation of Plan Benefits".

3. Paragraph (c) of § 2601.3 is revised to read as follows:

§ 2601.3 Board of Directors.

* * * * *

(c) Final non-substantive regulations and all proposed regulations shall be approved by the Executive Director prior to publication in the **Federal Register**; provided that all proposed substantive regulations shall first be circulated for review to the Board of Directors or their designees, and may thereafter be issued by the Executive Director after responding to any comments made within 21 days after circulation of the proposed regulation, or, if no comments are received, after expiration of the 21-day period.

Issued, as authorized by the Board of Directors, in Washington, DC this 21st day of December, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-31322 Filed 12-23-92; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 287

[DISA Instruction 210-225-1]

Defense Information Systems Agency (DISA) Freedom of Information Act Program

AGENCY: Defense Information Systems Agency.

ACTION: Final rule.

SUMMARY: This revision makes administrative changes to conform with Department of Defense's final rule, 32 CFR part 286, regarding the implementation of the Freedom of Information Act.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Sergeant Martha King, (703) 692-2006.

SUPPLEMENTARY INFORMATION: It is hereby certified that this final rule does not exert a significant economic impact on a substantial number of small entities. This determination is made based upon the fact that the rule merely recodifies the procedural aspects of the DISA's Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the Defense Information Systems Agency; imposes no new requirements, rights, or benefits on small entities; and will have neither a beneficial nor an adverse effect on small entities. A notice of proposed rulemaking was published in the **Federal Register** on October 28, 1992, (57 FR 48768).

Interested parties were given until November 28, 1992 to respond. No comments were received.

List of Subjects in 32 CFR Part 287

Freedom of information.

Accordingly, 32 CFR part 287 is revised to read as follows:

PART 287—DEFENSE INFORMATION SYSTEMS AGENCY (DISA) FREEDOM OF INFORMATION ACT PROGRAM

Sec.
287.1 Purpose.
287.2 Applicability.
287.3 Authority.
287.4 Responsibilities.
287.5 Fees.
287.6 Reports.
287.7 Questions.
287.8 "For Official Use Only" records.

Authority: 5 U.S.C. 552.

§ 287.1 Purpose.

This part delineates responsibility for making available to the public the maximum amount of information concerning the operations and activities of the Defense Information Systems Agency (DISA) and the Office of the Manager, National Communications System (OMNCS).

§ 287.2 Applicability.

This part applies to Headquarters, DISA/OMNCS, and DISA field activities in the Metropolitan Washington area.

§ 287.3 Authority.

Published in accordance with the authority contained in 32 CFR part 286.

§ 287.4 Responsibilities.

(a) The DISA Freedom of Information Act (FOIA) Officer at DISA Headquarters, 701 S. Courthouse Road, Arlington, VA, is vested with the authority, within DISA/OMNCS, to release records for all requests coming to Headquarters, DISA, and to the field activities in the Metropolitan Washington Area, and will:

(1) Make the material described in paragraph 2-101 of DoD Directive 5400.7-R,[1] DoD Freedom of Information Act Program available for public inspection and reproduction. A current index of this material will be

[1] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Rd, Springfield, VA 22161.

maintained in accordance with paragraph 2–101 of DoD 5400.7–R.

(2) Establish education and training programs for all DISA/OMNCS military members and employees who contribute to DISA/OMNCS implementation of the Freedom of Information Act.

(3) Respond to all requests for records from private persons in accordance with 32 CFR part 286 whether the requests are received directly by Headquarters, DISA/OMNCS, or by DISA field activities. Coordinate such release with the General Counsel in any case in which release is, or may be controversial.

(4) Be the DISA/OMNCS principal point of contact for coordination with the Office of the Assistant Secretary of Defense (Public Affairs), reference FOIA issues.

(5) Ensure the cooperation of DISA/OMNCS with the OASD (PA) in fulfilling the responsibilities of monitoring the implementation of the Freedom of Information Act program.

(6) Refer cases of significance to the OASD (PA) for review and evaluation, after coordination with the General Counsel and with the approval of the Chief of Staff, when the issues raised are unusual, precedent setting, or otherwise require special attention or guidance.

(7) Advise the OASD (PA), prior to the denial of a request or prior to an appeal when two or more DoD components are affected by the request for a particular record, and when circumstances suggest a potential public controversy.

(8) Be responsible for the annual reporting requirement contained in 32 CFR part 286.

(9) Furnish copies of the material to be published in the Federal Register to DISA Code ADR.

(b) The mission/support staff Directors and the Chief of Staff, DISA will furnish the FOIA Officer, when requested, with DISA/OMNCS documentary material which qualifies as a record in accordance with 32 CFR part 286, for the purpose of responding to FOIA requests. All such requests for information will be referred to the FOIA Officer.

(c) The Chief of Staff, DISA will, on behalf of the Director, DISA, respond to the corrective or disciplinary action recommended by the Merit Systems Protection Board for arbitrary or capricious withholding of records requested, pursuant to the Freedom of Information Act, by military members or employees of DISA/OMNCS. This action will be coordinated with the General Counsel, DISA.

(d) The DISA General Counsel, or in his absence, the Deputy General Counsel within DISA/OMNCS is vested with the sole authority to deny, in whole or in part, a request. The General Counsel, DISA will:

(1) Make the decision, whenever a request for a record is to be denied in whole or in part, in accordance with the criteria provided in 32 CFR part 286.

(2) Inform the person denied a record of the basis for the denial of the request and of his or her right to appeal the decision to the Director, DISA via written correspondence.

(3) Ensure that if such an appeal is taken, that the basis for the determination by the Director, DISA not to release the record will be in writing, will state the reasons for the denial, and will inform the requester of his or her right to a judicial review in the appropriate U.S. district court.

(e) DISA (Code ADR) will arrange for the publication of this part in the **Federal Register**, after coordinating with the DISA/OMNCS Freedom of Information Act Officer and General Counsel.

§ 287.5 Fees.

Fees charged to the requester are contained in 32 CFR part 286.

§ 287.6 Reports.

Each major staff element and field activity on the distribution list of this part will furnish an annual report by January 5 to the Freedom of Information Officer, Headquarters, DISA, in accordance with 32 CFR part 286.

§ 287.7 Questions.

Questions on both the substance and procedures of the Freedom of Information Act and the DISA/OMNCS implementation thereof should be addressed to the Freedom of Information Act Officer by the most expeditious means possible, including telephone calls. Freedom of Information Act requests should be addressed as follows: Defense Information Systems Agency, Attention: Code ADA, 701 S. Courthouse Road, Arlington, VA 22204–2199. Calls should be made to (703) 692–2006.

§ 287.8 "For Official Use Only" records.

The designation "For Official Use Only" will be applied to documents and other material only as authorized by 32 CFR part 286.

Dated: December 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–31180 Filed 12–23–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Loan Guaranty: Negotiated Interest Rates

AGENCY: Department of Veterans Affairs.

ACTION: Notice of availability of negotiated interest rates.

SUMMARY: This notice advises participants in the Department of Veterans Affairs (VA) loan guaranty program that the interest rate to be charged on a VA guaranteed home loan and the number of points to be charged, if any, may now be negotiated between the borrower, the lender and the seller of the property.

EFFECTIVE DATE: The parties to a VA guaranteed home loan transaction may negotiate interest rates and points on and after October 28, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Judith A. Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (202) 233–3042.

SUPPLEMENTARY INFORMATION: VA guaranteed home loans have historically been made at or below a maximum interest rate established by the Secretary pursuant to 38 U.S.C. 3703(c) and 3712(f). On October 28, 1992, the President signed Public Law 102–547, which authorizes the Secretary of Veterans Affairs to elect to require that such loans bear interest at a rate that is agreed upon by the veteran and the lender. The law also authorizes veterans to pay reasonable discount points in connection with these loans. VA has determined that negotiated interest rates should be made available to veterans seeking VA guaranteed home loans. This election to permit veteran-borrowers and lenders to agree upon interest rates and points to be charged is effective for VA guaranteed home loans closed on or after October 28, 1992.

The law also provides that the Secretary may from time to time change this election and return to a system with an administered maximum interest rate. Notice of any such future change in this election will be published in the **Federal Register**.

Approved: December 14, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

[FR Doc. 92–31272 Filed 12–23–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6954

[NM-920-4210-06; NMNMAA 1803]

Revocation of Public Land Order No. 203; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a public land order which withdrew 155.34 acres of public land for use by the Bureau of Indian Affairs in connection with the construction of a war housing project. Pursuant to Phase II of the Land Exchange Agreement dated May 1, 1991, involving the Navajo Nation, the Bureau of Land Management, and the Bureau of Indian Affairs, the land has been patented in trust to the Navajo Tribe of Indians, with all minerals reserved to the United States. This action will open the land to mining and mineral leasing.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505-438-7594.

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

1. Public Land Order No. 203, which withdrew the following described land, is hereby revoked in its entirety:

New Mexico Principal Meridian

T. 15 N., R. 17 W.,
Sec. 14, lots 2, 3, 4, and 6.

The area described contains 155.34 acres in McKinley County.

2. At 8 a.m. on January 25, 1993, the land will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 15, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-31197 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No. 911215-2328]

RIN 0648-AD50

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a revision of Amendment 18 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI). Revised Amendment 18 to the FMP established allocations of pollock in the BSAI between inshore and offshore components during the years 1993 through 1995. Also, these regulations revise the catcher vessel operational area (CVOA) established in the BSAI to allow only catcher vessels and motherships to operate during the non-roe (or "B") season (June 1-December 31). In addition, this rule clarifies regulations that implement portions of Amendment 18 and Amendment 23 to the FMP for Groundfish of the Gulf of Alaska (GOA). These actions are intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMP that governs these fisheries.

EFFECTIVE DATE: January 19, 1993.

ADDRESSES: Copies of revised Amendment 18 and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the BSAI and GOA FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fishery for walleye pollock (*Theragra chalcogramma*) and the affected human environment are described in the FMPs and in the environmental impact statements prepared by the Council for each FMP and the RIR/FRFA prepared for this action.

The problems and issues that Amendments 18 and 23 are intended to resolve are discussed in the proposed rule published for the amendments (56 FR 66009, December 20, 1991; corrected at 57 FR 2814, January 23, 1992), the final rule implementing Amendment 23 and the approved portions of Amendment 18 (57 FR 23321, June 3, 1992), and the proposed rule published for revised Amendment 18 (57 FR 46133, October 7, 1992).

Briefly, pollock fishing operations of several offshore catcher/processor vessels in the GOA early in 1989 contributed to an early closure of the GOA pollock fishery. This prevented some inshore processing plants and the vessels that deliver to them from realizing their anticipated economic benefit from pollock later in the fishing year. The Council discussed the issues of coastal community development and shoreside preference, and reviewed analyses of various management alternatives throughout the remainder of 1989, 1990, and in early 1991. The Council defined the issue as a resource allocation problem where one industry sector faces the risk of preemption by another.

After receiving advice from its advisory bodies and hearing public testimony at its meeting of June 24-29, 1991, the Council adopted its preferred alternative. This alternative included an allocation of all of the total allowable catch (TAC) of pollock in the GOA to the inshore component of the industry, and, in the BSAI area, a graduated,

increasing allocation to the inshore component of 35 to 45 percent from 1992 through 1995 and an inverse, decreasing allocation to the offshore component over the same period.

Secretarial review of the amendments began on December 1, 1991. Public comment on the proposed rule ended February 3, 1992. On March 4, 1992, the Secretary of Commerce (Secretary) approved the proposed pollock and Pacific cod allocations for the GOA and the proposed pollock allocation for the BSAI for 1992. These allocations were implemented on June 1, 1992 (57 FR 23321, June 3, 1992). The proposed pollock allocations for the BSAI in 1993 through 1995 were disapproved.

When an FMP amendment is disapproved, the Council may submit a revised amendment to the Secretary for consideration under an expedited review schedule set forth in section 304(b) of the Magnuson Act. At its April 21–26, 1992, meeting, the Council decided to submit a revised Amendment 18. In a supplement to its previous analysis of inshore-offshore management alternatives, the Council considered (1) no action, (2) allocations in 1993 through 1995 of 30 and 70 percent to inshore and offshore components, respectively, and (3) inshore and offshore allocations in 1993 of 35 and 65 percent, in 1994 of 40 and 60 percent, and in 1995 of 45 and 55 percent. The Council made the draft analysis of these alternatives available for public review on July 10, 1992.

At a special meeting to consider this issue on August 4–5, 1992, the Council again considered the comments of its advisory bodies and the public, and adopted its recommendation to the Secretary as revised Amendment 18. The Council recommended allocations of pollock in the BSAI area between inshore and offshore components, respectively, of 35 and 65 percent in 1993, and of 37.5 and 62.5 percent in 1994 and 1995. In addition, the Council recommended that the CVOA be established for 1993 through 1995 only in the "B" season pollock fishery. Further, the Council recommended allowing vessels in the offshore component that process only (i.e., motherships) to operate in the CVOA so that the catcher vessels that deliver to these vessels also can operate in the CVOA.

The Council submitted revised Amendment 18 to the Secretary for review, approval, and implementation under section 304(a) of the Magnuson Act. The Secretary's receipt date was September 24, 1992. A notice of availability of revised Amendment 18 and request for public comment was published on October 2, 1992 (57 FR 45602). A notice of proposed regulations that would implement revised Amendment 18, if approved, was published on October 7, 1992 (57 FR 46133). Public comments on the revised amendment were invited through October 29, 1992, and comments on the proposed rules were invited through November 4, 1992. All comments received through November 4, 1992, were considered.

Twenty comments were received from 16 separate entities. After careful consideration of the public comments, the record developed by the Council, and the RIR/FRFA analysis of the potential effects of the proposed amendment, NOAA decided to approve allocations of pollock TAC to the inshore and offshore components equal to 35 and 65 percent, respectively, beginning in 1993 and continuing through 1995. The allocations will apply in each BSAI subarea and for each season. NOAA also approved the CVOA for the "B" season during the years 1993 through 1995, as recommended by the Council, including the allowance that motherships could operate within, and receive pollock from catcher vessels operating in, the CVOA. NOAA disapproved the Council's recommended additional allocation of 2.5 percent to the inshore component for 1994 and 1995, because, based on the record before the Under Secretary for Oceans and Atmosphere (Under Secretary), it was determined that the sole purpose of the increased allocation to the inshore component during those years is economic, and, therefore, violates national standards 4, 5, and 7 of the Magnuson Act, as well as Executive Order 12291.

The approved 35/65 percent allocations in revised Amendment 18 are the same as those approved by the Under Secretary for the "B" season of 1992 when Amendment 18, as originally submitted by the Council, was partially disapproved, and which were intended to resolve the preemption problem for the balance of 1992. Disapproval of the allocations in the original Amendment 18 for the years 1993 through 1995 was based in part on a cost-benefit analysis that NMFS had prepared to assist the Under Secretary in his decision. The NMFS analysis, which was based on the best available data at the time, indicated that a substantial net economic loss to the Nation would result if the allocations proposed by the Council in Amendment 18 for 1993, 1994, and 1995 were approved. The Under Secretary determined that the Council had not supplied sufficient evidence of social or other benefits to offset that loss.

In a March 4, 1992, letter to the Council conveying the partial disapproval of the original Amendment 18, the Under Secretary stated that the net economic effects in 1993 through 1995 were "not fully understood" at the time the Council took its action on the original Amendment 18, and further evaluation of the economic effects of each reasonable alternative would be necessary before the additional years could be approved. In his letter, the Under Secretary asked the Council to examine and refine the assumptions and methodology of the economic model used by NMFS in its analysis, to identify any countervailing benefits, and to consider modifications to the allocation percentages that would minimize economic loss to the Nation from the Council action.

In its analysis for revised Amendment 18, the Council's response to the Under Secretary's suggestions displayed economic consequences that are more favorable than the original version of Amendment 18. The analysis indicates that the annual net economic loss to the Nation of the 35/65 percent allocation is no more than $1.7 million, and is offset by the Council's legitimate objective of avoiding preemption of one sector by the other.

An increased allocation from 35 to 37.5 percent for the inshore component must be justified. One possible justification would be an increase in net national benefits. The analysis shows that the increase in allocations to the inshore component for 1994 and 1995 would further reduce the national economic benefits available from the pollock resource. Unlike the economic loss resulting from a 35/65 percent allocation, which the Under Secretary believes is adequate to avoid preemption and provide stability in the pollock fishery, the additional economic loss resulting from 37.5/62.5 percent allocations for 1994 and 1995 has not been justified by any other legitimate objective of the FMP.

The Under Secretary has concluded that an inshore allocation greater than 35 percent would increase the risk of net negative national benefits that is not warranted or justified by the record. On the other hand, although the 35 percent allocation to the inshore component exceeds the current status quo, approval of the 35/65 percent allocations will have beneficial results. The main justification for approval of these allocations is that they will obtain the objective identified in Amendment 18, which is to avoid potential preemption of the inshore component by the

offshore component. In addition, the allocations will guarantee both components the opportunity to fish while providing the needed stability, so long-term business plans and decisions can be made. Finally, the inshore/offshore allocation issue has been debated for several years. The allocations will not solve the problem of overcapitalization and all parties involved have spent too much time and effort on an issue that does not appear to result in economic gain to the Nation and cannot be justified beyond the allocations as approved for 1993 through 1995. To further pursue the allocations distracts the Council from focusing on other important issues that could lead to the development of a market-based allocation system. Based on the above reasoning, the Under Secretary approved only the 35/65 percent allocation for 1993 through 1995. In addition, NOAA has approved regulations implementing the CVOA as recommended by the Council, and certain other regulatory changes proposed by NMFS to clarify the implementing regulations for Amendments 18 and 23. A summary of, and response to, public comments received is included in this notice.

Description of Management Measures Implemented by this Rule

Revised Amendment 18

The definitions of "inshore" and "offshore" components of the industry remain unchanged from those implementing Amendment 23 in the GOA and the approved part of Amendment 18, except as described below in "Additional Regulatory Changes." In addition, this action makes no change to the western Alaska Community Development Quota (CDQ) program. Final regulations to implement CDQ allocations of pollock in the BSAI area during the years 1992 through 1993 were published in the **Federal Register** on November 23, 1992 (57 FR 54936).

The principal provisions of revised Amendment 18, as approved by the Under Secretary, include (1) the proportional allocation of the pollock TAC between inshore and offshore components, and (2) the CVOA.

1. Inshore-Offshore Allocation of Pollock in the BSAI Area

Under revised Amendment 18, as approved, the BSAI pollock TAC is allocated between the inshore and offshore components for each subarea and for each season defined at § 675.20(a)(2) during a three-year period, 1993 through 1995. The allocations to the inshore and offshore components are 35 and 65 percent, respectively, for each of these years.

The amount of TAC allocated to each component will be calculated after the reserve (§ 675.20(a)(3)) is subtracted. The reserve is specified annually as 15 percent of the TAC of all species categories. One half of this amount (7.5 percent) would be designated as the CDQ reserve and made available to western Alaska communities that have an approved community development plan (CDP). If the CDQ reserve is not used by western Alaska communities, it will be reapportioned to the non-CDQ fishery in accordance with the specified proportional allocations among the inshore and offshore components.

If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to catch and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by one component will be reallocated to the other fishery by notice in the **Federal Register**.

2. Catcher Vessel Operational Area (CVOA)

Revised Amendment 18 establishes a CVOA between 163° and 168° W. longitude, south of 56° N. latitude, and north of the Aleutian Islands. Offshore catcher-processors must not conduct directed fishing operations for pollock in the CVOA during the pollock "B" season (June 1 through December 31). Access to this area is unrestricted during the pollock roe or "A" season (January 1–April 15). This CVOA is similar to that established by the approved portion of original Amendment 18 with the following two important differences.

First, under revised Amendment 18, the CVOA will exist only during the pollock "B" season instead of during the "A" and "B" seasons as originally proposed by the Council in Amendment 18. This represents a compromise between an exclusive, year-round CVOA, and no CVOA. The compromise is based on compelling arguments made by representatives of the offshore fleet that closing the CVOA during the "A" season would deprive them of prime fishing on roe-bearing fish, particularly because the Bogoslof area (adjacent to and west of the CVOA) fishery had been closed. Further, the ice edge would cause congestion and gear conflicts between factory trawlers and vessels using longlines and pots. They also reasoned that restricting factory trawlers north of 56° N. latitude would result in lower recovery rates and higher discard of small pollock. The Council retained the CVOA during the "B" season, because catcher vessels that deliver their pollock catch to shore-based processing plants in the Aleutian Islands have a limited range compared with catcher/processor vessels that can harvest pollock resources north and west of the CVOA. In addition, public testimony indicated the possibility of overcrowding and grounds preemption within the CVOA by the catcher/processor fleet.

Second, motherships operating in the offshore component may operate in the CVOA under revised Amendment 18. This was not allowed during the "B" season in 1992, because the original Amendment 18 established this area exclusively for catcher vessels. The regulations for 1992 did not prohibit catcher vessels from harvesting pollock in the CVOA and delivering their catch to motherships outside the area. However, this restriction was found to be impractical, because catcher vessels working with motherships cannot tow cod ends large distances. The Council also was concerned with safety. During the winter, the combination of ice edge, icing conditions, and severe storms makes it very hazardous for the catcher-boat fleet to operate outside the CVOA.

Additional Regulatory Changes

Experience in implementing inshore-offshore allocations under Amendments 18/23 during 1992 prompted NMFS to make several changes to existing regulations. The following changes were described and their purpose explained in the revised Amendment 18 proposed rule notice (57 FR 46133, October 7, 1992). The intent of these changes is to improve the clarity and effectiveness of the regulations.

1. The "inshore component" definition currently at §§ 672.2 and 675.2 would be changed by re-ordering the sequence of types of processing operations that qualify as "inshore." The category of processor vessels operating at a single location within State of Alaska waters would be identified third instead of second. This change juxtaposes this category of processor vessel with the succeeding sentence, which explains how a single location would be determined.

2. The prohibitions listed in §§ 672.7 and 675.7 would be changed by substituting a paragraph prohibiting the use of any vessel in more than one of the three categories included in the definition of "inshore component" during any fishing year. This change deletes regulatory text that is redundant with the definition of "inshore component," and clarifies that the category in which a vessel begins

operating in an "inshore" directed fishery for Pacific cod harvested in the GOA or pollock harvested in either the GOA or BSAI area is the category in which the vessel must continue to operate for the remainder of the fishing year whenever it processes these species.

3. Finally, regulatory text at §§ 672.20 and 675.20 is changed to clarify that allocations of pollock (and Pacific cod in the GOA) are made to vessels that catch these species for processing by either the inshore or offshore component. Hence, the vessels that catch these species, not processor vessels that do not catch fish, are subject to the directed fishing allowances and prohibitions that the Regional Director is authorized to establish for either component.

Changes in the Final Rule From the Proposed Rule

This final rule includes changes from the proposed rule. These changes are described as follows:

1. The prohibitions in §§ 672.7(h)(2) and 675.7(i)(2) are amended by deleting the word "processor." Under the existing regulations, if a vessel does not have a federal fishing permit, it is not included in the definition of a "processor vessel," and would not be subject to the prohibitions of this section. The revised paragraph clarifies that all vessels are subject to these prohibitions.

2. Section 675.20(a)(2)(iii) is amended to implement only the allocations approved by the Under Secretary. Language intended to implement the disapproved portions of revised Amendment 18 has been deleted.

Responses to Comments

The allocations of pollock in the BSAI area that are implemented by Secretarial approval of revised Amendment 18 remain controversial. Twenty letters of comment were received from 16 different entities during the comment period. Of these, nine opposed and seven expressed support for the action. Most comments are lengthy and raise many points of concern. Key issues and concerns are summarized and responded to as follows:

Comment 1: Revised Amendment 18 violates national standard 1 of providing for the greatest overall benefit to the Nation because (1) the supplemental analysis projects a cumulative loss of $85.6 million and (2) the alternative benefits only Alaskan onshore processors and reduces competition by restricting the number of processors to whom a fisherman can deliver.

Response: National standard 1 requires fishery conservation and management measures be implemented that prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery. Executive Order 12291 requires that the economic benefits be in favor of society as a whole. The allocations, as proposed in revised Amendment 18, do not reduce the likelihood of pollock TAC being reached. Weekly production report data indicate that the inshore and offshore components have sufficient capacity and opportunity to harvest and process the available OY.

The Under Secretary has determined that national benefits would result from the approval of a 35/65 percent allocation for 1993 through 1995 by way of maintaining a balance in the social and economic opportunities inherent in the fisheries. One of the nine Comprehensive Fishery Management Goals for the development of the North Pacific Council's fishery management plans is to ensure that the people of the United States benefit from optimum utilization of the Nation's publicly owned fishery resources. The benefits to the Nation will accrue in gains in Alaskan communities, as evidenced by the promotion of economic stability, growth, and self-sufficiency.

The Under Secretary determined that the 2.5 percent allocation increase proposed for the inshore component in 1994 through 1995 would violate E.O. 12291 because the increased risk of negative national benefits is not justified by the likelihood of any additional social or other benefit for the western Alaskan communities. Therefore, the proposed increased allocation to the inshore sector is disapproved. The approved allocations of revised Amendment 18 that benefit the coastal communities of Alaska and aid them in achieving a stable, self-sufficient, and growing economy balance any potential losses to the Nation.

For a discussion of the issue of competition, see response to comment 34.

Comment 2: Revised Amendment 18 violates national standard 2, which states that conservation and management measures shall be based upon the best scientific information available.

Response: As was explained in the final rule for Amendments 18/23 (57 FR 23321, June 3, 1992), the administrative record does not close until the Secretary makes a decision. During the public comment period, NOAA used the Council's data to review the Council's findings. The decision of the Under Secretary is based on the supplemental analysis, using 1992 data, as well as public comment received.

Based on the record and data developed by the Council and NMFS, the Under Secretary has determined that the record contained sufficient information, and that the information available was the best and most current available for a decision regarding revised Amendment 18.

Comment 3: National standard 4 is violated in that revised Amendment 18 discriminates against fishermen who deliver to shoreside processors in other states. In addition, the regulations would not allow freezer vessels to package frozen headed and gutted or round fish for later shoreside processing, which discriminates among processors of different states. Further, the CDQ discriminates among residents from different states.

Response: Several concerns similar to comment 3 were addressed in the final rule for Amendments 18/23 (57 FR 23321, June 3, 1992). The basis for the approval of the allocation does not conflict with the reasons given in the final rule for Amendments 18/23.

Regulations implementing revised Amendment 18 do not restrict owners or operators of catcher vessels from delivering to either inshore or offshore processing sectors until a component reaches its allocation. NOAA has determined that the revised allocations, as approved, will not discriminate among residents of different states.

As stated in the final rule for Amendments 18/23, the CDQ program does not discriminate between Alaskans and non-Alaskans on the basis of State of residence. The impact of the CDQ program in setting aside a pollock reserve for use by western Alaskan communities for CDPs falls equally upon similarly situated Alaskans and non-Alaskans. Regulations that are determined to discriminate among residents of different states, based on their residence, would not be approved.

See also response to comment 34.

Comment 4: The allocations do not violate national standard 4 as they represent a fair compromise, balancing needs and interests of industry, state, and coastal communities.

Response: Comment noted. The Under Secretary has determined that the revised allocations in the BSAI, as approved, are consistent with the fair and equitable criterion of national standard 4. See response to comment 3.

Comment 5: The proposed regulations violate national standard 5 in that the resource would not be efficiently utilized and because the only justification for the proposed action is economic gain by one sector. In

addition, to ignore modern technology for fear of preempting an older technology violates the efficiency requirements. The amendment merely acts as a subsidy to less efficient producers.

Response: A similar comment was raised during the review of Amendments 18/23. National standard 5 requires fishery conservation and management measures to promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose. In theory, an efficient fishery would harvest all the allowable catch with a minimum use of economic inputs (e.g., labor, capital, fuel, etc.). As was the case with Amendments 18/23, revised Amendment 18 is not substantially less efficient than an open access fishery. The benefits of advanced technology are dissipated when the TAC is reached before the end of the fishing year. The factory trawler fleet is capable of harvesting a large amount of fish in a short period of time. This can lead to early season closures, to the detriment of the inshore fleets and processors. The major objective of Amendment 18 is to avoid preemption of one sector by another. The Under Secretary determined that the 35/65 percent allocation obtains this objective and will protect the smaller, more localized fleets, and allow for continued development of coastal communities in the BSAI.

NOAA has determined that approval of the 35/65 percent allocation does not have economic allocation as its sole purpose because its aim is to protect and enhance benefits, such as preserving stability and avoiding preemption, for Alaska coastal communities. However, the increase in the allocation recommended by the Council for the inshore component to 37.5 percent for 1994 and 1995 is determined to be solely economic in nature as there is no evidence of an increase in social benefits to counter the substantial net economic loss that would be associated with the difference between 35 percent and 37.5 percent inshore allocations.

The allocations, as approved, could improve the overall recovery of fish products from the round weight harvested based on reported higher product recovery rates for the inshore sector. Also, non-resident or foreign workers employed by local processing plants during peak fishing seasons when local labor supply is insufficient contribute to the economic well being of local communities through their demand for goods and services. Finally, the guidelines of the national standards, at 50 CFR 602, provide that sector allocations are justified by the achievement of overall biological, economic, or social benefits. The Under Secretary determined that a 35/65 percent allocation is justified based on these criteria, although an additional 2.5 percent increase for the inshore component for 1994 and 1995 is not. Therefore, the Under Secretary approved only the 35/65 percent allocation for 1993 through 1995.

Comment 6: There is no evidence that revised Amendment 18 violates national standard 5.

Response: Comment noted. See response to comment 5. The benefits of economic stability and gains to the Alaskan coastal communities balance potential economic losses to the Nation with approval of the 35/65 percent allocation. However, the benefits of the 2.5 increase proposed for the inshore component, which was disapproved, do not balance potential economic losses to the Nation.

Comment 7: Revised Amendment 18 violates national standard 6.

Response: A similar comment was made during the review of Amendments 18/23. National standard 6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Impacts on both components and the resources were analyzed in the draft SEIS for Amendments 18/23.

Comment 8: Revised Amendment 18 is inconsistent with national standard 7, because it increases costs and promotes duplication of capital.

Response: National standard 7 requires that fishery conservation and management measures minimize costs and avoid unnecessary duplication, where practicable. Amendment 18, as proposed originally, was likely to result in net losses in economic efficiency that would not be offset by social or other non-economic benefits. As demonstrated in the supplemental cost-benefit analysis, the revised allocations would mitigate these losses in net national economic benefits. Moreover, the developmental benefits for Alaska coastal communities that would accrue with a 35/65 percent allocation program for 1993–1995 would outweigh the negative. The Magnuson Act allows for an allocation of fishing privileges that may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups (e.g., social and development benefits). Therefore, the Under Secretary approved the 35/65 percent allocation for 1993 through 1995.

Other alternatives were considered but rejected, because they were either too restrictive to the offshore component or would not have prevented preemption of the inshore component by the offshore component.

Comment 9: The partial denial of Amendment 18, which referenced national standard 7, was based on a flawed analysis, because it confused net national benefits with corporate profits.

Response: The cost-benefit analysis done by the NMFS analysis team prior to the March 4 decision adhered to standard methodology and used the best available data and information at the time of the analysis. The supplemental analysis submitted with Revised Amendment 18 used the same general methodology with updated information and some refinements in techniques. In both analyses, the results displayed estimated changes in producer surplus, which is an accepted measure of net national benefits. Producer surplus is not a proxy for corporate profits largely because of differences in the way costs are identified and treated in the accounting.

Comment 10: Amendment 18, as revised, addresses the Department of Commerce's concerns in the previous partial disapproval as it substantially reduces the original proposed allocations, removes the restriction on offshore vessel access in the CVOA during the roe or "A" season (January 1–April 15), and permits mothership vessels to operate in the CVOA during the non-roe or "B" season (June 1–December 31). Based, in part, on these significant changes, revised Amendment 18 should be approved.

Response: The above issues have been addressed during the review process for revised Amendment 18. NOAA recognizes that the allocations proposed in revised Amendment 18 are reduced from the original submission. The 35/65 percent allocations to be implemented for 1993 through 1995 were approved, because they are likely to meet the Council's objective without causing substantial losses to the offshore component or the Nation. In addition, approval of the allocations will allow the Council to focus its attention on more rational solutions to fishery problems in Alaska. The decision to allow offshore vessels to operate in the CVOA during the "A" season was due to the extreme importance this area and time have for the offshore sector. To deprive them of use of the CVOA during the "A" season would present too great an economic burden. Allowing motherships to operate in the CVOA would prevent undue hardships on the smaller catcher vessels in this area.

Comment 11: A number of comments opposing Amendments 18/23 were submitted in response to the proposed rule implementing the amendments (57 FR 66009, December 20, 1991). These comments were submitted by crew members on offshore vessels, seafood industry employees and representatives, and other interested parties. The main points stressed in opposition to Amendments 18/23 included: (1) Many at-sea workers had steady, well-paying jobs, not readily available otherwise; (2) many of these workers came from areas of high unemployment; (3) the at-sea fleet offered upward mobility for women and minorities; and (4) the high-pay and other aspects of at-sea employment made it possible to pursue goals in life that would otherwise be unattainable. These same comments apply to revised Amendment 18 and should be addressed. Many of the deficiencies identified with the initial amendment have not been addressed in the supplemental analysis.

Response: The comments that were submitted during the review period for Amendments 18/23 were addressed at that time. A resubmission of these comments does not provide any new information that was not considered under Amendments 18/23, and the responses to those comments in the final rule published June 3, 1992 (57 FR 23321), apply to revised Amendment 18. However, the same issues presented in those comments have been addressed throughout this final rule.

Comment 12: Revised Amendment 18 does not address the underlying problem of overcapitalization in an open-access fishery and may even encourage additional capital investment within the inshore sector. Therefore, the Nation is no closer to solving problems in the North Pacific groundfish fishery. The Council and NMFS should direct their attention to other, more important issues that need to be faced (i.e., stock assessments, bycatch, and management of new technologies) rather than this course of protectionist regulations that threaten to destroy rather than enhance the Magnuson Act system. Instead, conservation and management objectives should be met by establishing performance requirements.

Response: The issue of overcapitalization in an open-access fishery was addressed during the review of Amendments 18/23. NOAA agrees that the olympic system that prevailed is inefficient and wasteful in the sense that it fosters more investment than is necessary to catch the amount of fish available for harvest in any fishing year. One purpose of the approved revised Amendment 18 allocations is to serve as a preliminary step toward solving the problem of overcapitalization. The approved allocations will provide a stable three-year period while the Council can evaluate more permanent, rationalized management measures, and implement them.

In his November 23, 1992, letter to the Council, the Under Secretary strongly urged the Council to direct its attention to a long-term, market-based allocation system.

Comment 13: The stated purpose of the allocation is to prevent preemption; however, the final allocation will actually lower the share of the TAC currently being utilized by the offshore fleet in the BSAI. The result transfers resources that have been historically taken from one sector (offshore) to another (inshore). Thus the preferred alternative within revised Amendment 18 does not solve the stated problem of preemption, but rather creates it.

Response: NOAA recognizes that a 35 percent allocation to the inshore component exceeds the inshore performance in recent years. However, the inshore sector has taken increasing shares of the pollock harvest in the BSAI, and in 1991 its share grew to 28 percent. The approval of the 35/65 percent allocations is expected to obtain the objective identified in Amendment 18, which is to avoid potential preemption of the inshore component by the offshore component. The allocations also provide needed stability in the fishery for long-term planning and guarantee both components the opportunity to fish.

Comment 14: The intent of the Magnuson Act was not to allow one sector (offshore) to smother development of social and economic stability in another (coastal communities). Preemption is a continuing problem. Originally, the foreign distant water fleet preempted U.S. fishermen, and now the U.S. distant water fleet is preempting coastal communities.

Response: NOAA recognizes that protection of both sectors is needed. Because the mobility of the offshore component gives it a competitive advantage, an allocation to the inshore sector for a fixed term is justified. However, the groundfish resources off Alaska are a national resource. All U.S. fishing vessels, regardless of their home port of technological components, currently enjoy the same Alaska groundfish harvesting privileges under the BSAI FMP. The preemption problem stems from the excess harvesting and processing capacity to prosecute the fishery, and not the geographic origin of that capacity. The Council has been urged to develop a market-based allocation system for the long term to achieve stability in the fishery and eliminate the problems of preemption and overcapitalization.

Comment 15: The Magnuson Act encouraged American fishermen to invest in harvesting and processing facilities and many factory trawlers have achieved the capacity to harvest 100 percent of the pollock TAC. The allocations would take a large portion of pollock (worth between $34,994,845 and $54,537,433) away from factory trawlers and give it to another sector, thereby putting many American fishermen out of business.

Response: The Magnuson Act established U.S. authority for the conservation and management of fishery resources within the EEZ and provided for priority access to those resources by U.S. fishing and processing firms.

The Magnuson Act also authorizes the allocation of fishery resources among various sectors of the fishing industry. The Under Secretary determined that a 35/65 percent allocation of the BSAI pollock TAC between inshore and offshore components is consistent with the Magnuson Act and other applicable laws. While this allocation may produce benefits for the inshore component at the expense of the offshore component, both sectors should realize some decrease of investment risk, in the short term, resulting from better knowledge of the amount of BSAI pollock that will be reserved specifically for either component for a 3 year period.

Intra-component competition for the pollock resource will continue to be a source of uncertainty and risk, but inter-component competition, with its attendant risks, will cease with the implementation of this rule. This should allow improved investment decision-making for both components in the short term (i.e., 3 years).

Comment 16: Catcher boats played an important role in the Americanization of the Alaska groundfish fisheries and, yet, the superior catching capability of the factory trawlers has preempted them. Approval of revised Amendment 18 would provide a sufficient short-term measure. In addition, the smaller catcher boats cannot compete with the factory trawlers, particularly in stormy weather. Approval of the CVOA will enable catcher vessels to fish closer to sheltered waters and still deliver to motherships. Amendment 18 should be approved as it addresses the preemption of catcher vessels by factory trawlers.

Response: The development of a U.S. groundfish fishery in the BSAI area began in 1980 with U.S. catcher vessels delivering pollock and other species to

foreign processing vessels in joint venture processing (JVP) agreements. Significant harvests by U.S. catcher/processors began in 1985. Shorebased pollock processing began to develop in the mid-1980s. Under the Magnuson Act, however, the foreign and JVP fisheries were sequentially replaced in favor of the wholly domestic fishery. The last year in which any groundfish were allocated to JVP fisheries in the BSAI area was 1990. Many of the former JVP catcher vessels were converted to deliver fish to the shorebased processors, and some developed a JVP-style market with U.S. motherships. In both cases, the catcher vessels are generally smaller and more limited in their range than catcher/processors in the offshore component. Revised Amendment 18 recognizes this history by providing for catcher vessels that deliver BSAI pollock to the inshore component, which has a 35 percent allocation of the pollock TAC, and by providing for those that deliver to U.S. motherships the opportunity to fish within the CVOA during the pollock "B" season.

Comment 17: Preemption of the catcher boats by factory trawlers should be addressed from a harvesting perspective rather than one of processing.

Response: The Council considered the alternative of allocating pollock (and Pacific cod in the GOA) between vessels that catch and process at sea and vessels that catch for delivery to processors regardless of whether they are on shore or at-sea. This is alternative 6 in the final supplemental environmental impact statement prepared by the Council for Amendments 18/23. The Council did not recommend this alternative, because it did not adequately address the Council's objective of assuring catcher vessels that deliver to shorebased processors a specific proportion of the pollock TAC and alleviating the preemption issue. Approval of the 35/65 percent allocation is justified and accomplishes the stated objective.

Comment 18: The proposed allocation shifts resources away from the offshore fleet, which is primarily from the Pacific Northwest (Washington and Oregon), to the shoreside plants in local Alaskan communities. As a result, Alaska will gain a relatively small number of jobs and increased income at the expense of the Pacific Northwest having much greater losses. Such a reallocation of jobs and income from one region to another has not been justified. The bottom line is that the Pacific Northwest will suffer significant economic hardships as well as direct income and job losses at a time when the entire nation is concerned with rising unemployment and economic growth.

Response: The analytical results support this general conclusion that net economic benefits will be negative, but economic considerations are only one element of the decision-making process. The objective of revised Amendment 18 is to avoid possible preemption of the inshore sector by the offshore sector. The allocations, as approved, will prevent preemption and allow stability in the fishery so that long-term plans can be developed. In addition, the Council will be able to direct its attention to other fishery issues and resolutions. Therefore, the Under Secretary determined that the 35/65 percent allocation would result in benefits that offset National losses.

Comment 19: The inshore sector had no catch history prior to inshore/offshore allocations. The largest shoreside catchers came on line just this year and many have a significant percentage of ownership directly related to Con-agra (Trident), Unisea (Nippon-Suisan), and Westward (Taiyo). These are not the "family farm" companies the Council claims to be protecting.

Response: The inshore sector represents a complex of fishing, processing, and support operations that includes small independently owned catcher vessels and other small support enterprises, in addition to the large shore-based processors that are at the hub of the system. During the review of Amendments 18/23, representatives of several inshore plants testified that they had not been operating at full capacity previously, because they did not have enough fish to supply the plants. Lack of raw product for processing would curtail production and have a negative impact on the various enterprises that feed into and support the processing operations. The aim of Amendment 18 is to help assure some stability in raw fish supplies for the inshore sector and thus stabilize the system and promote economic growth and security for the affected coastal communities in Alaska.

Comment 20: Revised Amendment 18 does not demonstrate any net social benefits. It threatens jobs as well as the economic and social well-being of communities and individuals in the State of Washington, which could lead to revenue losses and economic dislocations in Washington State. In addition, the allocations discriminate against Washington State coastal communities by favoring Alaska shoreside processing plants. It takes from one sector to give to another.

Response: The overall fishery continues to be an open-access system, whether or not revised Amendment 18 is approved. Individual fishermen or processors are not guaranteed access to a given amount. The analysis concludes that losses in jobs and revenues will occur in the Pacific Northwest but will be partially offset by gains to employment and revenue in Alaska. See response to comment 8.

Comment 21: There is no realistic benefit or justification that outweighs the significant harm to the offshore fleet or those dependent on the health of that fleet. The proposed allocations would result in significant economic losses without any demonstrable countervailing benefits. The Council has failed to provide any new reason why the Under Secretary's initial rejection of this part of the proposal should not stand.

Response: The revised analysis provides the same general economic results, but in order to attain social goals, these considerations could cause the Council to give more or less weight to benefits or costs imposed on different segments of the industry. The Under Secretary approved the 35/65 percent allocation for 1993 through 1995 to obtain the objective of avoiding preemption of the inshore component by the offshore component while providing both components the opportunity to fish. In addition, approval of the allocations will allow the Council to direct its attention to other important management considerations to benefit the North Pacific fishing industry. However, the 2.5 percent increase to the inshore component proposed for 1994 through 1995 did not result in sufficient benefits that would offset National loss. Therefore, the Under Secretary disapproved any increase in the allocations to the inshore component for 1994 and 1995. Nonetheless, increasing national net benefits is only one of the many goals of applicable law and policy.

Comment 22: Communities that are located close to the fishing grounds face fewer alternative opportunities for economic advancement and thus have a greater reliance on access to these fisheries than do distant water fleets. Approval of the allocations of Amendment 18, especially with the CVOA, will be important for the economic health and development in the small coastal communities of Alaska. Amendment 18 would allow for stabilization and growth of locally generated municipal revenues that are derived mainly from taxes on landed raw fish, collected from shore-based vessels and plants, or local property taxes. Pollock is becoming a more

significant source of this revenue. Without this guaranteed access, instability will occur.

Response: NOAA agrees that the coastal communities have a smaller job base and could be viewed as having a higher reliance on fisheries, although not necessarily on pollock stocks. These communities have not had a historical dependence on pollock, *per se*, but on the crab, halibut, and salmon fisheries. As shoreside plants process more raw fish in general, local tax revenues will increase but growth may incur offsetting costs for society. Nonetheless, NOAA recognizes a need to provide some assurance of stability to the shore-based fishery enterprises that are substantial contributors to economic welfare of local communities, through a reliable supply of raw fish for processing. Approval of the 35/65 percent allocations and the CVOA offer adequate protection without overly deviating from the current conditions.

Comment 23: Amendment 18 will provide increased employment and long-term stability for Alaskan coastal communities.

Response: The amendment is expected to increase the number of harvesting and processing jobs available in the inshore component, although there will be a concurrent decrease in jobs and income in the offshore sector that is tied principally to the Pacific Northwest. This action is only intended to be a short-term solution that aims at promoting economic stability in Alaskan coastal communities. Improvement of the fisheries that help support these communities, and that contribute substantially to the national welfare, depends on putting in place a management system that eliminates the economic waste inherent in common property fisheries.

Comment 24: Although Amendment 18 is a short-term interim solution, if it is not enacted soon, management might lose the option of dealing with long-term rationalization. Without approval of Amendment 18, the more efficient offshore fleet would capture an ever increasing share of the TAC and reduce the viability of the inshore fleet dramatically. The sector may be so weakened that a decision to disapprove this amendment would be irreversible. Failure to approve this measure would lead to a *de facto* allocation of all or most of the resource to the offshore fleet and cause a loss of diversity within the fishery.

Response: Prior to the first allocation in 18/23, the inshore sector had grown over a fairly short period to a point where it was taking a significant share of the pollock resource, and new plants came on line. The growth in the inshore sector's participation in the pollock catch is an indicator of its ability to compete with the offshore sector. However, the substantial (and much underutilized) catching capacity of the offshore fleet cannot be ignored and is viewed as an overwhelming competitive threat to the inshore sector with regard to access to the pollock resource. Locking the allocations in at 35/65 for the three-year period assures that the threat is eliminated while a more productive and beneficial management system is designed and put into place.

Comment 25: The allocations would provide a predictable supply of fish, allowing onshore plants to operate nearly year-round and provide a sustained demand for support services. This would provide more opportunity for permanent residents to work, for other workers to become permanent residents, and allow for long-term planning abilities and financing, as harvesters could choose the best times for fishing. In addition, groundfish plants will be available for traditional species markets such as black cod (sablefish), Pacific halibut, salmon, and crab.

Response: NOAA concurs. The potential of operating nearly year-round is enhanced, which would lead to stabilized production and employment. Stability is one of the objectives of the amendment.

Comment 26: The allocations would allow harvesters to determine the best time to fish based on the condition of fish, the weather, and when recovery and value would be highest.

Response: NOAA concurs. By being guaranteed a percentage of fish, the "race for fish" between inshore and offshore interests is curtailed and harvesters can choose when they want to fish as long as TAC remains in either component. Harvesters delivering to the inshore component would be limited only by their portion of the TAC, and not by the harvesting capability of the offshore sector. Nevertheless, there remains a probability the "race" will occur within a sector, which is a problem that a market-based management system is intended to address.

Comment 27: The shoreside sector has much higher product recovery rates (PRRs), particularly for surimi. The supplementary analysis for revised Amendment 18 stated the surimi recovery rate for the offshore sector to be 17.7 percent. A NMFS study of factory trawlers showed the PRR of surimi during the "A" or roe season (January 1–April 15) to be only 14.35 percent and NMFS recently recommended a rule that established the offshore surimi rate to be 14 percent. Section 2 of the supplementary analysis fails to use existing data that the roe recovery rate is equal for inshore and offshore. The analysis overlooks a lot of data on PRRs and the result is PRRs are overstated for the offshore fleet and understated for the inshore processors.

Response: The team responsible for the supplementary analysis used 1991 data for surimi and roe recovery rates, which was the most recent information available at the time of the analysis. Later data based on partial year results for 1992 indicate lower surimi PRRs for the offshore sector compared with 1991 and higher roe recovery rates for the inshore sector. This new information was used by NMFS analysts in a subsequent run of the cost-benefit analysis and the results made available to the Under Secretary. With regard to PRRs, it is worth noting that the rate is influenced by market and resource conditions as well as the relative efficiency of the operator, and therefore can be expected to vary considerably. In the cost-benefit analysis done by the supplemental analysis analytical team and by NMFS analysts independently, the uncertainties in PRRs are addressed through the application of a risk analysis that allows for the use of a range of values for a particular variable as opposed to a point estimate.

Comment 28: Revised Amendment 18 promotes conservation in that the possibility of localized pulse overfishing by factory trawlers would be reduced.

Response: Effective management of TACs, as in the past, will prevent resource depletion. However, there is no evidence to indicate that increased allocations to the inshore sector will prevent localized depletions, early closures, or shore-based overcapitalization. Potential problems of localized depletion can be addressed by the Council through further management actions, as in the past.

Comment 29: The shoreside sector has demonstrated its concern for the fishery by attempting to delay the non-roe or "B" season (June 1–December 31) to reduce catch of juvenile pollock, Pacific herring, and salmon bycatch. In addition, the shoreside sector set up a voluntary herring savings area to reduce herring bycatch in 1991 and 1992.

Response: NOAA acknowledges and appreciates the concern fishermen have for the resources that sustain them. Self-regulation is certainly a benefit for the resource.

Comment 30: Benefits to the Nation with approval of Amendment 18 would include an increase in food production

and value, as well as a reduction in wasteful discard of fish.

Response: Some current data indicate that the product recovery rate of the inshore sector is somewhat higher than for the offshore sector. Inshore processors presently convert a higher percentage of fish from round weight to finished product. The best information currently available to estimate discard amounts in the groundfish fisheries provides no reason to believe that discard amounts will increase or decrease under the approved allocations. The amount of prohibited species taken in the groundfish trawl fisheries is largely governed by prohibited species catch (PSC) limits, attainment of which will prohibit further fishing for specified species by both inshore and offshore operations. In addition, the factory fleet has indicated that it expects to increase recovery rates while decreasing waste as it learns more about the improved technology used by the inshore sector. Shoreside processing plants have demonstrated an increase in use of all raw materials, while some factory trawlers may experience a greater loss of potential product due to the conditions under which they must work. Equipment used for preparing fish products must be precisely set; rough conditions experienced at sea on the factory trawlers could interfere with maximum efficiency of processing equipment. The inshore processing plants do not have to deal with the movement of equipment and can be more precise in their cuts of fish. Nonetheless, the offshore component is developing and employing better technology to more fully utilize the entire fish.

These same issues were dealt with in the final rule published for Amendments 18/23.

Comment 31: The offshore sector has a higher preprocessing discard rate, which can be verified by the 1992 data. This constitutes a waste of our resources and discards should be counted as a cost to the nation. This amendment will reduce waste and promote conservation.

Response: The cost-benefit analysis considers the variations in discard rates. Differences occur between seasons, sectors, and individual vessels. The 1992 data mentioned in the comment are from a small subset of factory trawler(s) and may not be representative of the entire fleet. Similarly, because only a portion of the harvest taken by the inshore fleet is reported by official observers, estimates of inshore discards are particularly subject to statistical bias and error.

With regard to an evaluation of efficiency and waste in the production process, other scarce resources in addition to raw fish need to be taken into account, e.g. fuel, labor, and capital. Thus, waste needs to be placed in the context of total resources employed to generate a given quantity of output.

Comment 32: The offshore sector has other fishing options available to it as it is more mobile. The inshore sector is solely dependent on resources close at hand.

Response: NOAA recognizes the competitive advantage of the mobile offshore component. Approval of the CVOA during the "B" season will provide needed protection to the inshore component in an area close to shore.

Comment 33: The inshore sector should not be penalized for failing to capitalize as rapidly as the offshore fleet, because part of the offshore fleet's growth can be attributed to federal loan guarantees and capital subsidies by both the U.S. government and foreign interests.

Response: The allocations approved under revised Amendment 18 are not intended to penalize either the inshore or the offshore component. Instead, the intent is to provide protection to the inshore component to allow the utilization of the fishery resource while acknowledging the fishery interest of the offshore component. Approval of the 35/65 percent allocation for 1993 through 1995 demonstrates this point.

Comment 34: By requiring fishermen to declare where they may sell their product for an entire calendar year, fishermen are prohibited from selling to a more competitive purchaser, thereby restricting trade. In addition, in attempting to protect a specific industry sector in a specific location from competition with another sector, freedom of trade between states is restricted.

Response: Amendment 18 does not restrict to whom a harvester may sell fish. Harvesters are free to deliver fish to either inshore or offshore processors, as defined in the regulations, up to the specified percentages. In addition, the allocations do not restrict freedom of trade between states as they do not restrict where delivery or sale of fish may occur.

Comment 35: Approval of revised Amendment 18 will transfer significant control to foreign interests that dominate the Alaska shoreside processing industry. In effect, the allocations illegally give away Washington State jobs and U.S. resources to Japanese companies. The allocation will increase the market power of the Japanese within these markets.

Response: Revised Amendment 18 will result in a transfer of benefits from the offshore sector to the inshore sector. The cost-benefit analysis indicates that under a 35/65 percent inshore/offshore allocation program, the impact on net national benefits is minimized. That is, losses from the one sector are nearly balanced by gains in the other, in terms of national economic welfare. The transfer will have a definite positive impact for the Alaska coastal communities that will benefit from an increase in commercial fishing and processing revenues. NOAA recognizes that a fairly substantial share of the inshore processing capacity is identified with Japanese interests. By the same token, there is a considerable foreign financial interest in the offshore operations. Moreover, the catcher vessels that serve the onshore processing plants are identified as nearly 100 percent U.S. enterprises. In any case, the foreign ownership element in both sectors does not violate U.S. law. In fact, under the U.S. "fish and chips" policy that played an important role in the development of Alaska fisheries for domestic production, foreign companies that transferred (pollock) processing technology and invested in U.S. fish processing companies were awarded preferential allocations of the total allowable foreign catch off Alaska in the period in which foreign directed fishing was allowed. Some Japanese companies were especially cooperative under this policy and as a result these companies have maintained an ownership presence in the onshore Alaska processing sector.

Comment 36: Allocation should be based on harvesting rather than processing rights. Otherwise, "foreign leakage" is a problem. Rents, or benefits, from the fishery are much more likely to be captured by allocating to harvesters as opposed to processors.

Response: Revised Amendment 18 allocates pollock between vessels catching pollock for processing by the inshore component and vessels catching pollock for processing by the onshore component. "Foreign leakage" refers to the accrual of benefits to persons and firms outside of the United States. The RIR/FRFA indicates the difficulties of measuring foreign leakage due to imperfect knowledge of the level of investment foreign firms have in the BSAI pollock fishery. Foreign firms are known to have investments in vessels in the offshore component as well as in shorebased plants and vessels in the inshore component. NOAA has no verified information on which to

determine whether benefits to the United States would be significantly larger under alternative allocations.

Comment 37: Revised Amendment 18 does not correct the failings of Amendment 18 identified in the March 4, 1992, letter of disapproval from the Under Secretary. By refusing to measure the preferred alternative against others, the Council has admitted there is no new justification for approval of revised Amendment 18.

Response: The Under Secretary, in his March 4, 1992, letter to the Council, disapproved portions of Amendment 18 based on a lack of information that would justify the higher percentages being allocated to the inshore component. In particular, there was no documentation of positive social impacts that could balance the losses in net national benefits demonstrated in the cost-benefit analysis. The Under Secretary suggested the Council consider alternative justifications, such as countervailing benefits, modifying the allocation percentages to minimize economic loss, and/or melding a subsequent allocation proposal with a moratorium on entry into the fishery, prior to a resubmission of Amendment 18. He stated that a supplemental analysis would be necessary before further consideration could take place. During the April 1992 meeting, the Council chose to consider a modification of the allocation percentages. And, although a separate action, the Council has prepared a plan amendment to place a moratorium on the entry of new vessels into the fishery, beginning in 1993.

On September 3, 1992, the Council, in cooperation with NMFS staff, completed a supplementary analysis of the allocation alternatives. The analysis concluded that the preferred alternative would result in net national economic losses but would generate compensating economic benefits and development for the Alaska coastal communities in the BSAI. On this basis, a 35/65 percent allocation from 1993 through 1995 appeared warranted. By the same token, there was not sufficient justification for an allocation that would give the inshore component a share greater than 35 percent.

The Under Secretary urged the Council to work towards some other method of allocating fish that would rely more on free market decisions and less on government intervention. The allocations, as approved, will provide protection from preemption of the inshore sector by the offshore sector while the Council works towards a more market-based allocation system. The Council has since submitted proposed amendments for individual fishing quotas (IFQ) for sablefish and Pacific halibut.

Comment 38: As stated in the March 4, 1992, letter from the Under Secretary to the Council, safeguarding capital investments is a desirable objective under the Magnuson Act. The Council has totally disregarded this obligation under the Magunson Act.

Response: NOAA disagrees. The Council must consider not only the interests of the offshore component, but also the interests of the inshore component. The Council has an obligation to both components when recommending appropriate management measures for the Alaska groundfish fishery. In view of the possibility of preemption, an allocation of the pollock TAC in the BSAI guarantees both the offshore and inshore sectors access to the fishery.

Comment 39: Maintaining the status quo would accomplish the goals identified in the March 4, 1992, letter from the Under Secretary. During the non-roe or "B" season, the shoreside sector operated for 77 days, while the offshore operated only 58. Prior to allocations, both sectors operated an equal number of days. If the allocations are approved and increased in 1994 and 1995, the offshore sector will be further decreased, especially taking into account losses to be incurred during the roe or "A" season.

Response: A comparison of the number of fishing days for the offshore versus inshore components is not an appropriate parallel. The offshore component is capable of harvesting a larger amount of fish in a shorter period of time than the inshore component. Maintaining the status quo could lead to the problem of preemption Amendment 18 was intended to prevent.

Although the supplemental analysis for this amendment projects future losses for the offshore fleet and gains for the inshore sector, the 35/65 percent allocation coupled with approval of the CVOA is justified based on the resulting stability and prevention of potential preemption on behalf of the inshore sector, and the likelihood of benefits that would accrue to Alaska coastal communities.

Comment 40: The Council has done little to "work as expeditiously as possible toward some other method of allocating fish than either the olympic system or direct government intervention" (i.e., IFQs) as urged in the March 4, 1992, letter from the Under Secretary.

Response: NOAA urged the Council to work toward a more efficient method of allocating fishing privileges than direct government intervention when Amendment 23 and part of Amendment 18 were approved. NOAA is aware that the Council currently is working on a moratorium on the entry of new vessels into the fisheries, to be followed by a permanent solution to excess fishing capacity. Any incentive to over-invest in the inshore catching and processing sector will be tempered by the planned expiration of the approved allocations, and the possibility of limited access measures in the near future. In addition, a proposed rule for IFQ for sablefish and Pacific halibut, submitted October 27, 1992, was published in the **Federal Register** December 3, 1992 (57 FR 57130).

Comment 41: Amendment 18 does not live up to the fundamental principle of the Magnuson Act to use "wise management of the fisheries as the best economic safeguard for those who derive their living from these resources."

Response: The allocations approved in revised Amendment 18 are intended to be a temporary, interim management measure to prevent the potential problem of preemption in the Alaska groundfish fishery. The allocations will provide a certain amount of protection to the inshore component, which depends on the fishery for its livelihood. NOAA has urged the Council to continue working toward more efficient management measures, such as limited entry and individual transferable quotas. In the meantime, NMFS, together with the Council, will provide necessary management measures to protect the resources as well as the temporary allocations to protect the resource-users, inshore and offshore.

Comment 42: A statement that a broad consensus of the industry supported the Council's action is untrue.

Response: NOAA concurs. The allocation recommendations of the Council under Amendments 18/23 and revised Amendment 18 appear to be highly controversial and divisive within the fishing industry.

Comment 43: Revised Amendment 18 is politically biased and conflicts of interest exist in the Council. Such issues will continue to invite costly litigation.

Response: A similar comment was raised during the review of Amendment 18/23. The Magnuson Act requires each voting member of a Regional Fishery Management Council and the executive director of each Council to disclose any financial interest in any harvesting, processing, or marketing activity that is being or will be undertaken within any fishery over which the Council concerned has authority. Financial

interests that must be disclosed include those held by the individual, his or her spouse, minor child, or partner; and any organization (other than the Council) in which the individual is serving as an officer, director, trustee, partner or employee. If the individual complies with the requirement to file a financial disclosure statement, he or she is exempt from criminal liability under section 208 of Title 18 of the United States Code.

In developing the Magnuson Act, Congress recognized the need to have members of the fishing community on the Council to share their fisheries knowledge and experience. Congress understood that by requiring nominees with this type of background, some members may be voting on issues that would directly affect their fishing operations, positively or negatively. Regardless of the effect, Council members are not required to recuse themselves from voting or debating on a decision unless the matter is primarily of individual concern.

Comment 44: The Council has not adequately addressed the merits for choosing the preferred alternative versus other possibilities, in particular, alternative 6, which would have allowed the catcher vessels to decide to whom they would sell. In addition, it is the catcher vessel sector that has been preempted, not the inshore sector. The Council has not explained how the preferred alternative will address this problem of preemption in the fishery.

Response: The preemption of catcher vessels may be a problem, but it was not the problem addressed by the Council. The Council may address this problem in the future if it chooses. Alternative 6 was not recommended to the Secretary in Amendments 18/23 or in revised Amendment 18, because allocations of pollock under that alternative did not provide sufficient assurance that the desired amounts of pollock would be available to vessels that deliver to shoreside processing plants, thereby preventing preemption. Approval of the 35/65 percent allocation is justified and accomplishes the stated objective. See response to comment 17.

Comment 45: The Department of Commerce does not have the legal authority to allocate processing rights, only harvesting rights, and should have chosen Alternative 6 as its preferred option.

Response: Revised Amendment 18 allocates pollock between vessels catching pollock for processing by the inshore component and vessels catching pollock for processing by the offshore component. In *American Factory Trawler Association v. Knauss*, No. C92-870R (W.D. Wash.), the court found that the allocations under Amendments 18/23 were consistent with the Magnuson Act.

Comment 46: The indirect and induced effects of direct income is greater for Alaskan coastal communities of the inshore sector than for the offshore sector.

Response: The results referred to in this comment were derived by using numbers from different impact studies and are not comparable with the results in the Councils' Input-Output study. In general, indirect and induced effects will be larger (have higher multipliers) for larger communities, because more of the initial income change will be captured and re-spent within the presence of support industries and other services. For smaller communities, more income will "leak" to other areas, and the indirect and induced impacts will contribute to those other areas.

Comment 47: Neither sector has to pay for the right to harvest raw fish, which are a public resource. Taxes are one way the public receives benefit from the fish. Because the offshore fleet pays minimal taxes as opposed to the inshore fleet, a transfer of resources to the inshore fleet gives the public more compensation from the use of the resource.

Response: Taxes are one vehicle used to convey or capture compensation to the true owners of the resource. However, the current tax structure only benefits a subset of owners, those in Alaska. See also response to comment 22. If this allocation necessitates growth in governmental services, then the increase in tax revenue may not be sufficient to offset the extra costs.

Comment 48: It is inappropriate to cite and use the total amount of fish tax, rather than the tax for pollock deliveries, while considering the benefits of inshore production for the State of Alaska.

Response: NOAA concurs that when calculating the benefits of processing more pollock on shore, only pollock deliveries should be considered.

Comment 49: The analysis of the benefits of the proposed increase in fish to the inshore sector does not incorporate the private costs required for increased processing capacity or the accompanying additional social infrastructure.

Response: The quantitative results in the supplemental analysis are a projection over the relatively short time period for Amendment 18 (through 1995). The inshore sector will not need to increase processing capacity beyond recent additions. In addition, the social impact data do not anticipate significant changes in structure over the same time period. The supplemental analysis reflects recently increased capacity and capital investment. Given the current inshore season length, further capacity would not likely be needed to harvest the approved allocations of 35 percent for the inshore component. Whether the amendment encourages (or discourages) further investment is unknown. We note, however, that capacity growth is a common feature of an open-access fishery.

Comment 50: The supplemental cost-benefit analysis is overly simplified and relies on faulty information. Inadequate data were used to project market prices (based on only 1 year) and to construct supply functions. The analysis does not incorporate recent changes in the size and number of operations in both sectors. A bioeconomic model should have been constructed instead.

Response: The supplemental cost-benefit analysis relied on the latest information available at the time and followed standard cost-benefit methodology. Time constraints ruled out an attempt to construct a more rigorous and elaborate model upon which to base the analysis, which in any case likely would have had data requirements that were not possible to meet under any circumstances. A prior effort by Council staff to model the pollock fishery was abandoned as a result, at least in part, of data constraints. The methodology used in the supplemental analysis was scrutinized by the Council's Scientific and Statistical Committee, expert representatives from the offshore and inshore sectors and economists from the academic community. There was general agreement the basic methodology was appropriate and sound, although there were disagreements about data inputs, particularly with regard to product recovery rates and discards. The analysts recognized that the model assumes no structural changes that could alter the outcome over time, but given the relatively short time frame for the analysis—three years—this shortcoming was judged as marginal. Variations and uncertainties in the data sets were addressed through the application of Monte Carlo simulations (risk analysis), which is a standard statistical technique. It is also of note that biologists were unable to predict any biological feedback or impact from this rule. TACs are set separately. If the harvest remains within the established TAC, the health of the fish stock is not likely to be affected by who harvests and processes it.

Comment 51: The supplementary analysis demonstrates a potential loss to the nation of $34–60 million. This is based on an erroneous analysis that, if corrected, would show a positive net benefit of $88 million.

Response: The estimate of net benefits of $88 million is based on a set of parameters and an analysis that was presented to the Council by certain processors, but was not reviewed by the Council/NMFS analytical team that prepared the supplemental cost-benefit analysis for the revised amendment. NMFS staff subsequently reviewed the processors' analysis and discovered computational and methodological flaws that raised serious questions about the results and conclusions. In any event, reruns of the NMFS cost-benefit analysis that incorporated the latest data failed to produce results that in any way resembled those produced in the processors' analysis. The NMFS model reruns consistently showed that the outcome of the allocation alternatives was a loss in net national economic benefits. See response to comment 50.

Comment 52: The revised Amendment 18 cost-benefit analysis shows a net gain in producer surplus as a result of approving this measure.

Response: The positive cost-benefit finding, as reported in section 8 of the September 3, 1992, supplementary analysis, was based on unverified data assumptions that did not agree with information that appears in other parts of the supplementary analysis. Also, the estimates in section 8 represent total benefits to all U.S. and non-U.S. owners of capital in the pollock industry and do not take into account the leakage of benefits to foreign interests. Studies have shown that foreign ownership of processing capacity in Alaska was in the 75–80 percent range, while foreign ownership for the offshore sector was in the 20–25 percent range. Additionally, the section 8 table does not include any of the lost surplus attributable to the labor sector.

Comment 53: The cost-benefit analysis should incorporate more than just the maximization of private profit. Other considerations, such as physical waste, marine pollution, and loss of food production, must be incorporated.

Response: The cost-benefit study addresses more than profit. Study results report the estimated changes in producer benefits that are identified as "producer surplus," which is the residual after variable costs (considered social costs) are deducted from revenues. This surplus cannot be strictly identified as corporate profits because of different ways some cost items are treated.

Comment 54: The supplementary analysis for revised Amendment 18 admitted the computation of fish meal production was understated, yet did not correct the error in the computation of producer surplus.

Response: In the numeric analysis, fish meal is treated as an ancillary product and the recovery rate of 1.0 is used. Treating roe and meal as additional rather than primary products means that quantities of those products in the model will depend solely on the amount of raw fish processed by each sector. This may not match actual observed product levels. In any event, the impact of fish meal production on the estimated changes in producer surplus is marginal.

Comment 55: The supplementary analysis states the cost for factory trawlers to harvest and process pollock into surimi is $0.10 per pound. This assumption does not take into account the cost of fuel, depreciation, equipment repair, and other services.

Response: The analysis relied upon the best available information at the time, which included records of offshore trawler operations from which cost estimates were made. Uncertainties with regard to the cost were addressed in the risk analysis.

Comment 56: The supplementary analysis treats wages differently for inshore and offshore workers. Wages to the offshore sector are viewed as profits, while wages earned by the inshore sector are not counted as a gain to the workers.

Response: Compensation for at-sea workers is not treated as profit. A portion of the lost share-based income for at-sea workers is treated as lost producer surplus, while a portion of the gains to inshore share-based workers (fishing crew) is treated as gained producer surplus. It is therefore not accurate to state that labor costs between sectors is treated differently. All labor payments, no matter the source, are treated as costs for purposes of calculating the surplus attributable to vessel and plant owners. Surplus also accrues to share-based labor, as represented by payment in excess of opportunity costs. Crewmen in both sectors are paid on a share basis. Labor in processing plants inshore, however, is paid on a wage rate basis, which does not fluctuate with changes in plant revenue and is assumed to approximate the opportunity cost.

Comment 57: The supplementary analysis does not include taxes paid to the government as a benefit to society.

Response: NOAA concurs that taxes paid by foreign entities should be included as a national benefit in cost-benefit analysis and that this was omitted in the cost-benefit analysis. The information on the amount of taxes paid was not available to the analysts. The effect of including these taxes would have been a reduction in the magnitude of the net losses. Even if we had information including the taxes, the likely result would still have been significant national losses.

Comment 58: NMFS uses the wrong percentage of foreign ownership in both sectors to account for foreign leakage of benefits outside of the nation. It also ignores the benefit of taxes paid by foreigners to the U.S. government in its analysis.

Response: The analysts used the best published information available on foreign ownership. It is difficult to ascertain actual ownership within the corporate structure, and how much control that ownership or capital investment has within the market to reallocate profits. No recent work on foreign ownership had been done or could be completed within the available timeframe. Nonetheless, approval of the 35/65 percent allocation was based on benefits to the western Alaskan coastal communities.

Comment 59: The cost-benefit calculations ignored subsidy of shoreside plants during their initial operations in the early 1980s.

Response: The cost-benefit study focuses on 1992–1995, so any prior investments are considered sunk costs. Federal funds were available to both sectors through a variety of government programs such as the Saltonstall-Kennedy Grant Program and the Fisheries Obligation Guarantee Program.

Comment 60: Because the results of the economic analysis showed a net loss as resources were shifted away from the offshore sector, the Council should have evaluated an alternative that increased the allocation to the offshore fleet.

Response: The Council did not consider an increased allocation because it had other objectives beside increasing the flow of national net benefits (i.e., protection from preemption for the inshore component and the accompanying stability of the fishery).

Comment 61: The models and analyses used for the cost-benefit study may be sufficient for gauging short run industry producer surplus from a given pollock TAC, but are not sufficient for constructing actual supply and demand equations.

Response: NOAA assumes this is a short-term measure and the TAC is relatively fixed. Since it is not necessary to estimate functions, this type of study is appropriate. Also, the data were not

sufficient to construct the market curves.

Comment 62: The cost data for inshore processors are not based on any formal survey and do not allow one to attribute cost by product form. This and other deficiencies make it difficult to generate any statistical measures of their accuracy and make the results of the cost-benefit study questionable.

Response: NOAA concurs. New data are constantly needed and NOAA recognizes the dynamic changes occurring in this fishery. The risk analysis performed as a part of the cost-benefit analysis is a modest attempt to capture some of the uncertainties. See response to comment 2.

Comment 63: Variable costs should have been attributed among products based on price as opposed to volume.

Response: Non-labor costs for the offshore sector were based on an analysis of vessel records that provided a breakdown of production volume, by product, and overall cost figures. Individual product costs were estimated through a regression analysis of costs as a function of volume, which, given the available data, was judged to be the most reliable means to estimate the costs. The underlying assumption is that the cost per unit of time spent is equivalent across product types. NMFS received no information indicating, for instance, that the labor costs per unit of time were different across species. Volume of fish handled would seem to be a more accurate representation of time spent than the value associated with the output products. If the value argument were used, the cost of producing surimi and roe during the "A" season would be substantially higher than producing surimi alone, and this does not seem reasonable.

Comment 64: Section 8 of the supplementary analysis is unfair and biased. It includes a cost-benefit analysis done by the Council after-the-fact to justify approval of the allocation. The analysis ignores extensive testimony of some parts of the industry and the Council's Scientific and Statistical Committee and relies solely on shoreside interests to produce model parameters. The predicted result of this "testimony" scenario does not resemble the actual fishery performance for the year modeled (1991). The NMFS team of economists refused to be identified as preparers of this section.

Response: This section should be viewed as a Council document reflecting the differing parameters the Council decided were important. NMFS staff did not contribute to the section 8 analysis.

Comment 65: Section 8 fails to account for the effect the cumulative costs would have on the offshore component of revised Amendment 18. It ignores the costs already imposed on the offshore fleet under Amendment 23 in the GOA.

Response: The revised analysis looks at the marginal costs, benefits, and impacts arising from the proposed new allocations. It is not appropriate to incorporate the results from any other previous management action.

Comment 66: The analysis did not take into account that the mobile offshore fleet has many more options for alternative activities than the smaller shorebased ones.

Response: Time was insufficient to assess the true opportunity cost to the at-sea sector (i.e., opportunities for shifting effort to other fisheries, mainly in Russian waters). The price currently being paid for the opportunity to fish elsewhere by some members of the at-sea fleet does not, by itself, supply enough information to assess accurately the profitability of those operations or the value of fishing in the EEZ as there are differences in risk, management regimes, etc.

Comment 67: Creation of the CVOA during the "B" season gives the inshore fleet the choice of unlimited access outside of that area but exclusive access within.

Response: The CVOA was established to address the dependence of the inshore component on pollock resources in nearby waters and to provide needed protection for the inshore component within this area. During the August 4–5, 1992, meeting, the Council considered comments from its advisory bodies and the public and recommended that offshore vessels that process only (i.e., motherships) be allowed to operate in the CVOA during both the "A" and the "B" season. This would allow catcher vessels that deliver to these offshore motherships to operate in the CVOA. Outside the CVOA, the inshore component's access is not unlimited because the catcher vessels delivering to it may not exceed their percentage of the allocation.

Comment 68: Approval of the CVOA cannot be justified now that the Bogoslof area is closed, the offshore component is being preempted from its most productive and valuable fishing area by the same interests that would profit from the CVOA, and the inshore component will have a guaranteed quota.

Response: See response to comment 67. NOAA also recognizes the importance of the Bogoslof subarea as a fishing ground; however, continued protection of the Aleutian basin pollock stock is necessary.

Comment 69: Approval of the CVOA would result in safety risks to the offshore sector, higher discards and lower recovery rates due to smaller fish, higher operational costs, gear conflicts, and ground preemption problems with crab and longline fishermen. In addition, the offshore pollock fleet would be preempted from entering the salmon processing industry. Analysis of the CVOA does not incorporate any increase in the operating costs due to harvesting and processing of smaller size fish by those vessels displaced outside of the zone or the cost of increased gear conflict with fixed gear fisheries.

Response: See response to comments 67 and 68. NOAA agrees that fishing patterns would be affected by implementation of the CVOA in the BSAI area. This action establishes the CVOA only for the "B" or non-roe season. Access to the CVOA will be unrestricted during the "A" or roe season. In addition, revised Amendment 18 was changed from the original Amendment 18 to allow access to the CVOA for motherships that only process fish. Restrictions in the CVOA apply only to pollock and will not affect entry in the salmon processing industry.

Historical catch data indicate that large amounts of pollock are likely to be available north and west of the CVOA during the "B" season of which the offshore component could take advantage. The Council retained the CVOA during the "B" season because catcher vessels that deliver their pollock catch to shore-based processing plants in the Aleutian Islands have a limited range compared with catcher/processor vessels that can harvest pollock resources north and west of the CVOA. In addition, public testimony indicated the possibility of overcrowding and grounds preemption within the CVOA by the catcher/processor fleet. Approval of the CVOA during the "B" season will provide needed protection to the inshore sector. Access to the CVOA is unrestricted during the "A" season, which will allow offshore vessels to operate. In addition, allowing motherships to operate in the CVOA will prevent undue hardship on the smaller catcher vessels in the CVOA and allow delivery there to the offshore component.

Comment 70: In the past, NMFS and the Council rejected similar CVOA proposals that would have applied to foreign fishermen and joint venture fishing operations. The reasons for disapproving such areas in the past apply to the CVOA as now proposed.

Response: The Council proposed a fishery development zone (FDZ) in Amendment 6 to the BSAI groundfish FMP. The FDZ was intended to exclude foreign fishing vessels and be reserved for the use of U.S. fishing vessels only. This amendment proposal was disapproved by the Secretary on December 8, 1983. Even though the concept was supported, the Secretary determined during the preliminary evaluation that the amendment was not consistent with the national standards and was not sufficient in scope and substance to warrant review. The Council was informed of the reasons for disapproval and provided with information on rectifying the deficiencies. The proposal was not resubmitted. In Amendment 9, the Council proposed closure of areas west of 170° W. longitude, within 20 nautical miles of the Aleutian Islands, to foreign trawling. The Council proposed this measure to reduce the foreign bycatch of fully utilized species such as rockfish. The Secretary disapproved this part of the amendment because the proposed area closure was not the most effective way to resolve the bycatch problem. Hence, the reasons for Secretarial disapproval of the previous exclusive area proposals are not relevant to the CVOA proposed as part of revised Amendment 18. In this instance, the CVOA is necessary to assure that catcher vessels that deliver "B" season pollock primarily to the inshore component will have a reasonable opportunity to harvest the pollock allocation without preemption by the offshore component that is capable of harvesting its "B" season allocation in other areas.

Comment 71: The CDQ is needed to help local communities offset the high capital costs of entering the BSAI groundfish fisheries.

Response: NOAA concurs. The CDQ program was established to help develop commercial fisheries in eligible western Alaska communities on the Bering Sea coast that otherwise may not have been able to enter the fishery. The Under Secretary approved the CDQ in concept through December 31, 1995, as a part of the final rule for Amendments 18/23. This decision has not been changed. Proposed regulations to implement the CDQ for the years 1994 and 1995 are the subject of a separate rulemaking; a final rule for the years 1992 and 1993 has been issued.

Comment 72: The CDQ part of the proposed action is not consistent with the problem statement (preemption) and no cost-benefit analysis was done for this portion of the allocation.

Response: See response to comment 71. Analysis of the CDQ program was considered during the review period for Amendments 18/23 and was approved, in concept. The CDQ is being implemented under separate rulemaking.

Comment 73: The allocations would be prejudicial to some CDQ participants because those at-sea processors that are neither catcher vessels nor motherships would be precluded from entering the CVOA. On the other hand, catcher vessels and motherships would be allowed to operate in the CVOA, reducing costs of transportation. The overall effect would be to drive up the expenses of the at-sea segment. The CVOA is unnecessary if the comprehensive rationalization of the fishery occurs and the CVOA discourages some potential participants in the CDQ program.

Response: The final rule issuing regulations to implement the CDQ states that "a vessel included in the offshore component may harvest its CDQ allocation in the CVOA when directed fishing is closed for the offshore component" (57 FR 54936, November 23, 1992). The CVOA is necessary to provide protection for the inshore component and should not affect participation in the CDQ program.

Comment 74: If the CVOA is approved, the non-roe or "B" season should be redefined so that it lasts only 5 weeks (or whatever period would affect the at-sea component). In addition, if individual fishing quotas (IFQ) come about, the CVOA would be unnecessary.

Response: Directed fishing for the second seasonal allowance of pollock, commonly known as the non-roe or "B" season, may occur at any time during the period June 1 through December 31 under § 675.20(a)(2)(ii). Although the "B" season is specified for this period, directed fishing by, or for delivery to, either the inshore or offshore component is expected to occur during a much reduced time period within this season. After closure of the offshore component's directed pollock fishery, the existence of the CVOA becomes moot, unless it is reopened later in the fishing year due to a reapportionment of reserve to the pollock TAC.

The applicability of the CVOA will have to be evaluated by the Council and the Secretary under an IFQ program for the pollock fishery.

Comment 75: The amended language in the prohibition sections of 50 CFR 672.7 and 675.7 to ensure that mobile processors declaring themselves to be part of the inshore component remain at a fixed point throughout the year may be incomplete. The portion of the sections which state, "when that vessel engages in a directed fishery for Pacific cod in the GOA or pollock for the first time in a fishing year" may lead to an interpretation that a vessel may have two fixed locations, one for Pacific cod and one for pollock. It might be useful to provide further clarification of this sentence.

Response: Harvesting and processing can be independent operations that may occur in different areas. With regard to harvesting, the single location criterion under the "inshore component" definition applies to "* * * pollock, harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the GOA * * *" (§§ 672.2 and 675.2). Without reference to a specific management area, this definition applies to any pollock harvested anywhere. For Pacific cod, it applies only to Pacific cod harvested in the GOA. For example, Pacific cod harvested in a directed fishery for this species in the GOA would be affected by the inshore-offshore allocation rules even if the fish were actually processed in the BSAI area. With regard to processing, the definition explains that a "single geographic location" means the location at which a processor vessel first engages in a directed fishery for Pacific cod in the GOA or pollock (harvested anywhere) during a fishing year. For example, if a processor vessel reported a single location adjacent to the BSAI to process pollock harvested in a directed fishery for pollock in that area and then moved to a different location adjacent to the GOA to process either pollock or Pacific cod harvested in directed fisheries for those species in that area, then the GOA location would be considered the second location. This would be a violation of the "inshore component" definition. This interpretation was explained in the preamble of the proposed and final rules for Amendments 18/23 published in the **Federal Register** (56 FR 66009; December 20, 1991, and 57 FR 23321; June 3, 1992, respectively).

Comment 76: The Department of Commerce's Inspector General and the antitrust division of the Department of Justice objected to flaws in the analysis of the rule.

Response: Comments on Amendments 18/23 presented this same argument and the agency responded to these comments in the final rule for Amendments 18/23 (see page 23330 of 57 FR 23321, June 3, 1992).

Comment 77: Revised Amendment 18 is in violation of the Appointments Clause of the U.S. Constitution. The

majority of the voting members of the Council are selected by the Governor of Alaska and biased Amendment 18 to promote social interests rather than legitimate conservation and management goals.

Response: Although Councils recommend FMPs or FMP amendments, it is the Secretary that decides whether to approve or disapprove a Council's proposal and only the Secretary has the authority to implement an approved FMP or FMP amendment. The delegation of power from the Congress to the Secretary is within the authority of the Appointments Clause. Therefore, the Secretary's approval of this allocation does not violate the Appointments Clause of the U.S. Constitution.

Classification

NOAA determined that revised Amendment 18 to the BSAI groundfish FMP, as approved, is necessary for the conservation and management of the groundfish fishery in this area. This final rule implementing revised Amendment 18 is published under section 305(a)(2) of the Magnuson Act, which requires the Secretary to publish regulations that are necessary to carry out a plan or plan amendment. The Under Secretary has determined that revised Amendment 18 as approved is consistent with the Magnuson Act and other applicable law.

NMFS finalized a supplemental environmental impact statement (FSEIS) for Amendments 18 and 23, which was reviewed under the requirements of the National Environmental Policy Act. A notice of availability of the FSEIS was published on March 20, 1992 (57 FR 9722). A copy of the FSEIS may be requested from the Council (see **ADDRESSES**). Since the impacts of revised Amendment 18 are within the scope of the FSEIS, this rule is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216–6.

NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/FRFA prepared by the Council. A copy of the RIR/FRFA may be requested from the Council (see **ADDRESSES**).

The FRFA prepared by the Council describes the effects that revised Amendment 18 is expected to have on small entities. Based on this analysis, NOAA concluded that this rule implementing revised Amendment 18 will have a significant impact on a substantial number of small entities. A summary of this determination is contained in the proposed rule notice (57 FR 46133, October 7, 1992).

The existing collection-of-information requirement for check-in/check-out notices has been approved by the Office of Management and Budget under the Paperwork Reduction Act (PRA) (control number 0648–0213). This final rule does not contain a collection-of-information requirement for purposes of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible Alaska State agency under section 307 of the Coastal Zone Management Act. Consistency is automatically inferred because the appropriate State agency did not reply within the statutory time period.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

A formal consultation on the original Amendment 18 under section 7 of the Endangered Species Act (ESA) was previously conducted by NMFS. The resulting biological opinion, dated March 4, 1992, concluded that the amendment was not likely to jeopardize the continued existence of any endangered or threatened species within the jurisdiction of NMFS. Since revised Amendment 18 is not expected to result in any effects to listed species that were not considered in the March 4 biological opinion, further consultation under section 7 is not required. NMFS will continue to evaluate the suitability of the existing management measures in the southeastern Bering Sea shelf to ensure adequate protection for Steller sea lions.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 18, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.2, the existing definitions of "inshore component" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

* * * * *

3. In § 672.7, paragraph (h) (1) and (2) are revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) * * *

(1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 672.2 of this part, during any fishing year.

(2) Operate any vessel to process pollock harvested in a Federal reporting area off Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

4. Section 672.20 is amended by removing paragraph (a)(2)(v)(C), and revising paragraphs (a)(2)(v) (A) and (B) to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) * * *

(v) * * *

(A) The DAP apportionment of pollock in all regulatory areas and for each quarterly reporting period described in paragraph (a)(2)(iv) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If the Regional Director determines that the inshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by the inshore component during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the offshore component.

(B) The DAP apportionment of Pacific cod in all regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraph (c)(2) of this section for vessels catching Pacific cod for processing by the inshore component and for vessels catching Pacific cod for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of Pacific cod allocated to vessels catching Pacific cod for processing by that component, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of Pacific cod to vessels catching Pacific cod for processing by the other component.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

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

6. In § 675.2, the definitions of "inshore component" and "offshore component" are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 metric tons of Pacific cod harvested in the Gulf of Alaska and pollock in aggregate round weight equivalents, and are less than 125 feet (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, and that submit a check-in notice and weekly production report as required at § 672.5(c) of this part. For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a check-in notice submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the Gulf of Alaska or pollock for the first time in a fishing year.

* * * * *

Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

* * * * *

7. In § 675.7, (i) is revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1995.* (1) Operate any vessel in more than one of the three categories included in the definition of "inshore component," at § 675.2 of this part, during any fishing year.

(2) Operate any vessel to process pollock harvested in a Federal reporting area of Alaska in a directed fishery for pollock, or Pacific cod harvested in the Gulf of Alaska in a directed fishery for Pacific cod, under the "inshore component" and "offshore component" definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

8. In § 675.20, paragraph (a)(2)(iii) introductory text is revised to read as follows:

§ 675.20 General limitations

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1995.* The DAP apportionment of pollock in each subarea, and for each seasonal allowance defined in paragraph (a)(2)(ii) of this section, will be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. The Regional Director may establish separate directed fishing allowances and prohibitions authorized under paragraphs (a)(8) and (a)(9) of this section for vessels catching pollock for processing by the inshore component and for vessels catching pollock for processing by the offshore component. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to process the entire amount of pollock allocated to vessels catching pollock for processing by that component, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to vessels catching pollock for processing by the other component.

* * * * *

9. In § 675.22, paragraph (g) is revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1995).* Processor vessels in the "offshore component," defined at § 675.2 of this part, may not catch pollock in excess of the directed fishing standard for pollock during the second seasonal allowance of pollock, defined in paragraph (a)(2)(ii) of this section, in the Bering Sea subarea south of 56°00′ N. latitude, and between 163°00′ and 168°00′ W. longitude. Processor vessels in the "offshore component" that do not catch groundfish but process pollock that is caught in a directed fishery for pollock by catcher vessels, may operate within this area to process the second seasonal allowance of pollock. Offshore processor vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within this area.

[FR Doc. 92-31210 Filed 12-18-92; 5:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

Standard Design Certification Rulemaking Procedures; Notice of Availability; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability: Correction.

SUMMARY: This document corrects a notice of availability appearing in the **Federal Register** on December 11, 1992 (57 FR 58730), that announces the availability of a paper, SECY 92-381 (November 10, 1992), providing final recommendations on design certification rulemaking procedures. The heading of the notice should be corrected to read 10 CFR Part 52, rather than 10 CFR Part 54.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504-1639.

Dated at Rockville, MD this 18th day of December, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-31248 Filed 12-23-92; 8:45 am]

BILLING CODE 7590-01-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1503

Privacy Act Procedures

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Privacy Act procedures of the Thrift Depositor Protection Oversight Board to permit it to use a specific exemption for certain investigatory material, as authorized by the Privacy Act. The action is necessary to protect the identity of sources of investigatory information compiled solely for determining suitability for Federal employment. The objective of the amendment is to protect the identity of sources who have furnished information to the Government under an express promise of confidentiality.

DATES: Comments must be received on or before January 25, 1993.

ADDRESSES: Comments may be mailed to the Office of General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, telephone (202) 786-9681.

SUPPLEMENTARY INFORMATION:

Privacy Act Rule

Elsewhere in this issue of the **Federal Register** the Thrift Depositor Oversight Board ("Board") is publishing a final rule establishing procedures to implement the Privacy Act of 1974, 5 U.S.C. 552a. The final rule does not include specific exemptions that, as authorized by 5 U.S.C. 552a(k)(5), may be promulgated in accordance with requirements of 5 U.S.C. 553.

Proposed Amendment

The Board receives and compiles investigatory information for the purpose of determining the suitability, eligibility, or qualifications for Federal employment of persons who may serve as special government employees on advisory boards established under section 21A(d) of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1441a(d), to advise the Board and the Resolution Trust Corporation on the disposition of real property assets of institutions under the jurisdiction of the Corporation. The Board does not directly obtain confidential investigatory information from third parties through the use of written report forms, questionnaires, or similar methods, but it receives such information from or through other agencies of the United States Government; and it is necessary to protect the identity of sources who would provide information to the Government only under express promises that their identities would be held in confidence.

Accordingly, the Board has determined to propose an amendment to its Privacy Act regulations that would add a new § 1503.13 to 12 CFR part 1503. As authorized by 5 U.S.C. 552a(k)(5), the new section would exempt a system of records within the Board from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f) of section 552a that is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal employment, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. As required by 5 U.S.C. 552a(k), the Board is publishing general notice of this proposed rulemaking in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3).

Executive Order 12991

The proposed amendment is not a major rule for the purposes of Executive Order 12291.

Regulatory Flexibility Act

The proposed amendment would concern information concerning Federal employment, and the Board certifies that the rule will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The proposed amendment would not require any collection of information.

List of Subjects in 12 CFR Part 1503

Privacy.

For the reasons set forth in the preamble, 12 CFR part 1503 is proposed to be amended as follows:

PART 1503—PRIVACY ACT PROCEDURES

1. The authority citation for Part 1503 continues to read as follows:

Authority: 5 U.S.C. 552a; 12 U.S.C. 1441a(a) (2) and (13).

2. Section 1503.13 is added to read as follows:

§ 1503.13 Exemption of system of records for Privacy Act provisions.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G) and (H), and (f) and from the sections of this part that implement such subsections of 5 U.S.C. 552a: Advisory Board Member Files (OB–011).

(b) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(c) The exemptions from particular subsections are justified for the following reasons:

(1) From subsections (c)(3), (d), (e)(4) (G) and (H), and (f), because access to records that are subject to exemption pursuant to 5 U.S.C. 552a(k)(5) would cause the identity of a confidential source to be disclosed and impair the ability of the Board and of agencies providing such information to the Board to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment.

(2) From subsection (e)(1), which requires that the agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a statutory or executively ordered purpose, because such requirement would unduly restrict the Board in its information gathering. The relevance and necessity of particular information with respect to the evaluation of candidates for Federal civilian employment cannot be determined prior to evaluation.

Peter H. Monroe,

President.

[FR Doc. 92–31205 Filed 12–23–92; 8:45 am]

BILLING CODE 2222–01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ANM–25]

Proposed Alteration of Control Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the names of two VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) aids, and one VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) aid, within the airspace designations for certain control zones located in Oregon and Idaho. A navigational aid (NAVAID) with the same name as the airport should be located on the airport. This action proposes to reflect the name changes, where necessary, of the NAVAID's that are not located on the airport with which they are associated.

DATES: Comments must be received on or before February 10, 1993.

ADDRESSES: Send comments on the proposal to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 92–ANM–25, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

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

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM–535, Federal Aviation Administration, Docket No. 92–ANM–25, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify with the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ANM–25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NRPM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NRPM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the change of the names of four VORTAC's within the airspace designations for certain control zones located in Oregon and Idaho. FAA Handbook 7400.2C states that a NAVAID with the same name as the associated airport should be located on the airport; therefore, the names of the NAVAID's associated with that airport that are not located on the airport surface, or are not the primary NAVAID's located off the airport surface for that airport, are proposed to be changed accordingly. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in section 71.171 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zones listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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

Aviation safety, Control zones, Incorporation by reference.

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

§71.171 Designation of Control Zones.

* * * * *

ANM OR CZ Medford, OR [Revised]

Medford-Jackson County Airport, OR
(lat. 42°22'20"N, long. 122°52'22"W)
Rogue Valley VORTAC (lat. 42°28'47"N. long. 122°54'47"W) Pumie Lom (lat. 42°27'03"N, long. 122°54'49"W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of the Medford-Jackson County Airport; and that airspace extending upward from the surface within 1.8 miles west and 2.7 miles east of the Medford ILS localizer north course extending from the 4.1-mile radius to 2.7 miles north of the Pumie LOM, and within 2.7 miles each side of the Rogue Valley VORTAC 352° radial extending from the Rogue Valley VORTAC to 6.4 miles north of the VORTAC, and within 4 miles each side of the VORTAC 164° radial extending from the 4.1-mile radius to 19.3 miles south of the Medford-Jackson County Airport.

* * * * *

ANM OR CZ Redmond, OR [Revised]

Redmond, Roberts Field, OR
(lat. 44°15'14"N, long 121°09'00"W)
Deschutes VORTAC (lat. 44°15'10"N, long, 121°18'13"W)

Within a 5.1-mile radius of Roberts Field, and within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius to .9 mile west of the VORTAC.

* * * * *

ANM ID CZ Lewiston, ID [Revised]

Lewiston-Nez Perce County Airport, ID
(lat. 46°22'28"N, long. 117°00'55"W)
Nez Perce VOR/DME (lat. 46°22'53"N, long. 116°52'10"W)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 4.1-mile radius of the Lewiston-Nez Perce County Airport; and that airspace extending upward from the surface within 2.7 miles each side of the Lewiston-Nez Perce ILS localizer course extending from the 4.1-mile radius to 14 miles east of the airport, and within 3.5 miles each side of the Nez Perce VOR/DME 266° radial extending from the 4.1-mile radius to 13.1 miles west of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter by continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on December 14, 1992.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 92–31241 Filed 12–23–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AWP–20]

Proposed Establishment of a Transition Area at Westover Field Amador Co; Jackson, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700 foot and above transition area at Westover Field Amador Co, Jackson, CA. This transition area would provide controlled airspace for aircraft executing a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) to the Westover Field Amador Co.

DATES: Comments must be received on or before February 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 92–AWP–20, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 6W14, 15000 Aviation Boulevard, Lawndale, CA.

An informal docket may be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWP–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot above the surface transition area at Westover Field

Amador Co, Jackson, CA. This transition area would provide controlled airspace from 700 feet above ground level and above for aircraft executing a newly established approach, the VOR/DME Runway 1, into Westover Field Amador Co, Jackson, CA. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in section 71.181 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; 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, when promulgated, 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

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR 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, 1956–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

§ 71.181 Designation of Transition Areas.

* * * * *

AWP CA TA Jackson, CA [New]

Westover Field Amador Co, Jackson, CA (lat. 38°22'44"N, long. 120°48'04"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Westover Field Amador Co, Jackson, CA.

* * * * *

Issued in Los Angeles, California, on December 15, 1992.

Charles B. Aalfs,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 92–31242 Filed 12–23–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–164–84]

RIN 1545–AG98

Allocations Reflecting Built-in Gain or Loss on Property Contributed to a Partnership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to allocations with respect to property contributed by a partner to a partnership under section 704 of the Internal Revenue Code. Changes to the applicable law were made by the Tax Reform Act of 1984 and the Revenue Reconciliation Act of 1989. The proposed regulations affect partnerships and their partners and are necessary to provide guidance needed to comply with the applicable tax law.

DATES: Written comments, requests to appear, and outlines to be presented at a public hearing scheduled for April 16, 1993, at 10 a.m. must be received by March 26, 1993. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–164–84], room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit, (202) 622–8452 (not a toll-free number); concerning the regulations, David Edquist at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document proposes to add new § 1.704–3 to the Income Tax Regulations (26 CFR part 1) under section 704(c)(1) of the Internal Revenue Code (Code) and to revise §§ 1.704–1(b)(1)(2)(vi), 1.704–1(b)(2)(iv), and 1.704–1(c) of the existing regulations.

Background

Contributions to and distributions from partnerships are generally tax free under sections 721 and 731 of the Code, respectively. Prior to its amendment by the Tax Reform Act of 1984 (1984 Act), section 704(c) provided that, in determining a partner's distributive share of partnership items, depreciation, depletion, or gain or loss with respect to property contributed by a partner was generally allocated among the partners in the same manner as if the property had been purchased by the partnership. However, the statute permitted a partnership, if the partnership agreement so provided, to make allocations with respect to contributed property so as to take into account the variation between the basis of the property to the partnership and its fair market value at the time of contribution.

The 1984 Act amended section 704(c) of the Code to require, rather than permit, that income, gain, loss, and deduction with respect to property contributed to the partnership by a partner be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. The statute grants broad regulatory authority to determine how these allocations should be made. This resulted from Congressional concern that the existing regulations under the formerly elective method did not provide sufficient flexibility and were overly burdensome for taxpayers in situations where there was little potential for abuse. See H.R. Rep. No. 861, 98th Cong., 2d Sess. 857 (1984); S. Prt. No. 169, Vol. I, 98th Cong., 2d Sess. 214–15 (1984).

The proposed regulations attempt to provide guidance that is consistent with the intent of Congress in enacting the amendments to section 704(c) and that is relatively simple for taxpayers to comply with and for the Internal Revenue Service to administer. The Treasury Department and the Internal Revenue Service encourage public

participation in the rulemaking process to achieve these goals.

Explanation of Provisions

In General

After review of the statute and legislative history, the Service and the Treasury Department have determined that when a partner contributes property to a partnership and the partner's basis in the property is not equal to the property's fair market value, the partner and the partnership should be able to use any reasonable method, consistently applied, of making allocations so that the contributing partner receives the tax burdens and benefits of any precontribution gain (built-in gain) and precontribution loss (built-in loss). The proposed regulations adopt this approach.

The proposed regulations specifically describe three reasonable methods of making allocations under section 704(c). These are (1) the traditional method, (2) the traditional method with curative allocations, and (3) the deferred sale method. Other reasonable allocation methods meeting the requirements of section 704(c) are also acceptable.

The proposed regulations allow a partnership to use different reasonable allocation methods with respect to different items of section 704(c) property. However, a partnership may not use more than one method with respect to the same item of section 704(c) property. The allocation method used for an item of section 704(c) property must be consistently applied to that item by both the partnership and the partners from year to year. In addition, the overall method or combination of methods must be reasonable under the facts and circumstances.

The proposed regulations provide a general anti-abuse rule that applies to all methods of making section 704(c) allocations, including the methods described in the regulations. Under the rule, an allocation method is not reasonable if the contribution of property and the allocation of tax items are made with a view to reducing substantially the partners' aggregate overall tax liability.

The proposed regulations also provide special rules and exceptions that apply regardless of the allocation method chosen by the partnership. These include a de minimis rule for small disparities, an aggregation rule for certain depreciable property, and a consistency rule for tiered partnerships.

The Traditional Method

The "traditional method" is the method of allocation described in § 1.704–1(c)(2) of the existing regulations, which reflect the formerly elective section 704(c). The proposed regulations restate the existing regulations in simpler terms. The traditional method requires the partnership, upon the disposition of contributed property, to allocate to the contributing partner the gain or loss attributable to the period prior to the contribution of the property. The partnership must also allocate any cost recovery deductions with respect to the contributed property to reduce the build-in gain or build-in loss. Generally, partnerships do this by determining the cost recovery deductions to which the partners are economically entitled based on the property's fair market value at the time of contribution, and then allocating first to non-contributing partners the cost recovery deduction for tax purposes up to the amount of their share of the economic (*i.e.*, book) deductions. The remaining tax deductions, if any, may be allocated to the contributing partner or shared among the partners.

The traditional method retains the "ceiling rule." The ceiling rule provides that the total amortization, depletion, depreciation, or gain or loss allocated to the partners cannot exceed the amount of the partnership's amortization, depletion, depreciation, or gain or loss. Thus, under the traditional method there may be insufficient partnership tax deductions to allow noncontributing partners to be allocated tax deductions equal to their share of book deductions. This consequence of the ceiling rule may prevent elimination of the entire effect of the disparity between the fair market value and adjusted basis in the partnership for the contributing partner and may create a disparity for the noncontributing partners. The proposed regulations retain the traditional method despite this potential for distortions; however, the general anti-abuse rule may apply to limit the use of the traditional method.

The proposed regulations maintain Example (2) in existing § 1.704–1(c)(2) in its present form, although the Joint Committee on Taxation's General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 suggests that this example should be amended. See General Explanation at 213, n.4. The intent of the suggestion is that the regulations permit tax allocations to correct the distortions caused by the ceiling rule upon a disposition of contributed property. Because that allocation would be permissible as a curative allocation under the proposed regulations, modification of the example is not necessary.

The proposed regulations also provide that under the traditional method, if a partnership disposes of section 704(c) property in a transaction in which gain or loss is not recognized, any substituted basis property is treated as section 704(c) property with the same amount of built-in gain or built-in loss as the section 704(c) property disposed of by the partnership.

The Traditional Method with Curative Allocations

The proposed regulations provide that partnerships may modify the traditional method by using reasonable curative allocations to overcome the distortions caused by the ceiling rule. In general, curative allocations are allocations of other partnership tax items of income, gain, loss, or deduction that "cure" disparities caused by the ceiling rule. Thus, the purpose of curative allocations is to equalize the overall allocations of economic and tax items to noncontributing partners. Because curative allocations involve only tax items, they will differ from economic allocations of the same items.

Under the proposed regulations, a curative allocation is reasonable only if it conforms to certain limitations, including the general anti-abuse rule. A curative allocation is reasonable only up to the amount necessary to offset the effect of the ceiling rule and only if it is made using a tax item that would have the same effect on the partners as the tax item affected by the ceiling rule.

If a partnership does not have tax items sufficient to make a reasonable curative allocation, the partnership may make the curative allocation in the next taxable year that it has sufficient other items of the correct type, provided that the curative allocation, when made, is reasonable. The proposed regulations do not attempt to define specific methods of making curative allocations that are reasonable. The Internal Revenue Service and the Treasury Department welcome comments regarding whether practitioners believe that the regulations should provide more specific guidance.

The Deferred Sale Method

In General

The proposed regulations allow use of the deferred sale method. Under this method, a contribution of property to the partnership is treated as a sale of the property to the partnership at fair market value, except that the recognition of any gain or loss realized by the partner on the sale is deferred (deferred gain or loss). The partnership

is treated as having a tax basis in the property, at the time of contribution, equal to its fair market value. The partnership's tax basis consists of the adjusted basis in the hands of the contributing partner and an amount of additional basis treated as newly acquired property. Upon contribution, the contributing partner's basis in the partnership interest is increased by an amount equal to the partner's adjusted tax basis in the property. The contributing partner's basis in the partnership interest increases or decreases by the amount of deferred gain or loss recognized by the partner each year.

Type and Stacking Order

The character, source, and other attributes of any deferred gain or loss recognized are determined as if the deferred sale property had been sold to the partnership at the time of the contribution. If the contributing partner would have had both ordinary income and capital gain had the deferred sale property been sold to the partnership at the time of the contribution, the contributing partner must treat recognized deferred gain as ordinary income until an amount of deferred gain equal to the deferred ordinary income has been recognized.

Recognition of Deferred Gain or Loss

As a general rule, the deferred gain or loss is triggered when the partnership receives an advantage or detriment, for tax purposes, from the adjusted partnership basis generated or foregone by using the deferred sale method, or when the contributing partner's interest in the partnership is reduced. In particular, all or part of the contributing partner's deferred gain or loss is triggered by the following events:

(i) The partnership takes deductions for amortization, depletion, depreciation, or other cost recovery that differ from the deductions it would have been allowed had it taken a transferred basis in the contributed property under section 723;

(ii) The partnership disposes of the contributed asset (including by distribution to any partner other than the contributing partner);

(iii) The partnership makes a distribution to the contributing partner, and the amount of cash and the fair market value of property distributed exceeds the adjusted basis of the partner's interest in the partnership immediately before the distribution; and

(iv) The partner disposes of any portion of the partnership interest (other than by death).

Special Rules

The proposed regulations provide special rules for dispositions of deferred sale property in certain nonrecognition transactions. If a partnership disposes of deferred sale property in a nonrecognition transaction under sections 1031, 1033, 1071, or 1081, deferred gain or loss is generally not recognized, but the replacement property acquired by the partnership is treated as deferred sale property. If the contributing partner disposes of all or a portion of the interest in the partnership in a nonrecognition transaction (for example, a transaction under section 351 or 721), the partner does not recognize any remaining deferred gain or loss, unless and to the extent that gain or loss is recognized in that transaction. The transferee partner recognizes any remaining deferred gain or loss at the same time and in the same manner as the contributing partner would have recognized the remaining deferred gain or loss.

Section 704(b) Revaluations

The principles of the proposed regulations also apply to allocations that reflect differences between book value and adjusted tax basis created when a partnership chooses to revalue partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*) (reverse section 704(c) allocations). Partnerships are generally not required to use the same allocation method for reverse section 704(c) allocations as for section 704(c) property or to use the same allocation method each time the partnership revalues its property, so long as each method is reasonable under the facts and circumstances.

Special Rules and Exceptions

Small Disparities

The proposed regulations provide that a partnership may disregard the application of section 704(c) to a partner's contributions of property in a single year if (1) for each item of contributed property, the fair market value does not differ from the adjusted basis by more than 15 percent of the adjusted basis, and (2) the total disparity for all properties contributed by that partner in that year does not exceed $10,000. In determining the total disparity for all properties, built-in gains and losses are both treated as positive numbers and property to which the deferred sale method is applied is not included. Alternatively, in the case of a small disparity, a partnership may choose to allocate gain or loss under section 704(c) only upon the disposition of the property.

Aggregation of Property

In general, the proposed regulations provide that property may not be aggregated for purposes of making allocations under section 704(c). However, property (other than real property) that is included in the same general asset account and contributed by a partner in a single taxable year of the partnership may be treated as one item of property. In addition, the Service and the Treasury Department may provide in guidance published in the Internal Revenue Bulletin that other classes of items may be aggregated for purposes of section 704(c).

Tiered Partnerships

The proposed regulations provide that when a partnership contributes section 704(c) property (other than deferred sale property) to a lower-tier partnership, the upper-tier partnership must allocate its distributive share of lower-tier partnership items in a manner that takes into account the contributing partner's remaining built-in gain or loss.

Proposed Effective Date

These regulations are proposed to apply to property contributed to a partnership on or after the date the regulations are published in final form in the **Federal Register**.

Request for Comments

The Service invites public comment on the rules proposed in these regulations. In particular, the Service requests comments on: (1) Possible allocation methods for partnerships that invest in marketable securities or commodities, (2) what, if any, additional specific guidance should be provided on what constitutes a reasonable or unreasonable curative allocation, (3) other types of property for which aggregation should be permitted, (4) how dispositions of deferred sale property in a nonrecognition transaction should be treated, and (5) how the deferred sale method might apply to oil and gas properties.

Private Letter Ruling Requests

The Service will entertain private letter ruling requests on whether particular allocation methods under section 704(c) are or are not considered reasonable. In particular, the Service invites private letter ruling requests regarding allocation methods (for both contributed property and revalued property) from partnerships with multiple properties and multiple partners where the compliance burden is likely to outweigh any abuse potential.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on April 16, 1993, at 10 a.m. Written requests to speak and outlines of oral comments must be received by March 26, 1993. See notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David Edquist of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.701–1 through 1.709–2

Income Taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.704–3 also issued under 26 U.S.C. 704(c). * * *

Par. 2. Section 1.704–1 is amended by revising paragraphs (b)(1)(vi), (b)(2)(iv)(*d*)(*3*), and (c) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(vi) *Section 704(c) determinations.* Section 704(c) and § 1.704–3 generally require that if property is contributed by a partner to a partnership, the partners' distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to the property are determined so as to take account of the variation between the adjusted tax basis and fair market value of the property. Although section 704(b) does not directly determine the partners' distributive shares of tax items governed by section 704(c), the partners' distributive shares of tax items may be determined under section 704(c) and § 1.704–3 (depending on the allocation method chosen by the partnership under § 1.704–3) with reference to the partners' distributive shares of the corresponding book items, as determined under section 704(b) and this paragraph. (See paragraphs (b)(2)(iv)(*d*) and (b)(4)(i) of this section.) See § 1.704–3 for methods of making allocations under section 704(c). See also Example (13)(i) of paragraph (b)(5) of this section.

* * * * *

(2) * * *

(iv) * * *

(*d*) * * *

(*3*) *Section 704(c) considerations.* Section 704(c) and § 1.704–3 govern the determination of the partners' distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to property contributed to a partnership (see paragraph (b)(1)(vi) of this section). In cases where section 704(c) and § 1.704–3 apply to partnership property, the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless the partnership agreement requires that the partners' capital accounts be adjusted in accordance with paragraph (b)(2)(iv)(g) of this section for allocations to them of depreciation, depletion, amortization, or other cost recovery, and gain and loss, as computed for book purposes, with respect to such property. See Example (13)(i) of paragraph (b)(5) of this section. Capital accounts are not adjusted to reflect allocations of taxable income under section 704(c) and § 1.704–3 (*i.e.*, allocations of precontribution gain, curative allocations, or deferred gain or loss).

* * * * *

(c) *Contributed property; cross-reference.* See § 1.704–3 for methods of making allocations that take into account precontribution appreciation or diminution in value of property contributed by a partner to a partnership.

* * * * *

Par. 3. Section 1.704–3 is added to read as follows:

§ 1.704–3 Contributed property.

(a) *In general*—(1) *General principles.* Under section 704(c), a partnership must allocate income, gain, loss, and deduction with respect to partnership property contributed by a partner so as to take into account any variation between the adjusted basis of the property and its fair market value at the time of contribution. Notwithstanding any other provision of this regulation a partnership must make allocations under this section using a reasonable method that is consistent with the purposes of section 704(c). Except as provided by paragraph (e)(2) of this section, section 704(c) and this section apply on a property-by-property basis (*e.g.*, in determining whether or not there is a disparity between basis and value, the built-in gains and built-in losses on items of property contributed by a single partner cannot be aggregated). A partnership may use different methods with respect to different items of contributed property, provided that the partnership and the partners consistently apply a single reasonable method for each item of contributed property and that the overall method or combination of methods are reasonable based on the facts and circumstances. For example, it may be unreasonable to use one method for appreciated property and another method for depreciated property. Paragraphs (b), (c), and (d) of this section describe some reasonable allocation methods. Paragraph (e) of this section contains special rules and exceptions.

(2) *Definitions*—(i) *Section 704(c) property.* Property contributed to a partnership is section 704(c) property if at the time of contribution its book value differs from the contributing partner's adjusted tax basis. For purposes of this section, book value is determined as contemplated by § 1.704–1(b); therefore, book value is equal to fair market value at the time of contribution, and is subsequently adjusted for cost recovery and other economic events. For a partnership that maintains capital accounts in accordance with § 1.704–1(b)(2)(iv), the book value of property is its value used in determining the contributing partner's capital account under § 1.704–1(b)(2)(iv)(*d*), and as adjusted thereafter

(*e.g.*, for book cost recovery under § 1.704–1(b)(2)(iv)(g)(3)). A partnership that does not maintain capital accounts under § 1.704–1(b)(2)(iv) must comply with this § 1.704–3 using a book capital account based on the same principles (*i.e.*, a book account that reflects the fair market value of property at the time of contribution and is subsequently adjusted for cost recovery and other recognition events).

(ii) *Built-in gain and built-in loss.* The contributing partner's built-in gain on section 704(c) property is the excess of the property's book value over the partner's tax basis upon contribution. The contributing partner's built-in gain is thereafter reduced by any decrease in the difference between the property's book value and adjusted tax basis. The contributing partner's built-in loss on section 704(c) property is the excess of the partner's tax basis over the property's book value upon contribution. The contributing partner's built-in loss is thereafter reduced by any decrease in the difference between the property's adjusted tax basis and book value.

(3) *Other provisions of the Internal Revenue Code.* Except as provided in paragraph (a)(4) of this section, section 704(c) and this section apply only if there is a contribution of property to the partnership under section 721, taking into account other provisions of the Internal Revenue Code. For example, to the extent that a transfer of property to a partnership is a sale under section 707, the transfer is not a contribution of property to which section 704(c) applies.

(4) *Revaluations under section 704(b).* The principles of this section apply to allocations that reflect differences between book value and adjusted tax basis created when a partnership chooses to revalue partnership property pursuant to § 1.704-1(b)(2)(iv)(f) (reverse section 704(c) allocations). Partnerships are generally not required to use the same allocation method for reverse section 704(c) allocations as for section 704(c) property, even if at the time of revaluation the property is already subject to section 704(c) and paragraph (a)(1) of this section. In addition, partnerships are generally not required to use the same allocation method for reverse section 704(c) allocations each time the partnership revalues its property. A partnership that makes allocations with respect to revalued property must do so by using a reasonable method that is consistent with the purposes of section 704 (b) and (c).

(5) *Anti-abuse rule.* An allocation method is not reasonable if the contribution of property and the allocation of tax items are made with a view to reducing substantially the partners' aggregate overall tax liability without substantially affecting the amounts to which each partner is economically entitled on the partnership's books. If a partnership's allocation method is unreasonable, the Service may make adjustments as needed to result in a reasonable method. See Example 2 of paragraph (b)(3) of this section and Example 2 of paragraph (c)(4) of this section.

(b) *Traditional method*—(1) *In general.* This paragraph (b) describes the traditional method of making section 704(c) allocations. In general, the traditional method requires that when the partnership has gain, loss, income, or deduction attributable to built-in gain or built-in loss on contributed property, it must make appropriate allocations to the contributing partner. Specifically, when the partnership disposes of section 704(c) property in a transaction in which gain or loss is recognized, any built-in gain or built-in loss on the property is allocated to the contributing partner. If the partnership disposes of part of section 704(c) property in a transaction in which gain or loss is recognized, a proportionate part of any built-in gain or built-in loss is allocated to the contributing partner. For section 704(c) property subject to amortization, depletion, depreciation, or other cost recovery, the allocation of deductions for these items takes into account any built-in gain or built-in loss on the property. For example, tax allocations of cost recovery deductions with respect to 704(c) property to the noncontributing partners are generally required to equal book allocations to those partners. However, the total amortization, depletion, depreciation, other cost recovery, or gain or loss allocated to the partners with respect to a property cannot exceed the amount of the partnership's amortization, depletion, depreciation, other cost recovery, or gain or loss with respect to that property (the ceiling rule).

(2) *Disposition of property in nonrecognition transaction.* If a partnership disposes of section 704(c) property in a transaction in which gain or loss is not recognized, any substituted basis property (within the meaning of section 7701(a)(42)) is treated as section 704(c) property with the same amount of built-in gain or built-in loss as the section 704(c) property disposed of by the partnership. To the extent that gain or loss is recognized in part in a transaction, paragraph (b)(1) of this section applies.

(3) *Examples.* The following examples illustrate the principles of the traditional method

Example 1. Reasonable use of the traditional method—(i) *Calculation of built-in gain on contribution.* A and B form partnership AB and agree that each will receive a 50 percent share of all partnership items and that AB will make allocations under section 704(c) using the traditional method under paragraph (b) of this section. A contributes depreciable property with a tax basis of $4,000 and a book value of $10,000, and B contributes $10,000 cash. Under paragraph (a)(2) of this section, A has built-in gain of $6,000, the excess of the partnership's book value for the property ($10,000) over A's tax basis in the property at the time of contribution ($4,000).

(ii) *Allocation of tax depreciation.* The property is depreciated using the straight-line method over a 10-year useful life. By contributing $10,000 cash, B has, in effect, acquired an undivided one-half interest in the property, with a fair market value of $5,000. Because the property depreciates at an annual rate of 10 percent, B would have been entitled to a depreciation deduction of $500 per year for both book and tax purposes. However, the partnership is allowed a depreciation deduction of only $400 per year (10 percent of $4,000) for tax purposes. Under the ceiling rule of paragraph (b)(1) of this section, the partnership can only allocate $400 of tax depreciation, and it must be allocated entirely to B. In AB's first year, the proceeds generated by the equipment exactly equal AB's operating expenses. At the end of that year, AB has an adjusted book value for the property of $9,000 ($10,000 less the $1,000 book depreciation deduction), and an adjusted tax basis in the property of $3,600 ($4,000 less the $400 tax depreciation deduction). A's built-in gain with respect to the property decreases to $5,400 ($9,000 book value less $3,600 tax basis). Also, at the end of AB's first year, A has a $4,000 basis in A's partnership interest, and B has a $9,600 basis in B's partnership interest.

(iii) *Sale of the property.* If AB sells the property at the beginning of AB's second year for $9,000, AB realizes tax gain of $5,400 ($9,000, the amount realized, less the adjusted basis of $3,600). Under paragraph (b)(1) of this section, the entire $5,400 gain must be allocated to A because A has that much built-in gain. If AB sells the property at the beginning of AB's second year for $10,000, AB realizes tax gain of $6,400 ($10,000, the amount realized, less the adjusted basis of $3,600). Under paragraph (b)(1) of this section, only $5,400 of gain must be allocated to A to account for A's built-in gain. The remaining $1,000 of gain is allocated equally between A and B in accordance with the partnership agreement. If AB sells the property for less than the $9,000 book value, and AB realizes tax gain of less than $5,400, the entire gain must be allocated to A.

(iv) *Termination of partnership.* If AB sells the property at the beginning of AB's second year for $9,000, and A, B, and AB engage in no other transactions that year, A will report a gain of $5,400, and B will report no income

or loss. A's adjusted basis for A's interest in AB will then be $9,400 ($4,000, A's original basis, increased by the gain of $5,400). B's adjusted basis for B's interest in AB will be $9,600 ($10,000, B's original basis, less the $400 depreciation deduction in the first partnership year). If the partnership then terminates and distributes its assets ($19,000 in cash) to A and B pro rata to liquidate their interests, A will have a capital gain of $100 ($9,500, the amount received, less $9,400, the adjusted basis of A's interest). B will have a capital loss of $100 (the excess of B's adjusted basis, $9,600, over the amount received, $9,500).

Example 2. Unreasonable use of the traditional method—(i) *Facts.* C and D form partnership CD and agree that each will receive a 50 percent share of all partnership items and that CD will make allocations under section 704(c) using the traditional method under paragraph (b) of this section. C contributes equipment with a tax basis of $1,000 and a book value of $10,000, with a view to taking advantage of the fact that the equipment has only one year remaining on its cost recovery schedule although its remaining economic life is significantly longer. The equipment is section 704(c) property, and at the time of contribution C has a built-in gain of $9,000. D contributes $10,000 of cash, which CD uses to buy securities. D has substantial net operating loss carryforwards that D otherwise anticipates will expire unused. Under § 1.704–1(b)(2)(iv)(g)(3), the partnership must allocate the $10,000 of book depreciation to the partners in the first year of the partnership. Thus, there is $10,000 of book depreciation and $1,000 of tax depreciation in the partnership's first year. CD sells the equipment during the second year for $10,000 and recognizes a $10,000 gain ($10,000 received less the adjusted basis of $0).

(ii) *Unreasonable use of method*—(A) At the end of the first year both the book value and adjusted basis of the equipment are $0 so there is no more remaining built-in gain. Therefore, the $10,000 gain on the sale of the equipment in the second year is allocated $5,000 each to C and D. The interaction of the partnership's one-year writeoff of the entire book basis in the equipment and the use of the traditional method results in a shift of $4,000 (D's $5,000 share of the sale proceeds less the $1,000 tax depreciation deduction previously allocated to D) of the precontribution gain in the equipment from C to D.

(B) The traditional method is not reasonable under paragraph (a)(5) of this section because the contribution of property is made and the traditional method is used with a view to shifting a significant amount of taxable income to a partner who is indifferent to receiving that income.

(c) *Traditional method with curative allocations*—(1) *In general.* To correct distortions created by the ceiling rule, a partnership using the traditional method under paragraph (b) of this section may make reasonable curative allocations of other partnership tax items of income, gain, loss, or deduction so that equal allocations of book and tax items may be made to noncontributing partners. A curative allocation is an allocation for tax purposes that differs from the allocation of the item as reflected on the books of the partnership. A partnership may choose to limit its curative allocations to a particular tax item or items (*e.g.*, only depreciation from a specific property or properties). If a partnership does not have other tax items of income, gain, loss, or deduction sufficient in the amount and of the correct type to equalize allocations of book and tax items, the partnership may choose to make the curative allocation in the next succeeding taxable year in which it has sufficient other items of the correct type.

(2) *Consistency.* A partnership must be consistent in its application of curative allocations with respect to each item of property from year to year.

(3) *Reasonable curative allocations*—(i) *Amount.* A curative allocation is reasonable only to the extent it does not exceed the amount necessary to offset the effect of the ceiling rule either for the taxable year or for a prior taxable year in which there were insufficient other partnership items to make the curative allocation.

(ii) *Type.* A curative allocation is reasonable only if made using tax items that would have the same effect on the partners as the tax items affected by the ceiling rule. For example, if depreciation deductions that would be allocated to a noncontributing partner are limited by the ceiling rule, a curative allocation of capital gain items to the contributing partner is not reasonable. Similarly, if depreciation deductions that would be allocated to a noncontributing partner with respect to property used in the conduct of a U.S. trade or business are limited by the ceiling rule, a curative allocation of income derived from operations conducted within foreign country to the contributing partner is not reasonable.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. Reasonable and unreasonable curative allocations—(i) *Facts.* E and F form partnership EF and agree that each will receive a 50 percent share of all partnership items and that EF will make allocations under section 704(c) using the traditional method with curative allocations under paragraph (c) of this section. E contributes equipment with a tax basis of $4,000 and a book value of $10,000. The equipment is section 704(c) property, and at the time of contribution E has a built-in gain of $6,000. F contributes $10,000 of cash, which EF uses to buy inventory for resale. In EF's first year, the proceeds generated by the equipment exactly equal EF's operating expenses. The equipment is depreciable using the straight-line method over a 10-year life. Thus, there is $1,000 of book depreciation and $400 of tax depreciation each year. In addition, at the end of the first year EF sells all the inventory for $10,700, recognizing $700 of gain. Under the traditional method of paragraph (b) of this section, E and F would each be allocated $350 of inventory profit for book and tax purposes and $500 of depreciation for book purposes. However, because there is only $400 of depreciation for tax purposes it all must be allocated to F. Thus, at the end of the first year, E and F's book and tax capital accounts would be as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	350	350	350	Sales income.
9,850	4,350	9,850	9,950	

(ii) *Reasonable curative allocation.* Because the ceiling rule causes a disparity of $100 between F's book and tax capital accounts, under paragraph (c) of this section, E and F may properly allocate to E an additional $100 of sales income for tax purposes. This allocation results in capital accounts at the end of EF's first year as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	350	350	250	Sales income.
9,850	4,450	9,850	9,850	

(iii) *Unreasonable curative allocation.* (A) The facts are the same as in paragraph (i) of this *Example 1*, except that E and F choose to allocate all of the sales income to E for tax purposes, although they share it equally for book purposes. This allocation results in capital accounts at the end of EF's first year as follows:

E		F		
Book	Tax	Book	Tax	
$10,000	$4,000	$10,000	$10,000	Initial contribution.
<500>	<0>	<500>	<400>	Depreciation.
350	700	350	0	Sales income.
9,850	4,700	9,850	9,600	

(B) This curative allocation is not reasonable under paragraph (c)(3)(i) of this section because the allocation is in excess of the amount necessary to correct the disparity caused by the ceiling rule. If the partnership makes this allocation, its method of making allocations under section 704(c) will not be considered reasonable for purposes of this section.

Example 2. Unreasonable use of curative allocations—(i) *Facts.* G and H form partnership GH and agree that each will receive a 50 percent share of all partnership items and that GH will make allocations under Section 704(c) using the traditional method with curative allocations under paragraph (c) of this section. G contributes equipment with a tax basis of $1,000 and a book value of $10,000, with a view to taking advantage of the fact that the equipment has only one year remaining on its cost recovery schedule although its remaining economic life is significantly longer. The equipment is section 704(c) property, and at the time of contribution G has a built-in gain of $9,000. H contributes $10,000 of cash, which GH uses to buy inventory for resale. In GH's first year, the proceeds generated by the equipment exactly equal GH's operating expenses. Under § 1.704–1(b)(2)(iv)(g)(3), the partnership must allocate the $10,000 of book depreciation to the partners in the first year of the partnership. Thus, there is $10,000 of book depreciation and $1,000 of tax depreciation in the partnership's first year. In addition, at the end of the first year GH sells all the inventory for $11,500 recognizing $1,500 of gain. Finally, G has substantial net operating loss carryforwards that G otherwise anticipates will expire unused. Under the traditional method of paragraph (b) of this section GH's book and tax capital accounts at the end of the first year would be as follows:

G		H		
Book	Tax	Book	Tax	
$10,000	$1,000	$10,000	$10,000	Initial contribution.
<5,000>	<0>	<5,000>	<1,000>	Depreciation.
750	750	750	750	Sales income.
5,750	1,750	5,750	9,750	

(ii) *Unreasonable use of method.* (A) If GH were to use curative allocations in this situation, their tax and book capital accounts at the end of the first year would be as follows:

G		H		
Book	Tax	Book	Tax	
$10,000	$1,000	$10,000	$10,000	Initial contribution.
<5,000>	<0>	<5,000>	<1,000>	Depreciation.
750	1,500	750	0	Sales income.
5,750	2,500	5,750	9,000	

(B) This curative allocation is not reasonable under paragraph (a)(5) of this section because the contribution of property and the curative allocation method is used with a view to shifting a significant amount of partnership taxable income to a partner who is indifferent to receiving that income.

(d) *Deferred sale method*—(1) *In general.* Under the *deferred sale method*, a contribution of section 704(c) property is treated as a sale of the property to the partnership at fair market value, except that any gain or loss that would have been recognized by the partner on the sale (deferred gain or loss) is deferred. The partnership is treated as having a total basis in the section 704(c) property (deferred sale property) equal to its fair market value. The amount of partnership basis in the property equal to (or up to, in the case of property with a deferred loss) the contributing partner's basis is depreciated over the property's remaining useful life under section 168(i)(7). The amount by which the basis is increased because of the use of the deferred sale method is treated as newly purchased recovery property placed in service when the contribution occurs for purposes of section 167. The contributing partner recognizes all or part of the deferred gain or loss as required under paragraph (d)(2) of this section. Under section 722, at the time of contribution the contributing partner's tax basis in the partnership interest is increased by the amount of the partner's tax basis in the deferred sale property at that time. That partner thereafter increases or decreases its basis in the partnership interest by the amount of deferred gain or loss recognized by the partner each year.

(2) *Recognition of deferred gain or loss*—(i) *In general.* As a general rule, the deferred gain or loss is triggered when the partnership receives an advantage or detriment, for tax purposes, from the adjusted partnership basis generated or foregone by using the deferred sale method, or when the contributing partner's interest in the partnership is reduced. In particular, the contributing partner recognizes deferred gain or loss upon the occurrence of a partner level event specified in paragraph (d)(2)(ii) of this section or a partnership level event specified in paragraph (d)(2)(iii) of this section. However, deferred gain or loss is not recognized as a result of a partnership or partner level event if another section of the Code continues to limit or disallow realization or recognition.

(ii) *Partner level events*—(A) *Disposition of partnership interest.* If the contributing partner disposes of all or a portion of the partner's interest in the partnership in a taxable transaction, the contributing partner recognizes a corresponding portion of any remaining deferred gain or loss with respect to any deferred sale property. If the contributing partner disposes of all or a portion of the partner's interest in the partnership in a nonrecognition transaction (as defined in section 7701(a)(45)), the partner does not recognize any remaining deferred gain or loss. To the extent that gain or loss is recognized in part in a nonrecognition transaction, a ratable portion of deferred gain or loss is recognized under this paragraph. The transferee partner must recognize any remaining deferred gain or loss on the deferred sale property at the same time and in the same manner as the contributing partner would have recognized the deferred gain or loss.

(B) *Distribution of property.* If the partnership distributes to the contributing partner cash or property other than the contributed property, the contributing partner recognizes any remaining deferred gain with respect to any contributed property to the extent the cash and fair market value of the other property exceed the contributing partner's adjusted basis in the partnership immediately before the distribution. If the contributing partner has contributed more than one deferred gain property, then a proportionate amount of the remaining deferred gain from each property is recognized.

(iii) *Partnership level events*—(A) *Depreciation, etc.* If the partnership claims deductions for amortization, depletion, depreciation, or other cost recovery that reduce the basis of the deferred sale property, the contributing partner recognizes any remaining deferred gain or loss in the amount by which the deductions differ from the amount that could have been deducted had the deferred sale method not been used.

Disposition of property. Except as provided in paragraphs (d)(4) and (d)(5) of this section, if the partnership disposes of deferred sale property (other than by distribution to the contributing partner), the contributing partner recognizes any remaining deferred gain or loss with respect to the property.

(3) *Type and stacking order*—(i) *Type.* The character, source, and other attributes of any deferred gain or loss recognized under this paragraph (d) are determined as if the deferred sale property had been sold to the partnership at the time of the contribution. For example, if a partner that is a dealer in securities contributes securities to the partnership, and the deferred sale method is used with respect to the contributed securities, gain on the sale of the securities is ordinary income regardless of whether the partnership is a dealer in securities.

(ii) *Stacking order.* If the contributing partner would have had both ordinary income and capital gain if the deferred sale property had been sold to the partnership at the time of the contribution, the contributing partner must treat deferred gain recognized under paragraph (d) of this section as ordinary income until an amount of deferred gain equal to the deferred

ordinary income has been recognized. For example, if a partner contributes deferred sale property to a partnership, and the property is section 1245 property, the contributing partner first recognizes ordinary income up to the amount that would have been treated as ordinary income under section 1245 if the contributing partner had instead sold the property to the partnership at the time of contribution, and then the contributing partner recognizes any capital gain.

(4) *Nonrecognition transactions.* If a partnership disposes of deferred sale property in a transaction in which gain or loss is not recognized under sections 1031, 1033, 1071, or 1081, any substituted basis property (within the meaning of section 7701(a)(42)) is treated as deferred sale property with the same amount and character of deferred gain or loss as the deferred sale property disposed of by the partnership. For example, if a partnership's deferred sale property is compulsorily or involuntarily converted and gain is not recognized because section 1033 of the Code applies, the substituted basis property is treated as deferred sale property. To the extent that gain or loss is recognized in part in a transaction, paragraphs (d)(2)(iii) and (d)(3) of this section apply.

(5) *Contribution to controlled partnership*—(i) *General rule.* Notwithstanding paragraphs (d)(2)(iii)(B) and (d)(4) of this section, if there is a disposition of deferred sale property to a controlled partnership, the deferred gain or loss recognized by the contributing partner is limited to the gain or loss (if any) recognized by the partnership on that disposition, and, for purposes of paragraph (d) of this section, the partnership is treated as continuing to hold the deferred sale property so long as the deferred sale property is held by a controlled partnership.

(ii) *Controlled partnership.* For purposes of paragraph (d)(5)(i) of this section, a controlled partnership is any partnership having a relationship described in section 707(b)(1)(B) to the contributing partnership.

(6) *Other rules*—(i) *Distribution of property to contributing partner.* If deferred sale property is distributed to the contributing partner, no deferred gain or loss is recognized and the contributing partner's basis in the property equals the partnership's basis in the property reduced by any unrecognized deferred gain or increased by any unrecognized deferred loss of the contributing partner.

(ii) *734 adjustments.* No adjustments to the basis of partnership property are made under section 734 on account of recognition of deferred gain or loss by the contributing partner.

(iii) *Nonapplication of section 724.* Section 724 does not apply to deferred sale property.

(7) *Example.* The following example illustrates the principles of the deferred sale method.

Example. (i) *Calculation of deferred gain.* J and K form partnership JK and agree that each will receive a 50 percent share of all partnership items and that JK will make allocations under section 704(c) using the deferred sale method under paragraph (d) of this section. J contributes depreciable property with a basis of $4,000 and a fair market value of $10,000, and K contributes $10,000 in cash. The property is depreciated using the straight-line method with a 10-year useful life, and has five years of its life remaining. Under paragraph (d)(1) of this section, J has a deferred gain of $6,000 in the property and JK has a $10,000 basis in the property. Under paragraph (d)(2) of this section, J must recognize gain whenever JK has a tax benefit from the additional $6,000 of basis JK has in the property by reason of using the deferred sale method.

(ii) *Deferred sale and depreciation.* In year 1, the partnership has a depreciation deduction of $1,400 with respect to the property ($800 on the $4,000 basis carried over from J and $600 on the additional basis). This deduction is shared equally by J and K. Under paragraph (d)(2)(iii)(A) of this section, J recognizes a deferred gain of $600 ($1,400 depreciation deduction to the partnership less the $800 depreciation deduction that would have been allowable had the partnership had a $4,000 basis in the property). J's basis in J's partnership interest at the end of the first year is $3,900 ($4,000 basis upon contribution plus $600 deferred gain recognized less $700 depreciation deduction). J's remaining deferred gain is reduced to $5,400 ($6,000 total deferred gain less $600 recognized deferred gain).

(iii) *Partial disposition of partnership interest.* At the beginning of year 2, J sells ½ of J's interest in JK to L for $4,200. J first recognizes a proportionate share of J's deferred gain and then calculates gain or loss based on the difference between the consideration received and J's adjusted basis in the portion of J's partnership interest transferred. J's deferred gain at the time of the sale is $5,400. J must take into income ½ of that balance, or $2,700. J received consideration of $4,200, and ½ of J's basis in J's partnership interest is $4,650 (half of $3,900 adjusted basis plus $2,700 deferred gain recognized). Thus, J has a loss of $450 on the sale that offsets the $2,700 of gain. Therefore, J recognizes gain on the sale of $2,250.

(e) *Exceptions and special rules*—(1) *Small disparities*—(i) *General rule.* If a partner contributes one or more items of property to a partnership within a single taxable year of the partnership, and the disparity between the book value of the property and the contributing partner's adjusted tax basis in the property is a small disparity, the partnership may—

(A) Disregard the application of section 704(c) to the property; or

(B) Allocate gain or loss with respect to the property under section 704(c) and this section only upon the disposition of the property.

(ii) *Definition of small disparity.* A disparity between book value and adjusted tax basis is a small disparity if for each item of property contributed by one partner in one partnership taxable year the book value does not differ from the adjusted tax basis by more than 15 percent of the adjusted tax basis and the total disparity for all properties contributed by that partner in that year does not exceed $10,000. In determining the total disparity for all properties, built-in gains and losses are both treated as positive numbers and property to which the deferred sale method is applied is not included.

(2) *Aggregation.* The following types of property may be aggregated for purposes of making allocations under section 704(c) and this section if contributed by one partner in one taxable year of the partnership.

(i) *Depreciable property.* All property, other than real property, that is included in the same general asset account may be treated as one item of property.

(ii) *Other aggregated property.* Any other class of items listed in guidance published in the Internal Revenue Bulletin as items that may be aggregated for purposes of section 704(c) may be treated as one item of property.

(3) *Tiered partnerships.* If a partnership contributes section 704(c) property (other than deferred sale property) to a lower-tier partnership, the upper-tier partnership must allocate its distributive share of lower-tier partnership items with respect to that section 704(c) property in a manner that takes into account the contributing partner's remaining built-in gain or loss.

(f) *Effective date.* This section applies to property contributed to a partnership on or after the date the regulations are published in final form in the **Federal Register.**

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92-31064 Filed 12-23-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[PS-164-84]

RIN 1545-AG98

Allocations Reflecting Built-in Gain or Loss on Property Contributed to Partnership; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations relating to allocations with respect to property contributed by a partner to a partnership under section 704 of the Internal Revenue Code.

DATES: The public hearing will be held on Friday, April 16, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, March 26, 1993.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS-164-84) room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 704(c) of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, March 26, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-31063 Filed 12-23-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 26

[PS-32-90]

RIN 1545-A089

Generation-Skipping Transfer Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed Generation-Skipping Transfer Tax Regulations relating to the liability for the generation-skipping transfer tax when a direct skip occurs at death with respect to property held in a trust arrangement. These proposed regulations will affect trustees of trust arrangements, such as life insurance companies, and executors of decedents' estates.

This document also contains proposed Generation-Skipping Transfer Tax Regulations relating to the treatment of the exercise of certain powers of appointment over trust property as constructive additions to generation-skipping trusts. The proposed regulations take account of the law in effect in States that have adopted the Uniform Statutory Rule Against Perpetuities.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for February 18, 1993, must be received by February 1, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS-32-90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, John B. Franklin, 202-622-3090 (not a toll-free number); concerning the hearing, Michael Slaughter, 202-622-8543 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On March 15, 1988, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking (53 FR 8469) [LR-128-86, 1988-1 C.B. 925] by cross reference to Temporary Regulations published on the same date in the **Federal Register** (53 FR 8441) (T.D. 8187, 1988-1 C.B. 332) under section 2601 and 2662 of the Internal Revenue Code (Code). Section 26.2601-1 of the Temporary Regulations relates, in part, to the effect of the release, exercise, or lapse of a power of appointment over a trust that is otherwise grandfathered from the generation-skipping transfer tax provisions. Section 26.2662-1 of the Temporary Regulations relates, in part, to return filing requirements and the imposition of liability for the generation-skipping transfer tax in the case of a direct skip occurring at death with respect to property held in trust arrangements.

Trust Arrangements

The Tax Reform Act of 1986 (Pub. L. 99-514), 1986-3 (Vol. 1) C.B. 1 retroactively repealed the generation-skipping transfer tax provisions that were added to the Code by the Tax Reform Act of 1976 (Pub. L. 94-455), 1976-3 (Vol. 1) C.B. 1 and added new generation-skipping transfer tax provisions that are contained in sections 2601 through 2663 (chapter 13) of the Code. Certain sections of the Code have since been amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647), 1988-3 C.B. 1 and the Revenue Reconciliation Act of 1989 (Pub. L. 101-239), 1990-1 C.B. 210, 214. In general, the new generation-skipping transfer tax provisions apply to any generation-skipping transfer made after October 22, 1986. Certain inter vivos transfers made after September 25, 1985, and on or before October 22, 1986, are treated as if made after October 22, 1986.

A direct skip, which is one form of generation-skipping transfer that is subject to the generation-skipping transfer tax, is a transfer of property subject to the gift or estate tax to a skip person. A direct skip occurs at death if property that is includible in a decedent's gross estate, and thus subject to estate tax, passes to a skip person. In this context, the property may pass directly from the decedent or from a trust or trust arrangement to a skip person (*i.e.*, a direct skip from a trust). A direct skip also occurs at death when property passes from a decedent to a

trust which is a skip person (*i.e.*, a direct skip to a trust).

A trust is a skip person if all "interests" (defined generally as a current right to receive trust income or corpus) in the trust are held by skip persons or if no person holds an "interest" in the trust and at no time after the transfer to the trust may a distribution be made from the trust to someone who is not a skip person. For generation-skipping transfer tax purposes, the term "trust" includes a trust arrangement, which includes life estates and remainders, estates for years, and insurance and annuity contracts. The trustee of a trust arrangement is the person in actual or constructive possession of the property subject to the arrangement.

As provided in section 2611(a) of the Code, the three types of generation-skipping transfers are (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip. The proposed regulation under consideration relates only to certain direct skips. Among other things, the Temporary Regulations prescribe rules relating to who must file the return and pay the generation-skipping transfer tax in the case of a direct skip occurring at death with respect to property held in trust arrangements.

Section 26.2662–1(c)(1)(iv) of the Temporary Regulations presently provides a general rule that in the case of a direct skip from a trust or trust arrangement, or with respect to property that continues to be held in trust, the trustee must file the return and pay the generation-skipping transfer tax. An exception to this general rule is contained in § 26.2662–1(c)(2)(iii). Under the special rule in § 26.2662–1(c)(2)(iii), the executor, rather than the trustee, must file the return and pay the generation-skipping transfer tax if the total value of property involved in direct skips with respect to the subject trust arrangement is less than $100,000. Under this special rule, the executor is entitled to recover the generation-skipping transfer tax from the trustee (if the property continues to be held in the trust arrangement) or from the recipient of the property (in the case of a transfer from a trust arrangement).

The Technical and Miscellaneous Revenue Act of 1988 added section 2663(3) to the Code to provide that the Secretary shall prescribe regulations providing for such adjustments as may be necessary to the application of chapter 13 of the Code in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b). By way of an example, an underlying committee report indicated that where the generation-skipping arrangement is in the form of an insurance or annuity contract, the regulation could provide that the beneficiary must pay the tax. It was determined, however, that it would be more appropriate if the primary burden for paying the tax remained on the trustee of the trust arrangement (or, in certain cases, upon the decedent's executor) because they are more likely to possess the information needed to compute the tax and file the return.

Explanation of Provisions Relating to Trust Arrangements

This notice of proposed rulemaking proposes an amendment to § 26.2662–1(c)(2)(iii) of the Temporary Regulations that would increase the $100,000 amount specified therein to $250,000. Thus, under the proposed regulation, in the case of direct skips occurring at death with respect to property held in trust arrangements such as life insurance policy proceeds, the executor, rather than the insurance company/trustee, must file the return and pay the generation-skipping transfer tax if the total value of property involved in direct skips with respect to the trustee of the subject trust arrangement is less than $250,000.

Generally, the executor of the decedent's estate is in the best position to ascertain the generation-skipping transfer tax consequences of transfers to and from trust arrangements such as life insurance policy proceeds. For example, an executor will generally have knowledge of critical factors such as the relationship between the decedent and the beneficiaries of the policy, whether the policy proceeds are includible in the gross estate; whether a given beneficiary is in a higher generation level by reason of having a predeceased parent, and whether any portion of the decedent's $1,000,000 GST exemption has been allocated to the policy proceeds.

If the burden of filing the return and paying the generation-skipping transfer tax is placed upon the insurance company (namely, if the conditions of the special rule are not satisfied), the executor is required to compute the tax on Schedule R–1 of Form 706 and forward the schedule to the insurance company. The company then remits the Schedule R–1 and the tax to the Service. The company is primarily liable for the tax and for any deficiency should the Schedule R–1 prove to be incorrect. Consequently, the company may have to withhold amounts from the policy proceeds until such time as the amount of the generation-skipping transfer tax becomes finalized, for example, by way of an estate tax closing letter. Thus, the proposed regulation would accelerate the payment of insurance benefits if the aggregate amount of the policies on the decedent's life issued by that company is less than $250,000.

As noted above, the exception shifting the burden of payment to the executor applies only with respect to a direct skip occurring at death and only if the aggregate policy proceeds are less than $250,000. Direct skips are limited to transfers subject to the estate or gift tax. If a generation-skipping transfer is subject, at the same time, to either the estate or gift tax, the transfer is a direct skip rather than a taxable termination or a taxable distribution because the characterization of a transfer for generation-skipping transfer tax purposes is determined with respect to the most recent application of the estate or gift tax. Thus, an insurance company/trustee will be able to pay policy proceeds without regard to the generation-skipping transfer tax if it determines that (1) the proceeds are includible in the decedent/insured's gross estate and (2) the amounts payable under all of the policies it issued on the decedent's life which are includible in the decedent's gross estate are, in the aggregate, less than $250,000. An insurance company will generally be able to determine whether the proceeds are includible in the decedent's gross estate because it will have access to information regarding whether the proceeds are being paid to the decedent's estate or whether the decedent owned the policy or incidents of ownership in the policy. As noted above, if the policy proceeds are includible in the decedent's gross estate, any generation-skipping transfer of the proceeds that occurs upon the decedent's death will be a direct skip rather than a taxable termination or a taxable distribution (the other two kinds of generation-skipping transfers).

USRAP Provisions

The Temporary Regulations that were published on March 15, 1988, relate, in part, to the conditions under which the exercise of a power of appointment will constitute a constructive addition to a trust that is otherwise grandfathered from the provisions of chapter 13 (26 CFR part 26.2601–1, T.D. 8187, 53 FR 8441).

Under the Temporary Regulations, an exercise of a nongeneral power of appointment under a trust grandfathered under the effective date provisions of the generation-skipping transfer tax will generally be treated as a constructive addition to the trust if the exercise of the power may postpone or suspend the vesting, absolute ownership

or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years. This limitation on the "grandfathering" of such trusts generally parallels restrictions on trust duration under the common law rule against perpetuities.

Several states have replaced the common law rule against perpetuities with the Uniform Statutory Rule Against Perpetuities (USRAP). USRAP generally provides that a nonvested interest in property is invalid unless (1) when it is created, it is certain to vest or terminate no later than 21 years after the death of an individual alive at the time the interest is created, or (2) the interest in fact vests or terminates within 90 years after its creation. The 90-year "wait and see" period employed in USRAP is intended to be a reasonable approximation of the period that would on average be produced under the common law measuring standard, i.e., lives in being at the time of creation plus 21 years.

This proposed regulation, which would amend the Temporary Regulations published on March 15, 1988, modifies the constructive addition rule discussed above to exempt exercises of nongeneral powers which, while not satisfying the requirements of the current Temporary Regulation, would be valid under a 90-year test. Although the amendment to the Temporary Regulation incorporates a 90-year period, it does not adopt the "wait and see" aspect of USRAP. A "wait and see" rule is inappropriate for purposes of chapter 13 because it will usually be necessary to determine the generation-skipping transfer tax consequences of distributions and terminations that occur during the interim. Under the amendment to the Temporary Regulation, it must be clear at the time the nongeneral power is exercised that the exercise will not postpone or suspend the vesting, absolute ownership or power of alienation of the subject interest in property beyond either (but not both) the common law period or the 90-year period (measured from the date of the creation of the trust). The subject proposed regulation does not permit the exercise of a nongeneral power of appointment in a manner that attempts to obtain a perpetuities period that is the longer of a specified term (such as 90 years) or lives in being plus 21 years.

Special Analyses

It has been determined that these rules are not rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing is scheduled for February 18, 1993. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is John B. Franklin, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 26 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 26 is revised to read as follows:

Authority: 26 U.S.C. 7805 and 26 U.S.C. 2663. Section 26.2662–1 is also issued under section 26 U.S.C. 2662.

Par. 2. Section 26.2601–1(b)(1)(v)(B)(*2*) is revised (and (b)(1)(v)(D) Examples 7 and 8 are added to read as follows:

§ 26.2601–1 Effective dates.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(B) * * *

(*2*) In the case of an exercise, the power of appointment is not directly or indirectly exercised in manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (perpetuities period). For purposes of this paragraph (b)(1)(v)(B)(*2*), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones vesting beyond the perpetuities period.

* * * * *

(D) * * *

Example 7. Extension for the longer of two periods. Prior to the effective date of chapter 13, GP established an irrevocable trust under which the trust income was to be paid to GP's child, C, for life. C was given a testamentary power to appoint the remainder in further trust for the benefit of C's issue. In default of C's exercise of the power, the remainder was to pass to charity. C dies on February 3, 1995 survived by two children and a sibling, S (who was born prior to the creation of the trust). C exercises the power in a manner that validly extends the trust in favor of C's issue until the later of May 15, 2064 (80 years from the date the trust was created), or the death of S. C's exercise of the power is a constructive addition to the trust because the exercise may extend the trust for a period longer than the permissible periods of either a life in being at the creation of the trust plus 21 years or a term not more than 90 years measured from the creation of the trust. On the other hand, if C's exercise of the power could extend the trust based only on a life in being at the creation of the trust plus 21 years or only for a term of 80 years from the creation of the trust (but not the later of the two periods) then the exercise of the power would not have a constructive addition to the trust.

Example 8. Extension for the longer of two periods. The facts are the same as in *Example 7* except local law provides that the effect of C's exercise is to extend the term of the trust until May 15, 2064, whether or not S survives that date. C's exercise is not a constructive addition to the trust because C exercised the power in a manner that cannot postpone or suspend vesting, absolute ownership, or power of alienation for a term of years that will exceed 90 years. The result would be the same if the effect of C's exercise is either to extend the term of the trust until the death of S or to extend the term of the trust until the *first* to occur of May 15, 2064 or the death of S.

Par. 3. Section 26.2662–1 is amended as follows:

1. The paragraph heading for (c)(2)(iii) is revised to read as set forth below.

2. Paragraph (c)(2)(iii)(B) is amended by removing the figure "$100,000" and adding "$250,000" in its place.

3. Paragraph (c)(2)(iv) is redesignated as paragraph (c)(2)(v).

4. New paragraph (c)(2)(iv) is added to read as set forth below.

5. Newly designated paragraph (c)(2)(v) is amended by:

a. Revising the introductory text to read as set forth below.

b. Redesignating *Examples (1)* through *(4)* as *Examples 1* through *4*, respectively.

c. In the list below, for each location indicated in the left column, remove the language indicated in the middle column, and add the language indicated in the right column:

Paragraph	Remove	Add
Example 1, sentence 1	Aug. 1, 1988	Aug. 1, 1993
Example 1, sentence 2	$95,000	$200,000
Example 1, sentence 6	$95,000	$200,000
Example 1, sentence 6	$100,000	$250,000
Example 2, sentence 2	$75,000	$150,000
Example 2, sentence 6	$150,000	$300,000
Example 2, sentence 6	$100,000	$250,000
Example 3, sentence 1	Aug. 1, 1988	Aug. 1, 1993
Example 3, sentence 3	$110,000	$300,000
Example 3, sentence 6	$110,000	$300,000
Example 3, sentence 6	$100,000	$250,000
Example 4, sentence 1	$95,000	$200,000
Example 4, sentence 3	$95,000	$200,000
Example 4, sentence 3	$100,000	$250,000

d. Adding *Example 5* to read as set forth below.

§ 26.2662–1 Generation-skipping transfer tax return requirements.

* * * * *

(c)* * *

(2)* * *

(iii) *Executor's liability in the case of transfers with respect to decedents dying on or after* June 22, 1993, *if the transfer is less than $250,000.** * *

* * * * *

(iv) *Executor's liability in the case of transfers with respect to decedents dying prior to June 22, 1993, if the transfer is less than $100,000.* In the case of a direct skip occurring at death with respect to a decedent dying prior to June 22, 1993, the rule in paragraph (c)(2)(iii) of this section that imposes liability upon the executor applies only if the property involved in the direct skip with respect to the trustee of the trust arrangement, in the aggregate, is less than $100,000.

(v) *Examples.* The following examples illustrate the application of this paragraph (c)(2) with respect to decedents dying on or after *June 22, 1993.*

* * * * *

Example 5. On August 1, 1993, A, the insured under a life insurance policy, dies. The insurance proceeds on A's life that are payable under policies issued by Company X are in the aggregate amount of $200,000 and are includible in A's gross estate. Because the proceeds are includible in A's gross estate, the generation-skipping transfer that occurs upon A's death, if any, will be a direct skip rather than a taxable distribution or a taxable termination. Accordingly, because the aggregate amount of insurance proceeds with respect to Company X is less than $250,000, Company X may pay the proceeds without regard to whether the beneficiary is a skip person in relation to the decedent-transferor.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–30945 Filed 12–23–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 26 and 301

[PS–73–88]

RIN 1545–AL75

Generation-Skipping Transfer Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1989. The proposed regulations will provide the guidance needed to comply with chapter 13.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for February 18, 1993, must be received by February 1, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS–73–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, John B. Franklin (202) 622–3090 (not a toll free call); concerning the hearing, Michael Slaughter (202) 622–8543 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirements in these regulations are in §§ 26 CFR 26.2632–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, and 26.2652–2. This information is required by the Internal Revenue Service in order to determine the tax rate applicable to generation-skipping transfers. The likely respondents are individuals and fiduciaries.

The time estimates for the reporting and recordkeeping requirements contained in this regulation are included in the estimate of burden applicable to Forms 706, 706NA, 706GS(T), 706GS(D), 706GS(D–1), and 709.

Background

This document contains proposed additions to the Generation-Skipping Transfer Tax Regulations (26 CFR part 26) under sections 2601 through 2663 of the Internal Revenue Code (Code). The

Tax Reform Act of 1986 retroactively repealed the generation-skipping transfer tax that had been enacted in 1976, replacing it with chapter 13 of the Code, a simplified tax determined at a flat rate. Sections of chapter 13 have been amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), and the Revenue Reconciliation Act of 1989 (Pub. L. 101–239).

Explanation of Provisions

Chapter 13 of the Code imposes a tax on every generation-skipping transfer (GST). A GST is a direct skip (generally, a transfer subject to estate or gift tax to a person more than one generation younger than the transferor), a taxable distribution (generally, a distribution from a trust to a person more than one generation younger than the creator of the trust), or a taxable termination (generally, the termination of a beneficiary's eligibility to receive current distributions from a trust if, after the termination, only certain younger generation beneficiaries have rights in the trust). A transfer that would be excluded from taxable gifts under section 2503(e) (relating to payment of certain medical or educational expenses) is not a GST. In addition, a transfer with respect to property that has previously been subject to GST tax is generally not a GST if the prior transferee was in the same generation as or in a lower generation than the current transferee.

Determining whether an event is a GST generally involves determining (1) the identity of the "transferor," (2) whether a donee or trust beneficiary is a "skip person," and (3) whether a trust beneficiary has an "interest in property held in trust."

Transferor

Under chapter 13 of the Code, the transferor is generally the person who most recently transferred the property in a transfer subject to estate or gift tax (*i.e.*, the donor in the case of a lifetime transfer and the decedent in the case of a transfer occurring at death). The proposed regulations clarify that a transfer is "subject to gift tax" if it is a completed gift within the meaning of § 25.2511–2 regardless of whether a gift tax is actually imposed on the transfer. Thus, a transfer excluded from taxable gifts under section 2503(b) is a transfer subject to gift tax for this purpose. Similarly, a transfer is "subject to estate tax" if the property would be includible in the decedent's gross estate as determined under section 2031. For example, a nonresident not a citizen of the United States is treated as the transferor of property transferred by that individual at death even though no Federal estate tax is imposed on the transfer by virtue of the situs of the property.

Notwithstanding the foregoing, if a special election is made to treat qualified terminable interest property (QTIP) for purposes of chapter 13 of the Code as though the QTIP election under section 2056(b)(7) or 2523(f) had not been made, the donee spouse does not become the transferor of the property when the donee spouse (or the estate of the donee spouse) is subject to transfer tax with respect to the QTIP property.

Skip Person

Generally, a skip person is an individual assigned to a generation more than one generation below the generation of the transferor. A trust is a skip person if all trust beneficiaries who can presently receive distributions from the trust are skip persons. A trust is also a skip person if no one has a present right to receive distributions from the trust and future distributions may be made only to skip persons.

Interest in Property Held in Trust

Generally, person has an interest in property held in trust (interest in trust) if the person has a present right to, or may otherwise currently receive distributions of, income or principal from the trust. An individual has an interest in trust if trust income or principal may be used to satisfy a legal obligation of the individual; however, an individual does not have an interest in trust solely because trust property may be used, within the discretion of a fiduciary or pursuant to a State law substantially similar to the Uniform Gifts to Minors Act, to satisfy a support obligation of the individual.

Direct skip

A direct skip is a transfer of property to a skip person that is subject to Federal estate or gift tax. A direct skip may be a direct transfer from the transferor to an individual or it may be made by a transfer to or from a trust.

In determining whether a transfer is a direct skip, each lineal descendant of a deceased lineal descendant of the transferor (or the transferor's spouse) is assigned to the generation that is one generation higher than the one to which he or she would otherwise be assigned. If a transfer to a trust would be a direct skip but for the application of this rule, the modified generation assignments continue to apply to determine the future applicability of the GST tax to the trust.

Taxable Termination

A taxable termination is any termination of an interest in a trust (including a termination that requires the distribution of trust property) unless, immediately after the termination, a person other than a skip person has an interest in the trust or no future distribution from the trust may be made to a skip person. In general, an interest in trust for generation-skipping transfer tax purposes means a present right or expectancy. The proposed regulations provide that only one taxable termination occurs on the happening of a single event though the interests of more than one person may terminate as a result of that event. A taxable termination may, under certain circumstances, involve only a portion of the property in a trust.

Taxable Distribution

A taxable distribution is any distribution of income or principal from a trust to a skip person in a transaction that is not a direct skip or a taxable termination.

GST Exemption

Each individual is allowed a GST exemption amount of $1 million. Through use of the GST exemption, each transferor may exempt up to $1 million in property transferred by that individual (generally valued as of the time the allocation of GST exemption is effective) and any future appreciation on the property from the GST tax. GST exemption may be allocated by the transferor or the transferor's executor at any time on or before the date prescribed for filing the transferor's Federal estate tax return (including extensions actually granted).

Available GST exemption is automatically allocated to lifetime direct skips unless the transferor elects out of the automatic allocation. The proposed regulations provide that the election out of the automatic allocation must be made on a timely-filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) and, once made, is irrevocable. Allocations of GST exemption to lifetime transfers other than direct skips are also made on Form 709. If the allocation is made on a timely-filed Form 709 or if the transfer is subject to the automatic allocation rule, it is effective from the date of the transfer to which it relates. If the allocation is made on a late-filed Form 709, it is effective on the date the Form 709 is filed (or, in the case of a late Form 709 filed by the donor's executor, on the date of the donor's death).

Allocations of GST exemption to transfers occurring by reason of death

are generally made on a United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706). If the executor does not allocate all of the decedent's available GST exemption by the date prescribed for filing the Form 706, including extensions, the remaining GST exemption is automatically allocated pro rata to direct skips occurring at death; any remaining GST exemption is allocated pro rata to trusts of which the decedent was the transferor and from which GSTs may occur in the future. Except with respect to certain lifetime transfers, any post-death allocation of GST exemption, whether made by the executor or occurring automatically, is effective as of the date of the transferor's death.

Under the proposed regulations, no GST exemption is automatically allocated to a trust that will have (in its entirety) a new transferor before any GST can occur with respect to the trust property, *e.g.*, a QTIP trust created under the decedent's will for which the special election under section 2652(a)(3) has not been made.

The proposed regulations provide that an allocation of GST exemption may be made by means of a formula. Allocations to trusts are made to the entire trust principal and may not be made to specific trust assets or to a fractional share of a trust. Once made, an allocation of GST exemption (including an automatic allocation) is irrevocable. Under the proposed regulations, an allocation of GST exemption (other than an allocation to a charitable lead annuity trust) greater than the amount necessary to fully exempt the transferred property is void to the extent of the excess allocation.

Estate Tax Inclusion Period

A transferor who makes a gift of property that would be included in the gross estate of the transferor or the transferor's spouse (other than by reason of section 2035(d)) may allocate GST exemption to the property. As described below, this allocation is generally not effective during the period in which the property would be included in the gross estate of the transferor or the transferor's spouse were the transferor or the transferor's spouse to die (the estate tax inclusion period or "ETIP"). An allocation of GST exemption on Form 709 filed by the date the return would be due if the termination of the ETIP were a taxable gift is effective as of the date of the termination. An allocation of GST exemption made after that date is effective as of the earlier of the date it is filed or the date of death of the transferor (or the transferor's spouse, if applicable). An allocation of GST exemption by the executor of the estate of the transferor (or the executor of the estate of the transferor's spouse, if applicable) on the termination of an ETIP occurring by reason of death is made on Form 706.

Under the proposed regulations, in determining whether property is subject to an ETIP, an individual is treated as holding any interest in or power over property held by the individual's spouse. However, this rule does not prevent allocation of the transferor's GST exemption to property with respect to which the special election under section 2652(a)(3) has been made.

Computing the GST Tax: The Applicable Fraction and the Inclusion Ratio

The rate of tax imposed on a GST is the product of the inclusion ratio with respect to the GST and the highest Federal estate tax rate in effect at the time of the GST. The inclusion ratio with respect to a transfer is 1 minus the applicable fraction. The numerator of the applicable fraction is generally the amount of GST exemption allocated to the trust (or allocated to the property transferred in a direct skip). The denominator of the applicable fraction is generally the value of the trust (or the property transferred in the direct skip) on the date the GST exemption allocation becomes effective, reduced by any death taxes actually recovered from the trust and any charitable deduction allowed with respect to the transfer.

The proposed regulations provide several exceptions to the general rule that property is valued as of the date the allocation becomes effective. First, if GST exemption is allocated to a lifetime transfer on a Form 709 that is not a timely-filed Form 709, generally the transferor may elect to value the property at its fair market value as of the first day of the month in which the late allocation is made. This rule recognizes the practical difficulties of filing an allocation on the same date the property is valued. Second, if GST exemption is allocated to a pecuniary bequest that is paid with property valued at other than date of distribution values, the value of the property used to pay the bequest is determined on the date the bequest is paid. However, if the amount is paid within 15 months of the decedent's death, or if the fiduciary is required to fund the payment with property fairly representative of the net appreciation or depreciation occurring with respect to the assets from which the amount may be paid between the date of death and the date the payment is made, the value is determined as of the date of death.

The inclusion ratio for a direct skip that is a nontaxable gift is zero. A transfer is a nontaxable gift to the extent it is excluded from taxable gifts under section 2503(b) or (e) of the Code. A transfer to a trust made after March 31, 1988, is not a nontaxable gift unless the trust is for the sole benefit of an individual during that individual's lifetime and the trust will be includible in the individual's gross estate if the trust does not terminate before the individual's death.

The proposed regulations provide that the inclusion ratio with respect to a direct skip becomes final upon the expiration of the statute of limitations for assessment of the GST tax. While this period will often parallel the assessment period for the applicable estate or gift tax, the periods may differ for reasons such as the existence of an ETIP, the late filing of a return, or the execution of a consent that extends the assessment period.

In the case of other types of generation-skipping transfers, the inclusion ratio does not become final until the later of (1) the expiration of the period for assessment of the first GST tax computed using that inclusion ratio, or (2) the expiration of the period for assessment of Federal estate tax with respect to the transferor's estate. The "later of" rule with respect to GSTs (other than direct skips) is necessary because there often will be no justifiable issue with respect to a claimed inclusion ratio until a deficiency in tax can be asserted. Comments are invited on this issue.

The proposed regulations set forth the method for recomputing the inclusion ratio for a trust to which an additional transfer is made or for a trust that is consolidated with another trust.

Special rules are provided for determining the inclusion ratio with respect to a charitable lead annuity trust. In general, the numerator of the applicable fraction with respect to the trust is the adjusted GST exemption (*i.e.*, the amount of GST exemption allocated to the trust plus interest on that amount computed for a period of the charitable lead interest at a rate equal to the rate used to determine the amount of the charitable deduction). The denominator of the applicable fraction is the value of the trust property immediately after the termination of the charitable lead interest. The proposed regulations provide that if a late allocation of GST exemption is made to a charitable lead annuity trust, interest is accrued only after the effective date of the allocation in determining the amount of the adjusted GST exemption.

Single Trust Treated as Separate Trusts

Generally, a single trust may not be treated as separate trusts for purposes of chapter 13 of the Code. The statute provides two exceptions to this rule: (1) The portions of a single trust attributable to different transferors are treated as separate trusts, and (2) separate and independent shares of different beneficiaries in a single trust are treated as separate trusts. Under the proposed regulations, separate and independent shares must exist at the time of the transfer and, under the terms of the instrument, at all times thereafter for separate trust treatment to apply. A trust may be severed at any time to reflect the separate trusts deemed to exist under the preceding rules.

The proposed regulations provide additional rules for determining when a pecuniary amount payable on the death of a transferor from a trust that is includible in the transferor's gross estate is treated as a separate share and therefore as a separate trust. These rules treat the pecuniary amount as a separate share (and thus remove the amount from the denominator of the applicable fraction determined for the trust) only if the pecuniary amount is promptly funded, or if any delayed payment earns interest and may not be funded in a manner that would disproportionately allocate post-death changes in the value of the property from which the pecuniary amount may be funded.

The proposed regulations also clarify that a single trust may, under certain circumstances, be divided into two or more trusts. Except as specifically provided in the proposed regulations, severed trusts are treated as a single trust for purposes of chapter 13 of the Code.

Reverse QTIP Election

The transferor or the transferor's executor may elect for purposes of chapter 13 of the Code to treat qualified terminable interest property (QTIP) as though the QTIP election had not been made. If this election is made, the donee spouse does not become the transferor of the property on the subsequent inclusion of the trust property in that spouse's taxable gifts or gross estate.

Additionally, because the right of recovery under section 2207A arises as a result of the QTIP election, an election to treat the property as if no QTIP election had been made for purposes of chapter 13 has the effect of disregarding the corresponding right of recovery for purposes of chapter 13. Thus, the waiver of (or failure to exercise) such right is not treated as an addition to the trust (whether or not Federal gift tax is imposed on the event).

The election to treat a trust as if no QTIP election had been made applies to the entire trust with respect to which the QTIP election is made. A transition rule under the proposed regulations permits a trust as to which the election was made prior to December 24, 1992, to be treated as separate trusts under certain circumstances.

Additional "Transferor" and "Transfer" Issues

The proposed regulations clarify that a transfer to a trust subject to a beneficiary's right of withdrawal is treated as a transfer to the trust rather than a transfer to the beneficiary. On the lapse of a withdrawal right, the holder of a right becomes the transferor of the trust to the extent the holder is treated as making a transfer subject to gift tax.

Multiple Skips

If immediately after a GST the property with respect to which the GST occurred continues to be held in trust, the transferor is thereafter deemed to occupy the generation immediately above the generation occupied by the person who occupies the highest generation of all persons holding an interest in the trust immediately after the transfer.

Treatment of Transfers by Nonresidents Not Citizens of the United States

The proposed regulations describe the application of chapter 13 of the Code to transfers made by nonresidents who are not citizens of the United States. Under the proposed regulations, any transfer on which a Federal estate or gift tax is imposed is subject to chapter 13 in the same manner as a transfer made by a resident or a citizen of the United States. In addition, certain transfers, distributions, and terminations are subject to chapter 13 depending on the citizenship or residence of certain individuals at the time of the original transfer and at the time of the subsequent distribution or termination.

In order to mitigate the unexpected application of chapter 13 to transfers by a nonresident who is not a citizen of the United States, the proposed regulations generally provide for the automatic allocation of the $1 million GST exemption to transfers that may have GST consequences regardless of whether the transfer is a direct skip. Comments are invited on the application of the automatic allocation rules, and on the rule for electing out of the automatic allocation.

Several bilateral tax treaties negotiated by the United States prior to 1986 cover the generation-skipping transfer tax. The Service believes that those treaties continue to apply to the generation-skipping transfer tax imposed by chapter 13, as amended by the Tax Reform Act of 1986 and subsequent legislation. These regulations are not intended to override any provision of those treaties that may limit United States jurisdiction to impose the GST tax on the transfer of certain property.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations; and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Proposed Effective Dates

These regulations are proposed to be effective with respect to any generation-skipping transfer made after December 24, 1992, except for the following. The rule that any election described in § 26.2632–1(b)(1) is irrevocable is proposed to be effective on July 22, 1993. Section 26.2652–2(c) contains a transition rule that is proposed to be effective for elections made prior to December 24, 1992. Section 26.2663–2(c) applies only to generation-skipping transfers occurring with respect to transfers made on or after December 24, 1992. Although the regulations under § 26.2663–2(c) are proposed to be effective only with respect to transfers made on or after December 24, 1992, section 2663(2) applies to transfers by nonresidents not citizens of the United States made after October 22, 1986. Comments are invited, including comments on the adequacy of this effective date with respect to existing documents that became irrevocable before December 24, 1992.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public

hearing is scheduled for February 18, 1993. See the notice of public hearing published elsewhere in this issue to the Federal Register.

Drafting Information

The principal author of these regulations is John B. Franklin, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedures, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 26 and 301 are proposed to be amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The title of part 26 is revised as set forth above.

Par. 2. The authority for part 26 is revised to read as follows:

Authority: 26 U.S.C. 7805 and 26 U.S.C. 2663. Section 26.2632–1 also issued under 26 U.S.C. 2632 and 2663. Section 26.2642–4 also issued under 26 U.S.C. 2632 and 2663. Section 26.2662–1 also issued under 26 U.S.C. 2662. Section 26.2663–2 also issued under 26 U.S.C. 2632 and 2663.

Par. 3. Section 26.2600–1 is revised to read as follows:

§ 26.2600–1 Table of contents.

This section lists the captions that appear in the regulations under sections 2601 through 2663 of the Internal Revenue Code.

§ 26.2601–1 Effective dates.

(a) Transfers subject to the generation-skipping transfer tax.
(1) In general.
(2) Certain transfers deemed made after October 22, 1986.
(b) Exceptions.
(1) Irrevocable trusts.
(2) Transition rule for wills or revocable trusts executed before October 22, 1986.
(3) Transition rule in case of mental incompetency.
(4) Exceptions to additions rule.
(c) Transfers before October 22, 1986.
(1) In general.
(2) Refunds of overpayments.
(d) $2,000,000 grandchild exclusion.
(1) In general.
(2) Treatment of transfers in trust. [Reserved]
(3) Election for certain contingent transfers.
(e) Additional effective dates.
(1) In general.
(2) Certain transfers by nonresidents not citizens of the United States.

§ 26.2611–1 Generation-skipping transfer defined.

§ 26.2612–1 Definitions.

(a) Direct skip.
(1) In general.
(2) Special rule for certain lineal descendants.
(b) Taxable termination.
(1) In general.
(2) Partial termination.
(c) Taxable distribution.
(d) Skip person.
(e) Interest in trust.
(1) In general.
(2) Exceptions.
(f) Examples.

§ 26.2613–1 Skip person.

§ 26.2632–1 Allocation of GST exemption.

(a) General rule.
(b) Lifetime allocations.
(1) Automatic allocation to direct skips.
(2) Allocation to other transfers.
(c) Special rules during an estate tax inclusion period.
(1) In general.
(2) Estate tax inclusion period defined.
(3) Termination of an ETIP.
(4) Treatment of direct skips.
(5) Examples.
(d) Allocations after the transferor's death.
(1) Allocation by executor.
(2) Automatic allocation after death.

§ 26.2641–1 Applicable rate of tax.

§ 26.2642–1 Inclusion ratio.

(a) In general.
(b) Numerator of applicable fraction.
(1) In general.
(2) GSTs occurring during an ETIP.
(c) Denominator of applicable fraction.
(1) In general.
(2) Zero denominator.
(3) Nontaxable gifts.
(d) Examples.

§ 26.2642–2 Valuation.

(a) Lifetime transfers.
(1) In general.
(2) Special rule for late allocations during life.
(b) Transfers at death.
(1) In general.
(2) Special rule for pecuniary payments.
(3) Special rule for residual transfers after payment of a pecuniary payment.
(4) Appropriate interest.
(c) Examples.

§ 26.2642–3 Special rule for charitable lead annuity trusts.

(a) In general.
(b) Adjusted GST exemption defined.
(c) Example.

§ 26.2642–4 Redetermination of applicable fraction.

(a) In general.
(1) Multiple transfers to a single trust.
(2) Consolidation of separate trusts.
(3) Property included in transferor's gross estate.
(4) Imposition of recapture tax under section 2032A.
(b) Examples.

§ 26.2642–5 Finality of inclusion ratio.

(a) Direct skips.
(b) Other GSTs.

§ 26.2652–1 Transferor defined; other definitions.

(a) Transferor defined.
(1) In general.
(2) Transfers subject to Federal estate or gift tax.
(3) Special rule for certain QTIP trusts.
(4) Exercise of certain nongeneral powers of appointment.
(5) Examples.
(b) Trust defined.
(1) In general.
(2) Examples.
(c) Trustee defined.
(d) Executor defined.
(e) Interest in trust.

§ 26.2652–2 Special election for qualified terminable interest property.

(a) In general.
(b) Time and manner of making election.
(c) Transitional rule.
(d) Examples.

§ 26.2653–1 Taxation of multiple skips.

(a) General rule.
(b) Examples.

§ 26.2654–1 Certain trusts treated as separate trusts.

(a) In general.
(b) Single trust treated as separate trusts.
(1) Multiple transferors to single trust.
(2) Substantially separate and independent shares.
(c) Division of single trust into separate trusts.
(1) In general.
(2) Trust property included in the gross estate.

§ 26.2662–1 Generation-skipping transfer tax return requirements.

(a) In general.
(b) Form of return.
(1) Taxable distributions.
(2) Taxable terminations.
(3) Direct skip.
(c) Person liable for tax and required to make return.
(1) In general.
(2) Special rule for direct skips occurring at death with respect to property held in trust arrangements.
(3) Limitation on personal liability of trustee.

(4) Exceptions.
(d) Time and manner of filing return.
(1) In general.
(2) Exceptions.
(e) Place for filing returns.
(f) Lien on property.

§ 26.2663–1 Recapture tax under section 2032A.

§ 26.2663–2 Application of chapter 13 to transfers by nonresidents not citizens of the United States.

(a) In general.
(b) Transferred property situated in the United States.
(1) Transfers at death.
(2) Transfers during life.
(3) Taxable distributions and taxable terminations.
(4) Determination of situs.
(c) Transferred property not subject to chapter 13 by reason of United States situs.
(1) In general.
(2) Beneficial interest in property.
(d) Anti-abuse rule.
(e) Examples.
(f) Automatic allocation of GST exemption.

Par. 4. Section 26.2601–1 is amended by adding paragraph (e) to read as follows:

§ 26.2601–1 Effective dates.

* * * * *

(e) *Additional effective dates*—(1) *In general.* Except as otherwise provided, the regulations under §§ 26.2611–1, 26.2612–1, 26.2613–1, 26.2632–1, 26.2641–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, 26.2642–5, 26.2652–1, 26.2652–2, 26.2653–1, 26.2654–1, 26.2663–1, and 26.2663–2(c) are effective with respect to generation-skipping transfers made on or after December 24, 1992.

(2) *Certain transfers by nonresidents not citizens of the United States.* The provisions of chapter 13 do not apply to any transfer by a nonresident not a citizen of the United States described in paragraph (c) of § 26.2663–2 made before December 24, 1992.

Par. 5. Sections 26.2611–1, 26.2612–1, 26.2613–1, 26.2632–1, 26.2641–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, 26.2642–5, 26.2652–1, 26.2652–2, 26.2653–1, 26.2654–1, 26.2663–1, and 26.2663–2 are added to read as follows:

§ 26.2611–1 Generation-skipping transfer defined.

A generation-skipping transfer ("GST") is an event that is either a direct skip, a taxable distribution, or a taxable termination. See § 26.2612–1 for the definition of these terms.

§ 26.2612–1 Definitions.

(a) *Direct skip*—(1) *In general.* A direct skip is a transfer that is subject to Federal gift or estate tax to a skip person. If property is transferred to a trust, the transfer is a direct skip only if the trust is a skip person. Only one direct skip occurs when a single transfer of property skips two or more generations. See § 26.2612–1(d) for the definition of "skip person." See § 26.2652–1(b) for the definition of "trust." See § 26.2632–1(c)(4) for the time that a direct skip occurs, if the transferred property is subject to an estate tax inclusion period. See § 26.2652–1(a)(2) for determining whether a transfer is subject to Federal estate or gift tax.

(2) *Special rule for certain lineal descendants.* Solely for the purpose of determining whether a transfer to or for the benefit of a lineal descendant of the transferor (or the transferor's spouse or former spouse) is a direct skip, the generation assignment of the descendant is determined by disregarding the generation of a predeceased individual who was both an ancestor of the descendant and a lineal descendant of the transferor (or the transferor's spouse or former spouse). If a transfer to a trust would be a direct skip but for this paragraph, any generation assignment determined under this paragraph continues to apply in determining whether any subsequent distribution from (or termination of an interest in) the portion of the trust attributable to that transfer is a GST. For purposes of this paragraph (a)(2), a living descendant is not treated as a predeceased individual solely by reason of applicable local law; *e.g.*, where state law treats an individual executing a disclaimer as having predeceased the transferor of the disclaimed property. See § 26.2652–1(a)(1) for the definition of "transferor." See § 26.2612–1(e) for the definition of "interest in trust."

(b) *Taxable termination*—(1) *In general.* Except as otherwise provided in this paragraph (b), a taxable termination is a termination (occurring for any reason) of an interest in trust unless—

(i) A transfer subject to Federal estate or gift tax occurs with respect to the property held in the trust at the time of the termination (*i.e.*, a new transferor is determined with respect to the property);

(ii) Immediately after the termination, a person who is not a skip person has an interest in the trust; or

(iii) At no time after the termination may a distribution (including a distribution at the termination of the trust) be made from the trust to a skip person.

(2) *Partial termination.* If a distribution of a portion of trust property is made to a skip person by reason of a termination occurring on the death of a lineal descendant of the transferor, the termination is a taxable termination, but only with respect to the distributed property.

(c) *Taxable distribution.* A taxable distribution is a distribution of income or principal from a trust to a skip person unless the distribution is a taxable termination or a direct skip. If any portion of GST tax (including penalties and interest thereon) imposed on a distributee is paid from the distributing trust, the payment is an additional taxable distribution to the distributee. For purposes of chapter 13, the additional distribution is treated as having been made on the last day of the calendar year in which the original taxable distribution is made.

(d) *Skip person.* A skip person is—

(1) An individual assigned to a generation more than one generation below that of the transferor (determined under the rules of section 2651); or

(2) A trust if—(i) All interests in the trust are held by skip persons; or

(ii) No person holds an interest in the trust and no distributions (including distributions at the termination of the trust) may be made after the transfer to a person other than a skip person.

(e) *Interest in trust*—(1) *In general.* An interest in trust is an interest in property held in trust as defined in section 2652(c) and these regulations. An interest in trust exists if a person—

(i) Has a present right to receive trust principal or income;

(ii) Is a permissible current recipient of trust principal or income and is not described in section 2055(a); or

(iii) Is described in section 2055(a) and the trust is a charitable remainder annuity trust or unitrust (as defined in section 664(d)) or a pooled income fund (as defined in section 642(c)(5)).

(2) *Exceptions*—(i) *Support obligations.* In general, an individual has a present right to receive trust income or principal if trust income or principal may be used to satisfy the individual's obligations. However, an individual does not have an interest in a trust merely because a support obligation of that individual may be satisfied by a distribution that is either within the discretion of a fiduciary or pursuant to provisions of State law substantially equivalent to the Uniform Gifts (Transfers) to Minors Act.

(ii) *Nominal interests.* If a significant purpose for the creation of an interest in trust is to postpone or avoid the GST tax, the interest is disregarded for purposes of chapter 13. The creation of an interest in a trust may have more than one significant purpose.

(f) *Examples.* The following examples illustrate the provisions of this section. Unless stated otherwise, § 26.2612–1(a)(2), which assigns descendants to a higher generation when there is a predeceased ancestor, does not apply.

Example 1.—Direct skip. T gratuitously conveys Blackacre to T's grandchild. Because the transfer is a transfer to a skip person of property subject to Federal gift tax, it is a direct skip.

Example 2.—Direct skip of more than one generation. T gratuitously conveys Blackacre to T's great-grandchild. The transfer is a direct skip. Only one GST tax is imposed on the direct skip although two generations are skipped by the transfer.

Example 3.—Taxable termination. T establishes an irrevocable trust under which the income is to be paid to T's child, C, for life. On the death of C, the trust principal is to be paid to T's grandchild, GC. Since C has an interest in the trust, the trust is not a skip person and the transfer to the trust is not a direct skip. If C dies survived by GC, a taxable termination occurs at C's death because C's interest in the trust terminates and thereafter the trust property is held by a skip person who occupies a lower generation than C.

Example 4.—Direct skip of property held in trust. T establishes a testamentary trust under which the income is to be paid to T's surviving spouse, S, for life and the remainder is to be paid to a grandchild of T and S. T's executor elects to treat the trust as qualified terminable interest property under section 2056(b)(7). The transfer to the trust is not a direct skip because S, a person who is not a skip person, holds a present right to receive income from the trust. Upon S's death, the trust property is included in S's gross estate under section 2044 and passes directly to a skip person. The GST occurring at that time is a direct skip because it is a transfer subject to chapter 11. The fact that the interest created by T is terminated at S's death is immaterial because S becomes the transferor at the time of the transfer subject to chapter 11.

Example 5.—Predeceased ancestor exception. T establishes an irrevocable trust providing that trust income is to be paid to T's grandchild, GC, for 5 years. At the end of the 5-year period, the trust is to terminate and the principal is to be distributed to GC. T's child C, a parent of GC, is deceased at the time T establishes the trust. Therefore, GC is treated as a child of T rather than as a grandchild. As a result, GC is not a skip person and the initial transfer to the trust is not a direct skip. Similarly, distributions to GC during the term of the trust and at the termination of the trust will not be GSTs.

Example 6.—Predeceased ancestor exception not applicable. The facts are the same as in *Example 5*, except the trust income is to be paid to T's spouse, S, during the first two years of the trust. Since S has an interest in the trust, the trust is not a skip person and the transfer by T is not a direct skip. Since the transfer is not a direct skip, the predeceased ancestor rule does not apply and GC is not treated as the child of T. A taxable termination occurs at the expiration of S's interest.

Example 7.—Taxable termination. T establishes an irrevocable trust for the benefit of T's child, C, T's grandchild, GC, and T's great-grandchild, GGC. Under the terms of the trust, income and principal may be distributed to any or all of the living beneficiaries at the discretion of the trustee. Upon the death of the second beneficiary to die, the trust principal is to be paid to the survivor. C dies first. A taxable termination occurs at that time because, immediately after C's interest terminates, all interests in the trust are held by skip persons (GC and GGC).

Example 8.—Taxable termination resulting from distribution. The facts are the same as in *Example 7*, except twenty years after C's death the trustee exercises its discretionary power and distributes the entire principal to GGC. The distribution results in a taxable termination because GC's interest in the trust terminates as a result of the distribution of the entire trust property to GGC, a skip person.

Example 9.—Simultaneous termination of interests of more than one beneficiary. T establishes an irrevocable trust for the benefit of T's child, C, T's grandchild, GC, and T's great-grandchild, GGC. Under the terms of the trust, income and principal may be distributed to any or all of the living beneficiaries at the discretion of the trustee. Upon the death of C, the trust property is to be distributed to GGC if then living. If C is survived by both GC and GGC, both C's and GC's interests in the trust will terminate on C's death. However, because both interests will terminate at the same time and as a result of one event, only one taxable termination occurs.

Example 10.—Partial taxable termination. T creates an irrevocable trust providing that trust income is to be paid to T's children, S and D, in such proportions as the trustee determines for their joint lives. On the death of the first child to die, one-half of the trust principal is to be paid to T's then living grandchildren. The balance of the trust principal is to be paid to T's grandchildren on the death of the survivor of S and D. If S predeceases D, the distribution occurring on the termination of S's interest in the trust is a taxable termination and not a taxable distribution. It is a taxable termination because the distribution is a distribution of a portion of the trust that occurs as a result of the death of S, a lineal descendant of T. It is immaterial that a portion of the trust continues and that D, a person other than a skip person, thereafter holds an interest in the trust.

Example 11.—Taxable distribution. T establishes an irrevocable trust under which the trust income is payable to T's child, C, for life. When T's grandchild, GC, attains 35 years of age, GC is to receive one-half of the principal. The remaining one-half of the principal is to be distributed to GC on C's death. Assume that C survives until GC attains age 35. When the trustee distributes one-half of the principal to GC on GC's 35th birthday, the distribution is a taxable distribution because it is a distribution to a skip person and is neither a taxable termination nor a direct skip.

Example 12.—Exercise of withdrawal right as taxable distribution. The facts are the same as in *Example 11*, except GC holds a continuing right to withdraw trust principal and after one year GC withdraws $10,000. The withdrawal by GC is not a taxable termination because the withdrawal does not terminate C's interest in the trust. The withdrawal by GC is a taxable distribution to GC.

Example 13.—Interest in trust. T establishes an irrevocable trust under which the income is to be paid to T's child, C, for life. On the death of C, the trust principal is to be paid to T's grandchild, GC. Because C has a present right to receive income from the trust, C has an interest in the trust. Because GC cannot currently receive distributions from the trust, GC does not have an interest in the trust.

Example 14.—Support obligation. T establishes an irrevocable trust for the benefit of T's grandchild, GC. The trustee has discretion to distribute property for GC's support without regard to the duty or ability of GC's parent, C, to support GC. Because GC is a permissible current recipient of trust property, GC has an interest in the trust. C does not have an interest in the trust because the potential use of the trust property to satisfy C's support obligation is within the discretion of a fiduciary.

§ 26.2613–1 Skip person.

For the definition of "skip person" see § 26.2612–1(d).

§ 26.2632–1 Allocation of GST exemption.

(a) *General rule.* Except as otherwise provided in this section, an individual or the individual's executor may allocate the individual's $1 million GST exemption at any time from the date of the transfer through the date for filing the individual's Federal estate tax return (including any extensions actually granted). If no estate tax return is required to be filed, the GST exemption may be allocated at any time through the date a Federal estate tax return would be due if a return were required to be filed (including any extensions actually granted). If property is held in trust, the allocation of GST exemption is made to the entire trust rather than to specific trust assets. If a transfer is a direct skip to a trust, the allocation of GST exemption to the transferred property is also treated as an allocation of GST exemption to the trust for purposes of future GSTs with respect to the trust by the same transferor.

(b) *Lifetime allocations*—(1) *Automatic allocation to direct skips*—(i) *In general.* If a direct skip occurs during the transferor's lifetime, the transferor's GST exemption not previously allocated (unused GST exemption) is automatically allocated to the transferred property (but not in excess of the fair market value of the property on the date of the transfer). The transferor may prevent automatic allocation of GST exemption by

describing on a timely-filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) the transfer and the extent to which the automatic allocation is not to apply. In addition, a timely-filed Form 709 accompanied by payment of the GST tax (as shown on the return with respect to the direct skip) is sufficient to prevent an automatic allocation of GST exemption with respect to the transferred property. See paragraph (c)(4) of this section for special rules in the case of direct skips treated as occurring at the termination of an estate tax inclusion period.

(ii) *Time for filing Form 709.* A Form 709 is timely filed if it is filed on or before the date that would be the date for reporting the transfer if it were a taxable gift (*i.e.*, the date prescribed by section 6075(b), including any extensions actually granted (the due date)). Except as provided in paragraph (b)(1)(iii) of this section, the automatic allocation of GST exemption (or the election to prevent the allocation, if made) is irrevocable after the due date. An automatic allocation of GST exemption is effective as of the date of the transfer to which it relates.

(iii) *Transitional rule.* An election to prevent an automatic allocation of GST exemption filed on or before January 25, 1993, becomes irrevocable on July 22, 1993.

(2) *Allocation to other transfers*—(i) *In general.* An allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is being made, the amount of GST exemption allocated to it, and the value of the trust principal at the time of the allocation. The allocation should also state the inclusion ratio of the trust after the allocation. An allocation of GST exemption may be made by a formula; *e.g.*, the allocation may be expressed in terms of the amount necessary to produce an inclusion ratio of zero. An allocation of GST exemption is irrevocable. Except as provided in § 26.2642–3 (relating to charitable lead annuity trusts), an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust. See § 26.2642–1 for the definition of inclusion ratio.

(ii) *Effective date of allocation.* Except as otherwise provided, an allocation of GST exemption is effective as of the date of any transfer as to which the Form 709 on which it is made is a timely filed return (a timely allocation). If more than one timely allocation is made, the earlier allocation is modified only if the later allocation clearly identifies the transfer and the nature and extent of the modification. Except as provided in paragraph (d)(1) of this section, an allocation to a trust made on a Form 709 filed after the due date for reporting a transfer to the trust (a late allocation) is effective on the date the Form 709 is filed. See paragraph (c)(1) of this section regarding allocation of GST exemption to property subject to an estate tax inclusion period. If it is unclear whether an allocation of GST exemption on a Form 709 is a late or a timely allocation to a trust, the allocation is effective in the following order—

(A) To any transfer to the trust disclosed on the return as to which the return is a timely return;

(B) As a late allocation; and

(C) To any transfer to the trust not disclosed on the return as to which the return would be a timely return.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (b).

Example 1.—Modification of allocation of GST exemption. T transfers $100,000 to an irrevocable generation-skipping trust on December 1, 1993. The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 1994. On February 10, 1994, T files a Form 709 allocating $50,000 of GST exemption to the trust. On April 10 of the same year, T files an amended Form 709 allocating $100,000 of GST exemption to the trust in a manner that clearly indicates the intention to modify and supersede the prior allocation with respect to the 1993 transfer. The allocation made on the April 10 return supersedes the prior allocation because it is made on a timely-filed Form 709 that clearly identifies the trust and the nature and extent of the modification of GST exemption allocation. The allocation of $100,000 of GST exemption to the trust is effective as of December 1, 1993. The result would be the same if the amended Form 709 decreased the amount of the GST exemption allocated to the trust.

Example 2.—Modification of allocation of GST exemption. The facts are the same as in *Example 1*, except on July 10, 1994, T files a Form 709 attempting to reduce the earlier allocation. The return is not a timely-filed return. The $100,000 GST exemption allocated to the trust, as amended on April 10, 1994, remains in effect because an allocation, once made, is irrevocable and may not be modified after the last date on which a timely-filed Form 709 can be filed.

Example 3.—Effective date of late allocation of GST exemption. T transfers $100,000 to an irrevocable generation-skipping trust on December 1, 1993. The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 1994. On December 1, 1994, T files a Form 709 and allocates $50,000 to the trust. The allocation is effective as of December 1, 1994.

Example 4.—Effective date of late allocation of GST exemption. T transfers $100,000 to a generation-skipping trust on December 1, 1993, in a transfer that is not a direct skip. T does not make an allocation of GST exemption on a timely-filed Form 709. On July 1, 1994, the trustee makes a taxable distribution from the trust to T's grandchild in the amount of $20,000. On the same date, T allocates GST exemption to the trust in the amount of $20,000. The allocation of GST exemption on the date of the transfer is treated as occurring immediately prior to the taxable distribution. Thus, at the time of the GST the trust has an inclusion ratio of less than one.

(c) *Special rules during an estate tax inclusion period*—(1) *In general.* An allocation of GST exemption (including an automatic allocation) to property subject to an estate tax inclusion period (ETIP) is effective no earlier than the termination of the ETIP. An allocation is effective at the termination of the ETIP if made by the due date for filing a Form 709 that would apply to a taxable gift occurring at the time the ETIP terminates (timely ETIP return). The rules of this paragraph (c)(1) do not apply to qualified terminable interest property with respect to which the special election under § 26.2652–1(a)(3) has been made.

(2) *Estate tax inclusion period defined.* An ETIP is the period during which, should death occur, the value of transferred property would be includible (other than by reason of section 2035) in the gross estate of—

(i) The transferor;

(ii) The transferor had the transferor retained an interest held by the transferor's spouse (but only to the extent the spouse acquired the interest from the transferor in an inter vivos transfer that was not included in the transferor's taxable gifts or for which a deduction was allowed under section 2523 of the Code); or

(iii) The spouse of the transferor.

(3) *Termination of an ETIP.* Generally, an ETIP terminates on the first to occur of—

(i) The death of the transferor;

(ii) The time at which no portion of the property would be includible in the transferor's gross estate (other than by reason of section 2035) or, in the case of an individual who is a transferor solely by reason of an election under section 2513, the time at which no portion would be includible in the gross estate of the individual's spouse (other than by reason of section 2035);

(iii) The time of a GST, but only with respect to the property involved in the GST; or

(iv) In the case of an ETIP arising by reason of an interest held by the

transferor's spouse, at the first to occur of—

(A) The death of the spouse; or

(B) The time at which no portion of the property would be includible in the spouse's gross estate (other than by reason of section 2035).

(4) *Treatment of direct skips.* If property transferred to a skip person is subject to an ETIP, the direct skip is treated as occurring on the termination of the ETIP.

(5) *Examples.* The following examples illustrate the rules of this section. In each example assume that T transfers $100,000 to an irrevocable trust.

Example 1.—Allocation of GST exemption during ETIP. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. If T dies within the 9-year period, the value of the trust principal is includible in T's gross estate under section 2036(a) of the Internal Revenue Code. Thus, the trust is subject to an ETIP. T files a timely Form 709 reporting the transfer and allocating $100,000 of GST exemption to the trust. The allocation of GST exemption to the trust is not effective until the termination of the ETIP.

Example 2.—Effect of prior allocation on termination of ETIP. The facts are the same as in *Example 1*, except the trustee has the power to invade trust principal on behalf of T's grandchild, GC, during the term of T's income interest. In year 4, when the value of the trust is $200,000, the trustee distributes $15,000 to GC. The distribution is a taxable distribution. The ETIP with respect to the property distributed to GC terminates at the time of the taxable distribution. See paragraph (c)(3)(iii) of this section. Solely for purposes of determining the trust's inclusion ratio with respect to the taxable distribution, the $100,000 allocation of GST exemption (as well as any additional allocation made on a timely ETIP return) is effective immediately prior to the taxable distribution. See § 26.2642–1(b)(2).

Example 3.—Split-gift transfers subject to ETIP. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. T files a timely Form 709 reporting the transfer. T's spouse, S, consents to have the gift treated as made one-half by S. Because S is treated as transferring one-half of the property to T's grandchild, S becomes the transferor of one-half of the trust for purposes of chapter 13. Because the value of the trust would be includible in T's gross estimate if T died immediately after the transfer, S's transfer is subject to an ETIP.

Example 4.—Transfer of retained interest as ETIP termination. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. Four years after the initial transfer, T transfers the income interest to T's sibling. The ETIP with respect to the trust terminates on T's transfer of the income interest because, after the transfer, the trust property would not be includible in T's gross estate (other than by reason of section 2035) if T died at that time.

Example 5.—Interest transferred to spouse. The facts are the same as in *Example 4*, except T transfers the income interest to T's spouse, S, rather than to T's sibling. Assume that the transfer to S qualifies for the annual gift tax exclusion under section 2503(b). The ETIP does not terminate by reason of the transfer because the trust property subject to the transferred income interest held by T's spouse would be includible in T's gross estate if T had retained the interest and had died during the term of the trust.

(d) *Allocations after the transferor's death*—(1) *Allocation by executor.* Except as otherwise provided in this paragraph (d), an allocation of the decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) filed on or before the date prescribed for filing the return by section 6075(a) (including any extensions actually granted (the due date)). An allocation of GST exemption with respect to property included in the gross estate of the decedent is effective as of the date of death. A timely allocation of GST exemption by the executor with respect to a lifetime transfer of property that is not included in the transferor's gross estate is made on a Form 709. A late allocation of GST exemption by an executor with respect to a lifetime transfer of property is made on Form 706 and is effective as of the date of the transferor's death. An allocation of GST exemption to a trust (whether or not funded at the time the Form 706 is filed) is effective if the notice of allocation clearly identifies the trust and the amount of the decedent's GST exemption allocated to the trust. An executor may allocate the decedent's GST exemption by use of a formula.

(2) *Automatic allocation after death*—(i) *In general.* A decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decendent's executor on or before that date. The automatic allocation occurs whether or not a return is actually required to be filed. Unused GST exemption is allocated pro rate (on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value) of the nonexempt portion of the transferred property) first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (on the basis of the chapter 11 value of the nonexempt portion of the trust property) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation of GST exemption is irrevocable, and an allocation made by the executor after the automatic allocation is made is ineffective. No automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust. In addition, no automatic allocation of GST exemption is made to a trust if, during the nine month period ending immediately after the death of the transferor—

(A) No GST has occurred with respect to the trust; and

(B) At the end of such period no future GST can occur with respect to the trust.

§ 26.2641–1 Applicable rate of tax.

The rate of tax applicable to any GST (applicable rate) is determined by multiplying the maximum Federal estate tax rate in effect at the time of the GST by the inclusion ratio (as defined in § 26.2642–1). For this purpose, the maximum Federal estate tax rate is the maximum rate set forth under section 2001(c) of the Internal Revenue Code (without regard to section 2001(c)(3)).

§ 26.2642.1 Inclusion ratio.

(a) *In general.* Except as otherwise provided in this section, the inclusion ratio is determined by subtracting the applicable fraction (rounded to the nearest one-thousandth (.001)) from 1. In rounding the applicable fraction to the nearest one-thousandth, any amount that is midway between one one-thousandth and another one-thousandth is rounded up to the higher of those two amounts.

(b) *Numerator of applicable fraction*—(1) *In general.* Except as otherwise provided in this paragraph (b), and in §§ 26.2642–3 (providing a special rule for charitable lead annuity trusts) and 26.2642–4 (providing rules for the redetermination of the applicable fraction), the numerator of the applicable fraction is the amount of GST exemption allocated to the trust (or to the transferred property in the case of a direct skip not in trust).

(2) *GSTs occurring during an ETIP*—(i) *In general.* For purposes of determining the inclusion ratio with respect to a taxable termination or a taxable distribution that occurs during an ETIP, the numerator of the applicable fraction is the sum of—

(A) The GST exemption previously allocated to the trust reduced (but not below zero) by the nontax amount of

any prior GSTs with respect to the trust; and

(B) Any GST exemption allocated to the trust on a timely ETIP return filed after the termination of the ETIP.

(ii) *Nontax amount of a prior GST.* The nontax amount of a prior GST with respect to the trust is the amount of the GST multiplied by the applicable fraction attributable to the trust at the time of the prior GST. For the definition of ETIP, for the definition of a timely ETIP return, and for rules regarding the allocation of GST exemption to property during an ETIP, see § 26.2632.1(c).

(c) *Denominator of applicable fraction*—(1) *In general.* Except as otherwise provided in this paragraph (c) and in §§ 26.2642–3 and 26.2642–4, the denominator of the applicable fraction is the value of the property transferred to the trust (or transferred in a direct skip not in trust) (as determined under § 26.2642–2) reduced by the sum of—

(i) Any Federal estate tax and any State death tax incurred by reason of the transfer that is chargeable to the trust and is actually recovered from the trust;

(ii) The amount of any charitable deduction allowed under section 2055, 2106, or 2522 with respect to the transfer; and

(iii) In the case of a direct skip, the value of the portion of the transfer that is a nontaxable gift. See paragraph (c)(3) of this section for the definition of nontaxable gift.

(2) *Zero denominator.* If the denominator of the applicable fraction is zero, the inclusion ration is zero.

(3) *Nontable gifts.* Generally, for purposes of chapter 13, a transfer is a nontaxable gift to the extent the transfer is excluded from taxable gifts by reason of section 2503(b) (after application of section 2513) or section 2503(e). However, a transfer to a trust for the benefit of an individual is not a nontaxable gift for purposes of this section unless—

(i) Trust principal or income may, during the individual's lifetime, be distributed only to or for the benefit of the individual; and

(ii) The assets of the trust will be includable in the gross estate of the individual if the individual dies before the trust terminates.

(d) *Examples.* The following example illustrate the provisions of this section. See *Examples 2* and *3* of § 26.2652–2(d) for examples of the computation of the inclusion ratio where the special (reverse QTIP) election may be applicable.

Example 1.—Computation of the inclusion ratio. T transfers $100,000 to a newly-created irrevocable trust providing that income is to be accumulated for 10 years. At the end of 10 years, the accumulated income is to be distributed to T's child, C, and the trust principal is to be paid to T's grandchild. T allocates $40,000 of T's GST exemption to the trust on a timely-filed gift tax return. The applicable fraction with respect to the trust is 2/5 ($40,000 (the amount of GST exemption allocated to the trust) over $100,000 (the value of the property transferred to the trust)). The inclusion ratio is 3/5 (1–2/5). If the maximum Federal estate tax rate is 50 percent at the time of a GST, the rate of tax applicable to the transfer will be 30 percent (50 percent (the maximum estate tax rate) x 3/5 (the inclusion ration)).

Example 2.—Gift entirely nontaxable. On December 1, 1993, T transfers $10,000 to an irrevocable trust for the benefit of T's grandchild, GC, in a manner that qualifies the entire transfer for the annual exclusion under section 2503(b) of the Code. Under the terms of the trust, the income is to be paid to GC for 10 years or until GC's prior death. Upon the expiration of GC's income interest, the trust principal is payable to GC or GC's estate. The transfer to the trust is a direct skip. T made no prior gifts to or for the benefit of GC during 1993. The entire $10,000 transfer is a nontaxable transfer. For purposes of computing the tax on the direct skip, the denominator of the applicable fraction is zero, and thus the inclusion ratio is zero.

Example 3.—Gift nontaxable in part. T transfers $12,000 to an irrevocable trust for the benefit of T's grandchild, GC. Under the terms of the trust, the income is to be paid to GC for 10 years or until GC'S prior death. Upon the expiration of GC's income interest, the trust principal is payable to GC or GC's estate. Ten thousand dollars of the transfer qualifies for the annual exclusion under section 2503(b) of the Code. The amount of the nontaxable transfer is $10,000. Solely for purposes of computing the tax on the direct skip, T's transfer is divided into two portions. One portion is equal to the amount of the nontaxable transfer ($10,000) and has a zero inclusion ratio; the other portion is $2,000 ($12,000–$10,000). With respect to the $2,000 portion, the denominator of the applicable fraction is $2,000. Assuming that T has sufficient GST exemption available, the numerator of the applicable fraction is $2,000 (unless T elects to have the automatic allocation provisions not apply). Thus, assuming the automatic allocation is made, the applicable fraction is one ($2,000/$2,000=1) and the inclusion ration is zero (1–1=0).

Example 4.—Gift nontaxable in part. Assume the same facts as in *Example 3*, except T files a timely Form 709 electing that the automatic allocation of GST exemption not apply to the $12,000 transferred in the direct skip. T's transfer is again divided into two portions, a $10,000 portion with a zero inclusion ratio and a $2,000 portion with an applicable fraction of zero (0/$2,000=0) and an inclusion ration of one (1–0=1).

§ 26.2642–2 Valuation.

(a) *Lifetime transfers*—(1) *In general.* For purposes of determining the denominator of the applicable fraction, the value of property transferred during life is its fair market value on the effective date of the allocation of GST exemption.

(2) *Special rule for late allocations during life.* If a transferor makes a late allocation of GST exemption to a trust, the value of the property transferred to the trust is the fair market value of the trust assets determined on the effective date of the allocation of GST exemption. Except as otherwise provided in this paragraph (a)(2), if a transferor makes a late allocation of GST exemption to a trust, the transferor may, solely for purposes of determining the fair market value of the trust assets, elect to treat the allocation as having been made on the first day of the month during which the late allocation is made (valuation date). An election under this paragraph (a)(2) is not effective with respect to life insurance. An allocation subject to the election contained in this paragraph (a)(2) is not effective until it is actually filed with the Internal Revenue Service. The election is made by stating on the Form 709 on which the allocation is made—

(i) That the election is being made;

(ii) The applicable valuation date; and

(iii) The fair market value of the trust assets on the valuation date.

(b) *Transfers at death*—(1) *In general.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, in determining the denominator of the applicable fraction, the value of property included in the decedent's gross estate is its value for purposes of chapter 11. For purposes of the preceding sentence, the chapter 11 value of qualified real property as to which the election under section 2032A is made is the fair market value of the property unless—

(i) The property is transferred by direct skip; and

(ii) The recapture agreement filed with respect to the election under section 2032A specifically provides for recapture of the GST tax.

(2) *Special rule for pecuniary payments.*—(i) *In general.* If a pecuniary payment is satisfied with cash, the denominator of the applicable fraction is the pecuniary amount. If property other than cash is used to satisfy a pecuniary payment, the denominator of the applicable fraction is the pecuniary amount only if payment must be made with property on the basis of the value of the property on—

(A) The date of distribution; or

(B) A date other than the date of distribution, but only if the pecuniary payment must be satisfied on a basis that fairly reflects net appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from

which the distribution could have been made.

(ii) *Other pecuniary amounts payable in kind.* The denominator of the applicable fraction with respect to any property used to satisfy any other pecuniary payment payable in kind is the date of distribution value of the property.

(3) *Special rule for residual transfers after payment of a pecuniary payment*—(i) *In general.* Except as otherwise provided in this paragraph (b)(3), the denominator of the applicable fraction with respect to a residual transfer of property after the satisfaction of a pecuniary payment is the estate tax value of the assets available to satisfy the pecuniary payment reduced, if the pecuniary payment carries appropriate interest (as defined in paragraph (b)(4) of this section), by the pecuniary amount. The denominator of the applicable fraction with respect to a residual transfer of property after the satisfaction of a pecuniary payment that does not carry appropriate interest is the estate tax value of the assets available to satisfy the pecuniary payment reduced by the present value of the pecuniary payment. For purposes of this paragraph (b)(3)(i), the present value of the pecuniary payment is determined by using—

(A) The interest rate applicable under section 7520 at the death of the transferor; and

(B) The period between the date of the transferor's death and the date the pecuniary amount is paid.

(ii) *Special rule for residual transfers after pecuniary payments payable in kind.* The denominator of the applicable fraction with respect to any residual transfer after satisfaction of a pecuniary payment payable in kind is the date of distribution value of the property distributed in satisfaction of the residual transfer, unless the pecuniary payment must be satisfied with property on the basis of the value of the property on—

(A) The date of distribution; or

(B) A date other than the date of distribution, but only if the pecuniary payment must be satisfied on a basis that fairly reflects net appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which the distribution could have been made.

(4) *Appropriate interest*—(i) *In general.* For purposes of this section and § 26.2654–1 (relating to certain trusts treated as separate trusts), appropriate interest means that interest must be payable from the date of death of the transferor (or from the date specified under applicable State law requiring the payment of interest) to the date of payment at a rate—

(A) At least equal to—(*1*) The statutory rate of interest, if any, applicable to pecuniary bequests under the law of the State whose law governs the administration of the trust; or

(*2*) If no such rate is indicated under applicable State law, 80 percent of the rate that is applicable under section 7520 at the death of the transferor; and

(B) Not in excess of the greater of—

(*1*) The statutory rate of interest, if any, applicable to pecuniary bequests under the law of the State whose law governs the administration of the trust; or

(*2*) 120 percent of the rate that is applicable under section 7520 at the death of the transferor.

(ii) *Pecuniary payments deemed to carry appropriate interest.* For purposes of this paragraph (b)(4), if a pecuniary payment does not carry appropriate interest, the pecuniary payment is considered to carry appropriate interest to the extent—

(A) The payment is made or property is irrevocably set aside to satisfy the pecuniary payment within 15 months of the transferor's death; or

(B) The governing instrument requires the executor or trustee to allocate to the pecuniary payment a pro rata share of the income earned by the estate or trust between the valuation date and the date of payment.

(c) *Examples.* The following examples illustrate the provisions of this section.

Example 1.—T transfers $100,000 to a newly-created irrevocable trust on December 15, 1993. The trust provides that income is to be paid to T's child for 10 years. At the end of the 10-year period the trust principal is to be paid to T's grandchild. T does not allocate any GST exemption to the trust on the gift tax return reporting the transfer. On September 15, 1994, T files a Form 709 allocating $50,000 of GST exemption to the trust. Because the allocation was made on a late filed return, the value of the property transferred to the trust is determined on the date the allocation is filed (unless an election is made pursuant to § 26.2642–2(a)(2) to value the trust property as of the first day of the month in which the allocation document is filed with the Internal Revenue Service). On September 15, 1994, the value of trust property is $150,000. Effective as of September 15, 1994, the applicable fraction with respect to the trust is .333 ($50,000 (the amount of GST exemption allocated to the trust) over $150,000 (the value of the trust principal on the effective date of the GST exemption allocation)), and the inclusion ratio is .667 (1.0—.333).

Example 2.—The facts are the same as in *Example 1*, except the value of the trust property is $80,000 on September 15, 1994. The applicable fraction is .625 ($50,000 over $80,000) and the inclusion ratio is .375 (1.0—.625).

Example 3.—T transfers $100,000 to a newly-created irrevocable trust on December 15, 1993. The trust provides that income is to be paid to T's child for 10 years. At the end of the 10-year period the trust principal is to be paid to T's grandchild. T does not allocate any GST exemption to the trust on the gift tax return reporting the transfer. On September 15, 1994, T files a Form 709 allocating $50,000 of GST exemption to the trust. T elects to value the trust principal on the first day of the month in which the allocation is made pursuant to the election provided in § 26.2642–2(a)(2). Because the late allocation is made in September, the value of the trust is determined as of September 1, 1994, except for any policies of life insurance held by the trust. The valuation date with respect to any policy of life insurance is September 15, 1994, the effective date of the allocation.

§ 26.2642–3 Special rule for charitable lead annuity trusts.

(a) *In general.* In determining the applicable fraction with respect to a charitable lead annuity trust—

(1) The numerator is the adjusted generation-skipping transfer tax exemption (adjusted GST exemption); and

(2) The denominator is the value of all property in the trust immediately after the termination of the charitable lead annuity.

(b) *Adjusted GST exemption defined.* The adjusted GST exemption is the amount of GST exemption allocated to the trust increased by an amount equal to the interest that would accrue if an amount equal to the allocated GST exemption were invested at the rate used to determine the amount of the estate or gift tax charitable deduction, compounded annually, for the actual period of the charitable lead annuity. If a late allocation is made to a charitable lead annuity trust, the adjusted GST exemption is the amount of GST exemption allocated to the trust increased by the interest that would accrue if invested at such rate for the period beginning on the date of the late allocation and extending for the balance of the actual period of the charitable lead annuity. The amount of GST exemption allocated to a charitable lead annuity trust is not reduced even though it is ultimately determined that the allocation of a lesser amount of GST exemption would have resulted in an inclusion ratio of zero. For purposes of chapter 13, a charitable lead annuity trust is any trust providng an interest in the form of a guaranteed annuity for which the transferor is allowed a charitable deduction for Federal estate or gift tax purposes.

(c) *Example.* The following example illustrates the provisions of this section.

Example.—T creates a charitable lead annuity trust for a 10-year term with the remainder payable to T's grandchild. T timely allocates an amount of GST exemption to the trust which T expects will ultimately result in a zero inclusion ratio. However, at the end of the charitable lead interest, because the property has not appreciated to the extent T anticipated, the numerator of the applicable fraction is greater than the denominator. The inclusion ratio for the trust is zero. No portion of the GST exemption allocated to the trust is restored to T or to T's estate.

§ 26.2642–4 Redetermination of applicable fraction.

(a) *In general.* The applicable fraction for a trust is redetermined whenever additional exemption is allocated to the trust or when certain changes occur with respect to the principal of the trust. Except as otherwise provided in this paragraph (a), the numerator of the redetermined applicable fraction is the sum of the amount of GST exemption currently being allocated to the trust (if any) plus the value of the nontax portion of the trust, and the denominator of the redetermined applicable fraction is the value of the trust principal immediately after the event occurs. The nontax portion of a trust is determined by multiplying the value of the trust principal, determined immediately prior to the event, by the then applicable fraction.

(1) *Multiple transfers to a single trust.* If property is added to an existing trust, the denominator of the redetermined applicable fraction is the value of the trust immediately after the addition reduced as provided in § 26.2642–1(c).

(2) *Consolidation of separate trusts.* If separate trusts created by one transferor are consolidated, a single applicable fraction for the consolidated trust is determined. The numerator of the redetermined applicable fraction is the sum of the nontax portions of each trust immediately prior to the consolidation.

(3) *Property included in transferor's gross estate.* If the value of property held in a trust created by the transferor is included in the transferor's gross estate, the applicable fraction is redetermined if additional GST exemption is allocated to the property. The numerator of the redetermined applicable fraction is an amount equal to the nontax portion of the property immediately before the death of the transferor increased by the amount of GST exemption allocated by the executor of the transferor's estate to the trust.

(4) *Imposition of recapture tax under section 2032A.* If an additional estate tax is imposed under section 2032A and if the section 2032A election was effective for purposes of the GST tax, the applicable fraction with respect to the property is redetermined as of the date of death of the transferor. In making the redetermination, any available GST exemption not allocated at the death of the transferor (or at a prior recapture event) is automatically allocated to the property. The denominator of the applicable fraction is the fair market value of the property at the date of the transferor's death reduced as provided in § 26.2642–1(c) and further reduced by the amount of the additional GST tax actually recovered from the trust.

(b) *Examples.* The following examples illustrate the principles of this section.

Example 1. Allocation of additional exemption. T transfers $200,000 to an irrevocable trust under which the income is payable to T's child, C, for life. Upon the termination of the trust, the remainder is payable to T's grandchild, GC. At a time when no ETIP exists with respect to the trust property, T makes a timely allocation of $100,000 of GST exemption, resulting in an inclusion ratio of ½. The entire trust property (valued at $500,000) is includible in T's gross estate when T dies. T's executor allocates an additional $100,000 of T's unused GST exemption to the trust. The inclusion ratio of the trust is recomputed at that time. The numerator of the applicable fraction is $350,000 ($250,000 (the nontax portion as of the date of death) plus $100,000 (the GST exemption currently being allocated). The denominator is $500,000 (the date of death fair market value of the trust). The inclusion ratio is $^{3}/_{10}$ (1– $^{7}/_{10}$).

Example 2. Multiple transfers to a trust, allocation both timely and late. On December 10, 1993, T transfers $10,000 to an irrevocable trust which does not qualify under section 2642(c)(2). T makes identical transfers to the trust on December 10, 1994, 1995, 1996, and on January 15, 1997. Immediately after the transfer on January 15, 1997, the value of the trust principal is $40,000. On January 14, 1998, when the value of the trust principal is $50,000, T allocates $30,000 of GST exemption to the trust. T discloses the 1997 transfer on the Form 709 filed on January 14, 1998. Thus, T's allocation is a timely allocation with respect to the transfer in 1997, $10,000 of the allocation is effective as of the date of that transfer, and, on and after January 15, 1997, the inclusion ratio of the trust is .75 (1–($10,000/$40,000). The balance of the allocation is a late allocation with respect to prior transfers to the trust and is effective as of January 14, 1998. In redetermining the inclusion ratio as of that date, the numerator of the redetermined applicable fraction is $32,500 ($12,500 (.25×$50,000), the nontax portion of the trust on January 14, 1998) plus $20,000 (the amount of GST exemption allocated late to the trust). The denominator of the new applicable fraction is $50,000 (the value of the trust principal at the time of the late allocation).

Example 3. Excess allocation. (i) T creates an irrevocable trust for the benefit of T's child and grandchild in 1993 transferring $50,000 to the trust on the date of creation. T allocates no GST exemption to the trust on the Form 709 reporting the transfer. On July 1, 1995 (when the value of the trust property is $60,000), T transfers an additional $40,000 to the trust.

(ii) On April 15, 1996, when the value of the trust is $150,000, T files a Form 709 reporting the 1995 transfer and allocating $150,000 of GST exemption to the trust. The allocation is a timely allocation of $40,000 with respect to the 1995 transfer and is effective as of that date. Thus, the applicable fraction for the trust as of July 1, 1995 is ⅔ {($40,000/$100,000 ($40,000+$60,000)}.

(iii) The allocation is also a late allocation of $90,000, the amount necessary to attain a zero inclusion ratio on April 15, 1996, computed as follows: $60,000, the nontax portion immediately prior to the allocation (⅔×$150,000) plus ($90,000/$150,000) equals one and, thus, an inclusion ratio of zero. The balance of the allocation $20,000 ($150,000 less the timely allocation of $40,000 less the late allocation of $90,000) is void.

Example 4. Undisclosed transfer. (i) The facts are the same as in *Example 3*, except that on February 1, 1996 (when the value of the trust is $150,000), T transfers an additional $50,000 to the trust and the value of the entire trust corpus on April 15, 1996 is $220,000. The Form 709 filed on April 15, 1996 does not disclose the 1996 transfer. Under the rule in § 26.2632–1(b)(2)(ii), the allocation is effective first as a timely allocation to the 1995 transfer; second, as a late allocation to the trust as of April 15, 1996; and, finally as a timely allocation to the February 1, 1996 transfer. As of April 15, 1996, $55,000, a pro-rata portion of the trust assets, is considered to be the property transferred to the trust on February 1, 1996 (($50,000/$200,000)×$220,000). The balance of the trust, $165,000, represents prior transfers to the trust.

(ii) As in *Example 3*, the allocation is a timely allocation as to the 1995 transfer (and the applicable fraction as of July 1, 1995 is 2/5) and a late allocation as of 1996. The amount of the late allocation is $99,000, computed as follows: (2/5×$165,000 plus $99,000=one).

(iii) The balance of the allocation, $11,000 ($150,000 less the timely allocation of $40,000 less the late allocation of $99,000) is a timely allocation as of February 1, 1996. The applicable fraction with respect to the trust, as of February 1, 1996, is .355, computed as follows: $60,000 (the nontax portion of the trust immediately prior to the February 1, 1996 transfer (2/5×$150,000)) plus $11,000 (the amount of the timely allocation to the 1996 transfer) over $200,000 (the value of the trust on February 1, 1996, after the transfer on that date)=$71,000 /$200,000=.355.

(iv) The applicable fraction with respect to the trust, as of April 15, 1996, is .805 computed as follows: $78,100 (the nontax portion immediately prior to the allocation (.355×$220,000)) plus $99,000 (the amount of the late allocation) over $220,000=$177,100 / $220,000=.805.

Example 5. Redemption of inclusion ratio on ETIP termination. (i) T transfers $100,000

to an irrevocable trust. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. The trustee has the power to invade trust principal on behalf of T's grandchild, GC, during the term of T's income interest. The trust is subject to an ETIP while T holds the retained income interest. T files a timely Form 709 reporting the transfer and allocates $100,000 of GST exemption to the trust. In year 4, when the value of the trust is $200,000, the trustee distributes $15,000 to GC. The distribution is a taxable distribution. Because of the existence of the ETIP, the inclusion ratio with respect to the taxable distribution is determined immediately prior to the occurrence of the GST. Thus, the inclusion ratio applicable to the year 4 GST is ½ ($100,000/$200,000).

(ii) In year 5, when the value of the trust is again $200,000, the trustee distributes another $15,000 to GC. Because the trust is still subject to the ETIP in year 5, the inclusion ratio with respect to the year 5 GST is again computed immediately prior to the GST. In computing the new inclusion ratio, the numerator of the applicable fraction is reduced by the nontax portion of prior GSTs occurring during the ETIP. Thus, the numerator of the applicable fraction with respect to the GST in year 5 is $92,500 ($100,000– (.50×$15,000)) and the inclusion ratio applicable with respect to the GST in year 5 is .537 (1–.463 ($92,500/$200,0000=.463). Any additional GST exemption allocated on a timely ETIP return with respect to the GST in year 5 is also effective immediately prior to the transfer.

§ 26.2642–5 Finality of inclusion ratio.

(a) *Direct skips.* The inclusion ratio applicable to a direct skip becomes final when no additional GST tax (including additional GST tax payable by reason of section 2032A) may be assessed with respect to the direct skip.

(b) *Other GSTs.* With respect to taxable distributions and taxable terminations, the inclusion ratio for a trust becomes final on the later of—

(1) The expiration of the period for assessment with respect to the first GST tax computed using that inclusion ratio; or

(2) The expiration of the period for assessment of Federal estate tax with respect to the estate of the transferor. For purposes of this paragraph (b)(2), if an estate tax return is not required to be filed, the period for assessment is determined as if a return were required to be filed and as if the return were timely-filed within the period prescribed by section 6075(a).

§ 26.2652–1 Transferor defined; other definitions.

(a) *Transferor defined*—(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, the individual with respect to whom property was most recently subject to Federal estate or gift tax is the transferor of that property for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be a transferor even though there is no transfer of property under local law at the time the Federal estate or gift tax applies.

(2) *Transfers subject to Federal estate or gift tax.* For purposes of this section, a transfer is subject to Federal gift tax if the transfer is a completed gift within the meaning of § 25.2511–2 regardless of whether gift tax is actually imposed. A transfer is subject to Federal estate tax if the value of the property is includible in the decendent's gross estate as determined under section 2031.

(3) *Special rule for certain QTIP trusts.* Solely for purposes of chapter 13, if a transferor of qualified terminable interest property (QTIP) elects under § 26.2652–2(a) to treat the property as if the QTIP election had not been made (reverse QTIP election), the identity of the transferor of the property is determined without regard to the application of sections 2044, 2207A, and 2519.

(4) *Exercise of certain nongeneral powers of appointment.* The exercise of a power of appointment that is not a general power of appointment (as defined in section 2041(b)) is treated as a transfer subject to Federal estate or gift tax by the creator of the power if the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (perpetuities period). For purposes of this paragraph (a)(4), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) is not an exercise that may extend beyond the perpetuities period.

(5) *Examples.* The following examples illustrate the principles of this paragraph (a).

Example 1. Identity of transferor. T transfers $100,000 to a trust for the sole benefit of T's grandchild. The transfer is a completed gift under § 25.2511–2. Thus, for purposes of chapter 13, T is the transferor of the $100,000. It is immaterial that a portion of the transfer is excluded from the total amount of T's taxable gifts by reason of section 2503(b).

Example 2. Gift splitting and identity of transferor. The facts are the same as in *Example 1*, except T's spouse, S, consents under section 2513 to split the gift with T. For purposes of chapter 13, S and T are each treated as a transferor of $50,000 to the trust.

Example 3. Change of transferor on subsequent transfer tax event. T transfers $100,000 to a trust providing that all the net trust income is to be paid to T's spouse, S, for S's lifetime. T elects under section 2523(f) to treat the transfer as a transfer of qualified terminable interest property. On S's death, the trust property is included in S's gross estate under section 2044 of the Internal Revenue Code. Thus, S becomes the transferor at the time of S's death.

Example 4. Effect of transfer of an interest in trust on identity of the transferor. T transfers $100,000 to a trust providing that all of the net income is to be paid to T's child, C, for C's lifetime. At C's death the trust property is to be paid to T's grandchild. C transfers the income interest to X, an unrelated party, in a transfer that is a completed transfer for Federal gift tax purposes. Because C's transfer is a transfer of a term interest in the trust that does not affect the rights of other parties with respect to the trust property, T remains the transferor with respect to the trust.

Example 5. Effect of lapse of withdrawal right on identity of transferor. T transfers $10,000 to a new trust providing that the trust income is to be paid to T's child, C, for C's life and, on the death of C, the trust principal is to be paid to T's grandchild, GC. The trustee has discretion to distribute principal for GC's benefit during C's lifetime. C has a right to withdraw $10,000 from the trust for a 60-day period following the transfer. Thereafter the power lapses. C does not exercise the withdrawal right. The transfer by T is a completed transfer within the meaning of § 25.2511–2 and, thus, T is treated as having transferred the entire $10,000 to the trust. On the lapse of the withdrawal right, C becomes a transferor to the extent C is treated as having made a completed transfer for purposes of chapter 12. Therefore, except to the extent that the amount with respect to which the power of withdrawal lapses exceeds the greater of $5,000 or 5% of the value of the trust property, T remains the transferor of the trust property for purposes of chapter 13.

Example 6. Effect of reverse QTIP election on identity of the transferor. T establishes a testamentary trust having a principal of $500,000. Under the terms of the trust, all trust income is payable to T's surviving spouse, S, during S's lifetime. T's executor makes an election to treat the trust property as qualified terminable interest property and also makes the reverse QTIP election. For purposes of chapter 13, T is the transferor with respect to the trust. On S's death, the then full fair market value of the trust is includible in S's gross estate under section 2044. However, because of the reverse QTIP election, S does not become the transferor with respect to the trust; T continues to be the transferor.

Example 7. Effect of reverse QTIP election on constructive additions. The facts are the

same as in *Example 6*, except the inclusion of the QTIP trust in S's gross estate increased the Federal estate tax liability of S's estate by $200,000. The estate does not exercise the right of recovery from the trust granted under section 2207A. Under local law, the beneficiaries of S's residuary estate (which bears all estate taxes under the will) could compel the executor to exercise the right of recovery but do not do so. Solely for purposes of chapter 13, the beneficiaries of the residuary estate are not treated as having made an addition to the trust by reason of their failure to exercise their right of recovery. Because of the reverse QTIP election, for GST purposes the trust property is not treated as includible in S's gross estate and, under those circumstances, no right of recovery exists.

Example 8. Exercise of a nongeneral power of appointment. On May 15, 1990, GP establishes an irrevocable trust under which the trust income is to be paid on GP's child, C, for life. C is given a testamentary power to appoint the remainder in further trust for the benefit of C's issue. In default of C's exercise of the power, the remainder is to pass to charity. C dies on February 3, 1996, survived by two children and a sibling, S (who was born prior to May 15, 1990). C exercises the power in a manner that validly extends the trust in favor of C's issue until the later of May 15, 2070 (80 years from the date the trust was created), or the death of S. C's exercise of the power is considered a transfer by GP that is subject to the estate or gift tax because it may extend the term of the trust beyond the perpetuities period.

Example 9. Exercise of a nongeneral power of appointment. The facts are the same as in *Example 8*, except local law provides that the effect of C's exercise is to extend the term of the trust until May 15, 2070, whether or not S survives that date. GP is not treated as having made a transfer to the trust as a result of the exercise of the power because the exercise of the power does not extend the term of the trust beyond a period of 90 years measured from the creation of the trust. The result would be the same if the effect of C's exercise is either to extend the term of the trust until the death of S or to extend the term of the trust until the *first* to occur of May 15, 2070, or the death of S.

(b) *Trust defined*—(1) *In general.* A trust includes any arrangement (other than an estate) that has substantially the same effect as a trust. Thus, for example, arrangements involving life estate and remainders, estates for years, and insurance and annuity contracts are trusts. Generally, a transfer as to which the identity of the transferee is contingent upon the occurrence of an event is a transfer in trust; however, a testamentary transfer as to which the identity of the transferee is contingent upon an event that must occur within 6 months of the transferor's death is not considered a transfer in trust solely by reason of the existence of the contingency.

(2) *Examples.* The following examples illustrate the provisions of this paragraph (b).

Example 1. T transfers cash to an account in the name of T's child, C, as custodian for C's child, GC (who is a minor), under a state statute substantially similar to the Uniform Gifts to Minors Act. For purposes of chapter 13, the transfer to the custodial account is treated as a transfer to a trust.

Example 2. To bequeaths $200,000 to T's child, C, provided that if C does not survive T by more than 6 months, the bequest is payable to T's grandchild, GC. C dies 4 months after T. The bequest is not a transfer in trust because the contingency that determines the recipient of the bequest must occur within 6 months of T's death. The bequest to GC is a direct skip.

Example 3. The facts are the same as in *Example 2*, except C must survive T by 18 months to take the bequest. The bequest is a transfer in trust for purposes of chapter 13, and the death of C is a taxable termination.

(c) *Trustee defined.* The trustee of a trust is the person designated as trustee under local law or, if no such person is so designated, the person in actual or constructive possession of property held in trust.

(d) *Executor defined.* For purposes of chapter 13, the executor is the executor or administrator of the decedent's estate. However, if no executor or administrator is appointed, qualified or acting within the United States, the executor is the fiduciary who is primarily responsible for payment of the decedents' debts and expenses. If there is no such executor, administrator or fiduciary, the executor is the person in actual or constructive possession of the largest portion of the value of the decedent's gross estate.

(e) *Interest in trust.* See § 26.2612–1(e) for the definition of "interest in trust."

§ 26.2652–2 Special election for qualified terminable interest property.

(a) *In general.* If an election is made to treat property as qualified terminable interest property (QTIP) under section 2523(f) or section 2056(b)(7), the person making the election may, for purposes of chapter 13, elect to treat the property as if the QTIP election had not been made (reverse QTIP election). An election under this section is irrevocable. An election under this section is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. See, however, § 26.2654–1(c)(2).

(b) *Time and manner of making election.* An election under this section is made on the return on which the QTIP election is made. If a protective QTIP election is made, no election under this section is effective unless a protective reverse QTIP election is also made.

(c) *Transitional rule.* If a reverse QTIP election is made with respect to a trust prior to December 24, 1992, and GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust. The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this paragraph (c) is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under section 2652(a)(3). The statement must indicate that an election is being made to treat the trust as two separate trusts and must identify the values of the two separate trusts. The statement is to be filed in the same place in which the original return was filed and must be filed before April 15, 1993. A trust subject to the election described in this paragraph is treated as a trust that was created by two transferors. See § 26.2654–1 for special rules involving trusts with multiple transferors.

(d) *Examples.* The following examples illustrate the provisions of this section.

Example 1. Special (reverse QTIP) election under section 2652(a)(3). T transfers $1,000,000 to a trust providing that all trust income is to be paid to T's spouse, S, for S's lifetime. On S's death, the trust principal is payable to GC, a grandchild of S and T. T elects to treat all of the transfer as a transfer of QTIP and also makes the reverse QTIP election for all of such property. Because of the reverse QTIP election, T continues to be treated as the transferor of the property after S's death for purposes of chapter 13. A taxable termination rather than a direct skip occurs on S's death.

Example 2. Election under transition rule. In 1991, T dies leaving $4 million in trust for the benefit of T's surviving spouse, S. On January 16, 1992, T's executor files T's Form 706 on which the executor elects to treat the entire trust as qualified terminable interest property. The executor also makes a reverse QTIP election. The reverse QTIP election is effective with respect to the entire trust even though T's executor could allocate only $1 million of GST exemption to the trust. T's executor may elect to treat the trust as two separate trusts, one having a value of 25% of the value of the single trust and an inclusion ratio of zero, but only if the election is made prior to April 15, 1993. If the executor makes the transitional election, the other separate trust, having a value of 75% of the value of the single trust and an inclusion ratio of one, is not treated as subject to the reverse QTIP election.

Example 3. Denominator of the applicable fraction of QTIP trust. T bequeaths

$1,500,000 to a trust in which T's surviving spouse, S, is given an income interest for life. Upon the death of S, the property is to remain in trust for the benefit of C, the child of T and S. Upon C's death, the trust is to terminate and the trust property paid to the descendants of C. The bequest by T qualifies for the estate tax marital deduction under section 2056(b)(7) as QTIP. The executor does not make the reverse QTIP election under section 2652(a)(3)(A). As a result, S becomes the transferor of the trust at S's death when the value of the property in the QTIP trust is included in S's gross estate under section 2044. For purposes of computing the applicable fraction with respect to the QTIP trust upon S's death, the denominator of the fraction is reduced by any Federal estate tax and State death tax attributable to the trust property that is actually recovered from the trust. The result is the same whether Federal estate tax is imposed under section 2001, 2101 or 2056A(b) of the Code.

§ 26.2653–1 Taxation of multiple skips.

(a) *General rule.* If property is held in trust immediately after a GST, solely for purposes of determining whether future events involve a skip person, the transferor is thereafter deemed to occupy the generation immediately above the highest generation of any person holding an interest in the trust immediately after the transfer. If no person holds an interest in the trust immediately after the GST, the transferor is treated as occupying the generation above the highest generation of any person in existence at the time of the GST who may subsequently hold an interest in the trust. See § 26.2612–1(e) for rules determining when a person has an interest in property held in trust.

(b) *Examples:* The following examples illustrate the provisions of this section.

Example 1. T transfers property to an irrevocable trust for the benefit of T's grandchild, GC, and great-grandchild, GGC. During GC's life, the trust income may be distributed to GC and GGC in the trustee's absolute discretion. At GC's death, the trust property passes to GGC. Both GC and GGC have an interest in the trust for purposes of chapter 13. The transfer by T to the trust is a direct skip and the property is held in trust immediately after the transfer. After the direct skip, the transferor is treated as being one generation above GC, the highest generation individual having an interest in the trust. Therefore, GC is no longer a skip person and distributions to GC are not taxable distributions. However, because GGC occupies a generation that is two generations below the deemed generation of T, GGC is a skip person and distributions of trust income to GGC are taxable distributions

Example 2. T transfers property to an irrevocable trust providing that the income is to be paid to T's child, C, for life. At C's death, the trust income is to be accumulated for 10 years and added to principal. At the end of the 10-year accumulation period, the trust income is to be paid to T's grandchild, GC, for life. Upon GC's death, the trust property is to be paid to T's great-grandchild, GGC, or to GGC's estate. A GST occurs at the time of C's death. Immediately after C's death and during the 10-year accumulation period, no person has an interest in the trust within the meaning of section 2652(c) and § 26.2612–1(e) because no one can receive current distributions of income or principal. Immediately after C's death, T is treated as occupying the generation above the generation of GC (the trust beneficiary in existence at the time of the GST who then occupies the highest generation level of any person who may subsequently hold an interest in the trust). Thus, subsequent income distributions to GC are not taxable distributions.

§ 26.2654–1 Certain trusts treated as separate trusts.

(a) *In general.* Paragraph (b) of this section and § 26.2663–2(a) provide rules for treating a single trust as separate trusts solely for purposes of chapter 13. Treatment of separate portions of a single trust as separate trusts under chapter 13 does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Additions to, and distributions from, such trusts are allocated pro-rata among the separate trusts unless otherwise expressly provided in the governing instrument. An individual's GST exemption allocated to a single trust is allocated on a pro rata basis among the separate trusts of which the individual is the transferor unless the individual, at the time of the allocation, clearly allocates the GST exemption in a different manner.

(b) *Single trust treated as separate trusts*—(1) *Multiple transferors to single trust*—(i) *In general.* If there is more than one transferor to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for purposes of chapter 13. If an individual makes a contribution to a trust of which the individual is not the sole transferor, the portion of the single trust attributable to each separate trust is determined by multiplying the fair market value of the single trust immediately after the contribution by a fraction. The numerator of the fraction is the value of the separate trust immediately after the contribution. The denominator of the fraction is the fair market value of all the property in the single trust immediately after the transfer.

(ii) *Examples.* The following examples illustrate the principles of this paragraph (b)(1).

Example 1. A transfers $100,000 to an irrevocable generation-skipping trust; B simultaneously transfers $50,000 to the same trust. From the time of the transfers, the single trust is treated as two trusts for purposes of chapter 13. Because A contributes ⅔ of the value of the original principal, ⅔ of the single trust principal is treated as a separate trust created by A. Similarly, because B contributes ⅓ of the value of the original principal, ⅓ of the single trust is treated as a separate trust created by B.

Example 2. A transfers $100,000 to an irrevocable generation-skipping trust; B simultaneously transfers $50,000 to the same trust. When the value of the single trust has increased to $180,000, A contributes an additional $60,000 to the trust. At the time of the additional contribution, the portion of the single trust attributable to each grantor's separate trust must be redetermined. The portion of the single trust attributable to A's separate trust immediately after the contribution is ¾ ((⅔ × $180,000) + $60,000) over $240,000). The portion attributable to B's separate trust after A's addition is ¼.

Example 3. The facts are the same as in *Example 2*, except after A's second contribution, $50,000 is distributed to a beneficiary of the trust. Absent a provision in the trust instrument that charges the distribution against the contribution of either A or B, ¾ of the distribution is treated as made from the separate trust of which A is the transferor and ¼ from the separate trust of which B is the transferor.

(2) *Substantially separate and independent shares*—(i) *In general.* If a single trust consists solely of separate and independent shares for different beneficiaries, the share attributable to each beneficiary (or group of beneficiaries) is treated as a separate trust for purposes of chapter 13. Except as provided in this paragraph (b)(2), the phrase "substantially separate and independent shares" has the same meaning as provided in § 1.663(c)–3. A portion of a trust is not a separate share unless such share exists from and at all times after the creation of the trust. For purposes of this paragraph (b)(2), a trust is treated as created at the date of death of the grantor if the trust is includible in its entirety in the grantor's gross estate for Federal estate tax purposes.

(ii) *Exception for certain pecuniary amounts.* For purposes of this section, if a person holds the current right to receive a mandatory payment of a pecuniary amount at the death of the transferor from a trust that is includible in the transferor's gross estate, the pecuniary amount is a separate and independent share if—

(A) The trustee—

(*1*) Is required to pay appropriate interest (as defined in § 26.2642–2(b)(4)) to the person; or

(*2*) Within 15 months of the date of death, either pays or permanently sets aside property in satisfaction of the pecuniary amount; and

(B) If the pecuniary amount is payable in kind on the basis of value other than the date of distribution value of the assets, the trustee is required to allocate assets to the pecuniary payment in a manner that fairly reflects net appreciation or depreciation in the value of the assets in the fund available to pay the pecuniary amount measured from the date of death to the date of payment.

(iii) *Examples.* The following examples illustrate the application of the principles of this paragraph (b)(2).

Examples 1. Separate shares as separate trusts. T transfers $100,000 to a trust under which income is to be paid in equal shares for 10 years to T's child, C, and T's grandchild, GC (or their respective estates). The trust does not permit distributions of principal during the term of the trust. At the end of the 10-year term, the trust principal is to be distributed to C and GC in equal shares. The shares of C and GC in the trust are separate and independent and, therefore, are treated as separate trusts. The result would not be the same if the trust permitted distributions of principal unless the distributions could only be made from a one-half separate share of the initial trust principal and the distributee's future rights with respect to the trust are correspondingly reduced.

Example 2. Separate share rule inapplicable. The facts are the same as in *Example 1*, except the trustee holds the discretionary power to distribute the income in any proportion between C and GC during the last year of the trust. The shares of C and GC in the trust are not separate and independent shares throughout the entire term of the trust and, therefore, are not treated as separate trusts for purposes of chapter 13.

Example 3. Pecuniary payment as separate share. T creates a lifetime revocable trust providing that on T's death $500,000 is payable to T's spouse, S, with the balance of the principal to be held for the benefit of T's grandchildren. The value of the trust is includible in T's gross estate upon T's death. Under the terms of the trust, the payment to S is required to be made in cash, and under local law S is entitled to receive interest on the payment at an annual rate of 6 percent, commencing immediately upon T's death. For purposes of chapter 13, the trust is treated as created at T's death, and the $500,000 payable to S from the trust is treated as a separate share. The result would be the same if the payment to S could be satisfied using noncash assets at their value on the date of distribution.

Example 4. Pecuniary payment not treated as separate share. The facts are the same as in *Example 3*, except the bequest to S is to be paid in noncash assets valued at their values as finally determined for Federal estate tax purposes. Neither the trust instrument nor local law requires that the assets distributed in satisfaction of the bequest fairly reflect net appreciation or depreciation in all the assets from which the bequest may be funded. S's $500,000 bequest is not treated as a separate share and the trust is treated as a single trust for purposes of chapter 13 unless the trustee, within fifteen months of the date of T's death, either pays the bequest or permanently sets aside sufficient assets to pay the bequest.

(c) *Division of single trust into separate trusts*—(1) *In general.* A single trust treated as separate trusts under paragraph (b)(1) or (b)(2) of this section may be divided at any time into separate trusts to reflect that treatment. Except as provided in this paragraph (c), the severance of a single trust into separate trusts is not recognized for purposes of chapter 13.

(2) *Trust property included in the gross estate*—(i) *In general.* The severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if—

(A) The new trusts are severed pursuant to authority granted either under the governing instrument or under local law;

(B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C) Either—

(*1*) The new trusts are funded with a fractional share of each and every substantial interest or right held by the single trust; or

(*2*) If the severance is required (by the terms of the governing instrument) to be made on the basis of a pecuniary amount, the pecuniary payment is satisfied in a manner that would meet the requirements of paragraph (b)(2)(ii) of this section if it were paid to an individual.

(ii) *Special rule.* If a court order severing the trust has not been issued at the time the Federal estate tax return is filed, the executor must indicate on a statement attached to the return that a proceeding has been commenced to sever the trust and describe the manner in which the trust is proposed to be severed. A copy of the petition or other instrument used to commence the proceeding must also be attached to the return. If the governing instrument of a trust authorizes the severance of the trust, a severance pursuant to that authorization is treated as meeting the requirement of paragraph (c)(2)(i)(B) of this section if the executor indicates on the Federal estate tax return that separate trusts will be created (or funded) and clearly sets forth the manner in which the trust is to be severed and the separate trusts funded.

§ 26.2663–1 Recapture tax under section 2032A.

See § 26.2642–4 for rules relating to the recomputation of the applicable fraction if additional estate tax is imposed under section 2032A.

§ 26.2663–2 Application of chapter 13 to transfers by nonresidents not citizens of the United States.

(a) *In general.* Paragraphs (b) and (c) of this section provide rules for applying chapter 13 of the Internal Revenue Code to transfers by a transferor who is a nonresident not a citizen of the United States (NRA). If a single trust created by an NRA is only partially subject to chapter 13 by reason of this section, the trust is treated in the same manner as a trust with multiple transferors. See § 26.2654–1. For purposes of this section, an individual is a resident or citizen of the United States if that individual is a resident or citizen of the United States under the rules of chapter 11 or chapter 12 of the Internal Revenue Code, as the case may be.

(b) *Transferred property situated in the United States*—(1) *Transfers at death.* Chapter 13 of the Internal Revenue Code applies to GSTs attributable to transfers by an NRA decedent to the extent that the transferred property is situated in the United States for purposes of chapter 11 (as determined under paragraph (b)(4) of this section).

(2) *Transfers during life.* Chapter 13 of the Internal Revenue Code applies to GSTs attributable to inter vivos transfers by an NRA to the extent that the transferred property is—

(i) Situated in the United States for purposes of chapter 12 (as determined under paragraph (b)(4) of this section); and

(ii) Is subject to tax under section 2501(a).

(3) *Taxable distributions and taxable terminations.* Distributions and terminations with respect to property held in a trust are subject to chapter 13 under this paragraph (b) to the extent the initial transfer by the NRA transferor (whether during life or at death) is a transfer described in paragraph (b)(1) or (b)(2) of this section.

(4) *Determination of situs.* For purposes of paragraphs (b)(1) and (b)(2) of this section, transferred property is situated in the United States to the extent that the property is treated as situated in the United States at the time of the initial transfer to the skip person or to a trust that is not a skip person, as the case may be.

(c) *Transferred property not subject to chapter 13 by reason of United States*

situs—(1) *In general.* Chapter 13 of the Internal Revenue Code applies to GSTs attributable to transfers by an NRA to the extent a beneficial interest in property passes to a skip person who is a resident or citizen of the United States at the time of the direct skip, taxable termination, or taxable distribution (as the case may be) if, at the time of the initial transfer to the skip person or to a trust that is not a skip person, a lineal descendent of the transferor who is a lineal ancestor of the skip person was a resident or citizen of the United States.

(2) *Beneficial interest in property.* Solely for purposes of this section, a beneficial interest in property passes to an individual to the extent the individual may at any time, directly or indirectly, hold the right to receive, or be a permissible recipient of, the property or the income therefrom.

(d) *Anti-abuse rule.* The rules of this section are applicable without regard to any transaction or other activity if the effect of such transaction or activity is to transfer United States situs property from the transferor to the transferee.

(e) *Examples.* The following examples illustrate the provisions of this section. In each example T, an NRA, is the transferor, C is T's child, GC is C's child, a grandchild of T, and GGC is GC's child, a great grandchild of T.

(1) *Transfers of property situated in the United States.*

Example 1. Direct transfer not in trust. During T's lifetime, T transfers real property located in the United States to GC. At the time of the transfer, C and GC are NRAs.The transfer is a direct skip for purposes of chapter 13 because T's transfer is a direct skip for purposes of chapter 13 because T's transfer consists of property that is treated as property situated in the United States for purposes of chapter 12 at the time of the direct skip and is a transfer subject to tax under section 2501(a)(1). The result would be the same if T first transfers the real property to T's wholly owned foreign or domestic corporation and shortly thereafter transfers the stock in the corporation to GC because the effect of the transaction is to transfer United States situs property from T to GC.

Example 2. Transfer in trust. During T's lifetime, T transfers United States situs real property to a trust for the benefit of all of T's descendants, none of whom are residents or citizens of the United States at the time of the transfer. The trust terminates on the death of the last to die of T's children at which time the trust corpus is to be distributed to T's then living descendants equally. Assuming that the last survivor of T's children is survived by living descendants of T, a taxable termination occurs upon the death of that child because the chapter 13 consequences are determined with respect to a transfer of property situated in the United States for purposes of chapter 12 and the transfer to the trust would be subject to tax under section 2501(a)(1). The result would be the same if T transfers cash to the trust and the trustee shortly thereafter purchases United States situs property from T because the effect of the transaction is to transfer United States situs property from T to the trust.

(2) *Transfers of property not subject to chapter 13 by reason of United States situs.* In *Examples 3* through *5*, unless otherwise specified, the transferred property is not United States situs property at the time of the direct skip or the initial transfer to a trust that is not a skip person and, therefore, no GST may occur with respect to the property by reason of paragraph (b) of this section.

Example 3. Transfer to a skip person. T transfers property to GC. At the time of the transfer, C is a resident of the United States and GC is an NRA. The transfer is not subject to chapter 13 because GC is not a resident or citizen of the United States at the time of the generation-skipping transfer. It is immaterial that C, the "skipped generation," resides in the United States at the time of the transfer. However, if both C and GC were residents or citizens of the United States at the time of the generation-skipping transfer, the transfer would be a direct skip subject to GST tax under paragraph (c) of this section.

Example 4. Transfer in trust for C and GC. T transfers property to a trust for the benefit of C and GC. Upon C's death the trust is to terminate and the trust principal is to be distributed to GC. At the time of the transfer, C is an NRA. The termination of C's interest (and the distribution of corpus to GC) is not a generation-skipping transfer by reason of paragraph (c) of this section because C was not a citizen or resident of the United States at the time of the initial transfer to the trust. The result would not change if, immediately prior to C's death, C and GC are residents of the United States.

Example 5. Transfer in trust. T transfers property to a trust for the benefit of GC during GC's life. At GC's death the trust is to be distributed to GC's descendants. At the time of T's transfer, C is an NRA and GC is a resident of the United States who has no descendants. The transfer to the trust is not subject to chapter 13 by reason of paragraph (c) of this section because C is not a resident or citizen of the United States at the time of the initial transfer to the trust. Under paragraph (c) of this section, a transfer is a generation-skipping transfer with respect to an NRA transferor only if the skip person recipient (GC) is a United States citizen or resident at the time of the generation-skipping transfer and a lineal ancestor of the skip person recipient who is a lineal descendant of the transferor is a citizen or resident of the United States at the time of the initial transfer to the trust. If GC has a descendant who is a United States citizen or resident at the time of the generation-skipping transfer, the termination of GC's interest would be a taxable termination because GC, an ancestor of GGC, is a United States resident at the time of the initial transfer to the trust.

(f) *Automatic allocation of GST exemption.* Notwithstanding any other provision of this chapter to the contrary, an NRA transferor's GST exemption is automatically allocated to the NRA's direct skips and to trusts as to which distributions and terminations may be subject to tax under paragraph (b) or (c) of this section. The GST exemption is generally allocated within a calendar year in the order prescribed in section 2632(c). Thus, an NRA's unused GST exemption is first allocated to any direct skips made during the calendar year and then to any trusts with respect to which the NRA made transfers during the same calendar year and from which a taxable distribution or a taxable termination might occur under this section. Allocations within the above categories are made in the order in which the transfers occur. Allocations among simultaneous transfers within the same category are made pursuant to the principles of section 2632(c)(2). See, however, § 26.2632–1(c)(1) for rules with respect to the effective date of an allocation in the case of an ETIP. An NRA may elect to have an automatic allocation of GST exemption not apply by describing on a timely-filed Form 709 for the year of the transfer (including extensions actually granted) the details of the transfer and the extent to which the allocation is not to apply. The executor of an NRA's estate may elect to have an automatic allocation of GST exemption not apply by describing on a timely-filed Form 709 for the year of the transfer (or on a timely filed Form 706NA for transfers made at the death of the NRA) the transfer and the extent to which the automatic allocation is not apply. Allocations of GST exemption made in a manner contrary to the automatic allocation must comply with all applicable rules of chapter 13 and these regulations. See § 26.2632–1.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 7. Section 301.9100–7T is amended as follows:

1. Paragraph (a)(1) is amended by removing both entries for "1431(a)".

2. Paragraph (a)(4)(i) is amended by removing the entry for "1431(a)".

3. Paragraph (a)(4)(iii) is revised to read as follows:

§ 301.9100–7T Time and manner of making certain elections under the Tax Reform Act of 1986.

(a) * * *

(4) * * *

(iii) *Freely revocable election.* The election described in this section under Act section 311(d)(2) is freely revocable.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92-30946 Filed 12-23-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[INTL-978-86]

RIN 1545-AJ93

Information Reporting by Passport and Permanent Residence Applicants

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing section 6039E of the Internal Revenue Code of 1986. Section 6039E was added by the Tax Reform Act of 1986 to require that applicants for passports and permanent residence report certain information related to administration of U.S. tax law. These regulations would inform applicants for passports or for permanent residence of their obligations under the new reporting provision and the penalties for non-compliance and advise certain agencies of the federal government of their responsibilities under this provision.

DATES: Written comments and requests for a public hearing must be received by February 22, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-978-86), P.O. Box 7604, Ben Franklin Station, room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Ricardo A. Cadenas of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, (202-874-1490, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224

The collection of information is required by § 301.6039E-1(c) of the proposed regulations. This information is required by the Internal Revenue Service to implement section 6039E. This information will be used to give the Internal Revenue Service notice of U.S. non-filers living abroad, and of persons with foreign source income that is subject to U.S. taxation but that is not subject to normal withholding. The respondents are individuals.

These estimates are an approximation of the average time expected to be necessary for collection of information. They are based on information available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden for passport applicants: 500,000 hours. The estimated annual burden per respondent varies from four to ten minutes, depending on individual circumstances, with an estimated average of six minutes. Estimated number of respondents: 5,000,000. Estimated annual frequency of responses: one.

Estimated total annual reporting burden for permanent residence applicants: 250,000. The estimated annual burden per respondent varies from twenty to forty minutes, depending on individual circumstances, with an estimated average of thirty minutes. Estimated number of respondents: 500,000. Estimated annual frequency of responses: one.

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301), under section 6039E of the Internal Revenue Code of 1986 (26 U.S.C. 6039E), as added by section 1234 of the Tax Reform Act of 1986 (Pub. L. 99-514), as amended by section 1012(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, Nov. 10, 1988). The proposed amendments to the regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805) and under the authority contained in section 6039E. The regulations are proposed to be applicable to all passport applications submitted after January 31, 1987 and immigration applications submitted after December 31, 1989, that solicit the information described in section 6039E.

Statutory Framework

Section 6039E of the Internal Revenue Code of 1986 requires that passport and permanent residence applicants include certain information with their applications. The information required of passport applicants in the statute is different from that required of permanent residence applicants. The Secretary of the Treasury has authority to require additional information from either of the above mentioned groups. The statute requires a TIN (Taxpayer Identification Number) (if any) from both passport applicants and applicants for permanent residence, but also requires special information from each of these two groups. For passport applicants, the foreign country of residence (if any) must be stated, and for permanent residence applicants, a statement as to whether the applicant is required to file a tax return for any of that individual's three most recent taxable years must be given. Section 6039E requires and authorizes the obtaining of three categories of information which are grouped into "lists" in the proposed regulations—a list for permanent residence applicants, a list for passport applicants, and a list of "possible" information items which may be required of either group (or both) at a later date under the authority of section 6039E (b)(4). The statute imposes a $500 penalty on any applicant who fails to provide the required information without reasonable cause for such failure. The Department of State and the Immigration and Naturalization Service are required to share the information collected in the course of processing passport and permanent residence applications with the Treasury Department, and are also required to identify persons refusing to comply. Finally, Congress gave the Secretary the authority to exempt any class of individuals from these reporting requirements if reporting by that class is unnecessary to carry out the purposes of section 6039E.

Section 1012 (o) of the Technical and Miscellaneous Revenue Act of 1988 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 exempted from the information-sharing requirement information subject to the Immigration Reform and Control Act of 1986 (IRCA); (section 245A of the Immigration and Nationality Act, 8 U.S.C. 1255a). This change, which added the last sentence of section 6039E (d), has been implemented in the

proposed regulations by both exempting any information gathered in connection with IRCA from the information sharing requirements and also by excepting such information from the reporting requirements by definition.

Purpose and Scope

Section 6039E is intended to improve tax compliance by resident aliens and U.S. citizens or nationals living abroad.

With respect to U.S. citizens or nationals living overseas but not filing returns, the Congress foresaw that collection of tax after identification might be difficult but nonetheless sought both to give the Internal Revenue Service a further source of information regarding these nonfilers and to notify these overseas persons of their continuing duty to file U.S. tax returns. With respect to persons applying for permanent residence, Congress was concerned that new residents might derive income from foreign sources not subject to normal information reporting or withholding. Therefore, Congress concluded that the Internal Revenue Service needed an additional tax compliance measure for these persons. The new reporting provisions give the Internal Revenue Service information about these persons that would otherwise be unavailable.

Explanation of Provision

The proposed regulations in this document:

(1) Prescribe the information to be gathered by processing agencies (generally, the Department of State and the Immigration and Naturalization Service (INS) of the Department of Justice),

(2) Exempt certain applicants and applications from section 6039E and this section,

(3) Provide alternate procedures for agencies reporting section 6039E information to the Internal Revenue Service,

(4) Require that information transmitted by other agencies include information concerning any persons who fail to comply with the information reporting requirements, and

(5) Restate the penalties imposed on nonexempt applicants who fail to comply.

In addition, the proposed regulations provide rules and examples concerning the possible unavailability of information to passport and immigration applicants.

The Department of State (through its domestic passport agencies and through its embassies and consulates abroad) processes all passport applications. Applications for lawful permanent residence, or "immigrant visa" applications, are processed by both INS (domestically) and the Department of State (overseas). Forms used in these processes have been (or are in the process of being modified to request information required by section 6039E and these proposed regulations. In some instances, the forms request additional information pursuant to the authority granted in section 6039E(b)(4).

Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed Regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments on the proposed rules. Notice of the time and place of that hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Ricardo A. Cadenas of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 301 is as follows:

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6039E–1 also issued under 26 U.S.C. 6039E * * *

Par. 2. Section 301.6039E–1 is added to read as follows:

§ 301.6039E–1 Information reporting by passport and permanent residence applicants.

(a) *Applicability.* Section 6039E and this section apply to passport applicants, immigration applicants, immigration services and passport agencies of the United States (as these terms are defined in paragraph (b) of this section). Paragraphs (c) and (d) of this section apply only to passport and immigration applicants. Paragraph (e) of this section applies only to government agencies. This section shall apply to passport applications submitted after January 31, 1987 and immigration applications submitted after December 31, 1989, that solicit the information described in section 6039E.

(b) *Definitions.* For purposes of this section, the following definitions apply

(1) *Taxpayer identification number* or *TIN* means the individual's social security number (SSN) issued by the Social Security Administration. If an individual does not have an SSN, then any TIN assigned to such individual under section 6109 must be reported. An individual who has neither an SSN nor a TIN must enter zeros in the appropriate space on the application.

(2) *Country of residence* means the country in which the applicant resides at the time of the application.

(3) *Passport applicant* means any person who applies for a U.S. passport, other than a person who applies for a U.S. passport for use in diplomatic, military, or other official U.S. government business.

(4) *Passport applicaton* includes any form used to apply for a U.S. Passport described in paragraph (b)(3) of this section.

(5) *Immigration applicant* means any person applying to be accorded the privilege of lawful permanent residence in the United States as an immigrant in

accordance with chapter 12 of title 8 of the United States Code. However, the term does not include any person applying for adjustment of status under 8 U.S.C. 1255a, commonly known as the Immigration Reform and Control Act of 1986, Public Law 99–603 (100 Stat. 3394).

(6) *Immigration application* means any form used in the processing of an immigration applicant by an immigration service (as defined in paragraph (b) (7) of this section).

(7) *Immigration service* means those offices of the Immigration and Naturalization Service of the Department of Justice that process immigration applications.

(8) *Passport agency* includes those offices of the Department of State (including United States Embassies and Consular posts abroad) that process passport applications.

(9) *Reporting agency* means an immigration service or passport agency.

(c) *Requirement of Reporting*— (1) Passport applicants must include with the application the following information—

(i) Name;

(ii) Address of the applicant's home within the country of residence as defined in paragraph (b)(2) of this section, but if the applicant does not maintain a home within the country of residence, the applicant's mailing address at the time of the application;

(iii) Taxpayer Identification Number (TIN), if such a number has been issued to the applicant;

(iv) Date of birth; and

(v) Country of residence.

(2) Immigration applicants must include with the application the following information—

(i) Name;

(ii) Address of the applicant's home within the United States, but if the applicant does nor have a home within the United States, the applicant's home address within the foreign country (or U.S. possession);

(iii) Taxpayer Identification Number (TIN), if such a number has been issued to the applicant,

(iv) Date of birth; and

(v) For each of the applicant's three most recent taxable years;

(A) A statement whether the applicant had income from sources within the United States during any such year (specifying which year or years); and

(B) A statement indicating whether the applicant has been present in the United States more than 182 days during any such year (specifying which year or years). For purposes of this section, the applicant's physical presence within the United States during any part of a day shall be considered as presence for that day.

(3) Passport and immigration applicants must also provide in connection with their applications, the following information, if required on the application form—

(1) The last year the applicant filed a United States tax return;

(ii) A statement whether the applicant is self-employed;

(iii) A statement indicating the applicant's occupation; and

(iv) A statement regarding whether the applicant was required to file a Federal income tax return for any of the applicant's three most recent taxable years, indicating whether such returns were filed or explaining why any such returns have not been filed.

(4) Passport applicants must provide the information required by this section at the time of submitting a passport application to a passport agency.

(5) Immigration applicants residing outside of the United States who commence the immigration application process by making a visa request with the Department of State (including U.S. embassies and consulates abroad) must provide the information required by this section to an immigration service no later than the time of immigration processing upon the applicant's entry to the United States. All other immigration applicants must provide the information required by this section at the time of submitting an immigration application to an immigration service.

(d) *Penalties*—(1) A passport or immigration applicant who fails to provide the information required by section 6039E and this section must pay a penalty of $500 for each such failure, unless it is due to reasonable cause and not willful neglect. This penalty will be applied only once per application.

(2) *Notice to applicant.* Before assessing a penalty under this section, the Service will ordinarily provide to the applicant a written notice advising the applicant of the potential imposition of the $500 penalty, requesting the information being sought, and offering the applicant an opportunity to explain why such information was not provided at the time the application was submitted. An applicant has 30 days (60 days if the notice is addressed to an applicant outside the United States) to respond to the notice. The Service will consider the applicant's response in determining whether it will assess the penalty.

(3) *Abatement of the penalty.* After a penalty is assessed, an applicant may obtain an abatement of the penalty by affirmatively showing reasonable cause for the failure to provide the information required by this section, in the form of a written statement declaring that it is made under penalties of perjury. If it is shown that the applicant exercised ordinary care and prudence, made a reasonable effort to respond with the correct information and was, nevertheless, unable to provide all of the information required by section 6093E and this section, then the failure is due to reasonable cause. If after considering all of the surrounding circumstances, the Service determines that the failure to provide the information was due to reasonable cause and not to willful neglect, the penalty will be abated.

(4) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. A (a citizen or national of the United States) needs a passport quickly because of a medical emergency and does not have the required information at the time A completes A's passport application. The Department of State (or other passport agency) processes A's passport application. The Internal Revenue Service contacts A about the penalty, and A responds within 30 days of the date of the Internal Revenue Service's notice (60 days if it is addressed to A outside the United States). Under the emergency circumstances A's failure to provide the information would generally be treated as due to reasonable cause and not willful neglect. No penalty would be assessed.

Example 2. B does not have a social security number when B applies for permanent residence. B should so indicate on the application. The law requires that B furnish a TIN (which for individuals is generally the SSN) only if B has one. No penalty would be assessed.

Example 3. C makes a minor mistake in supplying information on a passport or immigration application. Based on the nature of the error and the information C provides after contact by the Service, the Internal Revenue Service concludes that the mistake is not due to willful neglect. No penalty will be assessed if C provides accurate information when notified by the Service.

Example 4. D decides not to give D's TIN and another information item when applying for permanent residence. D has no reasonable cause for failing to provide the required information. Although two information items are missing, D's failure involves only one "statement," within the meaning of section 6039E(c); thus, only one $500 penalty is assessed.

(e) *Prescribed forms and transmittal of information by agencies*—(1) A reporting agency is required by section 6039E and this section to obtain from passport and immigration applicants the information described in section 6039E (b) and paragraph (c) of this section. A reporting agency may either forward the passport or immigration applications directly to the Service, or record and

transmit to the Service the information required by this section.

(2) If a passport or immigration applicant refuses to disclose any item of information required by this section, the reporting agency shall provide to the Service the applicant's name and address, and any other information, described in paragraph (c) of this section of which it has knowledge.

(3) If the passport or immigration applicant provides incomplete information with the application, the Service may contact the applicant to obtain complete information.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-31062 Filed 12-23-92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, and 268

[FRL-4548-8]

Notice of Public Meeting on the RCRA Hazardous Waste Identification System

AGENCY: Environmental Protection Agency.

ACTION: Meeting.

SUMMARY: EPA's Office of Solid Waste will conduct a discussion on issues related to hazardous waste identification. Through this meeting EPA will solicit input from the public on appropriate procedures and standards to identify hazardous waste and contaminated media. EPA will also solicit additional information on how to best address wastes from remediations.

On May 20, 1992, EPA proposed the Hazardous Waste Identification Rule (HWIR) (57 FR 21450). The proposed rule contained a number of different options for managing low-toxicity wastes under RCRA. On October 30, 1992, the HWIR was withdrawn (57 FR 49278) after review of pubic comments revealed a variety of concerns expressed by environmental groups, industry, and states over the options presented. This discussion is intended to allow all interested parties an opportunity for open dialogue on the next steps to be taken in this area. This discussion is open to the public.

DATES: On January 5, the meeting will begin at 8:30 a.m.

ADDRESSES: The meeting will be held at the Quality Hotel, 415 New Jersey Avenue, NW., Washington, DC, (202) 638-1616.

FOR FURTHER INFORMATION CONTACT: For information on substantive matters, please contact William A. Collins, Jr., of the Waste Identification Branch, at (202) 260-4791. For information on administrative matters, please contact Michael Young of Endispute, Inc., EPA's Convener at (212) 223-8300

Dated: December 21, 1992.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 92-31299 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 281

[FRL-4548-7]

Nevada; Approval of State Underground Storage Tank (UST) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination to approve the State of Nevada's UST Program, public hearing and public comment period.

SUMMARY: The State of Nevada has applied for approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Nevada's application and has made the tentative decision that Nevada's UST program satisfies all of the requirements necessary to qualify for approval. Thus, EPA intends to grant approval to the State to operate its program in lieu of the Federal program. Nevada's application for approval is available for public review and comment, and, if sufficient public interest is expressed, a public hearing will be held to solicit comments on the application.

DATES: A public hearing is scheduled for January 28, 1993, from 7 p.m. to 10 p.m. at the Nevada State Library, Board Room, 100 Stewart Street, Carson City, Nevada, 89710. Requests to present oral comments at the hearing must be received by January 14, 1993. EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing, postmarked by January 14, 1993. EPA will determine after January 14, 1993 whether there is significant interest to hold a public hearing. Those requesting to present oral comments will be notified of the cancellation. Nevada will participate in any public hearing held by EPA on this subject. All written comments on Nevada's state program approval application must be postmarked no later than January 29, 1993. If no significant comment are provided and insufficient public interest exists to hold a public hearing, this tentative decision of the Regional Administrator will become final 60 days after the public comment period ends, without the need to publish further notice in the **Federal Register**.

ADDRESSES: Copies of Nevada's state program approval application are available during 8:30 a.m. and 4:30 p.m. at the following addresses for inspection and copying:

Nevada Division of Environmental Protection, UST/LUST Branch, 333 West Nye Lane, Carson City, Nevada 89710, (702) 687-5872.

U.S. Environmental Protection Agency, UST Docket, Mail Code OS-305, 401 M Street, S.W., room 2427, Washington, DC 20460, (202) 260-9720.

U.S. Environmental Protection Agency, Region IX Library (13th Floor), 75 Hawthorne Street, San Francisco, California 94105-3901, Contact: Reference desk, (415) 744-1510.

Written comments should be sent to Martin Rodriguez, Nevada Program Manager, Office of Underground Storage Tanks, U.S. EPA Region IX, 75 Hawthorne Street (H-2-1), San Francisco, California 94105-3901, (415) 744-2076.

FOR FURTHER INFORMATION CONTACT: Martin Rodriguez, Office of Underground Storage Tanks, U.S. EPA Region IX, 75 Hawthorne Street (H-2-1), San Francisco, California 94105-3901, (415) 744-2076.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c(a), authorizes EPA to approve State UST programs to operate in the State in lieu of the Federal UST program. Program approval is granted by EPA if it finds that the State program is "no less stringent" than the Federal program in all eight elements listed below and provides for adequate enforcement of compliance with UST standards:

(a) New UST Systems Design, Construction, Installation, and Notification;

(b) Upgrading existing UST Systems;

(c) General Operating Requirements;

(d) Release Detection;

(e) Release Reporting, Investigation, and Confirmation;

(f) Release Response and Corrective Action;

(g) Out of Service UST Systems and Closure; and

(h) Financial Responsibility for UST Systems Containing Petroleum.

B. State of Nevada

The Nevada Division of Environmental Protection of the Department of Conservation and Natural Resources, through the Underground Storage Tank Program, is the implementing agency for UST activities in the State. State standards and criteria have been adopted in the statutes and regulations of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), as amended, for the design, installation, operation, maintenance, and monitoring of UST systems to prevent and correct UST-related soil and ground water contamination.

On October 1, 1992, the State submitted an official application for state program approval. Prior to its submission, Nevada provided an opportunity for public notice and comment in the development of its UST program, as required under 40 CFR 281.50(b). EPA sent a letter on November 3, 1992, stating that the application was administratively complete but requesting minor revisions to the Memorandum of Agreement and Attorney General's Certification Letter. These revised items were provided to EPA on November 5, 1992. EPA informally requested additional minor revisions of the Attorney General's Certification Letter, and the updated letter was provided to EPA on December 8, 1992.

EPA has reviewed Nevada's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for approval. Consequently, EPA intends to grant approval to Nevada to operate its program in lieu of the Federal program.

The State program regulates the same UST population as the Federal program, because Nevada adopted the Federal regulations (40 CFR 280.10 to 280.111, inclusive) by reference (NAC 459.993). The State of Nevada estimates that there are approximately 7,600 UST systems at 3,300 facilities in the State. At the time of submittal of this notice, the State had 6,368 registered UST systems at 2,745 facilities across the State.

There are approximately 20,000 home heating oil tanks and 100 to 200 above ground tanks that qualify for participation in the State Petroleum Fund, but are not subject to the UST notification or technical requirements. The Petroleum Fund has a participating universe larger than the UST regulated universe. The Fund allows coverage of home heating oil tanks and above ground storage less than 30,000 gallons.

C. Public Comments

In accordance with section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR 281.50(e), if sufficient public interest is received by January 14, 1993, the Agency will hold a public hearing on its tentative decision on January 28, 1993 from 7:00 p.m. to 10:00 p.m. at the Nevada State Library, Board Room, 100 Stewart Street, Carson City, Nevada, 89710. The public may also submit written comments on EPA's tentative determination and they must be postmarked by January 29, 1993. Copies of Nevada's application are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

EPA will consider all public comments on its tentative determination received at the hearing, if any, or during the public comment period. Issues raised by those comments may be the basis for a decision to grant or deny approval to Nevada. EPA expects to make a final decision on whether or not to approve Nevada's program within 60 calendar days after the end of the public comment period. EPA will give notice of its final decision in the **Federal Register**, if the final decision differs from this tentative decision. The notice will include a summary of the reasons for the final determination and a response to all significant comments. However, if no such comments are provided and insufficient public interest exists, this tentative decision of the Regional Administrator will become final 60 days after the end of the public comment period, without the need to publish further notice in the **Federal Register**.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval of Nevada's UST program effectively suspends the applicability of certain Federal UST regulations, thereby eliminating duplicative requirements for owners and operators of UST systems in the State. Consequently, it does not impose any new burdens on small entities. This decision, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Dated: December 17, 1992.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 92-31301 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 525, 533, 537

[Docket No. 91-50; Notice 2]

RIN 2127 AE42

Light Truck Average Fuel Economy Standards Model Years 1995-97

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the establishment of average fuel economy standards for light trucks manufactured in model years (MY) 1995 through 1997. The issuance of the standards is required by Title V of the Motor Vehicle Information and Cost Savings Act. The agency is proposing to set the combined standard for all light trucks within a range of 20.5-21.0 mpg for MY 1995, and 20.5-21.5 mpg for MY's 1996-97. This notice also proposes to eliminate the separate categories of "captive import" and "other" for purposes of light truck CAFE calculations beginning in MY 1995, and to convert certain measurements into metric units beginning at the same time.

DATES: Comments must be received on or before February 1, 1993. The comment period has been shortened due to a statutory deadline.

ADDRESSES: Comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. The Docket is open 9:30 a.m. to 4 p.m., Monday through Friday. Submission containing information for which confidential information is requested should be

submitted (in three copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket section.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–0846).

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added a new title, title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act (the Act). Title V provides for the establishment of average fuel economy standards for cars and light trucks.

Section 502(b) of the Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. The Act provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: Technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy. (Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976)). Pursuant to this authority, the agency has set standards of 20.2 mpg for MY 1992, 20.4 mpg for MY 1993, and 20.5 mpg for MY 1994.

II. Proposals

A. General

The agency's proposals are based on information derived from a variety of sources. One major source is the submissions received in response to a questionnaire published in the **Federal Register** (56 FR 50694) on October 8, 1991. As the agency had already established light truck fuel economy standards through 1994, it was the beginning of the process of establishing standards for model years 1995–97. The comments received in response to the questionnaire are available in Docket No. 91–50.

As a part of setting forth the proposals, this notice discusses a variety of issues which are being considered by the agency, all of which are relevant to the statutory criteria noted above. In discussing these issues, the agency asks a number of questions and makes a number of requests for data to help it obtain information to facilitate its analysis. For easy reference, the questions or requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, please provide any relevant factual information to support conclusions or opinions, including but not limited to statistical and cost data, and the source of such information.

B. Ranges of Proposals

This notice proposes to establish an average fuel economy standard for light trucks for each of MY's 1995–97. The agency is proposing to select the standard from within a range of 20.5–21.0 mpg for MY 1995, and 20.5–21.5 mpg for MY's 1996 and 1997.

In view of the uncertainties, the setting of standards outside the proposed ranges is possible. Factual uncertainties which could result in lower standards include the possibility of mix shifts toward larger light trucks and engines, the possibility that planned technological actions may not achieve anticipated fuel economy benefits or may prove to be infeasible, and the potential impact of test procedure changes mandated by the Clean Air Act Amendments of 1990. Factual uncertainties which could result in higher standards include the possibility that manufacturers may be able to improve their CAFE by further technological actions, i.e., ones beyond those they are already planning.

III. Manufacturer Capabilities for MY 1995–97

In evaluating manufacturers' fuel economy capabilities for MY 1995–97, the agency has analyzed manufacturers' current projections and underlying product plans and is considering what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Preliminary Regulatory Impact Analysis (PRIA), which has been placed in the docket for this notice. Some of the information included in the PRIA, including the details of manufacturers' future product plans, has been determined by the agency to be confidential business information whose release could cause competitive harm. The public version of the PRIA omits the confidential information.

A. Manufacturer Projections

1. General Motors

In December 1991, GM projected that it could achieve CAFE levels of 20.2 mpg in MY 1995, and 20.7 mpg in MY's 1996–97. This compares to a projection of 20.1 mpg for MY 1992 taken from GM's pre-model year report of December 1991.

2. Ford

Ford projected in January 1992 that it could achieve CAFE levels of 20.8 mpg for MY 1995, 21.6 mpg for MY 1996, and 21.5 mpg for MY 1997. This compares to a December 1991 pre-model year report projection of 20.3 mpg for MY 1992.

3. Chrysler

Chrysler projected in December 1991 that it could achieve CAFE levels of 20.5 mpg for MY 1995, and 21.0 mpg for MY's 1996–97. This compares to a pre-model year report projection of 21.3 mpg for MY 1992.

4. Other Manufacturers

Most light truck manufacturers, other than the domestic manufacturers, easily exceed the proposed combined CAFE standards. The exceptions are Range Rover, with a MY 1992 CAFE value of 16.3 mpg, and PAS, with a MY 1992 CAFE level of 19.2 mpg.

Nissan, the only manufacturer other than those listed above to respond to the questionnaire, projected MY 1995 fuel efficiency ratings above the proposed CAFE standard for that year. Nissan's pre-model year report projection for MY 1992 was 24.9 mpg.

B. Possible Additional Actions to Improve MYs 1995–97 CAFE

There are additional actions (further technological changes and product restrictions) which, given sufficient time and resources, manufacturers may be able to take to improve their CAFE above the levels currently projected for 1995–97.

1. Further Technological Changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies that manufacturers are able to apply within the available time.

The agency's PRIA discusses the fuel efficiency enhancing technologies which are expected to be available during the MY 1995–97 time period.

One potential constraint on the increased use of these technologies, at least for MY's 1995–96, is the limited leadtime. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically at least three years. Also, as the agency discussed in establishing its final rule for MYs 1993–94, once a new design is established and tested as feasible for production, the leadtime necessary to design tools and test components is typically 30 to 36 months. Some potential major changes may take even longer. Leadtimes for new vehicles are usually at least three years. Further, light trucks have a long model life, i.e., 8–10 years or more. If a manufacturer must make a major model change ahead of its normal schedule, this change may have a significant, unprogrammed financial impact.

Given the leadtime constraints, the agency does not believe that manufacturers can achieve significant improvements in their projected CAFE levels for these model years by additional technological actions. Some actions—increased use of diesel engines, for example—could lead to significant fuel economy improvements. However, diesel engines are faced with the increasingly strict emissions requirements of both the Clean Air Act Amendments of 1990 (CAAA) and the California standards. Further, consumer acceptance of diesel engines is limited if the price of gasoline remains below that of diesel fuel, as it has for the past several years. Other technologies already largely in use, such as electronic engine control, cannot achieve much further penetration into the light truck market.

With regard to manufacturers' abilities to afford new models and technological programs to improve light truck fuel efficiency, the agency anticipates that fuel economy standards within the proposed ranges will not result in any significant changes in capital spending levels already planned by companies. In its October 8, 1991 questionnaire, NHTSA asked manufacturers for projections of total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in the companies' responses. The manufacturers did not provide any evidence that projected capital spending for new technologies would put a strain on their financial conditions, or that the projected light truck product changes are economically impracticable.

In analyzing the economic practicability of making additional capital expenditures to improve MYs 1995–97 CAFE by additional technological means, the agency requests information or comments on the following questions:

1. What is the technological feasibility and economic practicability of the various fuel efficiency enhancing technologies, including but not limited to: Multi-valve and variable valve timing engines; electronic engine controls; port fuel injection; lean burn-fast burn combustion; engine friction reduction; two-stroke engines; turbocharging; improved transmissions, including continuously variable transmissions and electronic controls; redesigning vehicles for weight reduction and aerodynamic enhancement; substitution of lighter-weight materials; lowering rolling resistance; low-friction lubricants; and reducing parasitic losses, for improving manufacturers' CAFE for MY 1995–97? In answering this question, please address both the amount of fuel economy improvement associated with each technology, and the potential penetrations of those technologies during this time period i.e., the extent to which they could be incorporated across manufacturers' fleets. For each year and technology, what penetrations are feasible for each manufacturer's fleet? Why isn't a higher penetration feasible? What are the leadtimes involved in making such technological changes? Please provide cost estimates for these technologies and specific information concerning the bases for such cost estimates.

2. Would the technological requirements needed to achieve the proposed MY 1995–97 light truck CAFE standards place an undue financial burden on the manufacturers?

2. Product Restrictions

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting production of particular larger light truck models and larger displacement engines. Such product restrictions, if made necessary by selection of a CAFE standard that is above manufacturers' capabilities, could result in adverse effects on vehicle sales, if the effect was to force consumers to purchase vehicles over 8500 pounds GVWR, or industry-wide employment, if consumers elected to retain older vehicles longer than usual. Purchase of vehicles over 8500 pounds GVWR would have the additional effect of defeating the energy-saving and pollution control aims of the CAFE program, because such vehicles would not be subject to light truck CAFE standards. The analysis of manufacturer capabilities in the PRIA indicates that technical and marketing considerations appear to limit the maximum feasible CAFE level to 20.5–21.0 mpg in MY 1995 and 20.5–21.5 mpg in MYs 1996–97.

The agency estimates that only GM in MYs 1995–97 and Chrysler in MY 1995 may have a problem meeting the proposed standards. To develop an independent indicator of the potential impacts of a standard above the maximum feasible level on GM's production, the agency estimated the loss of production associated with sufficient production restrictions to raise its CAFE by 0.5 mpg. To estimate this effect, the agency eliminated production of GM's least fuel efficient models until the desired improvement in CAFE was achieved. This approach tends to yield the maximum possible negative impacts, because it does not include the possibility of consumers accepting a smaller truck or engine, or switching to vehicles over 8500 pounds GVWR. Also, it ignores the possibility of additional technological improvements to these truck fleets, or compliance through the use of credits earned in other model years.

For MY 1995, the NHTSA analysis indicates that to increase its CAFE by 0.5 mpg by restricting sales, GM could suffer a sales loss of up to 174,000 units of its projected light truck production for that year. For MY 1996, GM could suffer a sales loss of up to 151,000 units, and for MY 1997 a potential loss of 142,000 units. Because of uncertainty regarding the actual sales losses and the nature of personnel adjustments that would have to be made by manufacturers, no precise estimate of net employment effects can be made, especially in light of the fact that specific employment data for light trucks are not readily available. However, an estimate can be made assuming that labor requirements for light trucks are similar to those for motor vehicles on average. An additional complication is attempting to ascertain how many supplier jobs would be affected in industries such as metalworking equipment, electrical components, plastics, and iron and steel. Studies performed at the Department of Transportation's Transportation Systems Center yield an estimate of 1.4 to 2.0 supplier jobs for each auto industry job, or an average of 1.7 supplier jobs.

If there is one job in the motor vehicle and equipment industry for every 16 vehicles produced, then the potential 1995 sales loss discussed previously for

GM of 174,000 vehicles due to raising its CAFE standards 0.5 mpg, could result in the loss of approximately 10,900 jobs. A supplier industry job multiplier of 1.7 would imply a total job loss of 29,400 jobs. For the 151,000 sales that could be lost in 1996, 25,500 jobs could be lost. For 1997, the 142,000 potential sales reduction could mean the loss of 24,000 jobs.

In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use. Also, such product restrictions could unduly limit consumer choice.

Given these considerations, NHTSA tentatively concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve MYs 1995–97 CAFE levels.

To aid in analyzing the possible economic impacts of fuel economy standards outside the range of those proposed, the agency requests information or comments on the following questions:

3. What would be the likely specific effects on employment and sales of different MYs 1995–97 light truck fuel economy standards, within and outside the proposed ranges? Please provide data to support arguments on this point.

4. What would be the likely specific effects on consumer choice of different standards, within and outside the proposed ranges of light truck fuel economy standards?

C. Manufacturer-Specific CAFE Capabilities

Of the manufacturers producing light trucks for sale in the U.S. in MY 1992, only three are projecting CAFEs lower than the three major domestic manufacturers: Chrysler imports, PAS, and Range Rover. PAS is a low-volume converter of GM trucks that are marketed through GM dealers, and Range Rover is a small importer of luxury 4WD utility vehicles. Because none of the three fleets has a significant share of the U.S. market, the discussion in this section will be confined to the capabilities of the major domestic light truck manufacturers, Chrysler, Ford, and GM.

Chrysler's projected CAFE level is 20.5 mpg for MY 1995, and increases to 21.0 mpg for MY's 1996 and 1997.

In its submissions to the agency in response to the questionnaire, Ford described a number of risks and opportunities that could affect its CAFE in future years. Ford accumulates these corrections over the years of its projections. Ford's baseline CAFE projection for MY 1995 is 20.8 mpg, but due to technology risks, which could cost 0.025 mpg in its estimation, and other factors outweighing potential technology improvements, Ford revised its projection downward to 20.7 mpg. Ford's MY 1996 projection of 21.6 mpg was lowered to 21.4 mpg, mainly because of a technology risk estimated to be 0.20 mpg. Ford applied the same technology risk factor to its 21.5 mpg baseline projection for MY 1997, and it was a major factor in its revised projection of 21.4 mpg.

The agency questions the concept that a risk of not achieving the full benefit of a technology improvement in the first year of application will stay with the technology forever. It seems more reasonable that the risk may be reduced or eliminated after more development time. Therefore the agency suggests deleting the MY 1995 technology risk in MY 1996, and the MY 1996 risk in MY 1997, thus increasing the projected, adjusted CAFE by 0.02 mpg in MY 1996, and 0.20 mpg in MY 1997. NHTSA's revised projections for Ford are 20.7 mpg for MY 1995, 21.4 mpg for MY 1996, and 21.6 mpg for MY 1997.

GM also included a discussion of penalties and uncertainties that could affect its CAFE estimates in its submissions, but, unlike Ford, it did not anticipate any potential opportunities to increase CAFE. First GM "corrected" its fleet estimates by 0.1 mpg each year to account for the added weight for mandated safety and emissions hardware and some voluntary safety features, and the phase-out of CFC–12 refrigerant. Next GM estimated that various uncertainties could reduce its CAFE by 0.3 mpg in MY 1995 and 0.7 mpg in both MYs 1996 and 1997. Thus GM's baseline projection for MY 1995 of 20.2 mpg was revised to 19.8 mpg. Its 20.7 mpg baseline projections for MYs 1996 and 1997 were reduced to 19.9 mpg.

The agency disagrees with certain of GM's "risks" and revised GM's CAFE to new levels of 20.0 mpg in MY 1995, and 19.9 mpg in MY's 1996 and 1997.

It can be seen that Ford is projecting the highest CAFE levels of MY's 1995–97 among the three domestic manufacturers, and is also projecting an improvement over current performance. GM is clearly the least capable manufacturer with a large share of the market. GM is declining from levels achieved in recent years, while Chrysler lies in between the two, and is maintaining roughly equivalent average fuel economy. Some import light truck manufacturers also show declining CAFE levels, but still have higher levels than the domestic manufacturers.

GM projects a much larger portion of its fleet to have 4WD than it has had in recent years, or than its competitors are projecting. The agency is not aware of any reason to expect that the 4WD market share will continually increase. In addition, the agency believes that there are alternatives to 4WD. Limited slip differentials have been available for many years, but another similar feature is now becoming available: traction control. Traction control is now offered on some passenger cars in conjunction with antilock brakes. It could easily be offered on light trucks since most models will have antilock brakes soon. For those light truck users who do not expect to drive in heavy snow or mud, but merely want security and control on wet and icy pavements, traction control is potentially a satisfactory alternative. This is especially true when cost is considered. While the retail price of 4WD over 2WD is generally higher by approximately $1500, and occasionally by $2000, the price of optional traction control on a Lincoln Town Car is only $222. If the GM light truck fleet for MY's 1995–97 consisted of the same share of 4WD models as its MY 1992 fleet, its CAFE would be 0.1 mpg higher for each of these years.

The GM fleet leads the other manufacturers in every engine performance calculation carried out by the agency. GM's performance levels are detrimental to its fuel economy performance. If GM's light truck fleet for MY 1995 had been closer to the values achieved by other manufacturers for the various performance measures, its CAFE values might be improved by between 0.3 and 0.4 mpg. However, GM's fleet average 0-to-60 mph acceleration time might be increased by about 15 percent. This could impose costs (probably mainly in the form of utility reductions) on GM light truck buyers, because power and performance are attributes valued by consumers. GM's light truck fleet may be filling a market demand for higher-powered vehicles. For example it may be that, on average, GM trucks are purchased to haul or tow larger or heavier loads than those of other manufacturers.

In summary, the agency concludes that the feasible CAFE capability of the three domestic manufacturers for MYs 1995–97, as expressed in their responses to the questionnaire and after adjusting GM's to reflect a more comparable performance level (0.4 mpg), and a 4WD market share consistent with both its and its competitors' historical levels, is as follows:

Manufacturer	MY 1995	MY 1996	MY 1997
Chrysler	20.5	20.9	20.9
Ford	20.7	21.4	21.6
GM	20.5	20.4	20.4

Notwithstanding the projected product plans that the manufacturers have provided the agency and that the agency has adjusted above, there is potential for further improvement in each manufacturer's CAFE. For example, the market may dictate changes in the light truck mix in response to changes in fuel prices and availability. Although the agency does not expect any drastic changes in the near future, it is likely that if any significant changes do occur, they will be in the direction of improved CAFE. This is because the projections provided by the manufacturers appear to be pessimistic. The agency also has not suggested weight reductions beyond the manufacturers' product plans, because material substitution involves increased cost for lighter and/or stronger materials which is not returned in fuel savings at current fuel prices, and alternate, smaller vehicle configurations are subject to consumer acceptability problems. But, again, market forces could make lighter or stronger materials cost effective or lighter vehicles more popular in future years (although leadtime constraints limit manufacturers' abilities to introduce models not currently planned for the MY 1995–97 time frame). Aerodynamic improvements were not emphasized except on certain new models which did not show continuing progress over existing versions. As a result, the agency did not incorporate fuel economy corrections into the adjusted CAFE projections to account for aerodynamics. Some of the known technological improvements that are not projected for full implementation could also increase fuel economies. There are also a variety of emerging technologies for drivetrains that are basically refinements with minor fuel economy impact, but their combination with other improvements can produce net gains in CAFE. The implementation of the technologies mentioned above could yield a CAFE improvement of 0.1 to 0.2 mpg in MY 1995 and 0.3 to 0.5 mpg in MY's 1996 and 1997, where more leadtime is available.

Considering the potential for improvement in CAFE beyond that demonstrated in the foregoing analysis and adjustment of the manufacturers' projections along with the need to set the standard within the capability of the least capable manufacturer with a significant share of the market, the agency believes that a CAFE standard for MY 1995 in the range of 20.5 to 21.0 mpg is feasible. For MY's 1996–97, standards in the range of 20.5 to 21.5 mpg are deemed feasible. GM is the least capable manufacturer with a significant share of the market in MY's 1995–97, and is joined as least capable by Chrysler in MY 1995.

In analyzing manufacturer capabilities for MY 1995–97, the agency requests information or comments on the following question:

5. What are the manufacturers' current CAFE capabilities for MYs 1995–97? How substantial are the uncertainties affecting manufacturers' capabilities during this time period, how can these uncertainties be minimized, and how should these uncertainties be considered in setting fuel economy standards at the maximum feasible level?

IV. Other Federal Standards

In determining the maximum feasible economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability.

A. Safety Standards

As discussed by the PRIA, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MYs 1995–97. These include revisions to FMVSS Nos. 208: Occupant Crash Protection; 214: Side impact protection; 216: Roof crush resistance; 108: Lamps, Reflective Devices and Associated Equipment; and 201: Occupant Protection in Interior Impacts. In addition, the agency is considering whether to propose a safety standard to improve rollover protection.

The overall fuel economy effect of each of the safety programs discussed below indicate that the added weight due to the NHTSA safety regulations taking effect after MY 1992 will reduce typical light truck fuel economy capabilities by 0.08–0.18 mpg in MY 1995, 0.11–0.21 mpg in MY 1996, and 0.13–0.24 mpg in MY 1997. The effect of voluntarily-installed safety equipment could add as much as 0.1 mpg to this impact.

1. FMVSS 208

On March 26, 1991, NHTSA published (56 FR 12472) a final rule requiring automatic restraints on trucks with a Gross Vehicle Weight Rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less. These requirements phase in at the following rate for each manufacturer: 20 percent of light trucks manufactured from September 1, 1994 to August 31, 1995; 50 percent of light trucks manufactured from September 1, 1995 to August 31, 1996; 90 percent of light trucks manufactured from September 1, 1996 to August 31, 1997; and all light trucks manufactured on or after September 1, 1997. Thus, the requirement would affect 20 percent of MY 1995 light trucks, 50 percent of MY 1996 light trucks, and 90 percent of MY 1997 light trucks. Although light truck manufacturers may comply with the automatic restraint requirements by using automatic belts, "passive interiors," or air bags, NHTSA expects that essentially all light truck manufacturers will comply by using air bags.

To encourage the use of more innovative automatic restraint systems (primarily air bags) in light trucks, during the first four years of the phase-in (i.e., through MY 1998) manufacturers may count each light truck equipped with such a restraint system for the driver's position, and a manual safety belt for the right-front passenger's position, as a vehicle complying with the automatic restraint requirements. Beginning with MY 1999, however, all light trucks are required to provide automatic restraints for both the driver and right-front passenger positions.

Title II of the Intermodal Surface Transportation Efficiency Act of 1991 requires NHTSA to amend its automatic restraint requirements to mandate that 80 percent of MY 1998, and all MY 1999 light trucks be equipped with driver and passenger-side air bags. Because NHTSA expects that essentially all manufacturers will rely on air bags for compliance with the light truck automatic restraints requirements, this provision should have a negligible substantive impact, and will not affect MYs 1995–97 fuel economy capabilities.

In the Final Regulatory Impact Analysis (FRIA) for the light truck automatic restraint rulemaking, NHTSA estimated weight increases per vehicle ranging from 15.3 pounds for a driver's-side air bag to 35.7 pounds for both driver and right-front passenger air bags (including "secondary weight," i.e., weight added for supporting structure, etc.). Fuel economy would be reduced by about 0.05 to 0.11 mpg.

The automatic restraint weight estimates provided by the manufacturers were generally consistent with those previously developed by the agency. NHTSA calculates that the manufacturers' estimates translate into fuel economy penalties of 0.04–0 08

mpg for MY 1995, 0.07–0.11 mpg for MY 1996, and 0.09–0.14 mpg for MY 1997. These weight effects are reflected in the manufacturers' fuel economy projections, so there is not need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard. Nevertheless, this analysis demonstrates that the automatic restraint requirement of FMVSS 208 reduces MYs 1995–97 fuel economy capabilities by approximately 0.1 mpg.

2. FMVSS 214

On June 14, 1991, NHTSA published (56 FR 27427) a final rule extending the "quasi-static" test requirements of FMVSS 214 to trucks, multipurpose vehicles, and buses with a GVWR of 10,000 pounds or less. The rule is effective September 1, 1993. The "quasi-static" FMVSS 214 specified performance requirements for each side door to mitigate occupant injuries in side impacts. It measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder against it. Manufacturers generally comply with the standard by reinforcing the side doors with metal beams or rods.

In the FRIA accompanying the rule, NHTSA estimated that the requirements of FMVSS 214 would result in an average weight increase of 24.8 to 26.7 pounds (including secondary weight). This weight increase could result in a fuel economy degradation of 0.08 mpg.

The quasi-static side impact protection weight estimates provided by the manufacturers translate, according to NHTSA calculations, into fuel economy penalties of approximately 0.04–0.07 mpg for MYs 1995–97. These weight effects are included in the manufacturers' fuel economy projections, so there is no need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard. However, this analysis shows that the quasi-static side impact protection requirement of FMVSS 214 reduces MYs 1995–97 fuel economy capabilities by less than 0.1 mpg.

The agency is considering additional regulatory requirements to protect light truck occupants in side impacts. For example, NHTSA is considering applying to light trucks the same dynamic test that it has adopted for passenger car side impact protection. This approach is discussed in an ANPRM published August 19, 1988 (53 FR 31716). The test, which would be in addition to the quasi-static door-crush test described above, would require a light truck to provide occupant protection in a full-scale crash test. In the crash test, a light truck would be struck in the side by a moving barrier simulating another vehicle. Test dummies would be positioned in the light truck on the impacted side to measure the potential for injuries to the thorax and pelvis of occupants. NHTSA is also considering whether requirements should be developed to specifically address side impacts with fixed objects such as poles and trees.

The Intermodal Surface Transportation Efficiency Act of 1991 required NHTSA to publish an ANPRM or NPRM by May 31, 1992 to extend the passenger car side impact protection standard (the dynamic test discussed above) to multipurpose passenger vehicles and trucks with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less. On June 5, 1992, NHTSA published (57 FR 24009) an ANPRM on this issue. Any potential impacts on MYs 1995–97 fuel economy capabilities resulting from this rulemaking will be considered before CAFE standards are established for those model years.

3. FMVSS 216

On April 17, 1991, NHTSA published a final rule (56 FR 15510) amending FMVSS 216, Roof Crush Resistance, to extend its requirements to light trucks with GVWRs of 6000 pounds or less. Previously, the standard applied only to passenger cars. The effective date of the rule is September 1, 1993.

FMVSS 216 is intended to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover crashes. This standard established strength requirements for the forward portion of the roof to increase the resistance of the roof to intrusion and crush.

The agency believes that this requirement will have a negligible impact on light truck manufacturers' MYs 1995–97 fuel economy capabilities. Many light trucks already meet the standard. In addition, a 1982 evaluation of changes made to passenger cars to comply with the standard indicated that the average weight increase was only 2.95 pounds. NHTSA calculated that the manufacturers' weight impact estimates translate into fuel economy penalties of about 0.003–0.03 mpg for MYs 1995–97. These weight effects are included in the manufacturers' fuel economy projections.

4. FMVSS 108

On April 19, 1991, NHTSA published (56 FR 16015) a final rule requiring new light trucks to be equipped with center high-mounted stoplamps (CHMSLs). The effective date is September 1, 1993. With an estimated weight effect of about one pound, this rule will have a negligible CAFE effect.

5. FMVSS 201

As part of an ANPRM published on August 19, 1988 (53 FR 31716), NHTSA indicated it is looking into approaches to reduce injuries and fatalities due to head and face impacts with interior surfaces. In particular, the agency is examining means of reducing occupant harm due to head/face impacts with pillars and roof/windshield headers. NHTSA believes that various techniques, including adding padding and reducing the stiffness of impacted surfaces, may reduce the severity of, or even prevent, many head injuries.

One possible performance requirement would be to place limits on head acceleration in specified component tests using a headform impactor. The weight penalty for this potential rulemaking would probably be no more than 2–3 pounds per vehicle.

The Intermodal Surface Transportation Efficiency Act of 1991 requires that NHTSA publish an ANPRM or NPRM by January 3, 1993 to provide "improved head impact protection from interior components of passenger cars (i.e., roof rails, pillars, and front headers)." At this point, the Department has not decided what action to take on this requirement, but may include light trucks in any rulemaking on this subject. Potential impacts on MYs 1995–97 fuel economy capabilities will be considered before CAFE standards are established for those model years.

6. Rollover Prevention

The Intermodal Surface Transportation Efficiency Act of 1991 requires NHTSA to publish an ANPRM or NPRM by May 31, 1992 to provide "protection against unreasonable risk of rollovers of passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less." On January 3, 1992, NHTSA published (57 FR 242) an ANPRM announcing that the agency is considering whether to propose a safety standard to reduce the casualties associated with rollovers of passenger cars, pickup trucks, vans, and utility vehicles. NHTSA is considering possible regulatory actions in the areas of (1) improved vehicle stability (to reduce rollovers), (2) improved crashworthiness (to provide increased occupant protection in the event of a rollover), and (3) consumer information on a vehicle's rollover propensity. These

actions may be pursued singly or in combination.

Weight and fuel economy penalty estimates have not yet been developed for this rulemaking because the agency is considering a wide range of regulatory options. If the agency pursued an "improved vehicle stability" approach, regulatory possibilities include precluding the production of vehicles that do not meet a specific performance measurement (such as a minimum "tilt table" ratio) or requiring these vehicles to have safety devices or features to improve the vehicle's directional stability characteristics (such as anti-lock brakes).

If the agency pursued an "improved crashworthiness" approach, it could require means to increase belt usage, different types of restraints (e.g., four-point harnesses), improved roof strength, or interior padding. Under a "consumer information" approach, manufacturers could be required to measure certain metrics (such as the tilt table ratio) for their vehicles and report them to prospective purchasers. The number of rollovers might be reduced if consumers better understood the risk of rollover associated with different vehicle types and models.

Any potential impacts on MYs 1995–97 fuel economy capabilities will be considered before CAFE standards are established for those model years.

In analyzing the effects of the Intermodal Surface Transportation Efficiency Act of 1991 on CAFE standards, the agency seeks comment and information on the following question:

6. What effects could the potential or actual NHTSA safety requirements regarding FMVSS 201, 208, 214, 216, and rollover protection, have on manufacturers' CAFE levels in MYs 1995–97? Please provide data to support arguments on this point.

7. Voluntarily Installed Safety Equipment

The effect of voluntarily-installed safety equipment (i.e., anti-lock brakes, traction control, and built-in child restraints) on fuel economy is estimated to range from 0.01–0.10 mpg for each model year, with the effect varying from company to company. The specific impact for each company is included in the manufacturers' estimates of fuel economy capability.

B. Revised Emissions Standards

The Clean Air Amendments of 1990 (CAAA) impose more stringent exhaust emissions standards on light trucks. Standards are also becoming tighter in California. Under the CAAA, new standards begin phasing-in starting with MY 1994 for trucks with GVWRs up to 6,000 pounds. The phase-in is 40 percent for MY 1994, 80 percent for MY 1995, and 100 percent for MY 1996 and afterwards. For light trucks over 6,000 pounds GVWR, more stringent standards begin to take effect in MY 1996. Fifty percent of these vehicles must comply with the new standards in MY 1996; all light trucks over 6,000 pounds GVWR must meet the new standards for MY 1997 and later.

Current standards for exhaust emissions will tighten substantially under the CAAA. Over the "full useful life" of a vehicle, emissions standards will be 0.8 grams/mile for total hydrocarbons, and will range (depending on vehicle and test weight) from 0.31 to 0.56 grams/mile for non-methane hydrocarbons, from 4.2 to 7.3 grams/mile for carbon monoxide, from 0.6 to 1.53 grams/mile for oxides of nitrogen, and from 0.10 to 0.12 grams/mile for particulate matter.

The CAAA also require EPA to establish standards for carbon monoxide emissions at 20 degrees Fahrenheit. These standards take effect beginning with MY 1994. Furthermore, for all gasoline-fueled motor vehicles, the CAAA require EPA to promulgate regulations covering evaporative emissions (1) during operation ("running losses") and (2) over two or more days of non-use.

In their questionnaire responses, none of the auto companies provided substantial detail on the possible impacts of these standards of MY 1995–97 light truck fuel economy capabilities. GM states, "The total impact of the Clean Air Act Tier I and the California emissions standards on truck fuel economy is unknown at this time. * * * Although not quantified, preliminary indications are that there will be some lost opportunities to improve fuel economy when redesigning our powertrains to comply with these standards."

Ford stated that, "[M]ost troublesome is the effect of compliance with the amended Clean Air Act. We project that compliance has reduced the average truck fuel economy by 0.3 mpg after inclusion of technology which has an offsetting effect * * * and it negates other technology benefits."

The net impact on CAFE capabilities due to changes in emissions requirements is likely to be minimal. Some of the new requirements will lead to fuel savings, while others may lead to fuel economy losses. Benefits will be obtained from enhanced evaporative controls and the "low temperature" carbon monoxide standards because manufacturers will sharpen their fuel-control systems, using techniques such as sequential port fuel injection. Fuel economy losses may result from tighter hydrocarbon and nitrous oxides emissions standards.

NHTSA has not made any adjustments to the manufacturers' CAFE projections to account for any impacts of changing emissions standards during MYs 1995–97 because the net effects of the CAAA are uncertain.

C. Test Weight for Light Trucks over 6,000 Pounds GVWR

The CAAA require that, beginning with MY 1996, many light trucks over 6,000 pounds GVWR be tested, for emissions purposes, at the average of curb weight and GVWR. This requirement applies to one-half the "over 6,000 pound" fleet in MY 1996 and all of this fleet in MY 1997. Previously, test weights were determined based on "loaded vehicle weight," (LVW) which is defined as curb weight plus 300 pounds. Loaded vehicle weight has been the sole basis used to calculate "equivalent test weight," which is the weight used for dynamometer testing. EPA has defined the average of vehicle curb weight and GVWR to be "adjusted loaded vehicle weight" (ALVW) (see 56 FR 25739), which will be used as the basis for determining equivalent test weight for emission testing of the "over 6,000 pound" test fleet described above. ALVW is higher than the LVW, and if light trucks are tested at ALVW there will be a loss in the estimated fuel economy.

The CAAA do not require fuel economy testing to be performed at ALVW. However, because exhaust emissions testing must be done at ALVW for light trucks over 6,000 pounds GVWR, use of a different test weight system for fuel economy could require manufacturers and EPA (when conducting confirmatory tests) to test each of these trucks twice: Once at its "equivalent test weight" for fuel economy purposes and once at ALVW for exhaust emissions purposes. The extra tests performed under this option would cost manufacturers between $1,000–$1,500 per test. Similarly, EPA would incur additional testing costs when conducting confirmatory testing on these vehicles. Based on a submission from the Motor Vehicle Manufacturers Association (Docket No. 91–50–NO1–010) estimating the number of models for which dual testing would have to be performed, the total cost of this option would range roughly between $40,000 and $60,000. This "dual testing" approach would have the

effect of removing the emissions tests at ALVW from consideration in setting CAFE standards.

Another approach would be to have EPA mandate that trucks over 6,000 pounds GVWR be fuel economy tested at ALVW and for NHTSA to consider any deleterious fuel economy effect in establishing CAFE standards for the affected model years. A third approach would be to have a manufacturer-specific test procedure adjustment to account for the proportion of its fleet affected by this requirement when fuel economy is derived from tests at ALVW. This approach would require EPA to promulgate implementing regulations.

Domestic auto manufacturers have pointed out that testing at the higher weights would have a negative fuel economy impact. Using MY 1992 data, GM claimed a potential impact in MY 1997 of at least 0.5 mpg. Ford estimated a possible loss in MY 1997 of 0.2–0.3 mpg. Chrysler did not give a specific number but agreed that fuel economy would be lowered. Import manufacturers are unlikely to have any significant penalty from this test procedure change because they produce few, if any, light trucks with a GVWR exceeding 6,000 pounds.

EPA stated that NHTSA should set CAFE standards with the heavier test weight in mind and stated that dual testing would entail increased expenses. In addition, Congressional intent may have been that fuel economy and emission testing be performed under the same conditions. EPA also noted that EPCA requires that integrated fuel economy and emissions testing, although this requirement is limited "to the extent practicable." EPA estimated that the test weight change would reduce GM's and Ford's CAFE levels by 0.63 and 0.34 mpg, respectively (Docket No. 91–50–NO1–011).

Since that time, MVMA has indicated to EPA that requiring the heavier test weight would also increase testing expenses, by forcing separate fuel economy tests for light trucks above and below 6,000 pounds GVWR. In addition, MVMA has raised concerns that changing the basis for determining fuel economy on only a portion of the light truck fleet (i.e., those above 6,000 pounds GVWR) would cause consumer confusion and affect the competitiveness of manufacturers with a higher proportion of the sales of the heavier light trucks.

In analyzing dual testing and the CAFE standard adjustment alternatives, the agency requests information or comments on the following question:

7. Has the agency identified all options (i.e., dual testing, single testing with an adjustment in the CAFE standard, or an adjustment formula in the single test results) regarding the new EPA test weights? What are the consequences of each option (e.g., added expenses for dual testing, proper CAFE adjustment for single testing at higher weight), and which is preferable for MYs 1995–97 light truck fuel economy standard purposes?

D. Phase-out of Chlorofluorocarbons

Under terms of the international Montreal Protocol, the United States and other industrialized nations have agreed to halt production of chlorofluorocarbons (CFCs) by the year 2000. In February 1992, the President announced that the United States would phase-out production by the end of 1995.

Both Ford and General Motors identified weight penalties for eliminating the use of CFCs in their vehicles' air conditioning systems of seven pounds or less for each MY 1995–97. NHTSA estimated that these weight additions could result in an average fuel economy penalty of 0.02 mpg. These weight effects are included in the manufacturers' fuel economy projections.

In analyzing the effects of other Federal standards on fuel economy, the agency requests information or comments on the following question:

8. Has NHTSA identified all of the other Federal standards that might have an impact on light truck fuel economy during MYs 1995–97? What are the potential impacts of other Federal standards on individual manufacturers' CAFE levels for these model years?

V. NAS Study

In 1991, the agency provided a grant to the National Academy of Sciences (NAS) to estimate the practically achievable levels of fuel economy for various classes of passenger cars and light trucks over the next decade. The report of this study, Automotive Fuel Economy—How Far Should We Go?, published in April 1992, includes an estimate of the light truck fleet fuel economy potential for MY 1996. This value was derived from data shown in the EPA report, Light-Duty Automotive Technology and Fuel Economy Trends Through 1991, by Heavenrich, Murrell, and Hellman, 1991. The NAS analysis uses the average fuel economies projected for MY 1991 of four of the major segments of the light truck fleet—small pickup, small van, small utility, and large pickup—with the MY 1990 market share of each of these segments proportioned upward to give a total of 100 percent, and with 0.7 mpg added to each fuel economy average to simulate technological progress between MY's 1991 and 1996. The 0.7 mpg improvement was based on the assumption that fuel economy would continue to improve as in the past and at the same rate.

The MY 1996 average fuel economy projection that results from this methodology, 22 mpg, has little relevance as a reference value for this rulemaking. First of all, this figure is intended to represent the entire light truck fleet, not the capability of one or two manufacturers with a significant share of the market. Individual large manufacturers may have considerably less capability because of the presence in their fleets of larger, less fuel efficient trucks. Second, the model mix that the NAS study used for the MY 1996 projection was derived from EPA preliminary data for MY 1990 and does not bear a close relationship to the actual mix that was produced in MY 1991, and will have an even more distant connection with the projected mix for MY 1996. The study did not include large vans and utility vehicles that are, quite obviously, a significant segment of the light truck market. Third, the assumption of 0.7 mpg fuel economy improvement for each segment and the total fleet between MY's 1991 and 1996 is questionable. Fuel economy improvement measured in five-year intervals has been steadily decreasing over the past decade, and recent five-year trends have even been negative.

VI. Domestic/Import Fleet Distinction

Section 503 of the Act is very explicit regarding the procedures to be followed in calculating the average fuel economy for determining compliance with the passenger automobile standards. Section 503(a)(1) requires that the average fuel economy value be the harmonic average. Section 503(b)(1) provides that the EPA Administrator shall separate the total number of passenger automobiles manufactured by a manufacturer into two categories: domestically manufactured and not domestically manufactured. An automobile is considered domestically manufactured if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada.

Section 503 does not specify procedures for calculating the average fuel economy for automobiles which are not passenger automobiles (later referred to as light trucks). Section 503(a)(1) simply provides that light truck average fuel economy be calculated in accordance with procedures established by the EPA.

Section 502(b) of the Act calls for the Secretary of Transportation to prescribe, by rule, average fuel economy standards. This section further permits the Secretary to provide separate standards for different classes of light trucks, as determined by the Secretary, but it does not require a subdivision of a manufacturer's fleet into domestic and import categories as the passenger automobile section specifies. In 1977, the agency noted in its NPRM for light truck CAFE standards for MY's 1980–81 (42 FR 63186) that the Act did not explicitly state the basis on which classification schemes for light trucks should be drawn, and noted that the report of the Conference Committee on the Act stated that the agency had wide latitude for selecting bases for classification purposes, provided such classification promoted the general purpose of the Act. The agency explicitly noted that it was not required to separate domestic and captive import fleets for light truck CAFE, and could have continued full inclusion of captive import light trucks in the domestic fleet for CAFE purposes.

The agency issued its first light truck fuel economy standard for MY 1979 and permitted manufacturers to combine "captive imports" with their domestic light truck fleets in computing their CAFE values. This agency action resulted from two facts: (1) Light truck fleets are not required by the statute to be separated into domestic and import fleets; and (2) due to leadtime constraints at that time, the inclusion of the imports with the domestic light trucks in MY 1979 would not have provided any significant motivation for importing light trucks. However, for MY's 1980 and 1981, the agency elected to use its authority under section 502(b) to separate each manufacturer's light truck fleet into domestic and "captive import" classes to prevent domestic manufacturers from exporting jobs by augmenting their fleets with imported light trucks that could increase their CAFE values.

The agency justified the continued separation of captive imports and domestic fleets in its rule establishing the 1982 light truck CAFE standard, concluding that such division of light trucks would encourage domestic manufacturers to produce small trucks in the U.S. and was the position "most consistent" with the intent of the Act to develop similar average CAFE standards for light trucks and passenger automobiles. (45 FR 20872) NHTSA notes that the intent to which it was referring in 1980 was expressed in a committee report, and not in the statute itself. As such, that statement of intent did not legally bind the agency. Further, while the division of each manufacturer's fleet may then have been consistent with that statement of intent, changed circumstances since that time have rendered that judgment obsolete. Over the years that the separation of a manufacturer's light truck fleet into "captive import" and "other" sectors has been required, the composition of the domestic light truck fleets has changed. In 1980, 229,034 captive import units accounted for 14.7 percent of the overall light truck market. By 1992, captive imports had declined to less than a 0.5 percent share of the total light truck market. Conversely, during the same period, domestic light truck production increased by 162 percent, from 1,333,055 units in 1980 to 3,498,637 units in 1992. Thus, between 1980 and 1992, while the total light truck market increased by 231 percent, captive imports fell by over 90 percent, and now represent approximately 5 percent of their 1980 sales units.

One of the Act's major goals was to preserve domestic employment—a fact noted by NHTSA in establishing the separation of fleets for the 1980–81 model years. (43 FR 11998) Initial market conditions justified the decision to separate light truck fleets, but subsequent market changes show that continued separation of fleets is no longer relevant in today's market, in which over 99.5 percent of light trucks sold by domestic manufacturers in the United States are domestically produced. While domestic employment was an obvious concern when captive imports made up nearly 15 percent of the market at the beginning of the 1980's, it is not of paramount importance in 1992. Captive imports have fallen to a negligible portion of the market, and, in addition, the captive import segment occasionally has a lower CAFE level than domestically produced units.

The 25 percent tariff imposed on imported pickups and 2-door utility vehicles has provided a significant cost advantage for such vehicles manufactured in the U.S. or Canada. GM and Ford both have introduced compact pickups and utilities, and no longer import any light trucks to augment their domestic production. Chrysler has not produced a domestic compact pickup or utility, but it does compete in the slightly larger "mid-size" category of pickups and utilities with the domestic Dodge Dakota pickup and Jeep Cherokee utility. Chrysler's captive import fleet has gradually diminished in importance to the corporation. For MY 1992, Chrysler's captive import fleet consists solely of compact pickups produced in Japan by Mitsubishi and full-size utilities produced in Mexico. Indeed, the combination of Chrysler's domestic and imported trucks produces a CAFE that is within 0.1 mpg of the domestic CAFE in each of the last five years (1988–92). Although Chrysler's captive import fleet CAFE fell below the standard in one of the past five years, there were always adequate carryforward credits to offset the penalty and, consequently, no advantage to Chrysler would have resulted if it had been permitted to combine the captive imports with the domestic trucks.

Finally, it is unlikely that domestic manufacturers, having expended funds for the capital expenses (such as plant construction and retooling) required to increase light truck production in the U.S., would suddenly abandon their investments and begin purchasing large numbers of captive imports for sale in the U.S. simply because the agency eliminates the distinction between domestic and captive import fleets. There would be no economic incentive to reverse the trend toward almost total domestic production of light trucks for sale in the U.S. by domestic manufacturers.

In short, it appears that in recent years the maintenance of a distinction between captive import and other light trucks has not been necessary to discourage the importation of "captive imports" to the detriment of U.S. jobs. Neither Ford nor GM currently market any imported trucks, and Chrysler's imported truck fleet is nearing the level of insignificance.

Thus, besides there being no statutory requirement to separate a light truck manufacturer's fleet into imported and domestic components, there is no longer any evident detrimental employment issue associated with combining the captive import and other light truck fleets for CAFE compliance. Therefore, the agency proposes that for light truck standards beginning in MY 1995, manufacturers combine all of their light truck production in calculating their CAFE compliance. The columns in 49 CFR 533 labeled "captive imports" and "other" would be eliminated and the standards would simply be listed under the heading, "combined standard." For accommodating the 3-year carryforward and carryback of credits for light trucks after the elimination of the two-fleet requirement, a procedure should be outlined in the preamble of the final rule, or in a revision of 49 CFR 535. For MY's 1992–94, a manufacturer's domestic and captive import light truck credits could be applied to offset penalties incurred up to three model

years later. Similarly, a manufacturer would have to break down its MYs 1995–97 CAFE credits into "captive import" and "other" components based on each fraction of the fleet's share of total production if it wishes to carryback credits to offset earlier penalties in the respective light truck fleets. This procedure is consistent with the handling of credits for the transition from 2WD and 4WD standards for MY's 1980–81 to combined standards for MY 1982 and later (45 FR 83233, December 18, 1980).

In analyzing the effect of the elimination of the "captive import" category, the agency seeks comment and information on the following question:

9. What effect would elimination of the category of "captive import" have on the fleet CAFE in MY's 1995–97? What procedures for carryback and carryforward credits should be put into effect? Would this change have any detrimental effect on U.S. employment? If so, please provide data to quantify the effect.

VII. Metrification

Inasmuch as it is the policy of the U.S. to designate the metric system as the preferred system of measurement under the Omnibus Trade and Competitiveness Act, this rulemaking will also serve as a vehicle to convert measurements in the regulations related to the CAFE to metric equivalents. This encompasses regulations included in 49 CFR 523–538, and encompasses the following conversions.

§ 523.5(b)(2)(iv) Running clearance of not less than 20 centimeters (presently 8 inches).

§ 523.5(b)(2)(v) Front and rear axle clearances of not less than 18 centimeters each (presently 7 inches).

§ 525.7(e)(4) Basic engine, displacement, and SAE rated net power, kilowatts (presently net horsepower).

§ 533.4(b)(2) * * * *4-wheel drive, general utility vehicle* means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 280 centimeters (presently 110 inches), and that has a body shape similar to 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser.

§ 537.7(c)(4)(iii) Engine displacement, liters (presently cubic inches or liters).

§ 537.7(c)(4)(v) SAE net rated power, kilowatts (presently net horsepower).

VIII. The Need of the Nation to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share reached 36.8 percent in 1975, the year EPCA was passed, and peaked at 46.4 percent in 1977, at a cost of $62 billion (stated in 1982 dollars). Although the share declined to below 30 percent in the mid-1980's, lately the United States has again become increasingly dependent on imported oil. Over 40 percent of the country's petroleum needs have been imported in every year since 1988, peaking at 44.3 percent in 1990 before slipping to 41.9 percent in 1991. Sharply lower oil prices in the past decade, however, cut the value of oil imports in 1990 to $46.2 billion (1982 dollars).

Similarly, the percentage of oil imported from OPEC sources, which peaked at 70 percent in 1977, and declined to a low of 36 percent in 1985, has been steadily rising since then, and was 53.6 percent in 1991.

The average cost of crude oil imports jumped from $4.08 per barrel in 1973 to $12.52 in 1974 as a result of the oil embargo against selected countries, including the United States, by Arab members of OPEC. Additional increases in the cost of oil occurred in 1979–80, due to unrest in Iran (which eliminated a substantial portion of that country's oil output), and in 1980–81, when the outbreak of the Iran-Iraq war reduced supply from the area. In 1981, the United States adopted a policy of reliance on market forces and decontrolled the price of oil. Since 1981, prices have fallen as conservation efforts continue. In 1990–91, petroleum prices were affected by the conflict in the Persian Gulf. In the beginning of 1992, the continued worldwide economic recession and high levels of crude oil production by OPEC member countries together held down oil prices. The Department of Energy forecasts United States refiner acquisition cost of imported crude oil in 1992 averaging $18.76 per barrel, slightly below the 1991 average of $18.81 per barrel.

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed, and the percentage of its oil supplied by OPEC is similar to that of 1975. Oil continues to account for over 40 percent of all energy used in the United States, and 96 percent of the energy consumed in the transportation sector. Despite legislation such as the Clean Air Act Amendments of 1990 and California's strict "clean fuel" and emissions standards, gasoline will likely remain the predominant fuel in the transportation sector. Domestic oil production has declined steadily since reaching a peak of 10.6 million barrels per day in 1985 to 9.1 million barrels per day in 1991. Domestic production is expected to continue declining in 1992 and 1993. By the end of 1993, output is expected to be 220,000 barrels per day lower than current production levels. While the United States is currently the world's second largest oil producer, it contains only about three percent of the world's known oil reserves. Persian Gulf countries contain 63 percent of known world reserves, and former communist countries contain 9 percent.

Long-term projections of petroleum prices, supply, and demand are now influenced by a wide range of uncertainties associated with sweeping economic and political changes in the former U.S.S.R. and in Eastern Europe, environmental issues, and the role of Middle East countries in determining the world's future oil supplies and prices, and future energy demands in populous developing countries. The Department of Energy projects that oil prices will be between $18 and $32 (1990 dollars) per barrel in the year 2000, and will rise to between $23 and $40 per barrel by 2010. DOE projects a continuing decline in domestic oil production to between 4.16 and 6.14 million barrels per day in 2010, with imports rising to between 53 percent and 69 percent of total use. Four-fifths of the projected increase in total petroleum consumption in the United States during the next 20 years will be in the transportation sector. By 2010, the United States could be consuming between 43 and 107 percent more petroleum for transportation alone than is expected to be produced domestically. DOE's projections assume that significant improvements in vehicle fuel efficiency, at an average annual rate of 1.3 percent, will take place as motor gasoline prices rise.

The level of petroleum imports is only one aspects of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the national security and energy independence aspects of the current energy situation:

> Although dependence on insecure oil supplies is * * * projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to

changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.

The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to a world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.

Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

Based on the above NHTSA concludes that there is a continuing need for the nation to conserve energy.

The increase in market share of light trucks points to the need for enhanced fuel economy for this class of vehicle. Light trucks are less fuel efficient and are driven more miles over their lifetime than passenger automobiles. In 1991, over half of the energy in the transportation sector was used by light-duty vehicles (automobiles and light trucks). Light trucks have steadily increased their share of petroleum use in the transportation sector. In 1973, light trucks accounted for approximately 12 percent of transportation petroleum use, a figure which increased to roughly 20 percent by 1989.

Light trucks meeting the standards proposed by this notice would be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

10. NHTSA requests comments on these factors, as well as any other factors that may affect the benefits or costs of the proposed CAFE standards for light trucks, such as the proposal's effect on safety, vehicle performance, fleet composition, fuel consumption, competitiveness, or other issues.

IX. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) Be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

B. Industry-wide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industry-wide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–55 (1975)) states:

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. * * *

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industry-wide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876, March 31, 1980. However, as the agency noted in deciding not to set the MYs 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599, December 11, 1980.

C. Petroleum Consumption

The significance of a small change in fuel economy has declined since the early 1970's as overall light truck fleet fuel efficiency has increased about 75 percent, from roughly 12 mpg to the over 20 mpg level expected for the 1994 fleet. Based solely on the GM fleet, which is the one most significantly affected by the proposed MYs 1995–97 CAFE standards, raising CAFE levels from 20.0 mpg to 20.5 mpg would lead to a cut in that fleet's gasoline consumption of 2.4 percent. A further increase to 21.0 mpg would save 4.8 percent over a 20.0 mpg level.

However, it is possible that manufacturers may be able to achieve particular higher CAFE levels only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less fuel-efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to restrict sales of its large light trucks, consumers may be able to transfer their purchases of those same types of vehicles to another manufacturer which may have less difficulty meeting the CAFE standard. Thus, the agency believes that the actual impacts, if any, on energy consumption of alternative higher fuel economy standards, would be less than the theoretical calculations comparing different levels of industry-wide CAFE.

D. The Proposed MY 1995–97 Standards

The manufacturers provided various recommendations for MY 1995–97

standards. Chrysler supports the extension of the present MY 1994 light truck combined CAFE standard of 20.5 mpg to the 1995–97 model years, stating that it "has already invested considerable time and resources into improving the fuel economy of light trucks, and * * * [does not] anticipate any major light truck CAFE improvements for 1995–97 through new technological applications." Ford's docket submission stated that "[b]ased on the product and technical improvements and the market considerations, Ford recommends that the 1995 standard be set at a level which is carryover from 1994, particularly in recognition of the substantial changes needed to meet the 1990 Clean Air Act. For 1996 and 1997 model years, improvements in CAFE over 1994–95 levels are possible." However, Ford adds that "the extent of those improvements must be balanced against the risks and uncertainties to establish potential standards which meet the statutory criteria for manufacturers with a substantial share of the U.S. market." General Motors stated that "because of the various uncontrollable uncertainties manufacturers face 4–6 years from now, standards higher than those established for MY 1994 may prove to be too stringent for MY's 1995–97."

This proposed rule would not have any retroactive effect. Under section 509(a) of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act; 15 U.S.C. 2009(a)), whenever a Federal motor vehicle fuel economy standard is in effect, a state may not adopt or maintain separate fuel economy standards applicable to vehicles covered by the Federal standard. Under section 509(b) of the Cost Savings Act (15 U.S.C. 2009(b)) a state may not require fuel economy labels on vehicles covered by section 506 of the Cost Savings Act (15 U.S.C. 2006) which are not identical to the Federal standard. Section 509 does not apply to vehicles procured for the State's use. Section 504 of the Cost Savings Act (15 U.S.C. 2004) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal average fuel economy standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

X. Impact Analyses

A. Economic Impacts

The agency has considered the economic implications of the proposed standards and determined that the proposal is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Preliminary Regulatory Impact Analysis (PRIA), copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. Environmental Impacts

The agency has analyzed the environmental impacts of the proposed MYs 1995–97 light truck average fuel economy standards in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Copies of the Environmental Assessment are available from the Docket Section. The agency has concluded that no significant environmental impact would result from this rulemaking action.

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer subject to the proposed rule would be classified as a "small business" under the Regulatory Flexibility Act. In the case of other small businesses, small organizations, and small governmental units which purchase light trucks, adoption of the proposed rule would not affect the availability of fuel efficient light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

D. Impact of Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Department of Energy Review

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this proposal to the Department of Energy (DOE) for review. No comments were received.

Comments

NHTSA is providing a comment period, ending on February 1, 1993, for interested parties to present data, views, and arguments on the proposed standards. The agency invites comments on the issues raised in this notice and the accompanying PRIA, as well as any other issues commenters believe are relevant to this proceeding. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 523

Classification, Motor vehicles.

49 CFR Parts 525, 533, and 537

Energy conservation, Motor vehicles.

PART 523—[AMENDED]

In consideration of the foregoing, 49 CFR part 523 would be amended as follows:

1. The authority citation for § 523.5 would be revised to read as follow:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

1. Section 523.5(b) (2) (iv) and (v) are revised to read as follows:

§ 523.5 Light truck.

* * * * *

(b) * * *

(2) * * *

(iv) Running clearance of not less than 20 centimeters.

(v) Front and rear axle clearances of not less than 18 centimeters each.

PART 525—[AMENDED]

In consideration of the foregoing, 49 CFR part 525 would be amended as follows:

1. The authority citation for part 525.7 would be revised to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

1. Section 525.7(e) (4) would be revised to read as follows:

§ 525.7 Basis for petition.

* * * * *

(e) * * *

(4) Basic engine, displacement, and SAE rated net power, kilowatts.

* * * * *

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 would be amended as follows:

1. The authority citation for part 533 would be revised to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. § 533.5(a) would be amended by adding a new Table IV immediately following Table III to read as follows:

§ 533.5 Requirements.

* * * * *

TABLE IV

Model year	standard
1995	[A range is being considered].
1996	[A range is being considered].
1997	[A range is being considered].

3. Section 533.4(b)(2) would be amended by revising the definition of *4-wheel drive, general utility vehicle* to read as follows:

§ 533.4 Definitions.

* * * * *

(b) *Other terms.* * * *

(2) * * * *4-wheel drive, general utility vehicle* means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase of not more than 280 centimeters, and that has a body shape similar to 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser.

* * * * *

PART 537—[AMENDED]

In consideration of the foregoing, 49 CFR part 537 would be amended as follows:

1. The authority citation for part 537 would be revised to read as follows:

Authority: 15 U.S.C. 2005; delegation of authority at 49 CFR 1.50.

2. Sections 537.7(c)(4) (iii), and (iv) would be revised to read as follows:

§ 537.7 Pre-model year and mid-model year reports.

* * * * *

(c) Model type and configuration fuel economy and technical information.

* * *

(4) Loaded vehicle weight. * * *

(iii) Engine displacement, liters;

(iv) SAE net rated power, kilowatts;

* * * * *

Issued: December 18, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–31129 Filed 12–21–92; 11:05 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 921230–2330]

Summer Flounder Fishery

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

ACTION: Proposed initial specifications for the 1993 summer flounder fishery; request for comments.

SUMMARY: NMFS proposes to implement catch quotas and other restrictions for the 1993 summer flounder fishery. Regulations governing this fishery require the Secretary of Commerce (Secretary) to publish specifications for the upcoming fishing year. This action is intended to fulfill this requirement and prevent overfishing of the summer flounder resource.

DATES: Public comments must be received on or before January 5, 1993.

ADDRESSES: The environmental impact statement and analyses for Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, 508–281–9324 or Richard Seamans, 508–281–9244.

SUPPLEMENTARY INFORMATION: Section 625.20 of the regulations implementing Amendment 2 to the FMP published at 57 FR 57358 (December 4, 1992) describe the process for determining the annual catch quotas and other restrictions for the upcoming summer flounder fishing year. The Summer Flounder Monitoring Committee (Committee), made up of representatives from the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council and NMFS, are required to review, on an annual basis, scientific and other relevant information and recommend catch quotas and other restrictions necessary to result in a fishing mortality rate of 0.53 for the years 1993–1995, and 0.23 in 1996 and thereafter. This schedule of fishing mortality rates is mandated by Amendment 2 to the FMP and is necessary to prevent overfishing of the summer flounder resource.

The information to be reviewed annually by the Committee includes:

(1) Commercial and recreational catch data;

(2) Current estimates of fishing mortality;

(3) Stock status;

(4) Recent estimates of recruitment;

(5) Virtual population analysis;

(6) Levels of regulatory noncompliance by fishermen or individual states;

(7) Impact of fish size and net mesh regulations;

(8) Impact of gear other than otter trawls on the mortality of summer flounder; and

(9) Other relevant information.

Restrictions listed in § 625.20 that require consideration and may require adjustment to ensure achievement of the appropriate fishing mortality rate are the:

(1) Commercial quota;

(2) Commercial minimum fish size;

(3) Minimum mesh size;

(4) Recreational possession limit within the range of 0 to 15 fish per person per day;

(5) Recreational minimum fish size;

(6) Recreational season, and

(7) Restrictions to gear types other than otter trawls. Although adjustments to all of these measures were considered, the only recommendations forthcoming from the Committee were to propose that the 1993 commercial quota be set equal to 12.35 million pounds (5.6 million kg) and the recreational target quota be set at 4.36 million fish which is an estimated 8.38 million pounds (3.8 million kg). The other measures such as minimum fish size and net mesh size for the commercial fishery and minimum fish size, possession limit, and season for the recreational fishery remain as established by Amendment 2 to the FMP.

The commercial quota represents the level of allowable coastwide commercial landings necessary to achieve a 0.53 fishing mortality rate in the commercial sector of the fishery. It is calculated based on a simulation of the effects of the existing minimum fish and mesh sizes on landings, utilizing the most currently available estimates of stock size and an assumption that recruitment will be at average levels.

The recreational sector of the fishery is also constrained to the schedule of fishing mortality rates, and for 1993, the rate is also 0.53. The FMP utilizes a different approach to achieve this rate in the recreational sector, consisting of a combination of bag, season and size limits rather than state quotas and closures. The "target" level of recreational landings for the 1993 fishing year that will result in a fishing mortality rate of 0.53 is estimated to be 8.38 million pounds (3.8 million kg) or 4.36 million fish. Based on an analysis of the factors listed in § 625.20(a), the Committee has determined that the measures currently in place for the recreational fishery are sufficient to remain within the recreational target quota.

The Committee is required to include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The recently completed Environmental Impact Statement for Amendment 2 to the FMP (EIS) analyzes the impacts and consequences of the imposition of the fishing mortality rate schedule and the alternatives. Because the commercial quota specified in this proposed rule is merely a specification of the 0.53 fishing mortality rate, the environmental impacts of the annual quota fall within the range and scope of alternatives addressed in the EIS. There are no changes to any measures contained in the FMP as a result of this rule.

The Regional Director, Northeast Region, is required to publish a proposed rule in the **Federal Register** on or before September 15th, of each year, to implement measures he determines are necessary to assure that specified fishing mortality rates are not exceeded. For this first year of implementation, the proposed specifications could not be published until the final rule implementing Amendment 2 to FMP had been filed. This proposed rule sets forth the Regional Director's determination that a commercial quota equal to 12.35 million pounds (5.6 million kg) is the only specification necessary at this time. Public comments on this proposed rule are requested (see "**DATES**").

The following table presents the proposed 1993 commercial quota of 12.35 million pounds (5.6 million kg.) apportioned among each state according to the percent shares specified by Amendment 2 to the FMP:

State	Share (percent)	1993 quota (lbs)	1991 landings
ME	0.0482	5,956	0
NH	0.0005	65	0
MA	6.9111	853,521	1,124,000
RI	15.8914	1,962,588	1,672,000
CT	0.9532	117,720	399,000
NY	7.7486	956,952	719,000
NJ	16.9473	2,092,992	2,341,000
DE	0.0180	2,223	4,000
MD	2.0662	255,176	232,000
VA	21.6001	2,667,612	3,715,000
NC	27.8155	3,435,214	3,516,000

Classification

The Regional Director has initially determined that this action is necessary for the conservation and management of the summer flounder fishery and is consistent with Amendment 2 to the FMP.

These proposed specifications do not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

A final environmental impact statement (FEIS) was prepared for Amendment 2 and subjected to public comment. The FEIS concluded that the preferred alternative which included the method for determination of annual commercial and recreational quotas based on a specified fishing mortality rate was environmentally preferable compared to the status quo. The measures contained in these proposed specifications are within the scope of analysis of the FEIS for Amendment 2; therefore, no supplemental EIS or environmental assessment is necessary for this action.

These proposed specifications do not alter the impacts analyzed within the regulatory impact review (RIR) for Amendment 2. On the basis of the RIR, these proposed specifications are determined not to be a major rule under E.O. 12291.

Previously, a determination was made that Amendment 2 may have a significant effect on a substantial number of small entities and a RIR/final regulatory flexibility analysis was prepared. That analysis was in large part based on the commercial and recreational quotas for 1993 needing to attain a fishing mortality rate of 0.53, the same fishing mortality rate that these proposed initial specifications would obtain. The long-term benefit to the summer flounder stock and the fishery is expected to greatly outweigh short-term costs to small entities managed under quota restrictions.

These proposed specifications do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The most recent biological opinion on the impacts of the summer flounder fishery on threatened and endangered species concluded that the fishery may jeopardize the Kemp's ridley sea turtle, and certain reasonable and prudent alternatives were suggested. Management measures for Amendment 2 were determined to be consistent with those suggestions; therefore, these proposed specifications are also consistent with those suggestions.

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

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: December 21, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-31318 Filed 12-21-92; 3:17 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meetings

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, January 8, 1993. The meeting will be held in the Williamsburg Room (104–A), at the Department of Agriculture, 14th and Jefferson Drive, SW., Washington, DC, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Council Business
III. Executive Director's Report
IV. Section 106 Cases
V. New Business
VI. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202–786–0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: December 17, 1992.

Robert D. Bush,
Executive Director.

[FR Doc. 92–31201 Filed 12–23–92; 8:45 am]

BILLING CODE 4310–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 18, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

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

Revision

- Food and Nutrition Service
- School Lunch and Breakfast Cost Study
- One-time Only
- State or local governments; Non-profit institutions; 389 responses; 4,182 hours
- John R. Endahl (703) 305–2117

New Collection

- Forest Service
- Forest Industry Survey of California and Oregon
- One time only
- Businesses or other for-profit; Small businesses or organizations; 500 responses; 300 hours
- George R. Sampson (907) 474–3303
- Rural Electrification Administration
- Seismic Safety of New Building Construction
- On Occasion
- Small businesses or organizations; 279 responses; 419 hours
- Fred Albrecht (202) 720–0736
- Agricultural Stabilization and Conservation Service
- 7 CFR part 1435, Sugar and Fructose Marketing Allotment Regulations for Fiscal Years 1992 through 1996—Addendum
- CCC–831, 832, 835
- Recordkeeping; Monthly
- Individuals or households; Farms; Small businesses or organizations; 1,009 responses; 31,508 hours
- Bob Barry (202) 720–3391

Reinstatement

- Agricultural Stabilization and Conservation Service
- 7 CFR 735–743, Warehouse Regulations under U.S. Warehouse Act
- WA–50, 51, 51–2, 54, 55, 56, 57, 59, 60, 61, 70, 80, 81, 82, 83, 84, 85, 86, 87, 88, 99, 125, 137, 139, 140, 220, 221, 222, 302, 303, 308, 372, 561, 562, and 570
- Recordkeeping; On Occasion, Annually, and Daily
- Business or other for-profit; 35,290 responses; 192,710 hours
- R. Ford Lanterman (202) 720–6004

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92–31195 Filed 12–23–92; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Oil and Gas Leasing; Custer National Forest; Little Missouri National Grassland: Billings, Golden Valley and Slope Counties, ND; Cedar River National Grassland: Sioux and Grant Counties, ND

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice; amendment of notice of intent to prepare an environmental impact statement.

SUMMARY: A revised notice of intent was published in the **Federal Register** [57 FR 26818] on Tuesday, June 16, 1992, indicating that an environmental impact statement (EIS) would be prepared on the proposal to lease Federal oil and gas minerals in North Dakota on the Custer National Forest, including the Little Missouri and the Cedar River National Grasslands. That Notice of Intent is amended to include the addition of the Bureau of Land Management as a joint-lead agency on this project, and to change the schedule for completion of the draft EIS.

Originally the draft environmental impact statement was scheduled to be released to the public on May 30, 1993 with the final statement to be filed by December, 1993. Under the current schedule, the draft environmental impact statement should be available for review in August 1993, and the final statement should be released in December 1993.

DATES: This action is effective upon the publication of this notice.

ADDRESSES: Curtis W. Bates, Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, MT 59103; and Thomas P. Lonnie, State Director, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, MT 59107.

FOR FURTHER INFORMATION CONTACT: Greg Visconty, EIS Team Leader, Custer National Forest, phone (406) 657-6361.

Dated: December 14, 1992.

Curtis W. Bates,

Forest Supervisor.

[FR Doc. 92-31252 Filed 12-23-92; 8:45 am]

BILLING CODE 3410-11-M

Grade/Dukes Timber Sale, Payette National Forest, Washington County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: A notice of intent to prepare a draft supplement to a final environmental statement (EIS) for the proposed Grade/Dukes timber sale, in the Cuddy Mountain roadless area, was published in the **Federal Register** February 20, 1992 (Vol. 75, No. 34, p. 6087-6088). That notice is hereby revised to show a change in the anticipated schedule for the EIS.

The schedule has been delayed to complete additional field inventories for sensitive plant and animal species. Forest Service personnel are analyzing these data as part of the biological evaluation for each species.

The draft supplemental EIS is now scheduled for release to the public by February 1993, and the final supplemental EIS by April 1993. (The previous schedule was June 1992 for the draft, and August 1992 for the final).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to John Baglien, Weiser District Ranger, phone 208-549-2420.

Dated: December 16, 1992.

Kurt J. Nelson,

Acting Forest Supervisor.

[FR Doc. 92-31254 Filed 12-23-92; 8:45 am]

BILLING CODE 3410-01-M

Bear Mountain Ski Resort Expansion—San Bernardino National Forest, San Bernardino County, CA; Intent To Prepare a Supplemental Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare a Supplemental Environmental Impact Statement (SEIS) for the proposed further expansion of the Bear Mountain Ski Resort as anticipated in the Record of Decision of the San Bernardino National Forest Supervisor for the Bear Mountain Ski Resort Expansion Environmental Impact Statement dated July 3, 1990. That decision selected alternative 2, but stated that Alternative 4 was the preferred alternative but could not be selected because the impacts on the California spotted owls and northern flying squirrels could not be determined until the studies of these species were completed. Those studies have now been completed.

Issues Identified: Environmental issues for which supplemental analysis will be conducted will be limited to the individual and cumulative impacts of the proposed development on the habitats of California spotted owls and northern flying squirrels. The other previously considered issues will not be reconsidered during this analysis, except as they are associated with impacts on spotted owls and/or flying squirrels habitats. The impacts on spotted owls and flying squirrels will be evaluated for each of the remaining proposed, but unapproved, ski lifts and runs.

The Draft SEIS is expected to be available for public review by March 1993. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of its availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F. 2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is important those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplemental environmental impact statement. Comments may also address the adequacy of the draft supplemental environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3. The final supplemental environmental impact statement is

expected to be available about May 1993.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft SEIS. Comments must be received within 30 days of the publication date of this notice.

PUBLIC MEETING: The Forest Service has previously conducted a public meeting to provide information on the project and no additional public meetings are planned.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the Bear Mountain Ski Resort Expansion proposal to Gene Zimmerman Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the SEIS to Hal Seyden, Planning Program Leader, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430 or call (909) 383–5591.

Dated: December 14, 1992.

Gene Zimmerman,

Forest Supervisor.

[FR Doc. 92–31253 Filed 12–23–92; 8:45 am]

BILLING CODE 3410–11–M

Long-Term Soil Productivity Study; Tahoe National Forest; Nevada and Sierra Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) for a proposal to install long-term soil productivity study plots on the Nevada City and Downieville Ranger Districts of the Tahoe National Forest. These plots are an integral part of a national long term soil productivity study being undertaken throughout the National Forest System in the United States and Canada. The study is a joint undertaking by Forest Service Research and the National Forest System. The EIS described herein applies only to the study plots on the Tahoe National Forest.

The Forest Service gives notice of the full environmental analysis and decision making process that will occur on the Proposed Action so that interested and affected people, along with local, State and other Federal agencies are aware of how they may participate and contribute to the final decision. The Tahoe National Forest invites written input concerning issues specific to the Proposed Action.

The Proposed Action is to establish a series of 9 one acre plots on Cohasset soils on two sites on the Tahoe National Forest. One site is in the Brandy City area on the Downieville Ranger District and one in the Lowell Hill area on the Nevada City Ranger District. The study will encompass 82 acres; 52 acres in the Lowell Hill area and 30 acres in the Brandy City area. Nine treatments (three levels of organic matter removal crossed with three levels of soil compaction) will be applied following clearcutting at each site. This includes clearcutting of all trees within the one acre plots and in buffers which are at least 20 meters wide around each plot. Each treatment plot will be regenerated promptly with native conifer species; growth, vegetation, and soil characteristics will be monitored for up to 70 years. One half of each plot will be kept weed-free by ground application of herbicides. Alternatives to the proposed action will be developed by January 1993.

Internal scoping and public comments to date have identified the following major issues: Affect of project on California Spotted Owl, Goshawk and deer habitat, effects of clearcutting, protection of 4 potential Rust Resistant Sugar Pine trees, rutting of local roads which access the study sites during wet weather, herbicide use, and water quality in the Cherokee watershed.

DATES: Input concerning issues with the Proposed Action must be received by January 18, 1993.

ADDRESSES: Direct written input and questions about the Proposed Action and Environmental Impact Statement to the Forest Supervisor, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959–6003. Telephone (916) 265–4531.

FOR FURTHER INFORMATION CONTACT: Martha Twarkins, Project Leader, Nevada City Ranger District, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959–6003. Telephone (916) 265–4531.

SUPPLEMENTARY INFORMATION: The EIS will tier to the Tahoe National Forest Land and Resource Management Plan and Forest Plan EIS. The purpose of the Proposed Action is three-fold.

1. Address public concern about policies and programs related to forest management by providing for the measuring of the effects of site disturbance on long-term productivity.

2. Validating soil quality standards and developing effective monitoring techniques for evaluating the long-term impacts of management practices on soil productivity. This information will be helpful in fulfilling the Forest Plan requirement for "validation monitoring". Validation monitoring is to determine if the specifications in soil quality standards and guidelines are appropriate to maintain soil productivity.

3. Understanding how soil and site disturbances affect the fundamental processes controlling productivity.

Public Scoping Process: A letter describing the Proposed Action was mailed to a list of interested parties on October 29, 1992. An article describing the project and soliciting information/concerns from the public was published in "The Union" newspaper in Grass Valley, CA on November 6, 1992. The Tahoe National forest plans to issue a scoping letter to all interested publics in December, 1992 and have a public meeting with the research scientists who will carry out the Proposed Action in January or February 1993.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. "Vermont Yankee Nuclear Power Corp. v. NRDC", 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. "City of Angoon v. Hodel", 803 F.2d 1016, 1022 (9th Cir. 1986) and "Wisconsin Heritages, Inc. v. Harris", 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the draft EIS so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and

discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

A draft EIS is expected to be available for agency and public review by February 1993. A final EIS is expected to be completed by May 1993 and documented by a Record of Decision.

The responsible official for the EIS and decision is John H. Skinner, Forest Supervisor, Tahoe National Forest, P.O. Box 6003, Nevada City, CA 95959–6003.

Dated: December 16, 1992.

Judie L. Tartaglia,

Deputy Forest Supervisor.

[FR Doc. 92–31250 Filed 12–23–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–92]

Foreign-Trade Zone 86—Tacoma, WA; Application for Subzone West Coast Forest Products, Inc., Arlington, WA (Wood Building Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Tacoma, grantee of FTZ 86, requesting special-purpose subzone status for export activity at the facilities of West Coast Forest Products, Inc. (WCPP) (a subsidiary of Sekisui House, Ltd., Japan) in Arlington, Washington, within the Everett Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 3, 1992.

The WCFP (28 acres) is located at 19406 68th Drive, NE., Arlington, Snohomish County, Washington, some 70 miles north of Tacoma. The facility (90 employees) is used primarily to manufacture wood residential and commercial construction products, including door and window jambs, ceiling and wall frames, molding, and flooring. Up to 25 percent of the lumber used in the manufacturing process is Canadian softwood lumber (HTSUS 4407.10.00). Normally the product is duty-free, but currently a countervailing duty of 6.51 percent is in effect. Exports account for over 60 percent of total production, and all products manufactured from Canadian softwood lumber are exported to Japan (95 percent of which go to parent company Sekisui House, Ltd., Japan's largest construction firm).

Zone procedures would exempt WCFP from payments of the countervailing duties presently applicable to the Canadian softwood lumber which is used in its export production. Imports would be subject to such duties. The savings will help improve the plant's international competitiveness of increase exports.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 22, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period March 8, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, suite 290, 3131 Elliott Avenue, Seattle, Washington 98121

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 18, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–31326 Filed 12–23–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, 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 a 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 92–00014." A summary of the application follows.

Summary of the Application:

Applicant: American Pork Export Trading Company ("APEX"), P.O. Box 10383, Des Moines, Iowa 50306, Contact: Laurence J. Lasoff, Telephone: (202) 342–8400.

Application No.: 92–00014.

Date Deemed Submitted: December 16, 1992.

Members (in addition to applicant): Doskocil/Wilson Foods Co., Oklahoma City, OK; FDL Marketing, Inc., Dubuque, IA (Subsidiary of Geo. A. Hormel & Co.); Farmland Foods, Inc., Kansas City, MO; Hormel International Corporation, Austin, MN (Subsidiary of Geo. A. Hormel & Co.); IBP, Inc., Dakota City, NE; Seaboard Corporation, Shawnee Mission, KS; and W & G Marketing Company, Inc., Ames, IA.

APEX seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

Products for the pork industry are those forth in the U.S. Department of Agriculture, Agricultural Marketing Service's Institutional Meat Purchase Specifications and include all types of fresh, cured, cured and smoked and fully-cooked pork products. Fresh pork products include carcasses and/or split carcasses, hams, shoulders, bellies, loins, spareribs, hocks, trimmings, pig's feet, neck bones, ribs, diced pork, ground pork, fillets, butt steaks, loin chops, pork patties, and various miscellaneous fresh pork products. Cured, cured and smoked, and fully-cooked pork products include pork lions, can bacon, jowls, spareribs, hocks, clear fatback, feet, ham patties, ham steaks, pork loin chops, pork patties, pork shoulders, bellies, bacon, ham, diced pork, shoulders, and sausage.

2. Export Trade Facilitation Services

Consulting, international market research, marketing and trade promotion, trade show participation, insurance, legal assistance, testing and certification of Products, transportation, trade documentation and freight forwarding, communication and processing of export orders, warehousing/cold storage, packaging, foreign exchange, financing, and taking title to goods.

3. Services

Ancillary services associated with the production and sale of pork products for export, including research and development, testing and certification of products, and training programs.

4. Intellectual Property Rights

Patents, trademarks, service marks, copyrights, trade secrets, and know-how.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. APEX and/or one or more of its Members may:

a. Engage in joint bidding and/or other joint selling arrangements for Products and/or Services in Export Markets, and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-Member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of APEX and/or its Members;

g. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

h. License associated Intellectual Property Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with APEX or any other Member;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical product, service, and/or technology requirements of specific export customers or Export Markets; and

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by APEX and/or its Members, to export Products to Export Market; operate warranty, service, and training centers in Export Markets; and to provide Export Trade Facilitation Services to Members.

2. APEX and/or its Members may enter into agreements wherein APEX and/or one or more Members agree to act in certain countries or Export Markets as the Members' exclusive or nonexclusive Export Intermediary for Products and/or Services in that country or Export Market. In such agreements, (i) APEX or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country of Export Market, and (ii) Members may agree that they will export for sale in the relevant country or export Market only through APEX or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or Export Market, either directly or through any other Export Intermediary. APEX and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its Services on non-discriminatory terms to those Members that are parties to the exclusive arrangements and which request such Services.

3. APEX and/or its Members may exchange and discuss the following types of information:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, ability to supply Products in quantities sufficient to meet a sales opportunity, and delivery dates of Products available from Members for export, provided however, that exchanges of information and discussions as to Product quantity, source, ability to supply Products in quantities sufficient to meet a sales opportunity, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members who are participating or have a genuine interest in participating in such transaction;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by APEX and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales,

documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets;

h. Information about APEX's or its Members' export operations, including without limitation sales and distribution networks established by APEX or its Members in Export Markets, and prior export sales by Members (including export price information);

i. Information related to the standardization, testing, and certification of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations that are in the process of formulating standards for those Products or Services; and

j. Information related to the means for complying with existing technical standards.

4. APEX may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by APEX itself, or by agreement with members or other parties.

5. APEX and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. APEX and/or its Members may make available to non-Members the Export Trade Facilitation Services relating to testing and certification of Products. APEX and/or its Members may refuse to provide other Export Trade Facilitation Services, and may deny participation in the other activities described in paragraphs one through five above, to non-Members.

7. APEX and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private preshipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. An "Export Intermediary" means a person who acts as a distributor, representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means those member companies of APEX listed in Attachment A to the Certificate, which is incorporated herein by reference, and those member companies of APEX subsequently incorporated in the Certificate pursuant to the amendment procedures set forth below.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, Technology Right, and or Export Trade Facilitation Service, whether a Member or non-Member.

Terms and Conditions of Certificate

(a) In engaging in Export Trade Activities and Methods of Operation, neither APEX nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information that is about its or any other Member's or supplier's costs, production, inventories, domestic prices, domestic sales, capacity, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchaser.

(b) Any agreements, discussions, or exchanges of information under the Certificate relating to quantities of products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other then export financing, servicing and repair arrangements) shall, except as provided in paragraph 3(i) and (j) of the Export Activities and Methods of Operation, be in connection only with actual or potential bona fide export transactions and shall be on a transaction-by-transaction basis only, and shall include only those Members participating or having a genuine interest in participating in such transaction.

(c) Participation by a Member in any Export Trade Activity or Method of Operation under the Certificate shall be entirely voluntary to that Member, subject to the honoring of contractual commitments for sales of Products or Services in Specific export transactions. A Member may withdraw from coverage under the Certificate at any time by giving written notice to APEX, a copy of which APEX shall promptly transmit to the Secretary of Commerce and the Attorney General.

(d) APEX and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities or Methods of Operation of a person protected by this Certificate of Review continues to comply with the standards of section 303(a) of the Act.

Dated: December 18, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-31324 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, 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 a 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 92-00012." A summary of the application follows.

Summary of the Application

Applicant: Refined Sugar Trading Institute, P.O. Box 339; Savannah, GA 31402-0339.

Application No.: 92-00015.

Date Deemed Submitted: December 16, 1992.

Members (in addition to applicant): Domino Sugar Corporation, New York, NY; and Savannah Foods and Industries, Inc., Savannah, GA.

Refined Sugar Trading Institute seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operation.

Export Trade

Products

Refined sugar in various package forms, including but not limited to fifty kilo jute bags; and to pound, five pound, and twenty-five pound kraft paper bags.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands), Canada, and Mexico.

Export Trade Activities and Methods of Operation

Traders may exchange and discuss the following types of information:

a. Information about sales and marketing efforts in the Export Markets; activities and opportunities for sales of Products in the Export Markets; selling strategies for the Export Markets; pricing in the Export Markets; projected demand in the Export Markets; customary terms of sale in the Export Markets; prices and availability of Products for sales in the Export Markets; and specifications for Products by customers in the Export Markets;

b. Information about the quality, quantity, and prices of Products for export; the ability to supply Products in quantities sufficient to meet an export sales opportunity; source and delivery dates of Products available from Members for export; provided, however, that exchanges of information and discussions as to export prices, quantity, ability to supply Products in quantities sufficient to meet an export sales opportunity, and source and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export and involve only those Members who are participating or who have a genuine interest in participating in the transaction;

c. Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by the Members;

d. Information about joint bidding and selling for the Export Markets and allocation of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in the Export Markets; and

g. Information about the Members' export operations, including without limitation, sales and distribution networks established by the Members in the Export Markets, and prior export sales by Members (including export price information).

The Traders may jointly establish a selling price, or a "minimum margin," to be added to each Member's manufacturing and sales costs to arrive at a selling price for refined sugar for export. Once determined, the selling price, or the minimum margin, shall remain in effect until it is rescind or superseded by all of the Traders.

Members may utilize the selling price, or the minimum margin, in all of their sales of refined sugar for export to any Export Market; provided, however, that no Member shall be obligated to utilize the selling price or the minimum margin.

If a Member makes a sale at a price which is below the established selling price or does not utilize the minimum margin, the Trader of such Member shall inform the other Traders of such fact and explain the circumstances which caused the Member to so act.

Definitions

For purposes of this certificate application, the following terms are defined:

"Traders" are employees of a Member, and are appointed by the Member to be the sole persons to communicate with Traders of other Members. A trader shall not be any person whose job directly involves the sale or marketing of Products in the United States.

Dated: December 21, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-31325 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DR-M

University of Alaska-Fairbanks, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision;* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92-093. *Applicant:* University of Alaska-Fairbanks, Fairbanks, AK 99775-1440. *Instrument:* Coal Oxidation Calorimeter, Model V2.0. *Manufacturer:* BHP Research New Castle Laboratory, Australia. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instrument provides an adiabatic system with a temperature range of 10 to 50 °C controlled to ±0.1 °C and a sample capacity to 1.0 kg. *Advice Received From:* U.S. Bureau of Mines, October 14, 1992.

Docket Number: 92-095. *Applicant:* Princeton University, Princeton, NJ 08544. *Instrument:* Electron Microprobe, Model SX 50. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instrument provides an intense electron beam to excite characteristic x-rays of a sample phase down to 1.0 μm area. *Advice Received From:* National Institute of Standards and Technology, October 8, 1992.

The U.S. Bureau of Mines and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no

domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 92-30794 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-05-M

Marine Biological Laboratory; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be reviewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-087. *Applicant*: Marine Biological Laboratory, The Ecosystem Center, Woods Hole, MA 02543. *Instrument*: Accessory Equipment for Mass Spectrometer. *Manufacturer*: Finnigan MAT, Germany. *Intended Use*: See notice at 57 FR 40434, September 3, 1992.

Comments: None received. *Decision*: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons*: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated September 11, 1992 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-30798 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DS-M

The Pennsylvania State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision;* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92-089. *Applicant:* The Pennsylvania State University, Park, PA 16802. *Instrument:* Two Mass Spectrometer Systems, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instruments provide: (1) an internal precision of 0.005 per mil for 3 bar µ1 samples of CO_2, (2) six adjustable Faraday collectors and (3) a computer-controlled carbonate and gas chromatograph/combustion multiport inlet system.

Docket Number: 92-092. *Applicant;* New Mexico Institute of Mining and Technology, Socarro, NM 87801. *Instrument:* Noble Gas Mass Spectrometer, Model MAP 215-50. *Manufacturer:* Mass Analyzer Products, United Kingdom. *Intended Use:* See notice at 57 FR 40435, September 3, 1992. *Reasons:* The foreign instrument provides (1) a static mode background of 2.2×-10^{-18} moles at m/e=36, (2) a rate of rise of background of $4.5 \times 10-^{-17}$ moles/min., (3) quantitative measurement of ^3He and ^4He by dual collectors and (4) resolution of ^3He from HD and H_3 with an electrostatic analyzer.

These capabilities are pertinent to the applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-30796 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DS-M

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 92-067. *Applicant:* University of Vermont, Department of Pharmacology, UVM Medical Research Center, 55A South Park Drive, Colchester, VT 05446-2500. *Instrument:* 3-D Micromanipulator. *Manufacturer:* Narishige, Japan. *Date of Denial without Prejudice to Resubmission:* August 13, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-30797 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescission of a Request to Consult and Cancellation of an Import Restraint Limit on Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

December 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the rescission of a request to consult and cancelling a limit.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to rescind the request made on February 28, 1992 to consult on imports of cotton printcloth in Category 315. Should it become necessary to discuss this category with the Government of the Democratic Socialist Republic of Sri Lanka at a later date, further notice will be published in the **Federal Register.**

In the letter published below, the Chairman of CITA directs the

Commissioner of Customs to cancel the limit established for Category 315 for the period beginning on July 1, 1992 and extending through June 30, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 9689, published on March 20, 1992; and 57 FR 29290, published on July 1, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on December 29, 1992, you are directed to cancel only that portion of the directive dated June 25, 1992, which establishes a limit for cotton textile products in Category 315, produced or manufactured in Sri Lanka and exported during the period beginning on July 1, 1992 and extending through June 30, 1993.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31323 Filed 12-23-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Healthcare Provider Questionnaire; NAVCRUIT Form 6000/1.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 3 Hours.

Responses Per Respondent: 1.

Number of Respondents: 600.

Annual Burden Hours: 1,800.

Annual Responses: 600.

Needs and Uses: The information collected is used by a selection board and a professional review board to determine an applicant's qualifications for a commission in the United States Navy or United States Naval Reserve as a medical doctor, dentist, or healthcare professional requiring credentialing.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: December 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31181 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Joint Advisory Committee (JAC) on Nuclear Weapons Surety will meet in closed session on January 14-15, 1993, at San Diego, CA.

The mission of the Joint Advisory Committee is to advise the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. As this meeting, the Joint Advisory Committee will receive classified briefings on the nuclear weapons stockpile and the Trident nuclear weapon systems.

In accordance with section 19(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended, (5 U.S.C. App. II, (1988)), it has been determined that this Joint Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 18, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31275 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Services, DOD

AGENCY: Defense, Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the Committee at the DACOWITS 1992 Fall Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1993 Spring Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: February 8, 1993, 8:30 a.m.-4 p.m.

ADDRESSES: SECDEF Conference Room 3E869, the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Branda M. Weidner, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), the Pentagon, room 3D769, Washington, DC 20301-4000; telephone (703) 697-2122.

Dated: December 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-31276 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0059]

Clearance Request for North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0059).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina Sales Tax Certification.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 106; responses per respondent, 4; total annual responses, 424; preparation hours per response, 17; and total response burden hours, 72.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: December 17, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–31256 Filed 12–23–92; 8:45 am]

BILLING CODE 6820–34–M

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Proposed Reuse and Disposal of Naval Air Station Chase Field, Beeville, TX

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed disposal and reuse of Naval Air Station (NAS) Chase Field, Beeville, Texas.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on January 14, 1993, beginning at 7 p.m., in the Bee County Coliseum, Farm Road 351, Beeville, Texas.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by February 1, 1993, to become part of the official record.

NAS Chase Field is being closed in compliance with the Defense Base Closure and Realignment Act of 1990. The proposed action involves the disposal of NAS Chase Field, off-base family housing area, and Naval Auxiliary Landing Field (NALF) Goliad in compliance with Federal Property Management Regulations. Potential reuses of NAS Chase Field evaluated in the DEIS include correctional facility/mixed use and community aviation/mixed use; reuses of NALF Goliad evaluated include correctional facility/agricultural use and intensive agricultural use.

Additional information concerning this notice may be obtained by contacting Mr. Laurens Pitts (Code 20), Southern Division, Naval Facilities Engineering Command, P.O. Box 10068, 2155 Eagle Drive, Charleston, South Carolina 29411, telephone (803) 743–0893.

Dated: December 21, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92–31283 Filed 12–23–92; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet January 12, 1993, from 9:00 a.m. to 5:00 p.m., in Alexandria, Virginia.

The purpose of this meeting is to attempt to forecast emerging demographic and sociological trends and their effect on Naval Forces. The agenda of the meeting will consist of discussions of key issues related to domestic changes in response to demographic, sociological, cultural and political phenomena.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia, 22302-0268, Phone (703) 756-1205.

Dated: December 15, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92–31200 Filed 12–23–92; 8:45 am]

BILLING CODE 3810–AE–F

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet January 25, 1993, from 1:00 p.m. to 3:00 p.m., in the Pentagon, Room 4E630.

The purpose of this meeting is to do the final outbrief for the Task Force Environment.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia, 22302-0268, Phone (703) 756-1205.

Dated: December 15, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-31199 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-AE-F

Intent to Grant Exclusive Patent License; Electronic Health Technologies, Inc.

AGENCY: Department of the Navy

ACTION: Intent to Grant Exclusive Patent License.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Electronic Health Technologies, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-owned inventions described in U.S. Patent No. 4,685,462, entitled "Method and Apparatus for Treatment of Hypothermia by Electromagnetic Energy" and U.S. Patent No. 5,160,828 entitled "Electronmagnetic Warming of Submerged Extremeties" in the fields of (i) perioperative heating, and (ii) diabetic neuropathy, diabetic microangiopathy, slow-healing and non-healing wound due to either diabetes mellitus or peripheral vascular disease.

Anyone wishing to object to the grant of this license has 60 days form the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code OOCCIP), Ballston Tower One, Arlington, Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

Dated: December 15, 1992.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-31198 Filed 12-23-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.097A]

Law School Clinical Experience Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide grants to accredited law schools to establish, continue, or expand programs of clinical experience for students in the practice of law. This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, especially Goal 5, by enhancing the job skills and knowledge of law school students. Goal 5 calls for adult Americans to possess the knowledge and skills to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Individual law schools that have been accredited by a nationally recognized agency approved by the Secretary, and combinations and consortia of accredited law schools.

Deadline for Transmittal of Applications: March 1, 1993.

Deadline for Intergovernmental Review: April 30, 1993.

Applications Available: January 15, 1993.

Available Funds: $7,015,291.

Estimated Range of Awards: $40,000–$250,000.

Estimated Average Size of Awards: $160,000.

Estimated Number of Awards: 44.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 639, as revised on November 3, 1992 (57 FR 49650).

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 639.11, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications that meet both of these absolute priorities:

(a) Provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

(b) Provide service to persons who have difficulty in gaining access to legal representation.

Supplementary Information: The authorizing statute for the program permits the Secretary to pay up to 90 percent of the cost of projects at law schools (20 U.S.C. 1134u(a)). The program regulations permit the Secretary to establish annually a lower maximum Federal share (34 CFR 639.40(a)(2)). The Secretary sets the maximum Federal share at 65 percent for grants to establish programs, 35 percent for grants to continue programs, and 50 percent for grants to expand programs of clinical experience for FY 1993.

For Applications or Information Contact: Barbara J. Harvey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-7863. Individuals who are hearing-impaired may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1134u-1134w.

Dated: December 18, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-31221 Filed 12-23-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Finding of No Significant Impact, Consolidated Incineration Facility at the Savannah River Site, Aiken, SC

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The U.S. Department of Energy (DOE) has prepared an environmental assessment (EA)(DOE/EA-0400) for the proposed construction and operation of the Consolidated Incineration Facility (CIF) at the Savannah River Site (SRS), Aiken, South Carolina. The CIF would be for the treatment of hazardous, low-level radioactive, and mixed (both hazardous and radioactive) wastes from SRS. Incineration would reduce the volume and toxicity of these wastes. Construction and operation of the CIF would be subject to the conditions of permits issued by the South Carolina Department of Health and Environmental Control and the U.S. Environmental Protection Agency (EPA).

Based on the analysis presented in the EA, DOE issued a proposed finding of no significant impact (FONSI) on June 24, 1992. During the week of June 28, 1992, copies of the EA and proposed FONSI were distributed to the Governors of Georgia and South Carolina, local officials, interested organizations, news media, and DOE Public Reading rooms. Copies of the proposed FONSI were also sent to more than 1000 individuals and organizations on the SRS mailing list. The proposed FONSI was published in the **Federal Register** on July 1, 1992, beginning a 30-day public review period (57 FR 29299). In response to several requests, the public review period was extended to August 31, 1992; notification of this

extension was published in the **Federal Register** on July 31, 1992 (57 FR 33946).

In total, 14 Federal and State agencies, 11 organizations, and 35 individuals submitted comments during the review period. Those comments and DOE's responses are presented in appendix B to the EA, "Response to Public Comments." A summary of the public comments and DOE responses are included in the Attachment to this finding. DOE has added a reference in the EA to recent solid waste forecast information, and has deleted a reference to "applicable dioxin emission standards" because none exist. DOE has also added a calculus of the risk to the exposed population from potential accidents using a risk factor of $5x10^4$ latent cancer fatalities per person-rem. None of these updates constitutes a material change to the EA's analysis.

After considering all the comments received as a result of the public review process, DOE has concluded that no information has been made available that alters DOE's proposed FONSI. Therefore, DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). Accordingly, DOE is issuing this FONSI.

ADDRESSES: Persons requesting additional information regarding the CIF project or wishing a copy of the EA should contact: Stephen Wright, Director, Environmental and Laboratory Programs Division, Savannah River Field Office, U.S. Department of Energy, P.O. Box A, Aiken, South Carolina 29802, Telephone: (803) 725–3957.

FOR FURTHER INFORMATION CONTACT: Persons requesting further information regarding DOE's general NEPA procedures should contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Proposed Action

The SRS CIF is part of the strategy for the treatment, storage, and disposal of SRS waste as described in the Final Environmental Impact Statement (EIS), Waste Management Activities for Groundwater Protection, Savannah River Plant, Aiken, South Carolina (DOE/EIS–0120), December, 1987. The proposed action involves the construction and operation of the CIF for (1) the treatment of hazardous and mixed waste at SRS to enable SRS to comply with Resource Conservation and Recovery Act (RCRA) requirements for the treatment of hazardous and mixed wastes before land disposal; (2) volume reduction of low-level radioactive waste before disposal; and (3) the elimination of current SRS shipments of burnable hazardous waste for offsite treatment and disposal. The CIF is scheduled to start operating in 1995.

The types of waste proposed to be incinerated in the CIF include hazardous waste and low-level radioactive and mixed waste (waste that is or is presumed to be both hazardous and radioactive). These wastes are primarily generated during normal SRS operations and consist of solids, sludges, and organic and aqueous liquids; examples are oils, paints, solids, solvents, rags, clothing, and floor cleaning equipment. The CIF would not receive or treat waste containing dioxins or polychlorinated biphenyls.

The CIF would have a rotary kiln combustion chamber and a secondary combustion chamber (SCC) to ensure 99.99 percent destruction of all hazardous constituents. The CIF offgas treatment system would ensure that the SCC offgas meets all applicable regulatory requirements before discharge to the environment. At designed operating capacities, approximately 30 pounds per hour of residual ash would result from CIF operation and would be solidified for disposal at SRS in a proposed RCRA-permitted facility.

The CIF would be located near the center of the SRS in the 200–H Chemical Separations Area. The facility would consist of a new concrete and steel open building of approximately 31,000 square feet with processing facilities, control rooms, waste receiving areas, and waste handling areas. The CIF process building would have an exhaust stack to handle offgas from the incinerator and exhaust air from the building ventilation system. The offgas would be cooled in a quench vessel and would enter a free jet scrubber to remove particulates and acid gases before entering a cyclone separator to remove entrained moisture. The offgas would also pass through a mist eliminator and a series of high-efficiency particulate air (HEPA) filters to remove fine particulates (including radioactive particulates) before the emissions would be monitored and released through the stack. The building ventilation system would provide exhaust hoods around each of the kiln seals for the collection and HEPA filtration of any emissions.

Alternatives Considered

Under the No Action alternative, the CIF would not be constructed or operated. Untreated waste would continue to accumulate at SRS. This alternative would result in the continued offsite shipment of waste, and would impair SRS's ability to comply with RCRA land ban requirements.

An offsite treatment and disposal alternative would involve shipping burnable hazardous waste to offsite incinerators (DOE or commercial) and shipping mixed wastes to offsite DOE mixed waste incinerators (commercial capacity not available). However, sufficient capacity would not be available at DOE incinerators for the volume of SRS mixed waste. Even if capacity were available, the alternative would involve the costs and environmental impacts associated with any necessary modifications to other facilities and offsite transportation of hazardous and mixed wastes. It would also make SRS operations more dependent upon the availability of other facilities.

Another alternative would be to construct two incinerators at SRS—one incinerator to burn miscellaneous solid and liquid hazardous wastes, with a subsequent upgrade to handle radioactive waste, and the second to burn only organic liquid waste from the Defense Waste Processing Facility. This alternative would allow the use of different technologies and potentially lower direct treatment costs. However, this alternative would substantially duplicate facilities and increase costs. The duplication of equipment would also result in higher actual and potential emissions, e.g., from duplicate tank vents. Moreover, whether a single incinerator or two separate incinerators were used, either alternative would have to meet the same destruction and removal efficiency requirements and other offgas quality standards.

Other treatment methods for hazardous wastes (i.e., solidification, biological treatment, and chemical treatment) were considered as alternatives. A separate treatment method could be used for each waste stream, possibly increasing the efficiency of the treatment of each waste. If separate waste treatment processes were chosen, facility costs would be higher because of the need to construct, operate, and maintain multiple facilities. Such multiple facilities would increase land usage and fugitive emissions due to the possible duplication of equipment. No other treatment method compares favorably

with incineration, which EPA has identified (40 part 268) as the Best Demonstrated Available Technology for treatment of many SRS hazardous wastes.

Environmental Considerations

The CIF would occupy 3 acres of previously developed land adjacent to H-Area, a location that has been subjected to construction impacts since the early 1950s. The peak construction workforce of 175 workers would have negligible effects on area land use, housing, and social services. No significant impacts on ecological resources are expected due to the minimal habitat quality of the proposed CIF site. No floodplains, wetlands, or archaeological or historical sites exist on the proposed site. Air quality impacts from construction activities are expected to be negligible. Once operational, the facility would employ 39 people. It is anticipated that many of these positions would be filled by personnel already employed at SRS.

Liquid wastes from CIF processing operations would be collected in permitted storage tanks before being treated for disposal in a SRS RCRA-permitted vault disposal unit. Other liquid wastes from CIF operations, such as sanitary wastewater, would be analyzed and treated, as appropriate, before being discharged in compliance with the current National Pollutant Discharge Elimination System permit.

Air emissions from the CIF would be controlled to levels significantly below the applicable EPA Prevention of Significant Deterioration emission requirements. Therefore, the CIF would not be expected to significantly change regional ambient air quality. The CIF would be designed and operated to achieve a 99.99 percent minimum destruction and removal efficiency of principal organic hazardous constituents, as required by South Carolina air pollution control and hazardous waste management regulations for the wastes proposed to be incinerated at the CIF. Trial burn and periodic emission monitoring programs required by State and Federal regulations would be undertaken to confirm that CIF air emissions are within state and Federal standards.

The National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations (40 CFR part 61) limit radionuclide emissions from DOE facilities to amounts that would cause no more than a 10 mrem per year effective dose-equivalent to any member of the public. A NESHAP permit for CIF construction has been obtained from EPA. Total annual radionuclide releases to the atmosphere from the proposed CIF routine operations are estimated to be 1200 curies. The maximum effective dose to an individual at the SRS boundary from such releases is projected to be 0.003 mrem per year. The maximum combined dose from the existing operation of SRS and the CIF would remain at approximately 0.5 mrem to the maximally exposed individual at the plant boundary. This is well below the NESHAP limit. The EA also indicates that dioxin emissions from the CIF would be small; emissions from a similar incinerator in New York were less than the New York State standard.

Routine CIF processing activities would result in only minor radiological and chemical exposures to onsite operating personnel. Engineering and administrative controls would ensure that the annual effective dose equivalent to any SRS worker would not exceed the DOE limit of 5 rem (DOE Order 5480.11) and that any chemical exposure would be within safe limits.

Potential accidents associated with CIF operations are addressed in the EA and a safety assessment document for the facility. Facility accidents addressed in the EA include natural phenomena (wind or tornado), earthquakes, fire, nuclear criticality, explosion in the incinerator chamber(s), benzene release, and human-caused external events. Onsite transportation accidents were also evaluated. Using a relation between radiation dose and consequent health effects of 4×10^{-4} latent cancer fatalities per person-rem, none of these accidents would be expected to produce any radiation-induced fatal cancers in the exposed population, either onsite or offsite.[1]

For carcinogens such as benzene, EPA requires that risk be reduced to below 10^{-4} (i.e., 1 excess cancer death in ten thousand people) in exposed receptors. In the case of benzene release under maximum reasonably foreseeable accident conditions involving a spill of the benzene inventory into the secondary containment system, the estimated carcinogenic risk is 6×10^{-7} for the maximally exposed offsite individual, 4×10^{-6} for an individual at the spill site, and 2×10^{-8} for an onsite individual 5 miles from the spill, when computed using the EPA rise assessment methodology. Smaller but potentially more frequent releases could occur from minor spills or process upsets. However, the analysis determined that no chronic exposure hazards would exist for onsite or offsite populations, and that the probability of an accident that could produce a harmful exposure would be very low.

Determination

Based on the information and the analyses in the EA for the CIF as well as the review of the information received from the commenters, the proposed action does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of NEPA. Therefore, DOE has determined that preparation of an EIS is not required.

Issued at Washington, D.C., this 18th day of December 1992.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

Attachment—Summary of Comments Received on the Proposed FONSI

All of the comments received by DOE during the comment period from July 1 to August 31, 1992, and the corresponding responses are included in "Response to Public Comments," appendix B to the EA. The following summary briefly describes the nine major categories of comments and DOE's responses. Readers interested in specific comments or DOE's detailed responses should refer to appendix B.

A. Appropriate Level of NEPA Review

Many comments urged DOE to prepare an EIS for the CIF. One reason provided was that DOE's regulations for implementing NEPA (57 FR 15122, April 24, 1992) specify an EIS as the appropriate level of review for an incinerator such as the CIF, unless there are extraordinary circumstances that affect the significance of the proposal's impacts. The preparation of an EIS for the incinerator at DOE's Gaseous Diffusion Plant at Oak Ridge, Tennessee, was cited as precedent for requiring an EIS.

Under the DOE NEPA guidelines (52 FR 47662, December 15, 1987) that were in effect at the time DOE decided to prepare an EA for the CIF, there were no specific requirements regarding the type of NEPA documentation that should be prepared for the siting, construction, and operation of incinerators. Accordingly, DOE Headquarters held extensive discussions with SRS staff concerning the proposed CIF and its potential impacts. DOE also reviewed the characteristics and NEPA document level determination of other DOE incinerators. Based on this review, DOE concluded that it was not clear that

[1] Even if a factor of 5×10^{-4} were used (Nuclear Regulatory Commission, 56 FR 23360, May 21, 1991), none of these accidents would be expected to produce any radiation-induced fatal cancers in the exposed population, either onsite or offsite.

significant environmental impacts would result from the proposed action. Therefore, in accordance with applicable provisions of the Council on Environmental Quality's (CEQ) regulations implementing NEPA, DOE determined that it was appropriate to prepare an EA for the proposed CIF as the basis for determining whether to prepare an EIS or to issue a FONSI.

On May 26, 1992, a new DOE NEPA rule took effect which provides that an EIS will normally be prepared for proposals involving the siting, construction, and operation of incinerators such as the CIF. The rule provides that DOE need not prepare an EIS for incinerator proposals in cases where "there are extraordinary circumstances related to the specific proposal that may affect the significance of the environmental effects of the proposal" (57 FR at 15151, to be codified at 10 CFR 1021.400(c)).

The EA demonstrates that this specific incinerator proposal (i.e., the CIF) presents the type of extraordinary circumstances referred to in the rule. The conclusion that the CIF would not significantly affect the environment results from a combination of favorable factors: A site located on previously developed land and remote from any population centers; a facility design that incorporates many features to avoid or mitigate harmful emissions during normal and abnormal operations; and effective treatment of incinerator residuals, Consistent with the procedure CEQ provides when an agency believes a FONSi is warranted for a proposed action for which it would normally required an EIS (40 CFR 1501.4(e)(2)(i)), DOE made the Proposed FONSI available for public review for 30 days (extended to 60 days) before making its final determination regarding preparation of an EIS.

In any case, the preamble to DOE's new NEPA rule indicates that DOE intended to apply the rule to NEPA documents that had been initiated before the rule's effective date "to the fullest extent practicable" (57 FR at 15123). The new DOE NEPA rule took effect only one month before DOE issued the EA on the proposed CIF. It would not have been practicable to prepare an EIS on the proposed CIF where the EA was substantially complete at the time the new DOE NEPA rule took effect, and where the EA indicates that the proposed CIF would not significantly affect the environment.

In 1982, DOE issued an EIS for an incinerator that was subsequently built at DOE's Oak Ridge, Tennessee, Gaseous Diffusion Plant. The DOE incinerator at Oak Ridge differs from the proposed CIF in several respects, including: Type quantity, and source of waste feeds; design; stack emissions; aqueous effluents; and surrounding environment, including distance to land with public access. These differences preclude a conclusion that an EIS should be prepared for the proposed CIF only because an EIS was prepared for the Oak Ridge incinerator. DOE's decision to prepare an EA to serve as the basis for a decision of whether to prepare an EIS for the proposed CIF is in accordance with DOE regulations and policy and CEQ regulations.

B. Future SRS Waste Management Needs

Some commenters pointed to the significant change in the world political environment and questioned the continued mission of DOE to produce nuclear materials, the need for a waste treatment facility like the CIF at SRS, and the accuracy of DOE's prediction of the quantity of SRS generated wastes to be incinerated.

The mission of SRS is to serve the national interest of the United States by safely producing nuclear materials while protecting employee and public health and the environment. DOE recognizes that in recent years there has been a significant change in the world's political environment. In 1990, the Secretary of Energy chartered a Complex Reconfiguration Committee to reexamine the future activities of DOE. While the Secretary can encourage the evolution of the Department towards a new set of missions, in part developed by independent committees, task forces, and other citizen recommendations, any change to DOE's missions must come from the President and Congress. Although DOE has initiated an effort to determine in the long term how SRS capabilities can best be employed to serve the national interest, that effort has not yet reached the point of formulating any specific proposals for consideration by Congress and the President.

It is expected that environmental restoration and waste management activities will continue over time to increase at SRS. These activities will likely include decontamination and decommissioning (D&D) of SRS facilities. The CIF would provide SRS with the ability to treat many combustible hazardous and mixed wastes generated onsite, including those that might be generated from facility D&D. If nuclear facilities at SRS become part of a D&D program, waste volumes would increase. Many of the "job control" wastes generated by D&D activities (contaminated protective clothing and equipment, rags, etc.) would be identical to wastes currently generated from SRS operations and maintenance activities. Even though the waste volumes have changed since the initial sizing of the CIF, a re-evaluation of the waste volumes indicates that the sizing of the CIF is justified utilizing only SRS waste. Reference to this re-evaluation has been added to section 2.1 of the EA.

Should any mission change at SRS involve hazardous constituents different from those listed in the CIF Resource Conservation and Recovery Act (RCRA) permits, SRS would be required to request a permit modification from either the South Carolina Department of Health and Environmental Control (SCDHEC) or the U.S. Environmental Protection Agency (EPA), which in turn would require a public comment period. In that event, DOE would also determine if any further NEPA documentation would be required.

C. Waste Stream/Offsite Wastes (See Also Section D, Waste Management)

Some commenters either predicted the CIF would be used to treat offsite wastes or inquired if offsite wastes would be incinerated. Commenters stated that, by failing to consider the potential impacts from transport and treatment of offsite wastes, the EA illegally segments the action.

Construction and operation of the CIF is being regulated by SCDHEC and by EPA under RCRA. SCDHEC and EPA have issued to DOE permits setting conditions for constructing and operating the CIF. Condition IIIE4.D.1 of the SCDHEC permit states that no offsite wastes shall be accepted or managed at the CIF. SRS is prohibited from incinerating offsite wastes without first applying for and receiving a RCRA permit modification. This would require an additional public comment period. Further, management of offsite wastes at the CIF would have to be addressed through appropriate NEPA documentation.

SRS has fully characterized the existing waste inventory that would be incinerated under existing permit conditions. Condition III.E5.C.1.c of the SCDHEC permit requires that nine months prior to the trial burn, DOE would submit for review and comment an updated report of hazardous waste feed volumes and composition, based upon SRS waste only. That report would include:

1. The annual volume of SRS generated hazardous waste to be incinerated.

2. The necessary incinerator waste feed rates for the existing and annually-generated hazardous wastes.

3. An explanation of how the necessary waste feed rates for the incinerator were determined.

4. Any changes in waste character from the description of waste to be incinerated given in Volume X of the RCRA permit application.

A final waste feed assessment report addressing SCDHEC comments would be completed and submitted for SCDHEC approval prior to the trial burn. DOE does not expect that the final Waste Feed Assessment Report will depart materially from the waste fees considered in the EA.

D. Waste Management

Several commenters criticized the choice of incineration as a waste treatment process, some arguing that the byproduct wastes could not be disposed of adequately. Some suggested that waste generation be minimized instead of incinerating the waste.

EPA regulations impose stringent conditions on the treatment, storage, and disposal of hazardous and mixed wastes. DOE and EPA have signed a Federal Facilities Compliance Agreement (FFCA) which commits SRS to the construction and operation of several proposed facilities, including the CIF, for treating certain mixed wastes.

Currently, mixed wastes are stored at SRS and hazardous wastes are being shipped offsite for RCRA-specified treatment. As discussed in Section E (Technologies) below, incineration is the RCRA-specified treatment for many of SRS's waste streams, as well as the best demonstrated available technology (BDAT) for many others. Incineration would render these wastes less hazardous to public health and the environment and would reduce the volume of wastes requiring permitted disposal.

Secondary waste streams from the CIF must be managed in accordance with RCRA regulations. Ash from the kiln would be cement-stabilized and disposed of in onsite vaults. The CIF liquid waste, fly-ash, and blowdown would be stabilized to meet the regulatory requirements for disposal. In the commercial and nuclear industry sectors, a majority of solidification systems successfully utilize hydraulic cement to encapsulate ash materials and other waste contaminants. RCRA Land Disposal Restrictions (LDR) regulations (40 CFR part 268) require that such a solidified waste form meet applicable treatment standards before it can be disposed of. A CIF solidified waste form would not be disposed of unless it can meet EPA and DOE requirements for disposal.

The onsite disposal vaults that would receive solidified CIF wastes would be permitted by EPA and SCDHEC. A RCRA Part B permit application for these vaults was submitted to SCDHEC in 1988. NEPA review of these vaults is included in the 1987 SRS Waste Management Activities for Groundwater Protection EIS (DOE/EIS–0120). The Record of Decision was published in March 1988.

SRS has implemented a waste minimization program, which reduces the waste at the generation site. The EA states on page 1–2 that "a variety of techniques are being explored and utilized to minimize waste, and a number of techniques have been implemented, resulting in reduced generation rate for various SRS waste streams. Among these techniques are process and raw material changes, waste segregation (separate waste into toxic and non-toxic fractions), recycling and reuse of waste, and employee awareness training, one or more minimization techniques such as those listed above are selected and implemented, and progress toward established goals is reported an monitored. Significant waste reductions have already been realized at SRS."

E. Technologies

Some commenters questioned the choice of incineration instead of other treatment methods as the proposed means of treating SRS wastes. Other commenters questioned whether DOE was following EPA's LDR regulations and BDAT requirements for the wastes to be treated.

The CIF is the preferred alternative to other waste treatment alternatives addressed in the EA because:

—Incineration is the RCRA-specified treatment for the hazardous portion of certain mixed wastes generated at SRS.

—Treatment onsite would avoid having to transport SRS waste to another site for treatment and/or disposal.

The EPA LDR regulations establish treatment standards for wastes that must be met before final disposal (e.g., a landfill). There are two types of treatment standards:

—A technology standards requires that a waste must be treated by a specific industrial treatment process that has been shown to render the waste safe for disposal.

—A concentration standard sets the maximum allowable concentration of a hazardous constituent in a waste at the time of disposal. While any process may be legally used to achieve a concentration standard, the best results are usually achieved by application of BDAT. EPA sets a concentration standard after determining which commercially-available industrial process achieves the lowest concentration of a hazardous constituents in a waste. Usually the process that provides the lowest concentration is designated the BDAT. In many cases the concentration standard may only be achievable by use of the BDAT.

The CIF would meet the EPA LDR treatment standards for all 230 waste codes that it would be permitted to treat. The incineration portion of the CIF process is the specified treatment process (technology standard) or the BDAT (where concentration standards are used) for 80% of these waste codes. The stabilization and neutralization portions of the CIF process would meet the EPA LDR treatment standards for the remaining 20% by being the specified treatment (technology standard) or by achieving the required concentrations (concentration standards).

Additionally, incineration is the technology that achieves the greatest volume reduction benefit for the large amount of low-level radioactive waste (LLW) generated at SRS. Incineration achieves a significantly higher volume reduction than other technologies such as supercompaction. Another advantage of the CIF process over other volume reduction methods for LLW is that the resultant ash from the CIF would be solidified, which would immobilize the radioactive contaminants to prevent leaching. Supercompaction or other volume reducing methods other than incineration do not immobilize the radioactive contaminants.

Although incineration is the RCRA-specified treatment technology for certain SRS mixed wastes, the EA considered alternatives to the CIF system that were proven technologies and commercially available. Technologies, such as chemical or biological treatment, were also considered in section 2.4 of the EA.

F. Health

Many commenters questioned DOE's procedures for estimating the health effects for workers and the general public that might result from operation of the CIF.

DOE used EPA risk assessment guidance, exposure models, and air dispersion models to assess whether operation of the CIF would pose significant risks to human health and the environment. DOE agrees with the

recent findings of EPA's Science Advisory Board that recommends risk-based decisionmaking. Based on the very conservative assumptions (that tend to overestimate risks) built into the EPA models and risk equations, additional risk assessments were not considered.

EPA's proposed rules for controlling toxic emissions from hazardous waste incinerators are explained in detail in the April 27, 1990, **Federal Register** (55 FR 17862). DOE used this conservative risk-based approach to establish risk-based air concentrations and to set CIF emissions limits. These risk-based emission limits are incorporated into the SCDHEC RCRA permit. (Also see section H, below.)

The risk-based emission limits incorporate many protective assumptions to ensure that the most sensitive subpopulations (such as the very young and the very old) would be protected during periods of maximum exposure. The aggregate carcinogenic risk to the maximally exposed individual (MEI) is established at 1 in 100,000 (1×10^{-5}). For toxic compounds that do not exhibit carcinogenic effects, CIF air emissions are allowed to contribute only 25 percent of the dose that would exceed a health-based threshold. The results of these analyses indicate that potential emissions from CIF would be below risk-based emission limits.

DOE has also used several EPA approved air dispersion models to assess potential impacts on human health and the environment from emissions of heavy metals and radionuclides. DOE used the TSCREEN (Toxic Screening) model for heavy metals and organics, and the Industrial Source Complex Short-Term (ISCST) model for heavy metals and hydrogen chloride (HC1). For radionuclides, DOE used the CAP–88 model, which considers doses from all major pathways including inhalation and food chain effects.

G. Destruction & Removal Efficiency

Some commenters questioned the ability of the CIF to achieve and maintain a 99.99% destruction and removal efficiency (DRE).

After testing the capabilities of existing hazardous waste incinerators, the EPA has established strict emission and performance standards for hazardous waste incinerators (40 CFR part 264, subpart O). EPA has determined that these standards can be reliably and consistently achieved and are protective of human health and the environment.

The EPA standards require that no more than 0.01 percent of the principal organic hazardous constituents (POHC)—the organic chemicals used to test an incinerator—can be emitted unburned from the facility stack. This equates to a minimum DRE of 99.99 percent. Trial burns of hazardous waste incinerators have repeatedly demonstrated that the 99.99 percent DRE performance standard can be readily met. In fact, DREs of 99.999 percent or better are frequently achieved, such as the Kodak incinerator in Rochester, New York.

A trial burn tests a hazardous waste incinerator's ability to achieve performance standards—including DRE—under conditions that would make achieving such standards difficult. It should be noted that there are well recognized operating methods which can increase DRE. For example, DRE generally increases as combustion temperature is raised; DRE is also improved the longer waste remains at the combustion temperature. If the trial burn is successful in demonstrating a DRE of 99.99 percent or greater, the permitting authority will generally establish the range of operating conditions used in the test as the boundary conditions for routine operation.

Similarly, test chemicals selected for use in a trial burn are those that are as difficult or more difficult to destroy than those the incinerator would be permitted to process. EPA has ranked RCRA regulated hazardous constituents according to their resistance to incineration. This ranking is used to select test chemicals more resistant than the wastes to be incinerated. In summary, trial burn conditions are designed to be more severe than routine operating conditions. This ensures that routine operations can comply with the DRE standard.

The EPA approved CIF trial burn plan can be found in Section D–5 of the CIF RCRA permit application. The trial burn plan details the composition of the test feeds, the operating conditions to be tested, and the final permitted operating conditions that may be modified based on results of the trial burn. The trial burn plan also discusses operating data collection methods, instrument calibration procedures, sample collection and analysis protocols, chain-of-custody procedures, reporting requirements, and quality assurance procedures that would be utilized to ensure that the trial burn is properly conducted and accurately reflects the CIF's ability to reliably achieve the EPA performance standards.

To minimize emission increases that could result from process upsets, (e.g., a low temperature excursion in the rotary kiln or a reduction of scrubbing liquid flow to the free jet scrubber), equipment failures, or operator error, various measures will be employed to reduce the probability of occurrence and impact of such incidents. For example, engineering features, such as a waste feed cutoff system, will be built into the CIF. This system will automatically and instantaneously shut off waste feeds when the computer control system detects the existence of a problem condition (e.g., combustion temperature deviates outside of EPA and SCDHEC approved limits). Also, installed spare equipment and backup systems will be used in critical areas of the process (e.g., high efficiency particulate air (HEPA) filters) to immediately replace malfunctioning equipment to promote continued, efficient operation.

Carbon monoxide (CO) and oxygen concentrations in the stack gas would also be continuously monitored in the CIF. EPA has determined as a basis for proposed incinerator regulations (55 FR 17862, April 27, 1990) that a stack CO concentration of less than 100 parts per million by volume (ppmv) indicates that a high combustion efficiency in the incinerator is being achieved. This in turn indicates that POHC destruction is being maintained above 99.99% and the formation of products of incomplete combustion (PIC) are being limited to insignificant levels. The CIF would be equipped with an automatic waste feed cutoff interlock that would terminate waste combustion if the CO monitor indication exceeds 100 ppmv, which would prevent a significant emission of unburned organic waste constituents and PICs.

Administrative programs—including daily testing of key parts of the waste feed cutoff system—would also minimize the likelihood of an upset or malfunction. Comprehensive training of CIF operating personnel, performed and documented in accordance with DOE and regulatory requirements, is also expected to minimize the chance of operator error.

H. Stack Emissions

Many commenters were concerned about DOE's estimates of the relative destruction of the various waste components and the composition and dispersion of stack emissions.

As stated in Section G, DOE expects the trial burn to verify that the CIF would achieve a DRE of at least 99.99 percent of POHCs. Sampling would be conducted during the trial burn to quantify and qualify POHCs. Details

concerning selection of POHCs and their destruction during the trial burn are found in the CIF RCRA Part B Permit Application.

The approved SCDHEC air pollution control permit for the CIF specifies the maximum allowable feed quantity and maximum allowable emission of each hazardous metal and organic compound that the CIF may incinerate. The metals emission calculations are provided in appendix 2 of the same document.

The dispersion of these emissions in the atmosphere was modeled utilizing the EPA TSCREEN model and the ISCST model. The resulting ambient air concentration for each hazardous constituent was then compared to the regulatory standard established in SCDHEC Air Regulation 61–62.5 Standard No. 8, Toxic Air Pollutants.

In all cases, the concentrations were found to be less than the SCDHEC standards. Estimated emissions of hazardous metals and hydrochloric acid from the CIF were also determined to be well below EPA limits for control of heavy metal and hydrochloric acid emissions (risk-based limits found in 55 FR 17862, April 27, 1990). The CIF Clean Air Act and RCRA permit applications document the calculations that predict pollutant generation and apply emission control factors to arrive at predicted emissions removal.

When wastes containing both combustible materials (e.g., organic compounds, paper) and noncombustible materials (e.g., metals and radionuclides) are incinerated, the combustible fraction would be destroyed and its associated toxicity reduced or eliminated. The CIF has been designed to ensure that the amounts of non-combustible hazardous material entering the facility are strictly controlled. Also, pollution control devices (scrubbers, filters, etc.) have been designed to prevent constituents from being emitted from the stack in harmful quantities. Prior to combustion in the CIF, all waste material would undergo a thorough analysis to ensure that non-combustible metals and radionuclides do not exceed pre-established limits.

Most metals and radionuclides processed through the CIF would remain in the residual ash or be captured by the offgas scrubber and HEPA filters. The ash material, scrubber residues, and HEPA filter elements containing the captured metals and radionuclides would be treated and disposed of in accordance with RCRA requirements.

Metals and radionuclides not captured in the ash, offgas scrubbers, or HEPA filters would be emitted from the stack. However, as described above, DOE used SCDHEC air regulations, air dispersion models, and EPA risk-based limits so that the CIF's emissions would meet all public health and environmental requirements for air emissions. It should be noted that CIF emissions are estimated to be below permit requirements for all contaminants.

I. Emission Monitoring

Several commenters were concerned about the monitoring of the emissions from the CIF, raising questions about the compounds that would be monitored, techniques that would be used, and the frequency of monitoring.

SRS operates a network of approximately 30 radiological air quality monitoring stations, some of which are located off site. Additionally, the States of South Carolina and Georgia operate nonradiological monitoring stations in the vicinity of SRS. Although air dispersion modeling has indicated that no measurable air quality impacts would result from the CIF, these stations would be available to detect certain ambient air quality changes that could result from operation of the CIF, other facilities at SRS, and private industry in the vicinity of SRS. A comprehensive discussion of the SRS environmental monitoring program may be found in the 1991 Savannah River Site Environmental Report (document number WSRC–TR–92–186).

CIF monitoring programs required by State and Federal regulations (Section 4.5.1 of the EA) refer to the initial trial burn testing and periodic follow-up testing required by the facility's operating permits and provisions of RCRA and the Clean Air Act. These testing program would initially demonstrate and periodically confirm continued compliance with the RCRA performance standard of 99.99% minimum DRE and emission limits for metals and other pollutants. The proposed CIF would have continuous stack monitoring systems for measuring radionuclide emissions and concentrations of CO and oxygen. CO and oxygen would be used as an indicator of combustion efficiency. High combustion efficiency minimizes emissions of unburned organic compounds and PICs.

The emission of other pollutants such as metals, nitrogen oxides, and uncombusted organic compounds would be measured periodically to ensure compliance with regulatory performance standards and CIF permit limitations. The scope and frequency of the periodic sampling and analysis of CIF stack emissions are being developed and would be conditions of the CIF operating permits issued by EPA and SCDHEC. The methods to be used for the continuous and periodic stack sampling and analysis are those approved by EPA and required by Clean Air Act regulations (40 CFR parts 60–61) and RCRA regulations (40 CFR part 264). The methods are further described in the following CIF permit documents: Application for a SCDHEC Air Pollution Control permit (Revision 1; July 1991). Application for a NESHAP Permit (September 1988), and Application for a Hazardous Waste Part B Permit (Revision 4; July 1991).

DOE would continue to review the advancement of continuous emission monitoring systems for organic and metal constituents. In the interim, the emission of these pollutants would be measured periodically to ensure compliance with regulatory performance standards and CIF permit limitations. The scope and frequency of the periodic sampling and analysis of CIF stack emissions are being developed and would be conditions of the CIF operating permits to be issued by EPA and SCDHEC.

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BILLING CODE 6450–01–M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board

Date and Time: Friday, January 8, 1993, 8:30 a.m.–4 p.m.

Place: Ritz-Carlton Tysons Corner, Salon I, 1700 Tysons Boulevard, McLean, VA 22102, (703) 506–4300

Contact: Dr. Jake W. Stewart, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092

Purpose: The Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

Friday, January 8, 1993, 8:30 a.m.–4 p.m.

8:30 a.m. Call to Order and Opening Remarks
9:00 a.m. Education Task Force Update
9:15 a.m. Radioactive Waste Management Task Force Report and Discussion
12:15 p.m. Public Comment on Radioactive Waste Task Force Report (5 minute rule)

2:15 p.m. Space Nuclear Propulsion Task Force Update
2:30 p.m. The DOE National Laboratories Report: Follow-up
2:45 p.m. Task Force on Economic Analysis and Modeling Related to Energy—Update
3:30 p.m. Public Comment—(5 minute rule)
4 p.m. Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.S.T.) Thursday, December 28, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (E.S.T.) Thursday, December 28, 1992, to assure that it is considered by Board members during the meeting.

Minutes: A transcript and minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

Issued: Washington, DC, on: December 18, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-31312 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Decision To Sign Two Billing Credits Contracts

AGENCY: Bonnevillle Power Administration (BPA), DOE.

ACTION: Notice of decision. BPA file No.: BCR-11. BPA announces its decision to sign two billing credit contracts for two generations projects.

SUMMARY: BPA, pursuant to its Billings Credits Policy, as amended August 30, 1984, (49 FR 34395), and its Billing Credit Solicitation July 1990, has negotiated with two public bodies for two proposed generation projects.

The Wynoochee Hydroelectric project will be a 10.6 megawatt (MW) hydroelectric generating facility constructed at the existing Wynoochee Dam located on the Wynoochee River in western Washington. The Army Corps of Engineers own the Wynoochee Dam, and the City of Aberdeen, Washington, operates it. Tacoma will own the new hydroelectric facilities constructed at the site. (Notice of Intent, 57 FR 48793) The Wynoochee Hydroelectric facility is colicensed to the City of Aberdeen, Washington, and the City of Tacoma, Washington, under the Federal Energy Regulatory Commission License number 6842.

The Eugene Water and Electric Board's Steam Plant project consists of installing a 2.6 MW back pressure turbine generator to an existing facility. The existing facility includes two condensing turbines fueled by 40,000 units of hog fuel annually to produce steam. The new turbine would require an additional 4,000 units of hog fuel annually, backed with No. 6 fuel oil. (Notice of Intent, 57 FR 22212; May 27, 1992)

The Administrative Record, available for public review, contains background on BPA's Billing Credits Policy, the need for billing credit resources, a summary of the Billing Credit Solicitation, a summary of the evaluation process for proposals, and environmental considerations. The Administrative Record includes two Appendices: Appendix A—Billing Credit Solicitation, Appendix B—Issue Resolution Log. The Administrative Record also includes three Addendums.

Addedum One of the Draft Administrative Record—Customer System Efficiency Improvements (CSEI) Contract Development, and Amendment A to Addendum One provide specific information about CSEI projects and how billing credits are determined. These were previously released for public review (57 FR 1161; January 10, 1992) and (57 FR 9250; March 27, 1992).

Addendum Two of the Administrative Record—Contract Development Conservation Proposals, provides specific information about the conservation projects and how billing credits are determined for these projects. This Addendum was previously released for public review (57 FR 9250; March 17, 1992).

The release of Addendum Three—Generation Proposals Contract Development was announced on May 27, 1992, in 57 FR 22212.

BPA has signed other generation billing credit contracts, in addition to the contracts described in this Notice. These prior contract signings were addressed in previous released **Federal Register** notices. (57 FR 33501; July 29, 1992) and (57 FR 48792; October 28, 1992)

Responsible Official: Paul Norman, Billing Credits Project Manager, is the official responsible for BPA's Billing Credit contracts, the Administrative Record, and Addenda.

DATES: Payment or credits will not be made or granted until 90 days after the date of a **Federal Register** Notice announcing that a contract has been signed.

FOR FURTHER INFORMATION CONTACT: For a copy of a specific generation billing credit contract(s), or the Administrative Record, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503-230-3478 in Portland, or toll-free 800-622-4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, Room 253, Portland, Oregon 97208, 503-230-4551.

Mr. Robert Laffel, Eugene District Manager, Federal Building, Room 206, 211 East Seventh Street, Eugene, Oregon 97410, 503-465-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-2518.

Ms. Carol S. Fleischman, Spokane District Manager, Room 112 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-3279.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington 98807, 509-662-4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Avenue North, Suite 400, Seattle, Washington 98109, 206-553-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 508-522-6226.

Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, Room 450, Boise, Idaho 83702, 208-334-9137.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is a self-financing power marketing agency with the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 et seq., to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power

to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839c(b)(1) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839a(1) and (d). The Northwest Power Act requires BPA to grant credits to BPA's customers on their power bills for electric power resources that reduce the Administrator's obligation to acquire resources to meet BPA's electric power requirements. 16 U.S.C. 830d(h). Billing credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for billing credits include conservation and generation. Specific requirements for resources and the amount BPA can pay for these resources are outlined in the Northwest Power Act and BPA's Billing Credits Policy.

BPA's Billing Credits Policy interprets the billing credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting billing credits.

BPA's 1990 Resource Program focused on choosing near-term resource actions for Fiscal Years 1992 and 1993. Subsequent to receiving comments from customers on the draft 1990 Resource Program that suggested BPA use billing credits, BPA developed a solicitation requesting proposals for billing credits resources. Billing credits provide a way to shift some of the risk for resource development to utilities and others, which was an objective of the chosen strategy in the 1990 Resource Program. In July 1990, BPA released the solicitation. It proposed to test the billing credit approach for acquiring energy resources by granting 50 average MW of billing credits to eligible resources. BPA's objective in the test was to ensure that the billing credit mechanism is workable for BPA customers.

II. Billing Credit Proposals

The proposals submitted in response to the Billing Credit Solicitation were divided into two groups, conservation and generation resources. Because CSEI projects reduce electric power consumption or losses by increasing efficiency of electric use, production, transmission, or distribution, they were considered a subset of conservation measures, but covered in separate contracts. Conservation and CSEI projects are not discussed, in detail, in this Notice.

III. Description of the Generation Proposals

Seventeen generation proposals representing 11 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Proposed generation projects included hydroelectric, biomass, and cogeneration projects to produce electricity. Five of the 17 proposals were withdrawn during the evaluation process and three proposals were rejected for not meeting the threshold criteria. BPA has released previous **Federal Register** Notices announcing the signing of generation projects.

BPA intends to sign a contract with these public bodies for the following generation projects:

1. City of Tacoma, Washington—Wynoochee Hydroelectric Project—a hydroelectric project.
2. Eugene Water and Electric Board—Steam Plant Project—a back pressure turbine project.

These projects meet the qualifications for billing credits, and BPA has completed its obligations under NEPA. The customers will comply with all applicable environmental requirements in the construction of the projects and during the projects' operation phase.

IV. Methodology for Determining Generation Billing Credits

The payment for billing credits (BC) for each customer will be calculated and paid monthly as follows:

Both the City of Tacoma, Washington, and EWEB are Computed Requirements Customers. Under both Power Sales Contracts with BPA, the monthly BC will be the lesser of the Adjusted Alternative Cost or Net Cost multiplied by the monthly amounts of Assured Firm Energy of each BC Resource, less the amount of Priority Firm Rate dollars each customer avoids paying as a result of the BC Resource. There will be no true-up; each customer is required to maintain the Assured Energy Capability for each BC Resource, as it must do for all firm resources under the Power Sales Contract.

V. Materials Available

Copies of the Billing Credits Policy, the Administrative Record, its Appendices, Addendum One, Amendment A to Addendum One, Addendum Two, and Addendum Three are available from BPA's Public Involvement office. Refer to the "For Further Information Contract" section of this notice.

Issued in Portland, Oregon, on December 4, 1992.

Steve Hickok,

Executive Assistant Administrator.

[FR Doc. 92-31307 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF93-33-000, et al]

Monsanto Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Monsanto Company

[Docket No. QF93-33-000]

December 16, 1992.

On December 10, 1992, Monsanto Company (Applicant), of P.O. Box 12830, Pensacola, Florida 32575, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Cantonment, Florida, and will consist of a combustion turbine generator and heat recovery boilers. Steam recovered from the facility will be used in an existing chemical complex for process uses. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 100 MW. The facility is scheduled to begin in January, 1993.

Comment date: January 25, 1993 in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER93-53-000]

December 16, 1992.

Take notice that on December 11, 1992, Arizona Public Service Company tendered for filing an amendment to its filing in Docket No. ER93-53-000.

A copy of this filing has been served on the Arizona Corporation Commission and the City of Williams.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER93-265-000]

December 16, 1992.

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated December 7, 1992, tendered for filing a Second Supplemental Agreement to the interconnection agreement between Indiana Municipal Power Agency (IMPA) and LG&E.

The Second Supplemental Agreement modifies the Interconnection Agreement such that it references the Participation Agreement or the Unit Power Purchase Agreement, whichever is in effect. The interconnection agreement between IMPA and LG&E currently references only the Unit Power Purchase Agreement. This filing affects Schedule G, Backup Power, Schedule H, Transmission Service and Schedule J, Replacement Energy.

A copy of the filing was served upon the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. The United Illuminating Company

[Docket No. ER91-680-000]

December 16, 1992.

Take notice that on December 4, 1992, The United Illuminating Company (UI) filed an extension of a short-term, coordination transaction involving the exchange of capacity entitlements with Connecticut Municipal Electric Energy Cooperative (CMEEC). Under the original agreement, dated September 20, 1991, service was to end December 31, 1992. Service will be extended until terminated by either party. No other terms of the original agreement have been changed.

Copies of the filing were mailed to CMEEC.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Union Electric Company

[Docket No. ER93-267-000]

December 16, 1992.

Taken notice that on December 8, 1992, tendered for filing Third Revised Exhibit A to its Wholesale Electric Service Agreements with the Cities of California, Centralia, Clarksville, Farmington, Fredericktown, Hannibal, Kahoka, Kirkwood, Linneus, Marceline, Owensville, Perry, Rolla, and St. James, Missouri; Citizens Electric Corporation; Sho-Me Power, and West Point Municipal Utility System, providing for a decrease in the rates charged pursuant to said Agreements.

Said decrease in rates follows a decrease in the Company's Missouri retail rates and is being applied to the Company's wholesale customer's settlement rates pursuant to Section 2 of said Wholesale Electric Service Agreements.

Copies of the filing were served upon the public utility's jurisdictional customers, the Missouri Public Service Commission and the Iowa Utilities Board.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER93-167-000]

December 16, 1992.

Take notice that on November 30, 1992, Puget Sound Power & Light Company (Puget) tendered for filing additional information to its filing of November 17, 1992 in this docket.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Electric Company

[Docket No. ER93-261-000]

December 16, 1992.

Take notice that on December 7, 1992, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) an initial rate schedule for transmission services to Penntech Papers, Inc. (Penntech). Under a Transmission Services Agreement between Penelec and Penntech, Penelec would provide Penntech with firm transmission services for a period of 20 years for the delivery of energy from Penntech's proposed qualifying cogeneration facility to be located in Johnstonburg, Pennsylvania to Niagara Mohawk Power Corporation. Penelec has requested a waiver of § 35.3(a) of the Commission's Regulations (18 CFR 35.3(a)) to the extent required to permit the proposed rates to go into effect not later than February 1, 1993.

Copies of the filing have been served on the Pennsylvania Public Utility Commission and Penntech.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company; Massachusetts Electric Company; The Narragansett Electric Company

[Docket No. ER93-255-000]

December 16, 1992.

Take notice that New England Power Company, Massachusetts Electric Company and The Narragansett Electric Company jointly tendered for filing various interconnection Agreements on December 4, 1992.

The purpose of the agreements is to permit various utilities, municipal light departments and non-utility generators to interconnect with the companies' transmission and distribution.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Alabama Power Company

[Docket No. ER93-253-000]

December 16, 1992.

Take notice that on December 3, 1992, Alabama Power Company (Alabama) tendered for filing revisions to a Service Agreement between Alabama and Black Warrior Electric Membership Corporation.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER93-242-000]

December 16, 1992.

Take notice that on December 9, 1992, Florida Power & Light Company (FP&L) tendered for filing an amendment to its November 27, 1992 filing in the above-referenced docket.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Company

[Docket No. ER93-105-000]

December 16, 1992.

Take notice that on December 3, 1992, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR an Amendment 1 to its filing of the Transmission Service Agreement (WWP Contract No. WP-PS92-4846) between the Washington Water Power Company and PacifiCorp. WWP states that this Amendment 1 provides additional information on the Newport 115/60 kV Substation use of facilities charges. This information was requested by Commission staff.

A copy of the filing was served upon PacifiCorp.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER92-826-000]

Errata

(December 16, 1992)

Notice of filing

(December 10, 1992)

Take notice that the Notice of Filing issued on December 10, 1992, under Docket No. ER93-235-000 should have been issued under Docket No. ER92-826-000.

13. The Detroit Edison Company

[Docket No. ER93-91-000]

December 16, 1992.

Take notice that The Detroit Edison Company (Detroit Edison) on December 11, 1992, tendered for filing revised statements supporting its rate application in the above-referenced proceedings. The revised statements reflect cost of service normalization of income taxes required by the Commission's Order No. 144 and a modification in overall rate of return.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Green Mountain Power Corporation

[Docket No. ER93-272-000]

December 16, 1992.

Take notice that on December 9, 1992, Green Mountain Power Corporation (GMP) tendered for filing a letter dated December 9, 1992 notifying the Federal Energy Regulatory Commission that it would continue to provide service pursuant to an Option Power Sales Agreement and Amended Distribution Service Agreement (the Agreement) between GMP and the Vermont Department of Public Service which was filed previously in Docket No. ER90-151-000. GMP stated that the Agreement expired in accordance with its terms on October 31, 1992, and requested waiver of the Commission's regulations in order to permit the notification of GMP's intention to continue to provide service thereafter in accordance with the rates, terms and conditions of the Agreement to be effective as of that date.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Pennsylvania Power & Light Company

[Docket No. ER92-642-000]

December 16, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on December 9, 1992, tendered for filing an Amended executed Power Supply Agreement dated as of December 1, 1992 (Amended 1992 PSA), between PP&L and UGI Utilities, Inc. (UGI). PP&L states that the Amended 1992 PSA sets forth the terms and conditions under which PP&L will sell power to UGI. When approved, the Amended 1992 PSA will supersede and replace the November 22, 1977, Power Supply Agreement between PP&L and UGI, as supplemented to date, and designated by the Commission as PP&L Rate Schedule No. 68.

PP&L requests an effective date for the Amended 1992 PSA of March 1, 1993. PP&L states that a copy of its filing was served on UGI and the Pennsylvania Public Utility Commission.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Maine Public Service Company

[Docket No. ER92-725-000]

December 16, 1992.

Take notice that on December 9, 1992, Maine Public Service Company (Maine Public) tendered an amended filing of a proposed initial rate schedule, originally filed July 14, 1992, pertaining to the short term, non-firm sale of capacity and energy. The rate will be negotiated between Maine Public and the purchaser at the time of the transaction, but not to exceed Maine Public's cost of service for the units available for sale. A Service Agreement will be executed prior to the time of a purchase by a particular utility and submitted to the Commission. An amended filing is being made to include modifications suggested by the Commission Staff.

Additionally, Maine Public has included with the amended filing an executed Service Agreement with Bangor Hydro-Electric Company.

Maine Public has requested that the rate schedule become effective no later than November 18, 1992, corresponding with the commencement of the initial transaction under said rate schedule, and requests waiver of the Commission's regulations regarding filing.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Pennsylvania Power & Light Company

[Docket No. ER93-268-000]

December 16, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on December 8, 1992, tendered for filing an Offer of Settlement (Offer), dated December 8, 1992, between PP&L and Atlantic City Electric Company (Atlantic City).

PP&L states that a copy of its filing was served on Atlantic City, the Pennsylvania Public Utility Commission and the State of New Jersey Board of Regulatory Commissioners.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER93-250-000]

December 16, 1992.

Take notice that Entergy Services, Inc. (Entergy Services) as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively the "Entergy Operating Companies") on December 2, 1992 tendered for filing the Second Transmission Service Agreement (Second TSA) between Entergy Service and Entergy Power, Inc. (Entergy Power). The Second TSA sets out the terms and conditions of firm and non-firm transmission service under the Entergy Operating Companies' Transmission Service Tariff, which has been filed in Docket No. ER91-569-002, for the sale of base load capacity and reserve unit capacity to Northeast Texas Electric Cooperative, Inc.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Tampa Electric Company

[Docket No. ER93-264-000]

December 16, 1992.

Take notice that on December 7, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement that amends an existing Letter of Commitment providing for the sale by Tampa Electric to the Kissimmee Utility Authority (Kissimmee) of capacity and energy from Tampa Electric's Big Bend Station. The tendered Letter Agreement extends the term of the commitment and reduces the level of committee reserved capacity.

Tampa Electric proposes an effective date of January 1, 1993, for the Letter Agreement, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Iowa Electric Light and Power Company

[Docket No. ER93-262-000]

December 16, 1992.

Take notice that Iowa Electric Light and Power Company (Iowa Electric), on December 7, 1992, tendered for filing an Interconnection Agreement dated November 25, 1992, between Central Illinois Public Service Company (CIPS) and Iowa Electric.

The Interconnection Agreement provides for coordinated interconnection operation including the

interchange of Power and Energy under Emergency Service, Economy Energy, Short Term Power Non-Displacement, and Limited Term Power Schedules. The proposed effective date for the Agreement is the closing date of the sale agreements between the parties and Union Electric.

Copies of this filing have been sent to Central Illinois Public Service Company, the Iowa State Utilities Board, and the Illinois Commerce Commission.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. The United Illuminating Company

[Docket No. ER93-258-000]

December 16, 1992.

Take notice that on December 4, 1992, the United Illuminating Company (UI) tendered for filing a rate schedule for a coordination transaction involving the sale of capacity entitlements to Connecticut Municipal Electric Energy Cooperative (CMEEC). The rate schedule corresponds to a letter agreement, dated December 1, 1992, between UI and CMEEC. The commencement date for service under the agreement is January 1, 1993. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's Bridgeport Harbor Station Unit #2.

UI also filed an extension of a short-term, coordination transaction involving the exchange of capacity entitlements with Connecticut Municipal Electric Energy Cooperative (CMEEC). Under the original agreement, dated December 3, 1991, service was to end December 31, 1992. Service will be extended until the above mentioned new agreement becomes effective. No other terms of the original agreement have been changed.

Copies of the filing were mailed to CMEEC.

Comment date: December 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power & Light Company

[Docket No. ER93-271-000]

December 17, 1992.

Take notice that on December 9, 1992, Florida Power & Light Company (FPL) filed its Agreement to Provide Coordination Transmission Service and Additional Transmission Service between Florida Power & Light Company and the Utility Board of the City of Key West, Florida.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Company

[Docket No. ER93-270-000]

December 17, 1992.

Take notice that on December 9, 1992, Arizona Public Service Company (APS or Company) tendered for filing revised Exhibit I and a proposed extension to the Lease Power Agreement between APS and Electrical District No. 3 (District) (APS-FPC Rate Schedule No. 12).

No change to the current rate or revenue levels presently on file with the Commission is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on the District and the Arizona Corporation Commission.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER93-052-000]

December 17, 1992.

Take notice that on December 9, 1992, PacifiCorp tendered for filing an Amendment to its filing under FERC Docket No. ER93-052-000.

The Amended filing is in response to Commission's Staff's questions under FERC Docket No. ER93-052-000.

Copies of this filing were supplied to Nevada Power Company, Southern California Edison Company, The Department of Water Resources of the State of California, the Public Utility Commission of Oregon, the Public Service Commission of Nevada and the Public Utilities Commission of the State of California.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Public Service Electric and Gas Company

[Docket No. ER93-781-000]

December 17, 1992.

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on December 11, 1992, tendered for filing a supplement to the agreement filed in this docket on August 14, 1992 between PSE&G and Orange & Rockland (O&R).

In response to discussions with Commission Staff, PSE&G hereby submits the First Supplemental Agreement by and between Public Service Electric and Gas Company and Orange and Rockland Utilities, Inc. which establishes ceiling and floor caps on annual revenues from the sale of capacity and associated energy, eliminates the contribution of Cost of Work in Progress (CWIP) in the development of the "Up-to" Capacity Charge, and revises the calculation used in determining losses.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Appalachian Power Company

[Docket Nos. EL89-53-005, ER90-132-005 and ER90-133-005]

December 17, 1992.

Take notice that on December 4, 1992, Appalachian Power Company tendered for filing its compliance report in the above-referenced dockets.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Montaup Electric Company

[Docket No. ER92-91-001]

December 17, 1992.

Take notice that on November 30, 1992, Montaup Electric Company tendered for filing its compliance filing in this docket pursuant to the Commission's order issued on September 30, 1992 in this docket.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. Midwest Power Company

[Docket No. ER92-694-000]

December 17, 1992.

Take notice that on November 4, 1992, Midwest Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Portland General Electric Company

[Docket No. ER93-273-000]

December 17, 1992.

Take notice that Portland General Electric Company (PGE), on December 11, 1992, tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology. This filing includes the revised Appendix 1 to the Residential Purchase and Sale Agreement.

The Bonneville Power Administration determined the ASC rate for PGE to be 33.26 mills/kWh, effective April 15, 1992. PGE does not dispute the determination.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Company

[Docket No. ER93-130-000]

December 17, 1992.

Take notice that New England Power Company (NEP), on December 11, 1992, amended its filing in this docket. The amendment substitutes an initial service agreement with the Village of Johnson, Vermont, Electric Department for an amendment to a service agreement.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. Commonwealth Edison Company

[Docket No. ER92-354-001]

December 17, 1992.

Take notice that on December 9, 1992, Commonwealth Edison Company (Commonwealth) tendered for filing its compliance refund report pursuant to the Commission's order issued November 10, 1992.

Copies of the tendered filing have been served by Commonwealth upon the New England Power Company, the Commission Staff and the Massachusetts Department of Public Utilities.

Comment date: December 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31220 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-32-000]

Colorado Interstate Gas Co.; GRI Charge Filing

December 18, 1992.

Take notice that on December 15, 1992, Colorado Interstate Gas Company ("CIG") submitted for filing an original and six copies of tariff sheets pursuant to Commission Order issued August 28, 1992, in Docket No. RP92-133-000 (Phase I), reflecting an 8/Mcf cent Gas Research Institute ("GRI") D1 demand charge, and a continuation of the existing 1.51 cent/Mcf GRI commodity charge effective as of January 1, 1993.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before December 28, 1992. 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. 92-31260 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-111-000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

December 18, 1992.

Take notice that on December 15, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP93-111-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate 14 existing delivery taps that were originally installed under section 311(a) of the Natural Gas Policy Act of 1978, under the certificate issued to El Paso in Docket No. CP82-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that El Paso constructed a number of delivery taps exclusively for use in the transportation of natural gas under subpart B of part 284 of the Commission's Regulations. El Paso states that the regulatory restriction placed on the facilities prohibits El Paso's shippers from utilizing the delivery taps under any transportation arrangement other than a Subpart B transportation arrangement. El Paso states that it now requests authorization to operate, under the Natural Gas Act, the delivery tap facilities listed below.

Delivery point	Location
Borger Carbon Black Delivery Point No. 1.	Hutchinson County, Texas
Amoco Wasson Plant Delivery Point.	Yoakum County, Texas
Intersearch Pet Foods/Border Steel Delivery Point.	El Paso County, Texas
Cochran County Delivery Point.	Cochran County, Texas
Hartley County Delivery Point.	Moore County, Texas
Sun Compressor Fuel Tap Delivery Point.	Coke County, Texas
Cabot Walton Delivery Point.	Winkler County, Texas
Phillips Dune Booster Fuel Tap Delivery Point.	Crane County, Texas
Phillips Credo Booster Station Fuel Supply Delivery Point.	Glasscock County, Texas
Lamb County Delivery Point.	Lamb County, Texas
Kai Farms Tap Delivery Point.	Pima County, Arizona
Bruce Foods Meter Station Delivery Point.	El Paso County, Texas
El Paso Refining (Endevco) Delivery Point.	El Paso County, Texas
Phillips Lusk Plant Delivery Point.	Lea County, New Mexico

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31262 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-47-000]

Questar Pipeline Co.; Tariff Filing

December 16, 1992.

Take notice that Questar Pipeline Company, on December 11, 1992, tendered for filing and acceptance to be effective January 10, 1993, First Revised Sheet No. 63 to Original Volume No. 1-A of its FERC Gas Tariff.

Questar states that this filing revises § 13.1 of the General Terms and Conditions to Original Volume No. 1-A of its FERC Gas Tariff by removing tariff language that requires a shipper to provide documentation demonstrating a need for capacity at the requested receipt and delivery points.

Questar states further that this filing was served upon its transportation customers and the Wyoming and Utah public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 23, 1992. 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. 92-31217 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-68-000]

Questar Pipeline Co.; Request Under Blanket Authorization

December 16, 1992.

Take notice that on November 18, 1992, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93-68-000, an application pursuant to 18 CFR 157.205 and 157.216(b) requesting authority to abandon, by removal, one 3/4-inch sales tap/delivery point and appurtenant facilities on Questar's transmission pipeline system previously used to deliver natural gas to Mountain Fuel Supply Company (Mountain Fuel), under Rate Schedules CD-1 and X-33 of Questar's FERC Gas Tariff, for ultimate delivery by Mountain Fuel to the Husky truck stop located near Rock Springs, Wyoming. Such request was made under the blanket certificate authorization issued in Questar's Docket No. CP82-491-000 pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the prior-notice request, which is on file with the Commission and open to public inspection.

Questar proposes to abandon the 3/4-inch sales tap/delivery point in response to a request of Mountain Fuel, Questar's local distribution company affiliate and the only customer receiving service through the subject tap. Questar explains that the total investment associated with the facilities proposed to be abandoned is $886. It is stated that because Mountain Fuel is currently providing natural-gas service to the Husky truck stop via an adjacent sales tap-delivery point, service to Mountain Fuel, and ultimately Husky, will not be abandoned by the operation of this prior-notice request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31218 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-47-001]

Questar Pipeline Co.; Tariff Filing

December 18, 1992.

Take notice that Questar Pipeline Company, on December 16, 1992, tendered for filing and acceptance to be effective January 10, 1993, First Revised Sheet No. 63A to Original Volume No. 1-A of its FERC Gas Tariff.

Questar states that this filing revises § 13.1 of the General Terms and Conditions to Original Volume No. 1-A of its FERC Gas Tariff by removing tariff language that requires a shipper to provide documentation demonstrating a need for capacity at the requested receipt and delivery points.

Questar states further that this filing was served upon its transportation customers and the Wyoming and Utah public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31259 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-100-000]

Texas Eastern Transmission Corp.; Application

December 16, 1992.

Take notice that on December 8, 1992, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP93-100-000, an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to upgrade and rebuild six existing gas turbine/compressor units at the Lilly, Grantville and Bechtelsville, Pennsylvania compressor stations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that it would upgrade and rebuild six early-model Westinghouse Electric W-52 regenerative cycle gas turbine compressor engines. Texas Eastern further states that it would retire, scrap, and replace essentially all existing components of the old turbines. Texas Eastern states that it would upgrade one unit at the Lilly, Pennsylvania station in 1994, and upgrade the second unit at Lilly in 1995. In 1996, Texas Eastern states, it would upgrade two units at the Grantville station. The last two units located at the Bechtelsville station, would be upgraded in 1997.

Texas Eastern also states that it requests authorization to capitalize the costs associated with this upgrade program. Texas Eastern asserts that

those existing turbine units provide capacity used by Texas Eastern to render service to its system-wide customers and accordingly, Texas Eastern proposes to include the costs to rebuild these turbines in rate base and to recover such costs from its system-wide customers. It is asserted that the total cost of the proposal is $22,300,000.

In addition, Texas Eastern claims that the proposed turbine upgrade program has been determined to be the most effective means of reducing non-routine maintenance expenses, reducing exposure to flow disruptions due to turbine/compressor outage, and reducing fuel cost through improved efficiency. It is stated that the existing gas turbine units were installed in 1956 and 1957 and that various parts have exceeded the manufacturer's recommended service life and are requiring more frequent down time for inspections and maintenance. In addition, maximum horsepower outputs have decreased by approximately 10% to 20%, and thermal efficiencies have dropped 22% or lower.

Texas Eastern expects that the proposed turbine upgrade program would reduce maintenance costs and increase reliability. Further, reliability of the units as a result of age and deterioration of major components is also a primary concern, because the potential for major turbine failure increases. Finally, Texas Eastern states, inventories of older, more difficult to locate parts could be reduced because there would be fewer older units in operation. Replacement parts for the rebuilt units would be more readily available, which would also reduce inventory requirements.

It is also claimed that the proposed upgrading of these units would also increase thermal efficiencies from the present 22% level to 25.5% and that the increased efficiency alone would reduce fuel consumption by 13% and would generate fuel savings of approximately 2,420,000 Mcf over the ten year period from 1995 to 2005. Also, additional savings would be obtained by increasing the use factor of the upgraded units and proportionately decreasing usage of less efficient units.

Texas Eastern estimates that the cost to replace the turbines, as compared to the proposed upgrade program, would be in the order of magnitude of $60,000,000.

Texas Eastern states that, subject to Commission approval, Texas Eastern proposes to capitalize the costs associated with the turbine upgrade program. Texas Eastern asserts that this four-year $22,300,000 project represents a substantial improvement in the reliability and efficiency of Texas Eastern's system. The modification would upgrade major items of depreciable property using the latest standards in gas turbine technology. Essentially all major components of the turbine units, including the turbine casings and rotors will be newly constructed. For these reasons and due to the similarly large dollar amount involved in such a major renovation, Texas Eastern states that capitalization is the appropriate accounting treatment for the project.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 6, 1993, 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 abandonment 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 Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31219 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-104-000]

U-T Offshore System; Application

December 16, 1992.

Take notice that on December 9, 1992, U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93-104-000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of firm and associated interruptible overrun transportation services provided to Trunkline Gas Company (Trunkline) under U-TOS' Rate Schedules T-8 and I, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Service for Trunkline was certificated in Docket No. CP76-118 by order issued June 12, 1978. 3 FERC ¶ 61,232 (1978). Trunkline's currently effective contract demand under the T-8 Rate Schedule is 121,856 Mcf per day, and its overrun quantity under Rate Schedule I is 178,800 Mcf per day.

U-TOS states that it was notified by Trunkline by letter dated June 2, 1992 of Trunkline's intent to terminate the service agreement underlying the T-8 Rate Schedule at the end of the primary term thereof, *i.e.*, on June 14, 1993. Accordingly, U-TOS requests an order permitting and approving abandonment of Rate Schedule T-8 and related Rate Schedule I (interruptible overrun) service effective on June 14, 1993.

U-TOS states that it does not propose to abandon any facilities in the instant application. U-TOS states that no service to any of its other customers will be affected by the abandonment authorization requested herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (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 petition 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 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 on this application if no petition to intervene is filed within the time required therein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition 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 U-TOS to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31214 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-105-000]

U-T Offshore System; Application

December 16, 1992.

Take notice that on December 9, 1992, U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93-105-000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of firm and associated interruptible overrun transportation services provided to Natural Gas Pipeline Company of America (Natural) under U-TOS' Rate Schedules T-1 and I, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Service for Natural was certificated in Docket No. CP76-118 by order issued January 13, 1977. Texas Gas Transmission Corporation, *et al.* 57 FPC 199 (1977). Natural's currently effective contract demand under the T-1 Rate Schedule is 113,700 Mcf per day, and its overrun quantity under Rate Schedule I is 167,944 Mcf per day.

U-TOS states that it was notified by Natural by letter dated April 3, 1992 of Natural's intent to terminate the service agreement underlying the T-1 Rate Schedule at the end of the primary term thereof, *i.e.*, on May 22, 1993. Accordingly, U-TOS requests an order permitting and approving abandonment of Rate Schedule T-1 and related Rate Schedule I (interruptible overrun) service effective on May 22, 1993.

U-TOS states that it does not propose to abandon any facilities in the instant application. U-TOS states that no service to any of its other customers will be affected by the abandonment authorization requested herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (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 petition 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 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 on this application if no petition to intervene is filed within the time required therein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition 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 U-TOS to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31215 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-107-000]

U-T Offshore System; Application

December 16, 1992.

Take notice that on December 11, 1992, U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93-107-000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of firm and associated interruptible overrun transportation services provided to Columbia Gas Transmission Corporation (Columbia) under U-TOS' Rate Schedules T-4 and I, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Service for Columbia was certificated in Docket No. CP76-118 by order issued June 12, 1978. 3 FERC ¶61,232 (1978). Columbia's currently effective contract demand under the T-4 Rate Schedule is 30,987 Mcf per day, and its overrun quantity under Rate Schedule I is 89,505 Mcf per day.

U-TOS states that it was notified by Columbia by letter dated June 24, 1992 of Columbia's intent to terminate the service agreement underlying the T-4 Rate Schedule at the end of the primary term thereof, *i.e.*, on June 29, 1993. Accordingly, U-TOS requests an order permitting and approving abandonment of Rate Schedule T-4 and related Rate Schedule I (interruptible overrun) service effective on June 29, 1993.

U-TOS states that it does not propose to abandon any facilities in the instant application. U-TOS states that no service to any of its other customers will be affected by the abandonment authorization requested herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (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 petition 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 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 on this application if no petition to intervene is filed within the time required therein, if the Commission on its own review of

the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition 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 U-TOS to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31216 Filed 12-23-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 92-155-NG]

Canadian Hydrocarbons Marketing (U.S.) Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Canadian Hydrocarbons Marketing (U.S.) Inc. (Canadian Hydrocarbons) authorization to import up to 72 Bcf of Canadian natural gas over a two-year term beginning on April 1, 1993, the day after Canadian Hydrocarbons' current authorization expires, through March 31, 1995.

A copy of this order is available for inspection and copying in the office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, Except Federal holidays.

Issued in Washington, DC, December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31317 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-34-NG]

Fulton Cogeneration Associates; Order Amending Conditional Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that the conditional authorization previously granted to Fulton Cogeneration Associates (Fulton) in DOE/FE Opinion and Order No. 492, issued March 28, 1991, to import up to 55 Bcf of Canadian natural gas through October 31, 2005, has been finalized. Fulton may now import its remaining contract volumes at Grand Island, New York, for transportation by the proposed Empire State Pipeline to its 47.4-megawatt cogeneration facility in Fulton, New York.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31313 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-109-NG]

Kamine/Besicorp Beaver Falls, L.P.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that on December 3, 1992, it issued an order granting authorization to Kamine/Besicorp Beaver Falls, L.P. to import from Canada near Waddington, New York, up to 16,100 Mcf of natural gas per day through November 1, 2008. The gas will be used to fuel a 79.9-megawatt cogeneration facility being built in Croghan, New York.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31315 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-90-NG]

Kamine/Besicorp Syracuse L.P.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Kamine/Besicorp Syracuse L.P. authorization to import at Chippawa, Ontario/Grand Island, New York, up to 16,300 Mcf per day, and up to a total of 89.2 Bcf of Canadian natural gas over a period of 15 years, beginning on the date of commercial operation of a cogeneration facility to be constructed in the Town of Geddes, New York.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 15, 1992.

Charles F. Vacek

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31316 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-139-NG]

The Montana Power Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Montana Power Company (MPC) blanket authorization to import up to 10 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after February 6, 1993, the date on which MPC's current blanket import authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 18, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31314 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed the Week of December 4 Through December 11, 1992

During the week of December 4 through December 11, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 18, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 4 through December 11, 1992]

Date	Name and location of applicant	Case No.	Type of submission
12/7/92	Texaco/Bancfirst, Ponca City, OK	RR321-123	Request for Modification/Recession in the Texaco refund procedures. If granted: The October 1, 1992 Decision and Order (Case No. RF321-4152) issued to Bancfirst regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/7/82	Larry's Clark Station	RF342-313
12/7/82	Gonzales Canal Station	RF346-14
4/15/92	Jayson's Bottled Gas	RF340-111
6/30/92	Dresser Industries, Inc	RF225-11
12/4/92 thru 12/11/92.	Texaco Oil Refund Applications Received.	RF321-19488 thru RF321-19502
12/4/92 thru 12/11/92.	Gulf Oil Refund Applications Received.	RF300-20747 thru RF300-20763
12/4/92 thru 12/11/92.	Atlantic Richfield Applications Received.	RF304-13426 thru RF304-13438
12/4/92 thru 12/11/92.	Crude Oil Refund Applications Received.	RF272-93980 thru RF272-93995
12/8/92	Holly Sugar Corporation	RF347-1
12/11/92	Ball Corp	RF347-2

[FR Doc. 92-31309 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders the Week of November 16 Through November 20, 1992

During the week of November 16 through November 20, 1992, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within 10 days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order 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.

Dated: December 18, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Chapman Oil, Brewer, Maine, Lee-0037 Reporting Requirements

Chapman Oil, (Chapman) filed an Application for Exception from the provision of filing Form EIA-782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Chapman to be exempted from filing Form EIA-782B. On November 18, 1992, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

[FR Doc. 92-31311 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders the Week of November 30 through December 4, 1992

During the week of November 30 through December 4, 1992, the decisions and orders summarized below were issued with respect to applications for 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.

Refund Applications

Enron Corp./Northern Illinois Gas Co., 12/2/93 RF340-103

The DOE issued a Decision and Order concerning an Application for Refund

that the Northern Illinois Gas Company (NI-Gas) has submitted in the Enron Corporation special refund proceeding. The DOE found that NI–Gas was a public utility subject to the jurisdiction of the Illinois Commerce Commission. Accordingly, the DOE granted NI-Gas a refund of 3.8 million dollars based on its total purchases from Enron, and required NI-Gas to pass through the refund to its customers on a dollar for dollar basis.

Gerald A. Barrett, Inc., 12/2/92 FR272–25932, RD272–25932

The DOE issued a Decision and Order granting an Application for Refund filed by Gerald A. Barrett, Inc., a producer and transporter of bituminous concrete materials, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $23,370.

The Gillette Company, 12/4/92, RF272–25506, RD272–25506

The DOE issued a Decision and Order granting an Application for Refund filed by The Gillette Company, a manufacturer of shaving products, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States cited increases in Gillette's sales and profits and the maintenance of a substantial share of the blade and razor market during the refund period. In addition, the States submitted an affidavit of an economist stating that, because of the relative elasticities of supply and demand, nearly every industry passes through a portion of its cost increases. The DOE determined that the evidence offered by the States was insufficient to rebut the end-user presumption of injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $22,204.

Texaco Inc./Dental's Automotive Center, 12/3/92, RF321–5260

The DOE issued a Decision and Order denying an Application for Refund filed by Denial's Automotive Center (Dental's) in the Texaco Inc., special refund proceeding. The DOE found that because Dental's did not purchase product from Texaco, but sold Texaco product on consignment for an independent distributor of Texaco products, Dental's was not injured by any Texaco overcharges and consequently was not entitled to a refund in the Texaco proceeding.

Texaco Inc./Mike M. Marcello, Inc., 12/2/92, RF321–3843

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding on behalf of Mike M. Marcello, Inc. (Marcello) (Case No. RF321–3843), a distributor of Texaco products. In a Proposed Decision and Order (PDO) issued on May 15, 1992, the DOE tentatively determined that the Marcello application should be denied. That proposed determination was based on a finding that, after filing 17 unauthorized Texaco refund applications that were later dismissed, Marcello had again filed two unauthorized Texaco refund applications using the names of individuals who had no knowledge of the submissions. These actions were contrary to the stated requirements of the Texaco proceeding and the explicit instructions given to Mr. Frank Marcello, the owner of the refinery, by this Office after the first 17 applications were dismissed. On June 11, 1992, Mr. Marcello's attorney filed a two-page Statement of Objections, on his behalf, contesting the denial of the Marcello submission. However, this submission failed to provide evidence to disprove the findings of the PDO or any reasonable explanation regarding Marcello's filing of the unauthorized applications. It remained clear that neither Marcello, Inc. nor the individuals named in those applications were entitled to the refunds which would have resulted had those applications been granted. Accordingly, the DOE found that it lacked confidence in the veracity of any statements by Mr. Marcello and it would be inappropriate to grant him a refund. The application filed on behalf of Marcello, Inc. was therefore 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.

Alliance City Schools et al.	RF272–87408	12/03/92
Atlantic Richfield Company/Acme Markets, Inc. et al.	RF304–13210	11/30/92
Atlantic Richfield Company/Ashdale Arco et al.	RF304–6032	11/30/92
Atlantic Richfield Company/G&G Oil Company of Indiana, Inc.	RR304–48	12/04/92
Atlantic Richfield Company/J. C. Hayes, Inc. et al.	RF304–3107	12/04/92
Atlantic Richfield Company/Vassar's Arco et al.	RF304–11905	12/03/92
Beaver River Central School et al.	RF272–87301	12/03/92
Bellwood School District 88 et al.	RF272–79004	11/30/92
Benson County, North Dakota.	RC272–165	12/03/92
Chesterfield County	RC272–164	12/03/92
Cimarron-Ensign Schools et al.	RF272–87600	12/04/92
City of Davis et al ...	RF272–83007	11/30/92
Collier County School District et al.	RF272–87241	12/03/92
Enron Corp./Economy Gas Company.	RF340–64	12/02/92
Enron Corp./Pester Refining Company.	RF340–105	12/03/92
Enron Corp./Sooner Petroleum Company.	RF340–118	12/02/92
Fall Creek School District et al.	RF272–87204	12/03/92
Gulf Oil Corporation/Eastern Express, Inc.	RF300–16113	12/03/92
Gulf Oil Corporation/Ne-Glow Gas Company et al.	RF300–16523	11/30/92
Kindred Public School District No. 2 et al.	RF272–83327	12/02/92
M.S.D. Wabash County Schools et al.	RF272–80808	11/30/92
McDowell County et al.	RF272–87803	12/03/92
Murphy Oil Corp./Handy Shops, Inc. et al.	RF309–1199	11/30/92
Okeechobee County et al.	RF272–87707	12/02/92
Reese Construction Company.	RF272–26458	12/02/92
Shell Oil Company/Holmes Oil Corporation.	RF315–10213	12/04/92
Texaco Inc./Arthur P. Gumz Farms et al.	RF321–15175	12/03/92
Texaco Inc./Halprin's Texaco.	RF321–14837	12/04/92
Fletcher Oil Company.	RF321–14855	.....

Indian Oil Company	RF321-16490	.....
A.G. Lipfert Oil	RF321-16529	.....
Texaco Inc./Hancock Texaco #1 et al.	RF321-16450	12/03/92
Texaco Inc./Ron's Texaco et al.	RF321-9920	12/03/92
Texaco Inc./United Service Center.	RF321-19478	12/02/92

Dimissals

The following submissions were dismissed:

Name	Case No.
Bill Ellis	RF304-13378
Brookhaven Public Schools System.	RF272-86844
Deese's Gulf	RR300-168
Halliburton Gas Company	RF321-17072
Hayes Gulf	RR300-150
Homewood School District	RF272-79171
Munday Pontiac	RF272-93661
Orange County Transit District ...	RF272-56525
Richard F. Wilcoxon	RR300-139
Rios Gulf	RR300-148
Sell's Texaco #3	RF321-16703
Slew's Texaco	RF321-17355
St. John's University	RF272-93330
TNT Red Star Express, Inc.	RF272-92778
Unified School Dist. # 379	RF272-86780
Variety Pic-Up, Inc.	RF309-1220
West Texaco	RF321-15251
West Texaco Service Station	RF321-17344

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: December 18, 1992.

George B. Brezany,

Director, Office of Hearings and Appeals.

[FR Doc. 92-31310 Filed 12-23-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4547-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 07, 1992 Through December 11, 1992 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-FHW-D40127-PA

Rating EC1, Danville-Riverside Bridge Replacement Project, Construction and Road Construction, across the North Branch of the Susquehanna River, Funding and Section 404 Permit, Appalachian Mountain, Montour and Northumberland Counties, PA.

Summary: EPA expressed concern for potential impacts to the historic resources of the area. EPA suggests that the Federal Highway Administration resolve all outstanding concerns with the Advisory Council on Historic Preservation and the Pennsylvania Historic and Museum Commission.

ERP No. D-FHW-E40747-NC

Rating EC2, US 13/NC-24 Transportation Project, Improvements, from All American Freeway to I-95 at the existing US-13 Interchange, Funding, COE Section 10 and 404 Permits, City of Fayetteville, Cumberland County, NC.

Summary: EPA's concerns were primarily related to destruction of wetlands. Additional information was requested to further quantify projected wetland losses in terms of functional values. EPA requested that other alternatives that could reduce wetland destruction be investigated.

ERP No. D-NPS-K61123-HI

Rating LO, Kaloko-Honokohau National Historical Park, Management and Development, General Management Plan, Implementation, Hawaii County, HI.

Summary: EPA had no objections with the DEIS but requested additional information in the FEIS on wastewater disposal impacts, nonpoint source water pollution, and pollution prevention efforts at the historical park.

ERP No. D-USA-E11030-AL

Rating EC2, Redstone Arsenal Base Realignment, Transfer of Activities from US Army Armament, Munitions and Chemical Command, Rock Island, IL; Lexington-Bluegrass Army Depot, KY; Presido Army Base, San Francisco, CA and Harry Diamond Laboratories, Adelphi, MD to the Redstone Arsenal Base, Madison County, AL.

Summary: EPA expressed environmental concerns regarding the potential traffic problems within and around the Redstone Arsenal resulting from the functional and organizational changes. Additional information should be provided regarding the short and long-term measures to address traffic problems.

ERP No. DR-AFS-K61105-CA

Rating LO, Lake Tahoe Basin Management Unit (LTBMU) Forest Plan, New Information concerning the Lake of the Sky Visitor Information or Interpretive Center and Community Parking Development Project to Comply with the LTBMU Forest Plan, Tahoe City, Lake Tahoe, Placer County, CA.

Summary: EPA expressed a lack of objections to the proposed action.

Final EISs

ERP No. F-DOE-K80030-CA

Lawrence Livermore National (LLNL) and Sandia National (SNL) Laboratories, Continued Operation/Construction, Funding, Livermore Valley, City of San Francisco, Alameda and San Joaquin Counties, CA.

Summary: EPA recommended that the EIS Record of Decision contain commitments to ensure the facilities' compliance with all applicable environmental protection statutes.

Dated: December 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-31319 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4547-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075. Availability of Environmental Impact Statements Filed December 14, 1992 Through December 18, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920495, Final EIS, COE, CA, Los Angeles and Long Beach Harbors Navigation Improvements and Landfill Development Project, Construction and Approval of Master Plan Amendment, San Pedro Bay, Los Angeles County, CA, Due: January 25, 1993, Contact: Frank Piccola (213) 894-0244.

EIS No. 920496, Draft EIS, AFS, AK, North Revilla Project, Long-Term Timber Sale Contract, Implementation, Tongass National Forest, Ketchikan Administrative Area, Ketchikan Ranger District, Revillagigedo Island, AK, Due: February 09, 1993, Contact: Dave Arrasmith (907) 225-3101.

EIS No. 920497, Final Supplement, FHW, MN-TH-33 Improvements, I-35 to US TH-53, Additional Information Urban Section near the City of Cloquet, Approval of COE Permit, St. Louis

River, Carlton and St. Louis Counties, MN, Due: January 25, 1993, Contact: Kevin N. Kliethermes (612) 290–1242.

EIS No. 920498, Draft Supplement, NOA, Atlantic Sea Scallop, Placepecten Magellanicus, (Gmelin), Fishery Management Plan, (FMP), Additional Information, Amendment No. 4, Due: February 08, 1993, Contact: William W. Fox, Jr. (301) 713–2239.

EIS No. 920499, Draft EIS, AFS, UT, Chevron Table Top Project Exploratory Oil and Gas Wells Drilling, Leasing and Permit, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Due: February 09, 1993, Contact: Bernard Asay (307) 789–3194.

EIS No. 920500, Final EIS, FHW, MO, Ozark Mountain Highroad Corridor Construction from existing US 65/MO–F north of Branson, then south across Lake Taneycomo to another intersection with US 65 south of Branson, Funding, COE Section 10 and 404 Permits and Coast Guard Bridge Permit, Taney and Stone Counties, MO, Due: January 25, 1993, Contact: Tim Mullen (314) 636–7104.

EIS No. 920501, Final EIS, UMT, CA, Tasman Corridor Mass Transit System Improvements, between Milpitas and Northern San Jose and Mountain View/Sunnyvale, Funding, Santa Clara County, CA, Due: January 25, 1993, Contract: Robert Hom (415) 744–3116.

EIS No. 920502, Final EIS, AFS, CA, Littlerock Dam and Reservoir Restoration Project, Implementation and Special Use Permit, Section 404 Permit, Los Angeles National Forest, Valyermo Ranger, Los Angeles County, CA, Due: January 25, 1993, Contact: Michael J. Rogers (818) 574–1613.

EIS No. 920503, Draft EIS, BLM, NV, Cortez Gold Mines Expansion Project, Construction and Operation, Mining Plan of Operations, Right-of-Way Permits, Special-Use Permit, NPDES and Section 404 Permits, Crescent Valley, south of Battle Mountain District, Lander and Eureka Counties, NV, Due: March 01, 1993, Contact: Dave Davis (702) 415–4000.

Amended Notices

EIS No. 920376, Draft EIS, AFS, WY, Grand Targhee Ski Area Expansion Master Development Plan, Implementation, Targhee National Forest, Teton County, WY, Due: February 01, 1993, Contact; Lynn Ballard (206) 624–3151.

Published FR 11–06–92–Review period extended.

EIS No. 920429, Draft EIS, DOE, MS, AL, LA, Strategic Petroleum Reserve Expansion Plan, Implementation and Site Selection, Brazoria and Jefferson Counties, TX: Iberia and St. Mary Parishes, LA or Perry County, MS with Associated Pipeline and Terminals located in several counties and parishes of TX, LA, MS and AL, Due: January 13, 1993, Contact: Hal Delaplane (202) 586–4730.

Published FR—05–08–92 Review period extended.

EIS No. 920434, Draft EIS, AFS, OR, 1991 Warner Creek Fire Recovery Project, Northern Spotted Owl Habitat and Other Resources Reforestation, Northern Spotted Owl Habitat Conservation Area 0–10, Willamette National Forest, Oakridge Ranger District, Lane County, OR, Due: January 11, 1993, Contact: Terri Jones (503) 782–2291.

Published FR—11–13–92—Review period extended.

EIS No. 920482, Draft Supplement, NOA, PR, VI, Shallow-Water Reeffish Fishery Management Plan, Updated Information, Amendment 2, Puerto Rico and U.S. Virgin Island, Due: January 25 1993, Contact: William W. Fox, Jr. (301) 713–2239.

Published FR 12–11–92—Due Date Correction.

Dated: December 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–31320 Filed 12–23–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00326; FRL–4072–5]

Zinc Salts; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredients zinc sulfate monohydrate (hereafter referred to as zinc sulfate), zinc chloride, and zinc oxide and the start of a 60–day public comment period. The RED for zinc salts is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemicals, and presents the Agency's determination regarding which pesticidal uses of zinc sulfate, zinc chloride, and zinc oxide are eligible for reregistration.

DATES: Written comments on the RED must be submitted by February 22, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00326" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Mark Wilhite, at (703) 308–8586.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredients: zinc sulfate, zinc chloride, and zinc oxide. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemicals zinc sulfate, zinc chloride, and zinc oxide is substantially complete. EPA has determined that all currently registered products containing zinc sulfate, zinc chloride, and zinc oxide as an active ingredient are eligible for reregistration.

All registrants of products containing zinc sulfate, zinc chloride, and zinc oxide have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been

submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: December 11, 1992.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-31305 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00329; FRL-4072-8]

Soap Salts; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredients ammonium salts of fatty acids and potassium salts of fatty acids, and the start of a 60-day public comment period. The RED for soap salts is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of soap salts are eligible for reregistration.

DATES: Written comments on the RED must be submitted by February 22, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP-00329" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Veronica Dutch, at (703) 308-8585.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredients: ammonium salts of fatty acids and potassium salts of fatty acids. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical soap salts is substantially complete. EPA has determined that all currently registered products containing soap salts as an active ingredient are eligible for reregistration.

All registrants of products containing soap salts have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: September 30, 1992.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-31303 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00332; FRL-4073-2]

Sodium Hydroxide; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient sodium hydroxide, and the start of a 60-day public comment period. The RED for sodium hydroxide is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of sodium hydroxide are eligible for reregistration.

DATES: Written comments on the RED must be submitted by February 22, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP-00332" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for

inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in Rm. 1132, CM #2, at the address given above or call (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Richard Gebken, at (703) 308-8591.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredient: sodium hydroxide. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical sodium hydroxide is substantially complete. EPA has determined that all currently registered products containing sodium hydroxide as an active ingredient are eligible for reregistration.

All registrants of products containing sodium hydroxide have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: September 30, 1992.

Daniel M. Barolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92-31302 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100116; FRL-4159-4]

Labat-Anderson; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Labat-Anderson has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Labat-Anderson consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2), and will enable Labat-Anderson to fulfill the obligations of the contract.

DATES: Labat-Anderson will be given access to this information no sooner than December 29, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7460.

SUPPLEMENTARY INFORMATION: Under Contract Number 68-W9-0052, Work Order Number 208, Labat-Anderson will provide support to the Certification and Training Branch of the Field Operations Division in its efforts of maintaining and effectively using regulatory and non-regulatory pesticide applicator training and certification files under FIFRA sections 4 and 23.

OPP has determined that access to this information is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Labat-Anderson prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Labat-Anderson is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Delivery Order Project Officer for this contract in OPP.

All information supplied to Labat-Anderson by EPA for use in connection with this contract will be returned to EPA when Labat-Anderson has completed its work.

Dated: December 16, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 92-31304 Filed 12-23-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL TRADE COMMISSION

[File No. 861 0126]

National Association of Social Workers; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Washington, DC-based, professional association from restraining competition among social workers by restricting advertising or solicitation, and from restricting social workers from paying a fee to any patient referral service.

DATES: Comments must be received on or before February 22, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Schroeder, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Avenue, Seattle, WA 98174. (206) 553-4656.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of National Association of Social Workers, a corporation.
File No. 861 0126

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the National Association of Social Workers, a corporation, and it now appearing that the National Association of Social Workers, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between the National Association of Social Workers, by its duly authorized officers and its attorney, and by counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 750 First Street, NE., suite 700, Washington, DC 20002.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For the purposes of this order, "NASW" means the National Association of Social Workers, its directors, trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees, successors, or assigns.

II

It is Ordered That NASW, directly, indirectly, or through any corporate or other device, in or in connection with NASW's activities as a professional association, in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall cease and desist from:

A. Prohibiting, restricting, regulating, declaring unethical, interfering with, restraining or advising against the advertising, publishing, stating or disseminating by any person of the prices, terms, availability, characteristics or conditions of sale of social workers' services, offered for sale or made available by any social worker or by any organization or institution with which a social worker is affiliated, through any means, including but not limited to the adoption or maintenance of any principle, rule, guideline or policy that restricts any social worker from:

1. Engaging in any solicitation of actual or prospective clients or other consumers or from offering services to clients or other consumers receiving similar services from another professional; or

2. Presenting testimonials from clients or other consumers.

Provided That nothing contained in this order shall prohibit NASW from formulating, adopting, disseminating and enforcing reasonable ethical principles or guidelines governing the conduct of its members with respect to:

(1) Representations, including representations of objective claims for which the claimant does not have a reasonable basis, that NASW reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act; or

(2) Uninvited, in-person solicitation of business from persons who, because of their particular circumstances, are vulnerable to undue influence; or

(3) Solicitation of testimonial endorsements (including solicitation of consent to use the person's prior statement as a testimonial endorsement)

from current psychotherapy patients, or from other persons who, because of their particular circumstances, are vulnerable to undue influence.

B. Prohibiting, restricting, regulating, declaring unethical, interfering with or restraining the giving or paying of any remuneration by any of its members or affiliates or any organization or institution with which any of its members or affiliates is associated to any patient referral service or other similar institution for the referral of clients or other consumers for professional service.

Provided That nothing contained in this section shall prohibit NASW from formulating, adopting, disseminating and enforcing reasonable ethical principles or guidelines requiring that its members disclosure to clients or other consumers that they will pay or give, or have paid or given, remuneration for the referral of such clients or other consumers for professional services.

III

It is further Ordered That, for a period of five (5) years after the date this order becomes final, NASW shall:

Maintain for three (3) years following the taking of any action against a person alleged to have violated any ethical principle, rule, policy, guideline or standard relating to advertising, solicitation or referral fees, in one separate file, segregated by the names of any person against whom such action was taken, and make available to Commission staff for inspection and copying, upon reasonable notice, all documents and correspondence that embody, discuss, mention, refer or relate to the action taken and all bases for or allegations relating to it.

IV

It is further Ordered That NASW shall:

A. Within sixty (60) days after the date this order becomes final, remove from NASW's Code of Ethics and Standards for the Practice of Clinical Social Work, and any officially promulgated or authorized guidelines or interpretations of NASW's official policies, any statement of policy that may be inconsistent with Part II of this order, or amend any such statement to eliminate all such inconsistencies, including but not limited to Sections II.I.l and III.K.l of NASW's Code of Ethics, and Standards 8 and 9 of the Standards for the Practice of Clinical Social Work;

B. Within sixty (60) days after the date this order becomes final, publish in NASW News, or in any successor publication that serves as the official journal of NASW:

1. A copy of this order;

2. Notice of the removal or amendment of any Code of Ethics provisions, Standards, guidelines, interpretations, provisions or statement; and

3. A copy of such Code of Ethics provision, Standard, guideline, interpretation, provision or statement as worded after any such amendment;

C. Within sixty (60) days after the date this order becomes final, distribute a copy of appendix A, along with a copy of this order, to each of NASW's members, including those in all classes of membership, and to each affiliate;

D. Require as a condition of affiliation with NASW that any affiliate, constitutent, or component organization agree by specific action taken by the affiliate, constituent, or component organization's governing body to adhere to the provisions of Part II of this order; and

E. Cease and desist for a period of one (1) year from maintaining or continuing respondent's affiliation with any affiliate, constitutent, or component organization, whether a division of NASW or a state or regional association affiliated with NASW, within one hundred and twenty (120) days after respondent learns or obtains information that would lead a reasonable person to conclude that said organization has, following the effective date of this order, maintained or enforced any prohibition against:

1. Soliciting clients;

2. Offering services to persons receiving similar services from another professional; or

3. Making payments to patient referral services;

where maintenance or enforcement of such prohibition by respondent would be prohibited by Part II of this order; unless, prior to the expiration of the 120-day period, said organization informs respondent by a verified written statement of an officer that the organization has eliminated and will not reimpose such prohibition, and respondent has no grounds to believe otherwise.

V

It is further Ordered That NASW:

A. Shall, within sixty (60) days after the date this order becomes final and at such other times as the Commission may require by written notice to NASW, file with the Commission a written report setting forth in detail the manner and form in which NASW has complied and is complying with the order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part II of this order, including but not limited to all documents generated by NASW or that come into the possession, custody, or control of NASW, regardless of the source, that discuss, refer, or relate to any advice or interpretation rendered with respect to advertising, solicitation, or giving or receiving any remuneration for referring clients for professional services, involving any of its members or affiliates.

VI

It is further Ordered That NASW shall notify the Commission at least thirty (30) days prior to any proposed change in NASW, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change that may affect compliance obligations arising out of this order.

Appendix A

NASW and FTC Enter Into Consent Agreement

As you may be aware, the NASW entered into a consent order agreement with the Federal Trade Commission on September 24, 1988. Under that agreement, the Commission has entered a cease and desist order that became final on (insert date). A copy of that order is printed in this issue of the NASW News.

The agreement between the Commission and NASW does not constitute an admission by NASW that it has violated any law, and is for settlement purposes only.

The reason for this announcement is to acquaint all members with the order, especially including those who have become members in the last three years, and to call attention to changes that have been made in response to the agreement in NASW's Code of Ethics and in the Standards for the Practice of Clinical Social Work. The changes in the Code and Standards are also printed in this issue.

Under the terms of the order, NASW may not ban any of its members from engaging in truthful, non-deceptive advertising and marketing. Specifically, NASW may not prohibit its members from:

1. Engaging in any solicitation of actual or prospective clients or other consumers or from offering services to clients or other consumers receiving similar services from another professional;

2. Presenting testimonials from clients or other consumers.

The order also prohibits preventing the payment of any remuneration to any patient referral service or other similar institution for the referral of clients or other consumers for professional service.

However, the order does not prohibit NASW from formulating and enforcing reasonable principles or ethical guidelines to prevent deceptive advertising and solicitation practices. NASW is also not barred from issuing guidelines with respect to solicitation of business or testimonials from persons who, because of their particular circumstances, are vulnerable to undue influence by a social worker.

The order also does not prohibit NASW from issuing reasonable principles or guidelines requiring that factual disclosures be made to clients or other consumers regarding fees paid by any social worker to any patient referral service or similar institution for referring the client or other consumer for professional services.

Finally, the order requires NASW to amend the Code of Ethics, the Standards for the Practice of Clinical Social Work, and any guidelines or interpretations officially promulgated or authorized by NASW to delete any provisions that are in conflict with the order and to cease affiliation for one year with any affiliate, constituent, or component organization that engages in any conduct that is prohibited by the order and that does not notify NASW that it has ceased and will not repeat such conduct. In response to this requirement, NASW amended the Standards for Practice in April 1989, and the Code of Ethics in August 1990.

In entering into an agreement with NASW, the Federal Trade Commission has not endorsed any principle, guideline, policy, or practice of the Association. For more specific information, you should refer to the Federal Trade Commission's order itself.

National Association of Social Workers

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval an agreement to a proposed consent order from the National Association of Social Workers ("NASW"). The agreement would settle charges by the Commission that NASW has violated section 5 of the Federal Trade Commission Act by restraining competition among social workers in the United States. The Commission charged NASW with injuring consumers by unreasonably restricting social workers' use of solicitation, referral fees, and certain types of truthful advertising.

NASW has agreed to the proposed consent order for settlement purposes only and does not admit that it violated the law as alleged in the complaint.

The Commission has placed the proposed consent order on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After the close of the comment period, the Commission will again review the agreement, will review the comments received, and will decide whether it should make the agreement's proposed order final or withdraw the agreement.

The Complaint

The Commission has prepared a complaint to issue along with the proposed order. The complaint alleges that NASW is an association of about 114,000 social workers, a substantial number of whom are clinical social workers who provide therapeutic and counseling services. NASW members compete among themselves and with other social workers. NASW has adopted a Code of Ethics and a set of Standards for the Practice of Clinical Social Work, both of which restrain competition in the delivery of social work services.

According to the complaint, NASW has prohibited social workers from soliciting the clients of other social workers, which deters social workers from initiating contact with potential clients, even where the clients are not vulnerable to abusive solicitation practices.

The complaint further alleges that NASW has prohibited social workers from paying a fee for receiving a referral, which deters social workers from participating in such institutions as patient referral services.

Finally, the complaint alleges that NASW has deterred social workers from using testimonials and other forms of truthful advertising, which prevents social workers from disseminating truthful information concerning their services.

According to the complaint, these rules have restrained competition in the delivery of social work services, deprived consumers of the benefits of truthful information about the availability of social work services, and deprived consumers of the benefits of competition among social workers in the provision of their services through competing referral services.

The Proposed Consent Order

The proposed consent order prohibits NASW from restricting advertising or solicitation. NASW is allowed, however, to adopt reasonable ethical principles with respect to: (1) Representations that NASW reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act; (2) uninvited, in-person solicitation of business from persons who, because of their particular circumstances, are vulnerable to undue influence; or (3) solicitation of testimonial endorsements (including solicitation of consent to use the person's prior statement as a testimonial endorsement) from current psychotherapy patients, or from other persons who, because of their particular circumstances, are vulnerable to undue influence.

The order also prohibits NASW from restricting social workers from paying a fee to any patient referral service or other similar institution for the referral of consumers for professional service. However, NASW may require its members to tell clients a referral fee was paid.

Finally, the order requires NASW to distribute a copy of the order to all members, publish the order and revised ethics rules in NASW NEWS, terminate its affiliation with any affiliate organization that engages in practices prohibited by the order, and file compliance reports.

The purpose of this analysis is to aid public comment on the proposed order. It is not an official interpretation of the agreement and proposed order and it does not modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Starek In the Matter of National Association of Social Workers

I respectfully dissent from the decision of the Commission today to accept provisionally and place on the public record for comment the proposed consent order with the National Association of Social Workers ("NASW"). The lack of evidence indicating that the restrictions of NASW at issue are likely to restrict competition leads me to conclude that they are not "inherently suspect" as defined in Mass. Board.[1] Consequently, without a rule-of-reason inquiry, as required by Mass. Board, I cannot conclude that NASW's restrictions violate Section 5 of the Federal Trade Commission Act.

Association restrictions on professionals can reduce competition, and thereby harm consumers. The challenged practices here are restrictions on certain types of advertising, solicitations, and payment of referral fees by those who choose to become members of NASW. Because social workers employed by social service agencies would not have reason to take part in these activities, the restrictions in effect apply only to "clinical" social workers in private practice who are members of NASW. These social workers primarily provide psychological counseling and therapy services, as opposed to what might be considered more traditional social worker services.

The restrictions at issue here were in place in the association's ethics code and its "Standards of Practice" for a period of several years in the 1980s. We have no indication that they ever were enforced. We are not aware of any suspension, expulsion, reprimand, notice of violation in the association newsletter, or any threat of these or any other actions taken by the association in response to violations of these restrictions. We do not know if the restrictions ever have affected a social worker's business practices in any way. We do not know if any members of NASW were even aware of the existence of the allegedly anticompetitive restrictions.

Determining the extent to which a horizontal restraint is likely to have anticompetitive or procompetitive effects often requires considerable inquiry and analysis. However, in this case I need not reach that issue because the record does not indicate that the restrictions were likely to have *any* effect on the market. In order to determine whether a horizontal restraint is inherently suspect, Mass. Board instructs us first to ask "is the practice the kind that appears likely, absent an efficiency justification, to 'restrict competition and decrease output'?"[2] The interpretation, enforcement, and market response to challenged restraints can, in many cases,

[1] Massachusetts Board of Registration in Optometry, 110 F.T.C. 549 (1988).

[2] *Id.*, at 604.

clarify the likely effects of such restraints on competition.

Were the potential effects of the restrictions less ambiguous, I would not necessarily require much evidence of how these restrictions affected the market. Some efficiency benefits conceivably could result from NASW's restrictions. For example, NASW's restriction on the use of testimonials in members' advertising may protect certain patients vulnerable to undue influence from being coerced into providing testimonials for their therapist's advertising.[3] After all, patients of clinical social workers in many instances have serious emotional and mental disorders. Many of these patients may benefit from protection that is broader than that which is appropriate in other markets. Private professional associations such as NASW may be particularly well suited to provide such protection. The record does not indicate the extent to which such benefits are likely to result from the restrictions, as it also does not indicate the extent to which anticompetitive effects might result.

I am concerned that acceptance of the proposed consent order with NASW here will suggest that the Commission interprets the Mass. Board rule to the imply that ambiguous horizontal restraints can be concluded to be inherently suspect without any inquiry into how, or even if, the restrictions have affected the market.

When restrictions as written are competitively ambiguous, as I believe they are here, the enforcement of such restrictions can shed much light on their likely effects.[4] Evidence of how restrictions are interpreted and enforced may be sufficient to support a conclusion that the restrictions are inherently suspect. One commentator recently proposed as the first "Analytical Guideline" for antitrust enforcement in this area, "Professional rules are restraints only if and as enforced."[5] I would not go as far as he does when he argues that "unenforced restraints can be ignored."[6]

Other market evidence in some cases may indicate a likelihood of anticompetitive effects absent explicit market enforcement. For example, evidence may indicate that the fear of enforcement prevents professionals from certain restricted activities. Or professionals may choose not to violate restrictions because they fear retribution from their colleagues, such as being cut off from referrals or being ostracized after being noted as violators in a professional publication.

On the other hand, even when all agree that restrictions as written appear facially suspicious, they may be innocuous because they are not generally known by association members, are known but widely ignored, are easily circumvented, or are responded to by the membership in a way that illustrates that they are highly unlikely to have anticompetitive effects.

In the present case, I believe that we do not have sufficient evidence on the interpretation, application and market response to the challenged restraints, nor do we have any evidence that the written restrictions at issue were enforced or affected the market in any way.

Furthermore, the restraints applied only to NASW members who provide psychological therapy and counseling in private practice. In order to compete effectively at providing these services, it may not be necessary to be a member of NASW. We have no indication that NASW has substantial leverage to impose anticompetitive restrictions on those social workers who choose to join the association. Moreover, even if the association did have such leverage, it appears that inter-professional competition with other types of therapists may be sufficient to prevent anticompetitive results.

Obtaining evidence on these issues does not appear to impose an onerous burden of proof or to require an inordinate commitment of resources. Prudent enforcement requires that these issues be examined. The Commission's previous determinations that conduct is inherently suspect have been confined largely to cases in which market evidence much more strongly suggested the likelihood of anticompetitive effects than does the evidence in the present matter.

In Mass. Board itself, the record indicated that the Board had taken actions against numerous violators of the restrictions and these Board actions resulted in violators discontinuing advertising practices that were held to violate the Board's regulations.[7] Moreover, substantial evidence suggested that the restrictions were highly likely to lead to increased prices for optometry services.[8]

In Detroit Auto Dealers Association, evidence indicated that there was protracted enforcement of the restrictions which appeared to coerce widespread adherence.[9] Furthermore, the association acknowledged that its activity had anticompetitive results.[10]

In *Superior Court Trial Lawyers' Association*, the Supreme Court emphasized that the practice at issue was a *per se* antitrust violation. But the Court also emphasized that the record included "overwhelming testimony" indicating that the group's actions brought the District's criminal justice system to the "brink of collapse" and thus resulted in higher prices.[11]

Finally, the recent consent order placed on the public record by the Commission with the American Psychological Association ("APA") was supported by evidence of enforcement of the restraints. Thus, we did not have to speculate about how the restrictions there affected the market. APA's own enforcement record illustrated both its broad interpretation of the restrictions and actual effects of the restrictions on competitive behavior. Without such evidence here at a minimum, I cannot conclude that the challenged restrictions are inherently suspect.

Consequently, in order to condemn these restrictions under Section 5, a traditional rule-of-reason analysis must be performed, including an evaluation of market power. Although the evidence in this regard is not complete, based on what has been presented to date, I consider it highly unlikely that these restrictions would be condemned at the completion of that analysis.

Although my conclusion that the challenged restraints are not inherently suspect does not require that I reach the issue of market power, there has been a suggestion that a "market power screen" should be used to determine whether restrictions are inherently suspect. Mass. Board does not require the use of a market power screen, but it is worth noting that the Massachusetts Board of Registration had the power to license, and thus it appeared likely to have substantial market power. And, in *NCAA*, the court found that the association there did have substantial market power[12] (and that its restraint had demonstrable anticompetitive effects[13]).

I am not today advocating inclusion of a market power screen as a formal element of the Commission's truncated rule-of-reason analysis. But it seems to be self-evident that to ignore the issue of market power is to argue that the truncated rule of reason is applicable to the restrictions of all associations, regardless of the extent of an association's membership or its ability to affect members' behavior. This is particularly troubling when the challenged restrictions are unenforced and their potential effects are ambiguous. Here, the indications of a lack of market power on the part of NASW could well undermine the potential for the restraints to have anticompetitive effects. It may well be that some limited analysis of market power could be warranted in some cases in order to provide the Commission with some confidence that our enforcement

[3] The proposed order recognizes this and other possible sources of efficiency by including some safe harbors for NASW action. Because Commission inquiry into the restrictions' possible benefits was quite limited, I cannot confidently conclude that the safe harbors adequately protect potential benefits of the restrictions.

[4] Judge Easterbrook has written that "there can be no restraint of trade without a restraint." See *Schachar* v. *Am. Academy of Ophthalmology, Inc.*, 870 F.2d 397 (7th Cir. 1989). He explains that "enforcement mechanisms are the 'restraints' of trade. Without them there is only uncoordinated individual action, the essence of competition."

[5] J. Lopatka, Antitrust and Professional Rules: A Framework for Analysis, 28 San Diego L. Rev. 301, 310, 382 (1991).

[6] *Id.*, at 382.

[7] Mass. Board, 110 F.T.C. at 562–71 (Initial Decision Findings 73 and 117–59).

[8] *Id.*, at 561–63 (Initial Decision Findings 60–78).

[9] Detroit Auto Dealers Association, Inc., 111 F.T.C. 417, 425, 451–56 (1989) (Initial Decision Findings 51–52, 245–84), aff'd in part, remanded in part, 955 F.2d 457 (6th Cir. 1992), petition for cert. filed, 61 U.S.L.W. 3156 (Aug. 21, 1992) (No. 92–333).

[10] 111 F.T.C. at 426–27 (Initial Decision Findings 57–61).

[11] *Federal Trade Commission* v. *Superior Court Trial Lawyers' Association*, 110 U.S. 768, 772, 782 (1990).

[12] *NCAA* v. *Board of Regents of the Univ. of Okla.*, 468 U.S. 85, 111 (1984).

[13] *Id.*, at 104–07.

program is consistent with our competition mission.[14]

I am concerned about extending the reach of Mass. Board to restrictions as competitively ambiguous as those of NASW here. I am further troubled that acceptance of the proposed consent here might portend a weakening of the Mass. Board standard by future Commissions. The Mass. Board approach was an attempt by the Commission to enunciate a standard for evaluating horizontal restraints as gleaned from the Supreme Court's decisions in *NCAA* and *BMI*[15]—the truncated rule-of-reason cases. A relatively weak truncated rule-of-reason standard might appear to conserve enforcement resources. But if too much reason is truncated from the rule of reason, resources will be drawn to cases with questionable merit. The net effect is likely to be a draining of enforcement resources away from the types of cases in which Commission action can best benefit consumers. Acceptance of the proposed consent order with NASW appears likely to encourage this unfortunate and unintended effect.

Absent evidence that NASW's restrictions are likely to restrict competition, I do not have reason to believe that the National Association of Social Workers has violated the Federal Trade Commission Act. Therefore, I must dissent from the Commission's action today.

[FR Doc. 92-31264 Filed 12-23-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Runaway and Homeless Youth Program Proposed Priorities for Fiscal Year 1993

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Fiscal Year 1993 Runaway and Homeless Youth Program Priorities for the Administration for Children and Families.

SUMMARY: The Runaway and Homeless Youth Act requires the Secretary to publish annually, for public comment, a proposed plan specifying priorities the Department will follow in awarding grants and contracts under the Act. The final priorities selected will take into consideration the comments and recommendations received from the public in response to this notice.

The public, particularly those knowledgeable about and experienced in providing services to runaway and homeless youth, are urged to respond. The actual solicitations for grant applications will be published at a later date in the **Federal Register**. Solicitations for contracts will be published in the "Commerce Business Daily." No proposals, concept papers or other forms of application should be submitted at this time.

DATES: To be considered, comments must be received no later than February 8, 1993.

ADDRESSES: Please address comments to: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families. Attention: Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, (202) 205-8347.

SUPPLEMENTARY INFORMATION:

I. Background: Organization and Mission of the Administration for Children and Families (ACF)

On April 15, 1991, Louis W. Sullivan, M.D., Secretary of the Department of Health and Human Services (HHS) established the Administration for Children and Families (ACF) as a new HHS operating division, combining two antecedent agencies: the Family Support Administration and the Office of Human Development Services. The Administration on Children, Youth and Families (ACYF) is a major program unit within ACF.

The purpose of the consolidation was to bring together into a single agency many children and family programs that had been created over the years in order to better target and coordinate services. The consolidation has increased the Department's ability to deliver services and has provided communities, States, and the Congress a single agency to address in these matters.

Among the programs administered by ACF are Head Start, Job Opportunities and Basic Skills (JOBS), Aid to Families with Dependent Children (AFDC), Child Support Enforcement, Adoption Assistance, Foster Care, Social Services Block Grant, Child Care and Development Block Grant, Child Abuse Prevention Grants, and Runaway and Homeless Youth Programs.

While ACF program and staff offices are varied in the programs they administer and the populations they serve, all are guided by three common principles. First, all programs strive to create and stimulate self-sufficiency in their service populations. Second, all programs promote parental responsibility for the economic, social, emotional, physical, and cognitive development of children. Third, all programs encourage integration of services among specialized providers to eliminate fragmentation, reduce duplication, and improve the impact of ACF services on children and families.

II. Background: Organization, Mission and Goals of the Family and Youth Services Bureau

The Family and Youth Services Bureau (FYSB) is a component of the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

The Family and Youth Services Bureau is charged with implementing four Federal programs dealing with youth and children:

(1) The Runaway and Homeless Youth (Basic Center) Program,

(2) The Transitional Living Program for Homeless Youth,

(3) The Drug Abuse Prevention Program for Runaway and Homeless Youth, and

(4) The Youth Gang Drug Prevention Program.

The mission of the Family and Youth Services Bureau is to provide national leadership on youth issues and to assist individuals and organizations in providing effective, comprehensive services for at-risk youth and their families, ensuring the safety and maximizing the stability and long-term self-sufficiency of youth.

To accomplish this mission, the Bureau has established the following operational goals as a guide in the implementation of the four programs it administers:

(1) Promote the development of a continuum of care for at-risk youth and their families and increase the range and comprehensiveness of services provided by FYSB grantees;

(2) Provide timely financial support to and quality oversight of youth programs in order to strengthen such programs and ensure that quality services are available to at-risk youth and their families;

(3) Enhance training, technical assistance and related support to the youth-serving community to help increase the knowledge and skills of youth service workers and organizations;

(4) Improve the quantity, quality, and reliability of information on youth programs supported by FYSB;

(5) Promote the creation of a comprehensive youth service system by facilitating interaction and coordination among the FYSB-supported components of the youth service community; and

(6) Initiate and formalize coordination efforts with other ACF units, Federal

[14] Clearly, evidence of market power is not necessary in all cases. For example, analysis of market power would not be necessary in a case involving an ethics code restriction that establishes minimum prices for association members.

[15] *Broadcast Music, Inc.* v. *CBS*, 441 U.S. 1 (1979).

agencies, State and local governments, and the private sector in order to focus increased attention on at-risk youth issues and to access other resources to expand and enhance essential services for at-risk youth.

Two of the FYSB programs listed above—the Runaway and Homeless Youth Program (RHYP) and the Transitional Living Program for Homeless Youth (TLP)—are authorized under the Runaway and Homeless Youth Act (title III of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, hereinafter cited as "the Act") and are the subject of the priorities proposed in this notice.

The Act specifically authorizes the Secretary to make grants to entities that establish and operate local runaway and homeless youth centers (Basic Centers) to address the immediate needs of at-risk youth. Currently, 358 such projects are being supported. The Act also authorizes activities that support the local centers, and that gather knowledge about the conditions of runaway and homeless youth and their families.

The Act further authorizes the Secretary to make grants to entities that establish and operate transitional living projects for homeless youth to enable the youth to become self-sufficient and to avoid long-term dependency on social services. Currently, 86 such projects are being supported.

the Act also authorizes financial support for:

—A national communications system (a toll-free 24-hour runaway hotline) which serves as a neutral channel of communication between at-risk youth and their families and as a source of referral to needed services;
—Grants to statewide and regional non-profit organizations for the provision of training and technical assistance to agencies and organizations eligible to establish and operate runaway and homeless youth centers; and
—Grants to conduct research, demonstration, evaluation, and service projects.

Annual Program Priorities

Section 364(a) of the Act instructs the Secretary to develop for each fiscal year, and to publish annually in the **Federal Register** for public comment, a proposed plan specifying the priorities the Department will follow in making grants under the Act. The Secretary is further instructed to take into consideration the comments received in developing and publishing the subsequent plan specifying the final fiscal year priorities. This publication constitutes the Department's proposed priorities as required by the Act.

No acknowledgement will be made of the comments received in response to this notice, but all comments received by the deadline will be considered in preparing the runaway and homeless youth final priorities. We also encourage suggestions for topics not covered in this announcement, but which are timely and relate to the specific needs of runaway and homeless youth. Final priorities will be published in the **Federal Register** as required by the Act.

A program announcement soliciting applications for the Basic Center grants will appear in the **Federal Register** as in previous years. Copies of the announcement will be sent to all persons who comment on these proposed priorities. Because all FY 1993 funds which are likely to be available for the National Communication System (NCS) and for training and technical assistance activities are committed for continuation awards to projects already funded in FY 1992 or earlier, no new solicitations are planned for publication in these two areas in FY 1993. A competition for new Transitional Living grants will be held during FY 1993 to be awarded in the first quarter of FY 1994. Solicitations for contracts will be published in the "Commerce Business Daily" during FY 1993.

III. Priorities for On-Going Direct Service Programs

A. Priorities for Basic Centers

Approximately 360 grants, of which about two-thirds will be non-competitive continuations and about one-third competitive new starts, will be funded in FY 1993 to support organizations which provide services to fulfill the four major goals of the Runaway and Homeless Youth Program, as follows:

(1) Alleviate the problems of runaway and homeless youth;

(2) Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services;

(3) Strengthen family relationships and encourage stable living conditions for youth; and

(4) Help youth decide upon a future course of action.

The goals of the RHYP are achieved through the Basic Centers, which provide services in support of the immediate needs (temporary shelter, food, clothing, counseling, and related services) of runaway or homeless youth and their families in a manner which is outside the law enforcement, child welfare, mental health and juvenile justice systems. Further, the Basic Center provide services, directly and through referrals, to promote the long-terms stability and safety of such youth.

An announcement of the availability of funds for the Basic Centers, along with the instructions and forms needed to prepare and submit applications, will be published in a **Federal Register** announcement.

Funds for Basic Center grants are allotted annually among the States and other qualifying jurisdictions on the basis of their relative populations of individuals who are less than 18 years of age. Amendments to the Act made by Pub. L. 102–586 increase the minimum amount to be allotted to any State from $75,000 to $100,000 and to the Territories from $30,000 to $45,000, but only if all States first receive the amount allotted to them in FY 1992. Because the FY 1993 appropriation for this program is less than the FY 1992 appropriation, an increase in the minimum allotment to any State would result in a reduction to other States. For this reason, the increase in the minimum allotment will not be implemented this year.

For the past several years, Basic Center grants have been awarded for three-year project periods. Approximately one-third of the Basic Center grants expire each year, requiring these agencies to compete for new awards. The remaining two-thirds of the Basic Center grants receive non-competitive continuation awards. Within any given State, in consequence, individual grantees may fall within any one of three different funding cycles: New starts, second-year continuations, and third-year continuations. In FY 1993, the cyclical funding pattern will be continued, assuming satisfactory performance on the part of existing grantees and the availability of funds. Thus, approximately two-thirds of the current grantees will be awarded noncompetitive continuation funds, and the remaining grantees (those whose grant periods expire in FY 1993) will have the opportunity to submit new competitive applications. Readers should also note that all other eligible youth-serving agencies not holding current awards may also apply for these new competitive funds.

During the past two years, increased levels of funding have been available for Basic Center grants. To allow agencies in mid-cycle of their grant periods to compete for these increased appropriations, continuation grantees receiving an annual award of less than $75,000 in FY 1991 or less than $85,000 in FY 1992 were invited to apply for competitive expansion grants. The purpose of the expansion grants was to allow award totals to increase to an amount considered minimally sufficient

to carry out the requirements of the Runaway and Homeless Youth Program. Because there is a decrease in available funds in FY 1993, the Department does not currently plan to make expansion awards in FY 1993.

Section 366(a)(2) of the Act requires that 90 percent of the funds appropriated under part A be used to establish and strengthen runaway and homeless youth Basic Centers. Total funding under part A of the Act for FY 1993 is approximately $35.1 million.

B. Priorities for a National Communications System

Part C, Section 331 of the Runaway and Homeless Youth Act, as amended, mandates support for a national communications system to assist runaway and homeless youth in communicating with their families and with service providers. In FY 1991, a three-year grant was awarded to the National Runaway Switchboard, Inc., in Chicago, Illinois, to operate the system. It is anticipated that $912,500 in third-year continuation funds will be awarded to the grantee in FY 1993.

C. Priorities for Transitional Living Grants

Part B, Section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

The first 45 Transitional Living Program (TLP) grants were awarded in September 1990 for three-year project periods. An additional 32 grants were awarded in FY 1991 and 9 grants in FY 1992, also for three-year project periods. It is anticipated that all funds available under this program in FY 1993 will be awarded in the form of non-competitive continuation awards to the current grantees.

In order to award new TLP grants as early as possible in FY 1994, however, an open competition will be held in FY 1993 for new awards to be supported with FY 1994 funds. Projects periods of new awards will begin no sooner than October 1, 1993. This will also allow current grantees with project periods ending in September 1993 to compete for new grants and to continue their existing projects with minimal disruption of services, if they are successful in the competition.

IV. Continuation Support Services and Evaluations

Section 342 of the Act authorizes the Department to make grants to statewide and regional nonprofit organizations to provide training and technical assistance to organizations in establishing and operating runaway and homeless youth centers.

Section 343 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway and homeless youth. These activities are important in order to identify emerging issues and to develop and test models which address such issues.

A. Training and Technical Assistance

Both the Runaway and Homeless Youth Act, Section 314, and the Drug Abuse Prevention Program for Runaway and Homeless Youth, Section 3511 of the Anti-Drug Abuse Act of 1988, also administered by FYSB, authorize support to nonprofit organizations for the purpose of providing training and technical assistance (T&TA) to runaway and homeless youth service providers. This T&TA is a valuable mechanism to strengthen programs and to enhance the knowledge and skills of youth service workers.

Beginning in FY 1991, the Family and Youth Services Bureau awarded ten Cooperative Agreements, one in each of the ten Federal Regions, to provide T&TA to agencies funded under all three Federal programs for runaway and homeless youth. Each Cooperative Agreement is unique, being based on the characteristics and different T&TA needs in the respective Regions.

Each of these Cooperative Agreements has a three-year project period, and it is anticipated that all funds available for services in this area in FY 1993 will be awarded through noncompeting continuations to the current grantees.

B. National Clearinghouse on Runaway and Homeless Youth

In June 1992, a five-year contract was awarded by the Department to establish and operate the National Clearinghouse on Runaway and Homeless Youth. The purpose of the Clearinghouse is to serve as a central information point for professionals and agencies involved in the development and implementation of services to runaway and homeless youth. To this end, the Clearinghouse will:

(1) Collect, evaluate and maintain reports, materials and other products regarding service provision to runaway and homeless youth;

(2) Develop and disseminate reports and bibliographies useful to the field;

(3) Identify areas in which new or additional reports, materials and products are needed; and

(4) Implement other activities designed to provide the field with the information needed to improve services to runaway and homeless youth.

The Clearinghouse is fully operational and is able to respond to requests for information. Non-competitive continuation funding will be awarded to sustain the Clearinghouse in FY 1993.

C. National Evaluation of the Runaway and Homeless Youth Basic Center Program

In FY 1991, a contract to evaluate the Basic Center program was awarded, and it will continue through FY 1993. The study has two major objectives:

(1) To evaluate the impact and effect of the Runaway and Homeless Youth Basic Center Program on the youth served; and

(2) To determine the policy, program, and service delivery issues that facilitate or impede the program goals.

It is anticipated that evaluators will be in the field in FY 1993 interviewing a sample of both youth and youth-service workers. It is further anticipated that no additional funding will be required to complete this evaluation.

D. Evaluation of the Transitional Living Program for Homeless Youth

In FY 1991, an evaluation of the Transitional Living Program (TLP) was initiated, which will require additional financial support in FY 1993. The evaluation will collect data at three points in time: pre-program baseline, program exit, and six months after program completion, for the purpose of determining the effectiveness of the program in preparing homeless youth for self-sufficiency. It is anticipated that evaluators will be conducting interviews of a sample of youth and program administrators in the field during FY 1993.

E. National Evaluation of Home-Based Services Demonstration Grants for Runaway Youth

In FY 1989 and FY 1991, demonstration grants were awarded to develop and implement models of home-based services as alternatives to shelter care for at-risk youth. In FY 1992, a two-year contract was awarded to evaluate these grants. The contractor will provide descriptive information about the models and outcome information about their impact on the

youth served. In FY 1993, it is anticipated that the contractor will begin interviews in the field.

F. Management Information System (MIS) Implementation

In FY 1992, a five-year contract was awarded to implement the Runaway and Homeless Youth Management Information System (RHY MIS) across three FYSB programs: the Runaway and Homeless Youth Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program. In FY 1993, using an existing computer-based, information gathering protocol, the contractor will provide training and technical assistance to these grantees in the use of the MIS. The FYSB will use the data generated by the system to produce reports and information regarding the programs, including information for the required reports to Congress on each of the three programs.

The RHY MIS is designed to be useful as a management tool for individual programs, and to serve as the mechanism to submit required information and data to FYSB.

G. Monitoring Support for FYSB Programs

In FY 1992, FYSB began developing a comprehensive monitoring instrument and set of site visit protocols, including a peer-review component for the Runaway and Homeless Youth Basic Center Program, the Transitional Living Program, and the Drug Abuse Prevention Program. The instrument and related protocols will be implemented in FY 1993. Also in FY 1993, a new contract to provide logistical support for the peer review monitoring process is planned. Use of the new instrument and peer review process will improve Federal oversight of the programs. Moreover, it will identify program strengths and weaknesses. The findings will be used to direct technical assistance and policy development.

V. New Demonstration Initiatives: Promoting a Continuum of Care for Runaway and Homeless Youth

Background

Over the past decade, directors of agencies serving runaway and homeless youth have observed and documented significant changes in the populations they assist. The youth are increasingly "multi-problem" youth. Whereas 15 years ago, youth typically fled their homes for reasons related to child and parent conflict, the familial alienation of runaway and homeless youth today is very often overlaid with problems of alcohol and drug abuse, school failure, sexual promiscuity, as well as impaired physical and mental health. There also has been an apparent corresponding increase in the intensity of the problems experienced by these young people.

As a result of these growing problems among runaway and homeless youth and a corresponding increase in funding streams, an increasingly complex, multi-faceted service system has emerged. The Family and Youth Services Bureau will therefore promote the development of a continuum of care to more effectively serve at-risk youth and their families. This continuum can be considered from three perspectives:

(1) The individual components of care to be provided directly by FYSB-supported youth-serving agencies (e.g., street outreach, intake and assessment, or aftercare);

(2) The types and range of services to be provided through coordination with a variety of community agencies; and

(3) The care to be accorded special, particularly hard-to-reach, populations.

The following new demonstration grant priority areas are being proposed. However, given the limited funds available, FYSB does not anticipate soliciting applications in all of these areas. Selection of one or more of these areas for competitive grants will be based on the public comments received in response to this notice and the availability of funds. In addition, FYSB will continue to pursue a number of interagency collaborative efforts at the Federal level. Readers are encouraged to comment particularly on the following possible initiatives:

A. Continuum of Care: Strengthening Individual Program Components—Aftercare

Aftercare, as a component of runaway and homeless youth services, has been identified as needing additional attention. As part of its effort to provide the information and assistance required to strengthen this service component, the Family and Youth Services Bureau is considering making funds available to support grants to explore aftercare.

Once a youth has received services from a runaway and homeless youth center, it is often necessary to provide aftercare services, whether directly or through referrals, in order to maintain and increase the progress made by the client and his or her family. This program component is problematic. It is difficult to keep track of youth once they leave a center and even more difficult to determine if services are received when referrals are made to other service providers.

The purpose of these grants would be to demonstrate effective aftercare systems through the successful coordination of community-based service delivery. These grants would result in a written description of the aftercare model implemented, the identification of issues related to model implementation and information on youth and program outcomes.

B. Continuum of Care: Community Planning Grants for Promoting Comprehensive Services

One of the goals of service provision to runaway and homeless youth is to gear the services provided to the needs of individual youth and their families. The types of services needed vary by individual and encompass, at a minimum, such areas as reunification and other social services, mental health, drug treatment, medical and dental services, and education. In addition, the extent of the services needed by the individual also vary in intensity. For example, the youth and family may exhibit only a need for reassurance and immediate reunification, the youth may need emergency shelter prior to reunification, or residential care for extended periods of time may be required.

It is not necessary for any one agency to be able to provide all of the services needed by individual youth or families. It is important, however, that multi-disciplinary services and service components of varying scope and intensity for this client population be available and accessible within a community. The creation and ongoing functioning of such interagency collaboration takes considerable time and effort.

To help agencies and communities explore the continuum of services needed by runaway and homeless youth in their area, the Family and Youth Services Bureau is considering making funds available for grants to:

(1) Determine the needs of runaway and homeless youth in the community;

(2) Determine the availability and accessibility of care within the community, including services geared to special needs populations;

(3) Identify, on a community-wide basis, the gaps and weaknesses in available services and service components, including the duration and intensity of services; and

(4) Plan, through coordination and collaboration, a continuum of care for runaway and homeless youth, including the action steps required for community implementation of that plan.

It is expected that eligible grantees would be agencies currently providing

services to runaway and homeless youth.

C. Continuum of Care: Special Populations

Services for Youth in Rural Areas

Because of geographic distances, low population density and, in some cases, cultural differences, it is difficult to provide effective services to runaway and homeless youth in rural areas. There is a need for innovative models for the provision of a continuum of care in areas where the incidence of runaway and homeless youth is not sufficient to warrant allocating scarce resources to the funding of a separate, autonomous basic center program.

The purpose of these grants would be to demonstrate innovative and effective models for the provision of runaway and homeless youth services in rural areas, including Indian reservations. These models would involve innovative methods that make services accessible to youth without setting up inordinately expensive service agencies in low populated areas. Some possible options include satellite centers, telecommunication systems, and mobile vans. These grants would result in a written description of the service model implemented, the identification of issues related to model implementation, and information on youth and program outcomes. The proposed models would be required to incorporate formal collaboration with other major youth-serving agencies in the areas to be served.

(Catalogue of Federal Domestic Assistance, Program Number 93.623, Runaway and Homeless Youth Program, and Program Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: November 20, 1992.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

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Administration on Aging

Office of Administration and Management; Statement of Organization, Functions, and Delegations of Authority

This Notice amends part B of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Administration on Aging (AoA), as follows: Chapter B, Administration on Aging (AoA), Chapter BE, Office of Administration and Management (OAM), Chapter BC, Office of State and Community Programs (OSCP), and Chapter BD, Regional Office on Aging, as last amended at 56 FR 46620 on September 13, 1991. Specifically this organizational change will make the following changes to the Office of Administration and Management functional statement: Establish the Division of Budget and Finance (BE1); establish the Division of Management Systems (BE2); and, establish the Division of Grants Management (BE3). This organizational change will make the following change to the Office of State and Community Programs: Retitle and revise the Division of Community Based Systems Implementation (BC2) to the Division of Eldercare Services Implementation (BC2). In addition, this organizational change will correct a typographical error in the title for the Regional Offices on Aging; and, add Chapter BY, Federal Council on Aging Staff.

The changes are as follows:

1. Chapter B.10. Organization. Delete in its entirety and replace with the following:

B.10. Organization. The Administration on Aging is headed by the Commissioner on Aging and consists of:

Office of the Commissioner
Office of Policy Coordination and Analysis
Office of External Affairs
Office of Administration and Management
  Division of Budget and Finance
  Division of Management Systems
  Division of Grants Management
Office of Field Operations
Office of Program Development
  Division of Research, Demonstration and Training
  Division of Dissemination and Utilization
Office of State and Community Programs
  Division of Program Management and Analysis
  Division of Eldercare Services Implementation
Office for American Indians, Alaskan Native and Native Hawaiian Programs
Regional Offices on Aging
Federal Council on Aging staff

2. Chapter B.20. Functions D. Office of Administration and Management. Delete in its entirety and replace with the following:

D. Office of Administration and Management (BE)

Advises the Commissioner in the areas of internal administration and management of AoA. In response to Federal laws, regulations and Departmental policies and instructions, provides leadership, policies and procedures for effective and efficient management throughout AoA, including such areas as: Budget, finance, grants administration, personnel management, procurement, material and facilities management, management systems analysis, information resources management, telecommunications and similar administrative management facilitation services. Responsible for all management and administrative reviews, analyses and controls within AoA required by law or regulations, such as the Federal Managers Financial Integrity Act. The Director, OAM, will perform the duties of the Chief Financial Officer Act of 1990 as they relate to AoA. Conducts management analysis and systems development activities for AoA and serves as the principal AoA staff examining the AoA organization. Provides technical assistance and guidance to Central and Regional Office units in the development, implementation and maintenance of administrative management systems.

D.1. Division of Budget and Finance (BE1)

Provides and coordinates management support services involving budget formulation and execution, and financial management. In coordination with AoA program offices, consolidates, formulates, and presents budget estimates and forecasts of financial resources of AoA; executes apportionment documents; plans, directs, and coordinates financial and budgetary programs of AoA. Provides guidance to AoA program offices in preparing budgets, justifications, and other budgetary materials. Prepares budget document(s) on behalf of the Commissioner for presentation to Departmental management, the Office of Management and Budget (OMB), and the Congress. Assists in planning for and presenting the budget before OMB and the Congress. Solicits, obtains and consolidates information and data from other AoA offices for testimony at hearings before these bodies in coordination with the Office of External Affairs. Analyzes the budget as approved by Congress, obtains input from program offices and recommends for the Commissioner's approval a financial plan for its execution. Makes allowances to AoA offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observances of established ceilings on both program, including all formula and discretionary grants accounts, and S&E funds; maintains commitment records against allowances, and certifies funds availability for all AoA accounts. Prepares requests for apportionment of appropriated funds. Maintains control

of allotted funds against current obligations, including separate plans for each of the Regional Offices. Prepares spending plans and status-of-funds reports for the Commissioner.

Acts as AoA's focal point with the Office of the Secretary, other Federal agencies, and AoA organizational units on policy and regulatory issues involving travel management. Provides support services and policy interpretation to AoA components for travel management.

Provides analysis and coordinates accounting reports for AoA. Manages funds salary and expense accounts. Tracks financial status of all AoA program and salary and expense funds.

In meeting the Commissioner's priorities and instructions, with appropriate input from AoA program units, develops financial operating procedures and manuals, including directing the implementation within AoA (headquarters and regions) of Departmental and Federal fiscal policies and procedures. Participates in program development and implementation plans where there are budgetary implications; serves as the AoA liaison with the Department of Health and Human Services (HHS) and OMB on all budgetary matters.

D.2. Division of Management Systems (BE2)

Plans, organizes and conducts surveys, reviews and management studies of functions and administrative processes in the AoA program, staff and regional components, with cooperation and input from affected program units and/or staff offices. Initiates and develops AoA administrative management and human resources management policies, procedures and instructions.

Plans, organizes and conducts in-depth studies of organization structures, functional statements, job structure, staffing patterns, management and administrative information systems, relevant legislative and regulatory authorities and/or workloads to analyze staff, equipment, and systems resources and needs and/or to determine and measure work elements. Recommends to the Commissioner organization changes; alternate staffing patterns; job structure and/or functional statement modifications; staff, workload or equipment distribution/redistribution.

Develops, designs and implements management, work measurement, reporting and other information systems to provide for better informed management decisions and more equitable distribution of resources, consistent with the Office of Management and Budget (OMB) Circulars No. A–64 and No. A–76.

Assesses potential of proposed systems enhancement(s) or new systems design(s) to improve agency and staff performance in accomplishing agency goals and objectives, and presents comprehensive strategy to the Commissioner for consideration. Applies work measurements against agency functions and resources to propose changes and improvements in distribution of resources.

Plans, organizes and conducts surveys and management reviews of administrative processes and functions in AoA headquarters and regional components under the Federal Manager's Financial Integrity Act (FMFIA), OMB Circular A–123 (Internal Control Reviews (ICR)). Develops protocols for each ICR segment. Designs, develops and prepares guidelines for ICR self-assessment models. Evaluates the effectiveness of self-assessment models and reviews. Identifies weaknesses resulting from ICRs and recommends corrective actions. Monitors AoA's progress in taking actions on accepted recommendations. Acts as the AoA liaison with the Assistant Secretary for Management and Budget on matters related to the Departmental FMFIA program. Prepares the AoA annual FMFIA report to the Secretary.

Manages the AoA management improvement programs. Identifies areas in need of improvement by review and analysis of work methods and procedures, administrative information and management systems, organization and position management, and interviews. Makes recommendations for improvement to the Commissioner. Monitors AoA's progress in meeting goals on accepted recommendations. Develops that section of the annual budget relating to the AoA management improvement program. Develops supporting materials for the OAM Director's briefing of OMB officials on the AoA management improvement program.

Manages and monitors AoA's full-time equivalent (FTE) employment ceilings and formulates the agency's FTE portion of the budget. Develops strategies and recommendations to the Commissioner on manpower usage and the assignment of FTE ceilings. Projects AoA's end of year consumption of FTE based on adjustments to the Department's official FTE tracking system. Serves as the principal source of information to the Commissioner on FTE ceiling control matters as they relate to the distribution of personnel resources among AoA program and staff offices.

Examines all proposed organization or position structure changes. Studies proposed organization structure, functions, and staffing patterns to identify problems and recommend solutions to the Commissioner. Coordinates organization changes, assuring that appropriate clearances are obtained prior to the Commissioner's approval. Develops and administers the AoA Position Management Plan. Acts as liaison with the Assistant Secretary for Management and Budget in coordinating preparation of organizational proposals requiring approval by the Secretary. Maintains official organizational files for AoA.

Develops formal program, administrative and personnel AoA delegations of authority for the Secretary, the Commissioner and the Director, OAM. Reviews and analyzes legislation and regulations to determine to whom program, administrative or personnel authorities may be delegated in AoA. Acts as liaison with the Assistant Secretary for Management and Budget in preparing delegations from the Secretary to the Commissioner. Maintains official files of AoA delegations of authority.

Manages official AoA information systems, such as the personnel data base and the administrative issuance system. Performs assessments of paperwork processing, reporting, and other systems needs in AoA, with program and staff office input.

Provides technical assistance and guidance to AoA managers and staff regarding personnel management matters related to staffing and leave. Reviews proposed requests for personnel action and, where appropriate, recommends approval/disapproval of such requests to the Commissioner. Develops, administers and provides overall guidance on AoA time and leave policies.

Develops and monitors the annual AoA employee training strategy, assuring that the common training needs of AoA employees are identified. Serves as the AoA Training Officer to assure that AoA training needs are effectively met. Develops a training strategy and formulates the training budget for AoA. Serves as the project officer for AoA training contracts awarded.

Develops, manages, and assesses the effectiveness of AoA performance management systems, including inter/intra-departmental demonstration projects on performance management systems. Provides training and technical assistance on current and demonstration

systems and provides overall guidance, monitoring and evaluation of AoA systems. Develops, manages and assesses the effectiveness of AoA performance, incentive, and honor awards systems. Provides overall guidance, monitoring and evaluation of AoA awards systems, develops an awards strategy and formulates the various awards budgets for AoA.

Serves as the communications center for the Agency, ensuring that issues requiring the attention of the Commissioner, Deputy Commissioner or AoA Executive Staff are developed on a timely and coordinated basis. Analyzes all policy, planning and legislative documents and determines their impact on personnel and resources management; issues instructions to all AoA managers concerning their impact on administrative management. Monitors the response of other AoA units in developing necessary documents for the Commissioner's review and provides assistance to staff on the content and style of special assignments. Operates the agency-wide correspondence and assignment tracking and control system and provides technical assistance on standards for control of correspondence and memoranda. Manages the clearance system and receives documents for consistency with the Commissioner's and the Secretary's assignments, previous decisions on related matters and editorial standards. Refers unprecedented policy questions to the Office of Policy Coordination and Analysis. Provides liaison with the Executive Secretariats in the Office of the Secretary and in other Departmental units on AoA program and policy matters, as well as special administrative matters.

Maintains liaison with the National Archives and the Washington National Records Center for the loan and transfer of AoA retired records. Serves as the AoA records manager providing guidance and assistance to both Headquarters and Regional staff regarding filing practices, retention and disposition of records.

Is responsible for reviewing requests for information under the Freedom of Information Act and arranging for appropriate responses to the requests.

Acts as AoA's focal point with the Office of the Secretary, other Federal agencies, and AoA organizational units on policy and regulatory issues involving real and personal property, space management, occupational safety and health, materiel management, travel management, telecommunications, postal management, and forms and records management.

Provides oversight and direction to meet the administrative needs of AoA components. Provides administrative and support services to AoA components including coordination of services and purchase of equipment and supplies, postal services, small purchases, forms/records management and travel.

Serves as liaison with HHS, the General Service Administration (GSA) and outside vendors to provide facilities services including acquisition of facilities and equipment, personal property management, inventory control, and labor services. Administers AoA's personal property management program including: The establishment and maintenance of a personal property accountability system, the storing and distribution of supplies and the movement of furniture and equipment associated with the relocation of offices. Manages, coordinates, monitors, and controls the loan of Government-owned equipment and property to AoA employees according to existing regulations. Develops standard operating procedures and instructions to maintain uniform property management accountability systems for the control, utilization, and disposal of nonexpendable personal property for AoA. Administers the AoA personal property management program and provides technical guidance to AoA staff. Maintains liaison with the Department, the Office of the Secretary, and GSA in developing personal property standards, policies, and plans to assure an efficient supply management program.

Receives and sorts internal mail for AoA headquarters components. Provides internal special messenger service. Prepares and justifies budget estimates for AoA postal services.

Establishes guidelines for the utilization of GSA assigned space and facilities occupied by AoA. Prepares and monitors guidelines for the space reduction program effort in AoA on behalf of the Commissioner. Develops and implements AoA's space management plans and activities, including identification of and negotiations for space, allocations of space, coordination of physical moves, and planning and design of office layouts. Responsible for the acquisition, disposition, allocation, and budgeting of space for AoA.

Monitors and reconciles centralized office space rental billings and prepares budget estimates for incorporation in the AoA budget.

Develops policies and procedures related to the AoA Safety and Occupational Health Programs. Oversees AoA Safety and Health Program.

Provides telecommunications management for AoA Headquarters facilities, including installation, alterations, and maintenance. Develops telecommunications plans and places orders for telecommunications services; provides liaison with HHS, GSA and private communications firms on telecommunications matters; and provides assistance to AoA components to identify telecommunications needs and to use communications equipment and systems. Monitors telecommunications billings. Plans and administers telecommunications budgets for AoA Headquarters and Regional offices.

Manages AoA's information resources management (IRM) program and develops policies, plans, budget, standards and procedures related to it. Plans, manages, maintains and operates AoA's automated office system, including the LAN, personal computers, software, and support systems and services. Provides guidance and technical assistance on all components of the system and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the system. Provides or contracts for training of users in all AoA systems, hardware and software. Carries out activities required under the Paperwork Reduction Act of 1980, as amended, including OMB reports clearance. Represents AoA on OS IRM Policy and Planning Board.

Assesses the need for, and defines the specifications for procurement of all Headquarters and Regional Office IRM hardware and software. Reviews and recommends to the Director, OAM, the approval/disapproval for Headquarters and Regional Office requests for ADP equipment and services. Assesses, recommends and defines the need for contractual ADP sharing services through inter-government, inter-department and interagency agreements. Surveys specifications and other literature, initiates requests for services, and defines AoA's need for similar services with private ADP vendors.

Recommends strategies, provides for, and maintains systems integration in the AoA central data base system. Designs and institutes procedures for the protection, security and integrity of the AoA data base.

D.3. Division of Grants Management (BE3)

Serves as the nucleus for management, leadership and administration of discretionary grants

and formula grants for AoA. Provides national policy oversight and development for grant matters. Assures that all grant awards conform with applicable statutes, regulations, and policies. Maintains liaison and coordination with appropriate AoA and HHS organizations to assure consistency between AoA discretionary and formula grant award activities, and the Department's various payment systems for grants.

For discretionary grants, assures that the administrative and financial management aspects of grants administration are carried out and monitors grantee performance in these areas. Provides support for and processes all discretionary grant award documents and negotiates grant budgets, and makes all awards for AoA Headquarters and Regional Offices. Reviews discretionary grants after input from AoA program offices, and coordinates AoA financial management matters as necessary with appropriate HHS and AoA units.

Issues and maintains control over formula grant awards to States under Title III of the Older Americans Act. In addition, makes adjustments to previously issued formula grant awards.

In coordination with AoA program and Regional Offices, reviews and assesses AoA formula grant award procedures; directs and/or coordinates management initiatives to improve formula grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among AoA programs; establishes priorities and develops procedures for financial monitoring; and, reviews activities at the regional level for all AoA discretionary and formula grant programs.

Following consultation with program and regional offices and with the approval of the Commissioner, develops AoA regulations, instructions, and procedures for the administration of all discretionary and formula grants, including those approved in AoA Regional Offices. Provides training and technical assistance to AoA staff regarding grants and provides overall guidance, monitoring, and assistance to Regional Offices in all areas of administrative and financial management of grants.

Reviews all proposed AoA regulations and policy issuances pertaining to grant matters which are derived from Departmental, OMB or government-wide issuances to assure consistency within AoA.

Functions as AoA liaison with the General Accounting Office (GAO), the HHS Office of the Inspector General and the Department's Office of Acquisition and Grants Management on grant matters. Assists at discretionary and formula grant hearings held by the Departmental Appeals Board in response to claims by grantees. Manages the Departmental negative alert system for AoA units. Based on Department formula grants management policies and procedures, controls administrative accounting and reprogramming of formula grants funds under the Older Americans Act.

3. Chapter B.20. Functions G.2. Division of Community Based Systems Implementation. Delete in its entirety and replace with the following:

G.2. Division of Eldercare Services Implementation (BC2)

Implements the provisions of Title II of the Older Americans Act for overseeing the creation of a more responsive service system at the community level to meet the social and human service needs of the elderly. Develops and implements special initiatives at the national level for building strong interagency, intergovernmental and private sector partnerships to address age related issues and concerns and promotes these initiatives throughout the network of agencies involved with older Americans.

At all levels, from national to the local service delivery level, develops methods and relationships to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age related needs and issues.

Directs and assesses the development under Title III of the OAA of State administered, community based systems of opportunities, social services and long-term care for the elderly. Initiates and encourages expansion of the capacities of community based social service and health care systems to deliver comprehensive services to the elderly. Strengthens and extends the development of the continuum of care principle in local community based social services systems for the elderly. Provides technical and subject matter expertise for the development of these systems, targeted at building the capabilities of State and Area Agencies, and local service delivery programs to improve their service to older people.

Directs, guides and monitors the improvement and expansion of community based information and referral systems, and other developments in accessibility, for social services to the elderly.

Through extensive formal and informal contacts with a variety of agencies and organizations, identifies and disseminates through the State and Area Agency network, concepts, systems and devices to improve care for the elderly.

Promotes and coordinates information and education campaigns at the local level to improve the quality of life of the elderly, e.g., health promotion activities. Fosters public education efforts at all levels on the needs of the frail elderly through the Eldercare Campaign and other initiatives of AoA. Assists local agencies in other specialized social service areas by means of technically expert staff in the Division.

Assists State and Area Agencies and local service delivery agencies to analyze future program trends and needs of the aging population, and to develop strategies and specific implementation plans to enable all levels of the Aging Network to anticipate and adapt to community program needs at given intervals in the future.

Acts as a national representative and advocate of the State and Area Agency network with other Departmental agencies, private industry and the general public.

4. Chapter B.20. Function I. Regional Office on Aging (BD1–X5). Correct title to read as follows: Function I. Regional Offices on Aging (BD–1—BD–X).

5. Chapter B.20. Functions. Add the following functions as Function J.:

J. Federal Council on Aging Staff (BY)

The Federal Council on Aging Staff provides general staff support for a Presidential-level advisory body, the Federal Council on Aging. Provides all meeting and hearing arrangements. Prepares an annual report for the President and distributes it to the Congress and such other reports as are authorized by the Federal Advisory Committee Act. Conducts or supervises the production of studies, research, or analysis of various matters affecting the elderly as background for Council deliberations and recommendations.

Dated: December 15, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–31191 Filed 12–23–92; 8:45 am

BILLING CODE 4130–01–M

Food and Drug Administration

[Docket No. 85D-0249]

Guideline for Postmarketing Reporting of Adverse Drug Experiences; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guideline entitled "Guideline for Postmarketing Reporting of Adverse Drug Experiences," which provide guidance to drug manufacturers for complying with the postmarketing adverse drug experience reporting requirements for approved new drugs and antibiotic drugs. In addition, the guideline provides guidance to drug manufacturers for complying with the adverse drug experience reporting requirements for marketed prescription drugs without approved new drug applications.

ADDRESSES: Submit written requests for single copies of the "Guideline for Postmarketing Reporting of Adverse Drug Experiences" to the Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document "Guideline for Postmarketing Reporting of Adverse Drug Experiences" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joyce M. Johnson, Division of Epidemiology and Surveillance (HFD-730), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4227.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 1985 (50 FR 26411), FDA issued a notice announcing the availability of nine draft guidelines, including the "Guideline for Postmarketing Reporting of Adverse Drug Reactions," dated August 23, 1985. The draft guideline provided information on completing the adverse experience reporting form (FDA 1639), on the sources of adverse drug reaction information, and on the procedures for submitting a report. The draft guideline was made available for public comment to provide the agency with views to be considered in its development of the final guideline. A copy of the comments is on file with the Dockets Management Branch (address above), under Docket No. 85D-0249.

The current adverse drug experience reporting requirements were adopted in the final rule revising the new drug and antibiotic regulations (the NDA Rewrite) that was published in the **Federal Register** of February 22, 1985 (50 FR 7452). The reporting requirements were designed to ensure the timely submission to FDA of information on new and potentially serious safety problems (21 CFR 314.80).

In a final rule published in the **Federal Register** of July 3, 1986 (51 FR 24476), the agency adopted adverse drug reaction reporting requirements for manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of approved applications (21 CFR 310.305). The reporting requirements for drugs not subject to approved applications are like those established for new drugs.

The agency is now announcing the availability of a guideline entitled "Guideline for Postmarketing Reporting of Adverse Drug Experiences," a single guideline for reporting adverse drug experiences that applies both to new approved drugs and antibiotics and drugs not subject to approved applications. In developing this guideline, FDA has carefully considered the comments received on the draft guideline issued in the **Federal Register** of June 26, 1985, and its experience in implementing the two sets of reporting requirements.

The notice of availability of the draft guideline stated that FDA would announce the availability of the final guideline under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to the agency. The agency is now in the process of considering whether to revise § 10.90(b). Although that decisionmaking process is not yet complete, the agency has decided to publish this guideline. However, this notice and the final guideline are not being issued under the authority of § 10.90(b), and this final guideline, although called a guideline, does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. However, the guideline represents the agency's current position on procedures for reporting adverse drug experiences. An applicant may follow the guideline or may choose to use alternate procedures even though they are not provided for in the guideline. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA.

Interested persons may submit written comments on the final guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Two copies of comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document.

The final guideline and received comments may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 30, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-31229 Filed 12-23-92; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1993:

Name: National Advisory Committee on Rural Health.

Date and Time: February 8-10, 1993; 8:30 a.m.

Place: The Hyatt Regency Hotel, Ocean Front at Palmetto Dunes, P.O. Box 6167, Hilton Head Island, South Carolina 29938, (803) 785-1234.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During this meeting, the Committee intends to address graduate medical education and health care reform. The Committee will also be touring rural clinics and medical facilities in Beaufort County, South Carolina on Monday afternoon, February 8. It will concentrate on

programs that address the needs of underserved populations. Finally, the Committee will continue shaping its agenda for and developing recommendations to be included in the Sixth Report to the Secretary, Department of Health and Human Services. The entire meeting is open to the public, however, no transportation to the sites will be provided for public attendees.

Anyone requiring information regarding the subject Council should contact Dena S. Puskin, Sc.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Dated: December 21, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–31227 Filed 12–23–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

President's Cancer Panel Special Commission on Breast Cancer; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, January 11 and 12, 1993, at the Hyatt Atlanta Airport, 1900 Sullivan Road, College Park, GA 30337, (404) 997–2770.

This meeting will be open to the public on January 11 from 8:30 a.m. to recess and on January 12 from 8:30 a.m. to adjournment. Attendance will be limited to space available. Agenda items will include presentations by invited speakers on the topic of "Treatment, Rehabilitation and Quality of Life."

Iris J. Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31, room 4A34, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–1148, will provide a roster of the Commission members and substantive program information upon request.

Dated: December 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–31225 Filed 12–23–92; 8:45 am]

BILLING CODE 4140–01–M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on February 1–2, 1993. On Monday, February 1, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 5 p.m. This portion of the meeting will be devoted to a discussion of current issues in the management of Fulminant Hepatic Failure (FHF). On Tuesday, February 2, the meeting will begin at 8:30 a.m. and adjourn at approximately 4 p.m. A statement regarding current therapy of FHF and future needs in clinical and basic research as well as current and future Board business will be discussed at this time. The meeting, which will be open to the public, will be held at the Dulles Marriott, 333 West Service Road, Chantilly, Virginia 22021. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: December 18, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–31224 Filed 12–23–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Core Support of a Board on Learning Readiness

Introduction

The Public Health Service (PHS) announces the award of fiscal year (FY) 1992 funds for a cooperative agreement to provide core support for establishment of a board on learning readiness to address the physical social, and developmental requirements of children and adolescents that influence their ability to succeed in school. Such a board will provide a permanent structure, focus, and attention to complex issues relating to school readiness and will contribute to a better understanding of important national issues by improving information on which public policy decisions are based.

The Public Health Service has a primary responsibility for identifying the health barriers to learning readiness and those actions that might be undertaken by families, schools, communities, healthcare providers and the research community to overcome them. In carrying out this responsibility the Department wishes to have available to it a standing board composed of leading researchers in relevant domains that could be called together to provide either informal advise or more deliberative seminars or studies on discrete issues.

Authority

This program is authorized under section 301 of the Public Health Act, 42 CFR part 52.

Eligible Applicants

Assistance was provided only to the National Academy of Sciences, Washington, DC. No other applications were solicited.

The National Academy of Sciences is the only organization that has a unique and special relationship with the Federal Government which has the ability to assemble committees and boards of the Nation's most eminent scholars, to furnish independent advice and guidance of the highest quality with an unparalleled level of objectivity. This combination of advice and objectivity is a succinct asset to the Department in carrying out its' mission in this area.

Availability of Funds

$100,000, including direct and indirect costs, was awarded to the National Academy of Sciences for this cooperative agreement. Award was made on September 30, 1992 for a 12-month project period.

Purpose

The purpose of this cooperative agreement is to provide core support for a new board on learning readiness, to assist the Department in defining the concept of, identifying indicators of and measuring "school readiness" as they relate to the health component of Goal #1 (by the year 2000 all children will enter school healthy and ready to learn), of the President's national education strategy, America 2000, for which DHHS has the lead. The board will build upon

the efforts of PHS and other Federal and Non-Federal entities as it examines the science related to "readiness to learn" in both children entering school for the first time and children/youth already in school each and every day. In addition, the board will consider the public policy implications and the best approaches for reaching those with greatest need.

Program Requirements

During the period of this cooperative agreement, the federal substantial involvement will be as follows:

1. Meet with NAS to discuss plans for the activity of the Board during the coming year;
2. Be in contact with NAS staff prior to Board meetings to discuss the agenda for board meetings; and
3. Attend presentations, when appropriate, to pursue specific ideas and suggestions generated by the Board.

Evaluation Criteria

The application was reviewed and evaluated according to the following criteria:

A. Degree to which the applicant demonstrates their understanding of the problem and the purpose of the award.

B. Degree to which the objectives are consistent with the stated purpose of the application and the ability to meet the objectives within the specified period.

C. Adequacy of plans to monitor progress toward meeting the programs activities and objectives.

D. Degree to which the applicant demonstrates the capability to provide the staff and resources necessary to perform and manage the project.

E. Degree to which the budget is reasonable, adequately justified and consistent with the intended use of the grant funds.

Catalog of Federal Domestic Assistance Number

A Catalog of Federal Domestic Assistance Number is not required because the project is to be funded for one year only.

Where to Obtain Additional Information

Additional information regarding this program can be obtained by contacting Cindy Oswald, Contract Specialist, General Acquisitions Branch, Division of Acquisitions Management, ASC/OM, 5600 Fishers Lane, room 5–101, Rockville, MD 20857.

Programmatic technical assistance may be obtained from Melanie Timberlake, Office of Health Planning and Evaluation, HHH Building, Room 740G, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: September 16, 1992.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 92–31193 Filed 12–23–92; 8:45 am]

BILLING CODE 4160–17–M

National Toxicology Program; Draft Response of the Program to Recommendations in the Final Report of the Advisory Review by the NTP Board of Scientific Counselors; Request for Comments

Background

Dr. Kenneth Olden, Director of the NTP, has as a major goal to assure that the Program serves the public health by strengthening its role as the Nation's premier toxicology research and testing program. To accomplish this goal, Dr. Olden asked the NTP Board of Scientific Counselors, the primary scientific oversight body for the NTP, to review three specific issues of the operation and function of the NTP having to do with how:

- To improve the quality of chemicals nominated for testing by assuring that they have the greatest public health significance;
- To assure that emphasis is placed on studies of the mechanism of toxicity and carcinogenicity; and
- To develop and validate alternate essays that may reduce the need for long-term testing in animals.

Accordingly, the NTP Board, assisted by *ad hoc* expert consultants, met in public session in Research Triangle Park, NC, on April 14–15, 1992, to conduct this review. The final report of the advisory review was published in the **Federal Register** (Vol. 57, No. 138, pp. 31721–31730, July 17, 1992).

Comments were received on the report and other aspects of Program activities at a public meeting held on September 11, 1992, in Washington, DC. Written comments also were accepted at NTP headquarters. At a meeting of the NTP Board on October 27, 1992, Program staff responded to the report and its recommendations. A copy of the response with a summary of public comments is appended here.

Action

The NTP seeks written comments and views on the response to the Advisory Review report and its recommendation. To be most useful, comments should be received within 30 days of the date of this announcement, be as specific and brief as possible, and addressed to the Executive Secretary, NTP Board of Scientific Counselors, Dr. Larry G. Hart, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709. Comments may be sent by FAX to 919 541–2260.

Subsequently, the final report and Program response, along with comments received, and after approval by the NTP Executive Committee, will be considered by Dr. Olden in making recommendations for improvements in the NTP to the Assistant Secretary for Health, Department of Health and Human Services.

Dated: December 18, 1992.

Kenneth Olden,

Director, National Toxicology Program.

Summary of the NTP Response to Recommendations of the NTP Board of Scientific Counselors

The NTP Board of Scientific Counselors met on April 14–15, 1992, to review certain key aspects of the operation and function of the NTP, specifically, the nomination of chemicals, the emphasis on mechanistic work within the NTP and the role of the NTP in the development and validation of alternative assays in toxicology. The overall positive response by the Board regarding the Program is appreciated. The recommendations are relevant to the broad dimensions of the Program as an interagency effort of the Federal government, primarily including scientists and resources of the NIEHS, NIOSH and NCTR.

The NTP agrees strongly with the suggestions of the Board that the process for nominating chemicals and agents for testing by the NTP needs to be expanded and revised to include more emphasis on endpoints of toxicity other than carcinogenesis and to get input from a broader audience of nomination sources. The current procedures for nomination and selection of chemicals, as outlined in the NTP Annual Plan, could more clearly indicate that these options are available. The Program will review the selection and prioritization process in light of recommendations made by the Board. Consideration will be given to the development of criteria for selection and prioritization that are endpoint specific.

The recommendation that mechanisms of toxicity and carcinogenesis should be more widely included in NTP studies is consistent with changes in emphasis that have been implemented over the past few years. As suggested, scientists from basic research backgrounds from NIEHS, NIOSH and FDA (NCTR) laboratories will be included in the discussions to determine the research plans and protocols on individual chemicals. This will introduce more mechanistic observations in the study designs and

will foster cooperative research projects with more intramural scientists. The Program is committed to developing a broader package of data to assist in the interpretation of test results and in the assessment of human risk.

The NTP agrees with the Board recommendation that the NTP should continue to foster the development and validation of new test systems. This is a contribution that can be made uniquely by the NTP. Approaches using *in vitro* systems and alternative species have considerable potential to contribute to our understanding of mechanisms. Their potential value as replacements for currently used *in vivo* systems remains to be determined, as recognized by the Board.

The NTP also agrees with the Board that one of the strengths of the NTP is that scientists are involved in testing, methods development, and mechanistic research. This will definitely continue on a program basis, and on an individual scientist basis where appropriate. More extensive involvement of other intramural scientists and laboratories from NIEHS, NIOSH and NCTR in NTP studies will help to broaden the array of scientific expertise brought to bear on NTP projects.

In summary, the NPT management and professional staff agrees with the major recommendations of the NTP Board of Scientific Counselors from the recent review. Further amplification of our responses is included in the more detailed discussion that follows.

NTP Response to Board of Scientific Counselors' Report

The NTP Board of Scientific Counselors met on April 14–15, 1992, to review certain key aspects of the operation and function of the NTP, specifically, the nomination of chemicals, the emphasis on mechanistic studies within the NTP, and the role of the NTP in the development and validation of alternative assays in toxicology. The thoroughness of the report of the Board, received in June 1992, reflects the hard work and attentiveness of the Board members and ad hoc consultants. The Board's comments were insightful and will definitely help to provide further focus and improvements to the Program. While the Board reviewed the three major issues through workgroups of experts in the areas of carcinogenesis, reproductive and heritable effects, and chemical disposition and other toxicities, this response addresses the collective recommendations of the three groups on the three issues. Comments in this response focus primarily on points of agreement that are of particular importance and points of disagreement or misunderstanding.

Issue 1—To Improve the Quality of Chemicals or Other Environmental Agents or Factors Nominated for Testing by Assuring That They Have the Greatest Public Health Significance

Although there were some differences in the recommendations provided by the three workgroups, the recommendations were more complementary than conflicting and will be used to help guide the Program evaluation and revision of the procedures for nomination, selection and prioritization of agents to be tested. All three workgroups recommended that a wider diversity of individuals and organizations be reached as a source of chemical nominations. The NTP agrees that it is important for a broader spectrum of sources to have input to the nomination process. The greatest diversity in working group recommendations occurred in those addressing the selection and prioritization of agents for testing, reflecting, in part, the varying criteria that need to be considered in testing agents for different endpoints. The Carcinogenesis Workgroup considered the extent of human exposure to be the most important criterion, followed by suspicion of toxicity or carcinogenicity and the existence of data gaps in knowledge. They recommended that chemicals should not be nominated solely as a representative of a chemical class. Classes of chemicals that have been studied in the past were nominated because of exposure of large numbers of people to some members of the class in addition to a suspicion of carcinogenicity. Hypotheses about chemical structural contributions to carcinogenic potential have and should continue to be evaluated. In some cases it has been possible to characterize the toxicity of a large chemical class by studying a few carefully selected members of the class.

Increasing numbers of chemicals have been nominated for study of endpoints other than cancer and the NTP encourages such nominations. Only about half of the chemicals studied by the Program are evaluated in two-year carcinogenicity studies. In contrast to the Carcinogenesis Workgroup, the other two workgroups put less emphasis on human exposure as the primary consideration for selection for study. The criteria for prioritizing chemicals for non-cancer endpoints included structure activity relationships and mechanistic considerations, including chemical class. We do not disagree with these recommendations or with the distinction between the selection criteria for carcinogenesis vs. other toxicity studies. In fact, the Program has always considered human exposure to be a high priority criterion for selecting chemicals for carcinogenesis testing. In answer to the question of how to identify chemicals that become important through the development of new industries, the Carcinogenesis Workgroup recommended that the program might employ chemists or chemical engineers to identify chemicals from these new industries. The Program has been relatively successful in anticipating new industries, such as the semiconductor industry with its novel chemicals, and will continue to use the contacts already established to identify newly developing industries. We feel that additional personnel would have a higher priority for other aspects of Program work.

The NTP agrees with the recommendation of the Reproductive and Heritable Effects Workgroup that the Program should test individual chemicals and concepts of importance to toxicology. The greatest impacts of this Program's work to date are the total body of knowledge accumulated through the testing and research program, and the standardization of methods for the conduct and interpretation of studies, and to a lesser extent, the results of studies on individual chemicals. Although questions driven by chemical-data needs will continue to be important, there are many ideas and concepts of great importance to the regulatory agencies that this Program can address, often simultaneously with testing of selected chemicals. The Reproductive and Heritable Effects Workgroup also recommended a historical evaluation of the chemicals nominated to the Program, and the outcomes and implications of performing or not performing testing. Numerous reviews have been written that analyze and summarize the results of NTP studies. These reviews address issues related to the animal models, statistical considerations, predictiveness of certain types of observations for other toxicologic responses, chemical triggers for specific types of toxic potential, and other evaluations of the respective databases. A more specific response would require further clarification of the intent of the recommendation by the Board.

The workgroup evaluating other toxicity endpoints and chemical disposition recommended the formation of an independent committee to judge

chemical prioritization and selection. The Program will review all chemical nominations as well as consider recommendations for concept and issue-related studies. This review will be done by representatives from the three major operating agencies of the NTP—NIEHS, NIOSH, and NCTR and possibly other government agencies in the future. Thus, reviewers will represent a broad range of scientific interests to provide more assurance that chemicals and ideas that are selected for Program work in the future will have public health importance as a major criterion for selection. The initial review of nominations of chemicals and issues for work by the NTP will consider epidemiologic, mechanistic, and toxicological questions and other Program needs such as the development and validation of screening tests. The procedural details of the selection and prioritization process including involvement of the Chemical Evaluation Committee, **Federal Register** notices of study plans and approval procedures are under review by NTP staff.

The NTP proposes that after a chemical or scientific issue is selected for work by the NTP and receives the appropriate committee approvals, a team leader will be selected for that specific chemical or issue based on expertise relevant to the topic. A team of experts will be selected from the cooperating agencies of the NTP as well as experts from other organizations inside and outside the government, as appropriate, to develop a plan of work on that specific chemical or scientific issue. This group of experts will review the literature and prepare a list of prioritized studies that represent the recommendations to the NTP. The NTP management will review the recommendations of these teams to determine which are relevant for commitment of NTP resources. The approved work will be initiated through existing NTP contracts, in-house laboratories, or through new contracts or grants, new interagency agreements, or other mechanisms as needed. The team that was organized to recommend the research program on the individual chemical or issue will monitor progress on the program and will meet periodically to review the status of ongoing work and to consider new priorities. Once the work is accomplished, the team will be disbanded. This approach of using teams for high priority commitments of the Program will assure broad representation from throughout the NTP and other agencies of the Federal government. In fact, these teams will represent the driving force for much of the work by the NTP in the future.

The workgroup on Other Toxicities and Disposition also recommended that steps be taken to improve public awareness of the NTP. The NTP agrees that additional steps could be taken, perhaps along the line of the recommendations of the Reproductive and Heritable Effects Workgroup that more effort be made to communicate through the scientific and professional societies that are related to the areas of work of the NTP. For example, we can provide information to the relevant major scientific societies that can be published in their newsletters to make their members aware of the purpose of the NTP and our interest in their nominations of chemicals and research suggestions. We will also communicate with the Association of State and Territorial Health Officials for the same purpose. These efforts to improve communications will be assisted by the Office of Communications of the NIEHS.

In summary, the Program intends to utilize the suggestions provided and make a greater effort to solicit nominations from other agencies, trade associations, unions, public organizations, and professional societies. As was recommended in the Summary Section of the Board report, the Program will also evaluate and revise, as needed, the nomination format to emphasize the options in nominations for testing. Also, the Program intends to review the selection and prioritization process in light of the recommendations made by the Board. Consideration will be given to the development of criteria for use in selection and prioritization which are specific to the various endpoints of toxicity.

Issue 2—To Assure That Emphasis is Placed on Studies of the Mechanisms of Toxicity and Carcinogenicity

We agree with the Board about the need for additional data that improve interpretation and extrapolation of test results. In fact, many recent studies have incorporated additional observations to improve the interpretability of the test results, such as lung loading of insoluble particles in inhalation studies, oncogene activation patterns, cell proliferation data, identification of metabolic pathways that result in the formation of toxic or reactive metabolites, species variations in the metabolism and elimination of test chemicals, and dose and route dependent factors that account for variations in toxicity. This information documents more completely the dosimetry aspects of exposure, identification of critical lesions that might be important in the development of toxicity or cancer, and helps to define the mode of action of chemicals where specific toxic effects have been observed. It is anticipated that this process will be expanded in the coming years through the involvement of a broader range of intramural scientists from within NIEHS and other NTP agencies (NIOSH, NCTR). In addition, efforts to stimulate the existing extramural grant mechanism to develop investigator-initiated research proposals based on the results of NTP studies will be pursued. Intramural and extramural scientists will also be notified, as feasible, of the potential availability of experimental animals from NTP studies for research projects in their laboratories.

With the NIEHS reorganization, a greater involvement of other intramural scientists will assure that all NIEHS expertise will be available to address important NTP scientific issues. Moreover, scientific expertise from the other two NTP agencies will also be available to address specific research needs of the Program. This closer cooperation between NIEHS intramural, NIOSH, and NCTR scientists will permit a much broader cadre of scientific expertise from which the Program can identify and select scientists who can contribute to protocol design, mechanistic research, and data interpretation and provide the scientific community and appropriate regulatory bodies with sound scientific data to better assess human risk.

Thus, the NTP testing program will be enhanced at all stages. A greater diversity of scientific input will be sought for selection of chemicals and for the design of studies on selected chemicals and issues. Study protocols will be expanded, as possible, to accommodate collaborative research studies and facilitate the design of mechanistic studies that might follow the descriptive toxicity studies. This added emphasis on mechanistic work, however, must not deemphasize the importance of the chemical testing program of the NTP.

The recommendation of the Carcinogenesis Workgroup that there should be a requirement that the results of the bioassay be discussed with regard to their biological significance concerning human health requires further discussion and clarification. Hypotheses about mechanisms of cancer and relevancy of animal responses for human hazard are not widely accepted for any type of tumor. The current state of knowledge about mechanistic considerations appropriate for a given

study should be identified in technical reports, but the historical strength of the NTP database is the fact that the reports include all of the data necessary for anyone to evaluate the results of the study. As a rule the NTP conclusions about the data are independent of mechanistic considerations, some of which have narrow windows of acceptance. It is uncommon that any single special study will make a tumor response in animals "relevant" or "irrelevant" for humans.

Although the Program is committed to developing a broad package of data to help interpret test results, there will likely continue to be uncertainty in extrapolating animal data to humans. The "under the conditions of this study" approach of the Program is conservative, objective, and has had acceptance in the public peer review process. To enhance risk characterization and facilitate extrapolation to humans, though, opportunities will be sought that include human studies and model development.

The statement that ⅔ of the carcinogens would not be identified at less than the maximum tolerated dose (MTD) is based on a paper (Haseman, J.K.: Issues in Carcinogenicity Testing: Dose Selection. *Fundamental and Applied Toxicology 5*, 66–78, 1985) that evaluated only 13 rodent carcinogen studies, too few to justify such general conclusions. An expansion of that analysis (Hoel, D.G., Haseman, J.K., Hogan, M.D., Huff, J., and McConnell, E.E.: The Impact of Toxicity on Carcinogenicity Studies: Implications for Risk Assessment. *Carcinogenesis 9* (11), 2045–2052, 1988) concluded that only 18 of 52 (35%) multidose chemicals classified as carcinogens would not be statistically positive if the MTD were excluded. Fifteen of the 18 chemicals not showing statistically significant tumor effects at doses below the MTD nevertheless had numerically elevated tumor rates at these dose levels relative to controls.

The criteria for selecting the high dose level for carcinogenesis studies have been the subject of review and discussion for years. The default criteria cited by the Board for extrapolation from the MTD actually have little impact on the design of most carcinogenesis studies because of the lack of mechanistic understanding. Use of the MTD for hazard identification grew out of efforts to produce cancer in laboratory animals with known human carcinogens. Carcinogenic risk may or may not be impacted by proportionality of dose with exposure even in the presence of nonlinear kinetics in blood. NTP studies currently use three dose levels to define the dose-response relationship. The concept of the MTD does not include assumptions about the dose response for DNA repair. Regarding age-dependency and our experience in exposing animals for about ⅔ of their lifespan, no clearcut advantage has been shown by adding perinatal exposure. Estimations of human exposure often have little or nothing to do with selection of the highest dose level for carcinogenesis studies. Negative studies with all dose levels below the MTD are not given much credence for hazard identification. We believe, given our current understanding of mechanisms for carcinogenesis, that currently there are no well-founded generic changes that can be incorporated in test protocols that would impact any default criteria for extrapolation from high dose to low dose in animals, or in scaling to human exposure doses. The Program does believe, however, that it would be prudent to explore modification or alternatives to the MTD concept, such as DNA repair kinetics, to assist in protocol design and in reducing the number of default assumptions incorporated in conducting risk assessments.

Two of the workgroups specifically recommended that a balance be maintained in the areas of testing, mechanistic work, and the development of new methods. This balance can be maintained where it has existed in the past and can be developed in those areas where it hasn't existed on a program basis but is difficult to achieve on an individual scientist basis. By closer integration with other intramural laboratories of NIEHS, NCTR, NIOSH and other organizations, the Program will maintain a balance between mechanistic, testing, and methods development work with individual efforts spanning the range from complete mechanistic commitments to complete Program responsibilities. The balance between mechanistic research and other responsibilities, on an individual basis, will be tailored as closely as possible to the skills of the individuals.

Closer coordination of efforts of toxicologists, whose primary responsibilities are to NTP-related work, and other intramural scientists who are involved in basic research, will be accomplished through at least two approaches. First, efforts to include basic research scientists in all of the functional operations of the NTP will be expanded. Thus, the planning for the program activities will be done by a broader range of scientists. This will help ensure that more mechanistic work will be included in the study protocols and that more mechanistic work will be done in the intramural laboratories to enhance the database on individual chemicals or on issues that relate to the interpretation of test data. The other approach by which collaboration will be developed with other intramural scientists is through an internal granting process. In this process, NIEHS resources, though limited initially, will be made available to NIEHS scientists who develop collaborative research projects that are at the interface between toxicological observations and mechanistic research. These resources would be applied for through central mechanisms and would be made available on basis of merits of the proposal. This work could include new hires (most likely temporary employees such as post doctoral scientists) to conduct the studies under the guidance of the intramural scientists who devised the projects. This will not only provide resources to support research projects but also provides an incentive for scientists to collaborate to generate data at the interface between mechanistic and toxicologic areas of work.

As noted in the discussions by the workgroups, what constitutes mechanistic work is not a matter of widespread agreement. In most cases, what is considered mechanistic work is really additional descriptive information relating to some normal or abnormal biological process or outcome (toxicity). Such information doesn't identify ultimate mechanisms of action, but may be helpful in the overall understanding of the development of the agent-induced toxicity. To fully identify and characterize the molecular mechanisms of toxicity will require the full resources of the entire biomedical community. For its part, the NTP will expand the scope of its mechanistic efforts to include more intramural scientists and to incorporate mechanistic information in the design of more definitive studies. Much of the mechanistic work, however, must be done sequentially based on the results of the toxicity testing and the developing base of mechanistic information. Thus, a balance will continue to be sought between research and testing activities by the NTP to provide the best composite of information for making public health and regulatory decisions.

Issue 3—To Develop and Validate Assays that May Reduce the Need for Long-Term Testing in Animals

The Program shares the qualified optimism expressed by the three

workgroups regarding the status and prospects for the future use of alternative test systems. We agree that there are currently no short-term tests or tests in alternative species that are adequate to replace the definitive protocols currently used for characterizing toxicity and carcinogenicity. We mut be cautious with statements that changes in protocols will lead to the use of reduced numbers of animals. Within the field of toxicology, such optimistic statements were made decades ago and it is not obvious that there have been significant reductions in the use of animals as a result of the development of prescreens and alternative test systems. Instead, test strategies, including prescreens, have permitted us to use animals more wisely by improving the prioritization process. Also, the proposed expert team approach for the development of work plans and protocols should enhance the opportunity for investigators to maximize the amount of data obtained from a study and, thus, possibly decrease the number of animals required. We must be careful not to build false hopes that alternative procedures are so close at hand that we will be able to phase out long-term tests using whole animals. The Program has made considerable progress in using animals only for high priority testing and research and has provided a considerable amount of guidance to broad fields of toxicology in the development and evaluation of screens in such areas as genetic toxicity and developmental toxicity. In addition to the history of the Program and its involvement in submammalian screens, the program is currently involved in the evaluation of fish, frogs, and Drosophila as alternative test systems for carcinogenicity and developmental toxicity.

The Program will continue to evaluate the use of reduced protocols for evaluation of carcinogenic potential. Recent meetings sponsored jointly by the EPA and NIEHS have confirmed that there are some situations where reduced protocols, perhaps including only one sex of each of two species, would be appropriate but that a certain percentage (perhaps as high as 10%) of chemicals that would have been detected by the standard two species-protocol would not be identified as animal carcinogens. Thus, the possibility of using reduced protocols for carcinogenicity testing will be considered but on an individual chemical basis.

The Program is currently involved in the evaluation of several transgenic animal models particularly for the identification of carcinogenic potential. Transgenic and other models show considerable promise for improving our understanding of mechanisms of toxicity and carcinogenicity. However, their ultimate value for early screens for toxicity remains to be determined.

The Reproductive and Heritable Effects Workgroup recommended the development of statistical models using existing data to increase power by combining endpoints of toxicity. They also noted that this might reduce the number of animals needed for such testing. One of the strengths of the database generated by the NTP in multiple areas of toxicity, including cancer, immunotoxicology, reproductive and developmental toxicity, and genetic toxicity, is that all of the data are available for evaluation by others who wish to try other approaches to data analysis. For example, the EPA is currently evaluating the developmental toxicity database generated by the NTP for other approaches to model the data. At the present time, we consider it most appropriate to let the evaluation by EPA and others go to completion and then review the status. It isn't clear that combining biochemically or physiologically unrelated endpoints is a logical way to improve the interpretation of developmental and reproductive toxicity data. Rational combinations of endpoint observations await better mechanistic understanding.

The Program agrees with the Board that the NTP should continue to foster the development and validation of new test systems and should be involved in interagency coordination efforts to develop and use such systems. In fact, 1992 Congressional appropriations supported the development of alternative test systems by the NTP but the level of support doesn't afford a larger role in the field for the NTP. Currently there are at least two interagency committees that deal with this issue to a limited extent—the Interagency Research Animal Committee (IRAC) and the Interagency Regulatory Alternatives Group (IRAG). Because neither of these groups has the focus and scale of the NTP interest in alternative test systems, the Program is considering the advisability of forming another interagency group of the nature recommended by the Board.

Toxicology Strategy

The workgroup on Other Toxicities and Disposition made an additional recommendation that was outside of the three major issues already discussed. This group recommended that the NTP become the nation's principal coordinating center for toxicological issues, to develop a national toxicology strategy. In response, the Program already, to a significant extent, plays this role in the field of toxicology through the various conferences, symposia and workshops that have been sponsored by the NTP and public reviews of reports and programs. NTP studies provide hypotheses used by extramural scientists in grant applications funded by the NIEHS Extramural Program in the areas of clinical and experimental biomedical sciences that impact on toxicology. The NTP leads major interagency efforts to communicate and harmonize toxicological issues. The Program serves as a center for coordination of toxicological data needs and issues, particularly for those agencies that comprise the NTP Executive Committee. Consideration will be given to broadening the communications to include all agencies that are producers or users of toxicological data.

While the Program is committed to communication on a chemical-by-chemical and issue-by-issue basis, it has effectively served as a center of coordination of toxicological issues without adopting a more aggressive stance of policy advocacy. The Program feels that the contribution of data to support regulatory and public health decisions has been more important than spending a larger proportion of our resources to develop and defend strategies for appropriate approaches to toxicological issues. Thus, the Program is committed to continue to play an important role in providing leadership for the toxicology community with the approaches used successfully in the past.

NTP Annual Report on Carcinogens

Several reviewers recommended that the process of listing chemicals in the Annual Report on Carcinogens take into account mechanistic data to avoid listing chemicals where the animal data appear to be not relevant for predicting risk for humans. The approach used to select chemicals for the Annual Report was recently reviewed by an interagency committee, the Committee to Coordinate Health and Related Programs, which concluded that the procedures were appropriate and consistent with the congressional mandate for the Report. The NTP agrees that mechanistic data are important to consider and will cite relevant literature of a mechanistic nature that could impact the extrapolation from animals to humans for chemicals that are listed in the Annual Report.

In summary, the insightful recommendations of the NTP Board of Scientific Counselors are a basis for

constructive refinements to the operation of the NTP. Coupled with organizational changes in progress within the NIEHS that will increase the breadth of scientific expertise applied to the work of the NTP, the comments of the Board are timely to assure the high scientific quality and leadership role of the National Toxicology Program.

Summary Report of Public Comments on the Advisory Review Report of the NTP Board Received by October 23, 1992

The NTP Board of Scientific Counselors assisted by ad hoc expert consultants met on April 14–15, 1992, to review certain aspects of the operation and function of the National Toxicology Program (NTP) and make recommendations to NTP Director and Executive Committee. As agreed, the final report of the Advisory Review of the NTP was published in the **Federal Register**, Vol. 57, No. 138, 31721–31730 (July 17, 1992) and public comments were requested on the report as well as suggestions of other activities to improve the NTP. Additionally, a public meeting attended by about 100 persons was held in Washington, DC, on September 11, 1992, at which time oral comments were received.

There were 19 speakers at the meeting on September 11. Eleven were from industry or represented industrial trade associations, while there were two speakers representing labor, two from public interest groups, two Federal scientists representing themselves, a representative for an animal protection group, and one private citizen. Without exception, the industrial speakers expressed general support for the recommendations in the report, especially the call for more mechanistic research often incorporated into bioassay design to aid in risk assessment, while being in less agreement on whether there should be less testing, the same as currently, or more. These speakers thought the use of the MTD should be reevaluated. Other speakers encouraged more studies of mechanisms but not at the expense of doing bioassays, calling for increased funding to support more testing. Two noted that there was no current alternative to the bioassay for predicting human cancer risk. There was general support for an NTP role in development and validation of alternative test systems to replace the use of whole animals. With regard to improving chemical nomination and selection, there was some expressed support for selection of natural substances and opposition expressed to selecting and testing pharmaceuticals and chemicals that should be tested by industry. One speaker cautioned that production volume did not necessarily equate with human exposure. Another called for broader nongovernment input in the nomination process and several called for more emphasis on non-cancer endpoints. With regard to the issue of how to improve the procedures for alerting regulatory agencies and the public about test results on chemicals, there was a divergence of opinion between not communicating information until potential human risk is identified vs. more prompt release of bioassay results. One subject not addressed specifically in the report but which drew comments from several speakers was the NTP Annual Report on Carcinogens. Several speakers stated that the criteria for inclusion of substances needed to be reevaluated to include the use of mechanistic information. Two speakers said the Annual Report was an important public health tool and there should be no delays in its release.

There were 38 written statements received through October 23, with about a third received prior to the public meeting. Eight were from persons who also spoke at the public meeting. Of the statements, 20 were from industry/trade group representatives, five from Federal scientists, five from academia, three from public interest groups, two from private citizens, one from a journal editor, one from a consultant, and one from labor. In general, many of the comments received mirrored those received in the public meeting.

Among the comments, three correspondents stated there was a factual error in the statement in the Report about the percentage of NTP carcinogens that would not be positive in rodent studies if the MTD had not been used. There was a divergence of opinion concerning the use of reduced protocols. One writer decried the lack of discussion on risk assessment in the report. Two called for more testing of natural dietary substances while one thought this should be coupled with more research on effects of dietary insufficiencies and caloric restriction on tumorigenesis in rodents. One writer called for more short-term bioassays in immature animals as they are more sensitive to tumor induction than adult animals. With regard to development of alternative systems, one writer thought more emphasis should be given to aquatic organisms, while another suggested that multiple endpoint assays could be valuable *in vitro* alternatives to whole animal studies. One writer said the NTP should reexamine the mechanisms involved in carcinogenesis of compounds which only induce liver tumors in B6C3F1 mice. Classes of substances that were suggested for study included mixtures, food constituents, and radiolytic byproducts of the irradiation of food. Two writers supported a call for more interaction and even collaboration between NTP scientists and industrial scientists. Two writers proposed that, because of limited NTP resources, testing be shifted to industry where possible with one stating that there was sufficient authority under the Toxic Substances Control Act (TSCA) to compel industry to increase the conduct of bioassays. Finally, 13 correspondents referred to the Annual Report on Carcinogens with the comments primarily echoing those received at the public meeting.

All of the oral and written comments received from the public were promptly provided to NTP staff in the three agencies for their review and consideration in the process of formulating the Program's responses to the recommendations of the Advisory Review Report.

[FR Doc. 92–31226 Filed 12–23–92; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–3350–N–11]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is

publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD:

(1) Its intention to make the property available for use to assist the homeless,

(2) Its intention to declare the property excess to the agency's needs, or

(3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the total free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-0474; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE-MM, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; (These are not toll-free numbers).

Dated: December 18, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/24/92

Suitable/Available Properties

Buildings (by State)

California

199 Military Family Housing
Savannah Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240001
Status: Excess
Base closure, Number of Units: 398
Comment: 1405 sq. ft., 2-family duplexes, 1-story woodframe stucco, 144 units scheduled to be vacated 1/31/93; 254 units scheduled to be vacated 10/1/93.

Utility Bldg.
Savannah Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240002
Status: Excess
Base closure, Number of Units: 1
Comment: 237 sq. ft., 1-story woodframe stucco, most recent use—gas meter bldg., scheduled to be vacated 10/93.

100 Military Family Housing
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240003
Status: Excess
Base closure, Number of Units: 684
Comment: 2550 sq. ft. to 3024 sq. ft., 16 duplexes, 72 four-plexes, and 12 six-plexes totaling 684 units, 3 to 4 bedrooms, 1 to 2 story, scheduled to be vacated 10/94.

49 Detached Carports
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240004
Status: Excess
Base closure, Number of Units: 49
Comment: size varies, 1-story concrete block wall, scheduled to be vacated 10/94.

Convenience Store
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240005
Status: Excess
Base closure, Number of Units: 1
Comment: 4830 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

Youth Center
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240006
Status: Excess
Base closure, Number of Units: 1
Comment: 6576 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

Utility Bldg.
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240007
Status: Excess
Base closure, Number of Units: 1
Comment: 416 sq. ft., 1-story woodframe stucco, most recent use—gas meter building, scheduled to be vacated 10/94.

Child Care Center & Storage
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240008
Status: Excess
Base closure, Number of Units: 2
Comment: 6641 sq. ft. child care center and 400 sq. ft. storage bldg. 1-story woodframe stucco, scheduled to be vacated 10/94.

Maintenance Bldg.
Cabrillo Project
Long Beach Naval Station

Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240009
Status: Excess
Base closure, Number of Units: 1
Comment: 900 sq. ft., 1-story steel panel bldg., scheduled to be vacated 10/94.

Laundromat
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801–
Landholding Agency: Navy
Property Number: 779240010
Status: Excess
Base closure, Number of Units: 1
Comment: 1320 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

North Dakota

Barracks/Admin Bldg.
Lamoure Co: Lamoure ND 58458–
Landholding Agency: GSA
Property Number: 549240007
Status: Excess
Comment: 11800 sq. ft., 1-story masonry frame, most recent use—offices, in wetlands area.
GSA Number: 7–U–ND–0494

Land (by State)

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultr IL 62565–9804
Landholding Agency: COE
Property Number: 319240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Suitable/Unavailable Properties

Land (by State)

Kentucky

Carr Fork Lake
5 miles SE of Hindman, Ky., Hwy. 60
Hindman Co: Knott KY
Landholding Agency: COE
Property Number: 319240003
Status: Unutilized
Comment: 2.81 acres, most recent use—drainage area for bank stabilization for adjacent cemetery.

Suitable/To Be Excessed

Land (by State)

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 319240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

[FR Doc. 92–31144 Filed 12–23–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–03–4410–01]

Correction of Meeting Agenda

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of agenda for meeting of the Rock Springs District Advisory Council.

SUMMARY: This notice corrects the agenda and sets forth the schedule and total agenda for the next meeting of the Rock Springs District Advisory Council.

DATES: January 8, 1993, 9 a.m. until 4:30 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82901–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting, as amended, will be limited to:

1. Introduction and opening remarks
2. Review minutes of the last meeting
3. Election of officers
4. The Green River Resource Management Plan
5. Animal Damage Control M–44 demonstration
6. Public comment period

The meeting is open to the public. Interested persons may make oral statements to the Council between 3:30 and 4:30 p.m. on January 8, 1993, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by January 6, 1993.

Marlowe E. Kinch,

District Manager.

[FR Doc. 92–31202 Filed 12–23–92; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Land Management

[NM–060–4320–01 ADVB; 602]

Roswell District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATES: Thursday, January 28, 1993, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

LOCATION: BLM Roswell District Office, 1717 West Second St., Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 W. 2nd St., Roswell, NM 88201, telephone (505) 622–9042.

SUPPLEMENTARY INFORMATION: The agenda will consist of review and discussion of FY 93 Range Improvement Projects and Incentive Based Grazing Fee Proposal. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the District Manager by August 24, 1992. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours, within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: December 16, 1992.

Leslie M. Cone,

District Manager.

[FR Doc. 92–31251 Filed 12–23–92; 8:45 am]

BILLING CODE 4310–FB–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 15, 1992.

The plat representing the dependent resurvey of a portion of the north boundary, subdivisional lines, subdivision of sections 1 and 2, and adjusted 1873 and 1977–1984 meanders of the left bank of the Clearwater River, and the subdivision of sections 1 and 2, Township 33 North, Range 3 East, Boise Meridian, Idaho, Group No. 820, was accepted December 10, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs, North Idaho Agency, Nez Perce Tribe.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: December 15, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92-31258 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Eugene R. Gordon, Naples, FL, PRT-773261.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by D.B. Pohl, P.O. Box 249, Teafontein, Grahamstown, 6140, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Tom L. Pettiette, Houston, TX, PRT-774017.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by E.V. Pringle, P.O. Box 59, Huntley Glen, Bedford, 5780, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: John J. Jackson, III, Metairie, LA, PRT-774792.

On December 14, 1992, a notice was published in the **Federal Register** requesting comments on a number of conservation actions proposed for the rhinoceros, currently undergoing a catastrophic population decline. One management program involves dehorning as a means of reducing poaching. Now the Fish and Wildlife Service has received an application. The applicant requests a permit to import one horn from Zimbabwe taken from a sedated black rhinoceros (*Diceros bicornis*) for personal display. The applicant proposes to dart a rhinoceros with anaesthesia for removal of the horn by a qualified individual. The rhinoceros would be released after dehorning. The applicant requests that the proposed horn, removed from a live rhinoceros, be considered a sport-hunted trophy and states the import would serve to enhance survival of the species in the wild.

Applicant: U.S. Fish & Wildlife Service, Pacific Island Office, Honolulu, HI, PRT-774779.

Applicant requests a permit to take (harass, capture, band, attach radio transmitters) and remove from the wild both eggs and hatchlings of Hawaiian crow (*Corvus hawaiiensis*) for a captive-breeding and reintroduction program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: December 18, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-31212 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued food and beverage facilities and services for the public at Independence National Historical Park, Pennsylvania, for a period of ten (10) years from the date of execution of the contract.

EFFECTIVE DATE: February 22, 1993.

ADDRESS: Interested parties should contact the Regional Director, Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pennsylvania, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1990, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 16, 1992.

Charles P. Clapper, Jr.,

Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 92-32135 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-70-M

Farmington Wild and Scenic River Study; Massachusetts and Connecticut Farmington River Study Committee; Public Forum Meeting

The National Park Service is hereby announcing that a public forum meeting of the Farmington River Study Committee will be held Thursday, January 14, 1993.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments.

The purpose of this meeting is to offer presentations on aspects of the study and to provide an opportunity for public comment. This is not a regular business meeting of the Study Committee and no decisions will be made. The meeting will convene at 7:30 p.m. at the Barkhamsted Elementary School Gymnasium, Barkhamsted, Connecticut

(the school is located on Route 318 in Pleasant Valley, approximately 200 yards west of the intersection with Route 181 and the Farmington River).

Agenda

I. Introduction;
II. Brief Presentations on:
1. Study Status
2. Instream Flow Study
3. Draft recommendations for River Management Plan
III. Opportunity for questions/clarifications from the public;
IV. Public comment and open discussion.

Further information concerning this meeting may be obtained from the Chief, Office of Communications, National Park Service, North Atlantic Region, 15 State Street, Boston, Massachusetts, 02109 (617) 223-5199.

Dated: December 16, 1992.

Marie Rust,

Regional Director.

[FR Doc. 92-31234 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-70-M

Preservation of Jazz Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Preservation of Jazz Advisory Commission will be held at 9 a.m., on Friday, January 29, 1993, at the World Trade Center, 18th Floor, Crescent City Conference Room, 2 Canal Street, New Orleans, Louisiana.

NOTE: If necessary, the Commission meeting will be extended to Saturday, January 30, at 9 a.m., at the U.S. Customs House, 423 Canal Street, room 223.

The Preservation of Jazz Advisory Commission was established by Public Law 101-499 to advise the Secretary of the Interior in the preparation of the suitability and feasibility of preserving and interpreting the origins of jazz in New Orleans.

The Commission will:

—Review the Draft New Orleans Jazz Special Resource Study (The Draft Study has been made available to Commission members prior to the meeting. Comments from the Commission members will be addressed in the final report that will be available to the public after it is transmitted to Congress)

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the Commission meeting with the Superintendent, Jean Lafitte National Historical Park and Preserve. The public will also have an opportunity to submit written and oral comments for the record during the meeting.

Persons wishing further information concerning the meeting, or who wish to submit written statements may contact Mr. Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130-2341, telephone 504/589-3882.

Mintues of the Commission meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: December 16, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92-31321 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-70-M

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of Meetings for the Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of the forthcoming scheduled meetings of the Vancouver Historical Study Commission. The next two monthly management meetings will be held on Tuesday, January 12, 1993, and Tuesday, February 9, 1993. The two meetings will be held in the Vancouver City Council Chambers, 210 East 13th Street, Vancouver, Washington. The meeting for January 12, 1993, is scheduled from 1 to 5 p.m.

Dated: December 10, 1992.

Charles H. Odegaard,

Regional Director.

[FR Doc. 92-31236 Filed 12-23-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[332-288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act (19 U.S.C. 2253 note), enacted in December 1989, concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries. The U.S. International Trade Commission's role as outlined in this Act was to determine annually for 2 years the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feed stock requirement. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332-288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Departments of Commerce and Treasury to make these determinations.

Section 225 of the Customs and Trade Act of 1990 (Pub. L. 101-382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. In the amendment, a determination of the U.S. domestic market for fuel ethyl alcohol will be made for each year after 1989.

For the 12-month period ending September 30, 1992, the Commission has preliminarily determined the level of U.S. consumption of fuel ethyl alcohol to be 1.11 billion gallons. Seven percent of this amount is 77.8 million gallons. Because the law specifies that the base quantity to be used by Customs in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission, the base quantity for 1993 should be 77.8 million gallons. It should be noted that certain of the data required to make the determination are being estimated by the Commission pending finalization of Treasury statistics through September 1992 for alcohol fuel producers. In addition, fuel oxygenates data from the Department of Energy are being used to supply fuel ethyl alcohol production data for periods not yet compiled by Treasury. In the event that the finalized data materially change the base quantity estimate to be used in 1992, the

Commission will notify the Customs Service and issue an amended **Federal Register** notice.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Michels (202–205–3325) or Mr. James A. Emanuel (202–205–3367) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–205–3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: December 18, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–31213 Filed 12–23–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Notice of 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).

A.1. *Parent Corporation and address of principal office:* Southwest By-Products of Arkansas, Inc., whose principal office is 3401 North Grant Street, Springfield, Missouri 65803.

2. *Wholly owned subsidiaries which will participate in the operations and State(s) of incorporation:* National Commodity Exchange, Inc., a Missouri Corporation, located at 3401 North Grant Street, Springfield, Missouri 65803.

B.1. *Parent corporation and address of principal office:* Tyler Corporation, 3200 San Jacinto Tower, 2121 San Jacinto Street, Dallas, Texas 75201.

2. *Wholly owned subsidiaries which will participate in the operations and State(s) of incorporation:* Tyler Pipe Industries, Inc. (Delaware Corporation) and Swan Transportation Company (Delaware Corporation).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31266 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 290 (Sub No. 5 (93–1))]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factors and decisions.

SUMMARY: The Commission has approved a first quarter 1993 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF (Unadjusted) is 1.012. The first quarter RCAF (Adjusted) is 0.863, an increase of 0.1 percent from the rebased fourth quarter 1992 RCAF (Adjusted) of 0.862. Maximum first quarter 1993 RCAF rate levels may not exceed 100.1 percent of maximum fourth quarter 1992 RCAF rate levels.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 927–5720; Robert C. Hasek, (202) 927–6239, TDD for hearing impaired (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, or call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 16, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31267 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32167]

Kansas City Southern Industries, Inc., MidSouth Corp., MidSouth Rail Corp., MidLouisiana Rail Corp., SouthRail Corp. and TennRail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision No. 3.

SUMMARY: The Commission is accepting for consideration the control application filed November 25, 1992, by Kansas City Southern Industries, Inc., The Kansas City Southern Railway Company, K&M Newco, Inc. to acquire control of MidSouth Corporation, MidSouth Rail Corporation, MidLouisiana Rail Corporation, SouthRail Corporation, and TennRail Corporation (collectively referred to as applicants).

DATES: The Commission is formally adopting the procedural schedule tentatively adopted in Decision No. 2. Written comments on the application must be filed no later than January 25, 1993, and for comments from the Department of Justice and the Department of Transportation, no later than February 8, 1993. For further information, see the attached procedural schedule.

ADDRESSES: Send an original and 10 copies of all documents to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32167, Washington, DC 20423. In addition, one copy of all documents in this proceeding must be sent to each of the following:

Federal Railroad Administration, Docket Clerk, Office of Chief Counsel, room 5101, 400 Seventh Street, SW., Washington, DC 20590

Attorney General of the United States, Antitrust Division, Washington, DC 20530

Laurence R. Latourette, Preston, Gates, Ellis & Rouvelas Meeds, Suite 500, 1735 New York Avenue, NW., Washington, DC 20006–4759

Richard P. Bruening, Kansas City Southern Industries, Inc., 114 West 11th Street, Kansas City, MO 64105

Robert H. Forry, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, GA 30308–2216

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721.].

SUPPLEMENTARY INFORMATION: The Commission is accepting for consideration the control application filed in these proceedings. On November 25, 1992, Kansas City Southern Industries, Inc. (KCSI), The Kansas City Southern Railway Company (KCS), K&M Newco, Inc. (KMN), MidSouth Corporation (MSC), MidSouth Rail Corporation (MSR), MidLouisiana Rail Corporation (MLR), SouthRail Corporation (SR), and TennRail Corporation (TR) (all of these entities are referred to collectively as applicants) filed an application under 49 U.S.C. 11343 *et seq.* for the common control by KCSI of KCS and MSC's rail subsidiaries (MSR, MLR, SR, and TR).

The Commission will also adopt the schedule proposed in its prior decision in this proceeding served November 6, 1992 (Decision No. 2), a copy of which is attached as appendix A, but it

reserves the right to amend it if circumstances warrant. All of the filing deadlines ordered here are in accordance with the governing regulations as modified by the expedited schedule. Applicants and all other parties to this proceeding are advised that, particularly because of the expedited schedule, they must strictly comply with all requirements. If questions arise concerning an interpretation of a requirement, they may contact the Commission's Office of Proceedings, Office of Legal Counsel, (202) 927-5610, for assistance. See 49 CFR 1180.4(c)(6)(iii).

If the application in Finance Docket No. 32167 is approved, applicants intend that KCSI, though its newly created noncarrier subsidiary KMN, will acquire the common stock of MSC. Once KMN has acquired all of MSC's common stock, KMN and MSC will be merged, with MSC the surviving corporation. After the merger, MSC will be a wholly owned subsidiary of KCSI, and KCSI will have direct control over KCS and indirect control of the MS rail subsidiaries through its ownership of MSC.

The application was filed under 49 U.S.C. 11343, *et seq.* and 49 CFR Part 1180. The Commission is accepting it for consideration because it substantially complies with the applicable regulations, waivers, and requirements. There is one aspect of the application, however, that needs to be supplemented with additional information.

The financial data submitted by applicant are complete except for the requirement of 49 CFR 1180.9(e), which requires balance sheets (Exhibit 20) and income statements (Exhibits 21) for the MSC's class II and III rail carrier subsidiaries covering a period ending within 6 months before the application is filed. The waiver of *pro forma* financial statements granted in Decision No. 2 did not include the balance sheet and income statement required under 1180.9(e). Applicants should be able to comply with this request by submitting MSC's SEC Form 10-Q for both the first and second quarters of 1992. An original and ten copies of the above information must be filed within 5 days of the service date of this decision.

Copies of this and prior decisions, as well as the application and exhibits are available for inspection in the Public Docket Room, Room 1221, at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested persons, including government parties, may participate in this proceeding by submitting written comments regarding the applications. Comments from parties other than the Department of Transportation and the Department of Justice must be filed no later than January 25, 1993. The Department of Transportation and the Department of Justice must file comments no later than February 8, 1993. An original and 10 copies of all comments must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be concurrently served by first class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list. A service list will be issued shortly after comments have been received. Any person who files timely written comments shall be considered a party of record if so indicated in the comments. Accordingly, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments shall include:

(1) The docket number and title of the proceeding;

(2) The name, address, and telephone number of the commenting party and its representative on whom service shall be made;

(3) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(4) A statement on whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(5) Any request for an oral hearing with reasons supporting this request and an indication of the disputed facts that can only be resolved at a hearing;

(6) A list of all information sought to be discovered from applicant carriers;

(7) An initial list of specific conditions sought;

(8) An analysis of the issues the Commission must consider under the relevant underlying statutory criteria and the policies of the antitrust laws.

The parties have already begun discovery. This proceeding is being assigned to the Office of Hearings to resolve any discovery disputes. All parties are advised to respond to discovery requests promptly. The Commission will not tolerate dilatory tactics in response to discovery requests designed to elicit relevant evidence. A refusal to voluntarily provide information will be treated as an objection to the request for discovery. Responses must be served on all parties of record, and 10 copies of those responses must be concurrently filed with the Commission.

The evidentiary phase of this proceeding will conclude by April 9, 1993. The initial decision will be waived, and the determination of the application's merits will be made in the first instance by the entire Commission under 49 U.S.C. 11345.

Under 49 U.S.C. 11344(d), the Commission shall approve an application unless it finds that (1) as a result of the transaction there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

Decided: December 17, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmon and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

Schedule for the Control Transaction in Finance Docket No. 32167

November 25, 1992—Primary application filed.

December 24, 1992—Commission notice of acceptance of primary application published.

January 25, 1993—Comments on primary application (except DOJ, DOT) due.

February 8, 1993—Written comments of DOJ and DOT due.

March 1, 1993—Opposition evidence and briefs due.

March 15, 1993—Government parties' evidence and briefs due.

April 9, 1993—Rebuttal evidence and reply briefs [1] in support of primary application due. Close of evidentiary record.

July 8, 1993—Final decision.

[FR Doc. 92-31269 Filed 12-23-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32206]

Norfolk Southern Railway Co.; Acquisition and Operation Exemption; Line of Eastern Alabama Railway, Inc.

Norfolk Southern Railway Company (NSR) seeks a notice of exemption to

[1] We are here clarifying the proposed schedule to specify that applicants are the parties entitled to file rebuttal evidence and reply briefs.

purchase approximately 2.4-miles of rail line currently owned by Eastern Alabama Railway, Inc. (EARY). The line extends from a point formerly known as GP Junction at NSR milepost 737.3 to a point 500 feet north of the north switch to Donoho Clay (approximately 11,427 feet north of GP Junction) at Anniston, AL, and is part of a 15.06-mile EARY line extending between Anniston (milepost LAM 507.73) and Wellington (milepost LAM 522.79) in Calhoun County, AL. NSR now serves shippers on the 2.4-mile line under a trackage rights agreement with EARY. See Finance Docket No. 32050, Norfolk Southern Railway Company—Trackage Rights Exemption—Eastern Alabama Railway, Inc. (not printed), served May 20, 1992. The transaction is expected to be consummated before December 31, 1992.

As part of their trackage rights agreement, NSR was granted the option to purchase the line in the event EARY sought regulatory authority to abandon or discontinue its own operations over the line. NSR recently sought to exercise its option and purchase the 2.4-mile segment when EARY was granted an exemption to discontinue its service on the 2.4-mile segment and abandon the remainder of the line between Anniston and Wellington, in AB–374 (Sub-No. 1X), Eastern Alabama Railway, Inc.—Abandonment and Discontinuance Exemption—In Calhoun, AL (not printed), served October 9, 1992. NSR filed an offer of financial assistance (OFA) in that proceeding, but NSR's OFA was rejected on the basis that section 10905 purchase procedures do not apply when there are continuing operations over the line. See Docket No. AB–374 (Sub–No. 1X), Eastern Alabama Railway, Inc.—Abandonment and Discontinuance Exemption in Calhoun County, AL (not printed), served October 23, 1992. In this instance, the continuing operations were those of NSR under its trackage rights.

NSR has now filed a petition requesting either an exemption under 49 U.S.C. 10505 from the provisions of 49 U.S.C. 11343 or application of the class exemption pursuant to 49 CFR 1180.2(d)(1).[1] EARY and NSR could have sought abandonment and discontinuance, respectively, for the entire line and followed that by a sale of the 2.4-mile segment to NSR. Instead, EARY received a discontinuance for the 2.4-mile segment rather than an abandonment and NSR was allowed to continue its operations under the trackage rights. In these limited circumstances, where the owning carrier sought discontinuance (rather than abandonment) authority in order to allow the acquiring carrier to continue its operations on the line, it is in the public interest to construe the acquiring carrier's subsequent acquisition as falling within the parameters of 1180.2(d)(1).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: R. Allan Wimbish, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions in New York Dock Ry.—Control—Brooklyn Eastern Distr., 360 I.C.C. 60 (1979).

Decided: December 17, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31270 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

[1] Section 1180.2(d)(1) is the exemption for acquisition of a line of railroad that would not constitute a major market extension when the Commission has found that the public convenience and necessity permit abandonment.

Release of Waybill Data

The Commission has received a request from the Reebie Associates for permission to use certain data from the 1991 ICC Waybill Sample.

A copy of the request (WB654–12/8/92) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–31268 Filed 12–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 451X]

CSX Transportation, Inc.—Abandonment Exemption in Ben Hill and Irwin Counties, GA

CSX Transportation, Inc. has filed a notice of exemption under 49 CFR part 1152, Subpart F—Exempt Abandonments to abandon its approximately 2.71-mile line[1] of railroad from milepost SLA–660.6, V.S. 1289+74 at Fitzgerald, in Ben Hill County, GA, to milepost SLA–663.31 V.S. 1436+26 at Wiggins, in Irwin County, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at the 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 23, 1993, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[2] formal

[1] This line was part of a line that applicant sought to abandon in Docket No. AB–55 (Sub-No. 352), CSX Transportation Inc.—Abandonment—in Ben Hill and Irwin Counties, GA. By decision served December 7, 1990, as corrected by decision served February 25, 1991, the Commission found that the present and future public convenience and necessity permitted the abandonment by applicant of the line that was the subject of that proceeding except for the segment that is the subject of this proceeding.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). An entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to

Continued

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 4, 1993.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 13, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water St. J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 29, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions, will be imposed, where appropriate, in a subsequent decision.

Decided: December 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-31271 Filed 12-23-92; 8:45 am]

BILLING CODE 7035-01-M

review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,697]

Coombs Machinery, Inc., Whitehall, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Coombs Machinery, Incorporated, Whitehall, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,697; Coombs Machinery, Inc., Whitehall, Pennsylvania (December 14, 1992)

Signed at Washington, DC, this 15th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-31277 Filed 12-23-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,453]

Welltech, Inc., Dickinson, ND; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Welltech, Incorporated. Dickinson, North Dakota. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,453; Welltech, Incorporated Dickinson, North Dakota (December 11, 1992)

Signed at Washington, DC this 15th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-31278 Filed 12-23-92; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[Docket No. NRTL-2-92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Canadian Standards Association Rexdale (Toronto) facility application for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Canadian Standards Association (CSA), Rexdale (Toronto), which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this application is:

Canadian Standards Association, Toronto Facility, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario M9W1R3, Canada.

Background

The Canadian Standards Association is an independent organization providing integrated services in the fields of standards development and conformity assessment. The Certification and Testing Division provides conformity assessment programs including laboratory testing, certification, inspection and quality management services.

CSA originated in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the present name. In 1940, CSA began to test and certify products.

CSA's initial application, dated April 20, 1989 (Ex. 2A), was amended by letter dated January 16, 1990 (Ex. 2C) to expand the original request for NRTL recognition to test and certify products from only two standards to more than 360 acceptable test standards. By letter dated December 20, 1991 (ex. 2M), CSA further amended its application for recognition as follows:

1. The scope of this application relating to certification services is to be limited to in-house testing, and

2. The initial phase of the recognition is to be limited to the Rexdale (Toronto) facility.

An on-site evaluation of the Rexdale facility was conducted from November 4 through November 8, 1991, and the results discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey. In the interim, the application was revised by letter dated

April 27, 1992 (ex. 2Q) to include two additional test standards and further data was provided as requested. The final on-site review report (ex. 3A), consisting of the on-site evaluation of CSA's Rexdale testing facilities and administrative and technical practices and the corrective action taken by CSA [ex. 3A (2)], and the OSHA staff recommendation, were subsequently forwarded to the Acting Assistant Secretary for a preliminary finding on the application. A notice of CSA's application together with a positive preliminary finding was published in the **Federal Register** on June 3, 1992 (57 FR 23429–23434). Interested parties were invited to submit comments.

There were 68 responses to the **Federal Register** notice of the CSA application and preliminary finding (Docket No. NRTL–2–92).

Of the 68 responses, 54 agreed with OSHA's preliminary determination. Several respondents (exs. 4–20, –52) recommended that accreditation be denied to CSA until U.S. laboratories, such as UL, are recognized in Canada. This issue is discussed under the heading "Eligibility" below. Another comment questioned how any CSA product certified under the OSHA/NRTL program could be distinguished from any other of CSA's programs. The Canadian Standards Association will utilize the acronym "NRTL" as an integral part of its mark. If no label is used, the "NRTL" acronym will also be used in CSA's product directory to identify the product as having been certified under the OSHA/NRTL program. For the present, the use of the "NRTL" acronym will also be limited only to products tested or re-tested at the Rexdale facility.

Seven other commentators recommended that CSA be recognized, but with a variety of conditions, ranging from permitting witness testing of products at the manufacturer's site to allowing the manufacturer to engage in CSA's "Category Certification" and "Assured Certification" programs, none of which is presently allowable. (See exs. 4–2, –25, –27, –40, –55, –65, and –67).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Eligibility

The American Council of Independent Laboratories, Inc. (ACIL) has questioned whether CSA, as a foreign laboratory, is eligible for recognition as an NRTL under this program. OSHA concludes that the Canadian Standards Association (Toronto) is eligible for recognition as an NRTL to test and certify equipment and materials to the standards listed below. As required by appendix A [1], OSHA has "take[n] into consideration the policy of the foreign government" toward U.S. entities in making this eligibility determination.

Initially, OSHA notes that this eligibility requirement in appendix A is not a substantive requirement going to the capability of an applicant to effectively implement a program to assure the safety and integrity of workplace materials or equipment. Rather it is a procedural matter which is left to the Secretary's discretion, subject only to the requirement that the policy of the foreign government be taken into consideration. It does not establish any substantive criteria for this consideration, nor does it assign any weight to be given to this consideration in the final determination of whether a foreign laboratory can be recognized by OSHA. Certainly, this provision does not require the Secretary to find that any particular form of "reciprocity" exists between this country and the country where the foreign applicant is domiciled, nor indeed to make any specific findings on this matter. The eligibility requirement, which was included in the regulation at the request of the U.S. Trade Representative during the rulemaking proceeding, merely requires that the Secretary consider the foreign trade implications of recognizing a foreign-based testing and certification organization. The provision was intended to provide a tool to help advance U.S. interests in the international trade arena where appropriate.

Section I.A.1. of appendix A requires OSHA to take into consideration the policy of a foreign government toward U.S. entities. OSHA did in fact take these matters into consideration and concludes that CSA is eligible for recognition as an NRTL. OSHA interpreted the appendix A provisions in light of the U.S.-Canada Free Trade Agreement (CFTA) and with the advice of the U.S. Trade Representative. The CFTA requires that each party shall accord the other party "national treatment," i.e., that each party will treat the other's testing and certification laboratories as it treats its own.

The legislation implementing the CFTA provides that where there is a conflict between the CFTA and an existing statute or regulation, the existing statute or regulation will prevail. However, the Statement of Administrative Action accompanying the implementing legislation explains that this section is to be construed to allow for the interpretation of such statutes and regulations in a way that is consistent with the CFTA. While Appendix A requires OSHA to consider the treatment of U.S. companies by a foreign government, it does not require a finding of reciprocity as a precondition to NRTL accreditation. Since the United States has agreed in the CFTA to accord national treatment to Canadian service organizations, OSHA has determined that it will accord a Canadian applicant for recognition as a nationally recognized testing laboratory the same treatment it would an American applicant.

Even apart from U.S. obligations under the "national treatment" requirements of the CFTA, OSHA notes that the Standards Council of Canada (SCC) has accepted applications for recognition from American testing and certification organizations and has recently accredited an American organization, Underwriters Laboratories Inc. Thus, Canada is allowing U.S. laboratories to seek and obtain recognition as testing and certification organizations and therefore the eligibility criteria in appendix A would be satisfied even without regard to the CFTA provisions.

The American Council of Independent Laboratories, Inc. (ACIL) objected to OSHA's preliminary finding (57 FR 23429, 6/3/92) that CSA could meet the requirements for recognition as an NRTL, stating *inter alia*, that the preliminary finding was flawed since OSHA did not address the requirement in Section I.A.1. of Appendix A to the regulation (exs. 4–1 and 4–24). Specifically, the ACIL objected to what it termed the Agency's failure to address the "foreign reciprocity requirement," the failure to provide any legal interpretation or factual finding with respect to this requirement, and the failure to give any indication of the Agency's reasoning with respect to this

[1] Appendix A states in pertinent part: 1. *Eligibility*. a. Any testing agency or organization considering itself to meet the definition of nationally recognized testing laboratory as specified in § 1910.7 may apply for OSHA recognition as an NRTL.

b. However, in determining eligibility for a foreign-based testing agency or organization, OSHA shall take into consideration the policy of the foreign government regarding both the acceptance in that country of testing data, equipment acceptances, and listings, and labeling, which are provided through nationally recognized testing laboratories recognized by the Assistant Secretary, and the accessibility to government recognition or a similar system in that country by U.S. based safety-related testing agencies, whether recognized by the Assistant Secretary or not, if such recognition or a similar system is required by that country.

issue, and requested an opportunity to comment. The ACIL also submitted comments substantively addressing these issues.

While not conceding that the preliminary notice was procedurally flawed, on October 28, 1992, OSHA amended its preliminary finding on the CSA application and offered further explanation of "the Appendix A issue" (57 FR 48808). OSHA found that by its own terms, section I.A.1.b. of Appendix A requires OSHA to consider the treatment of U.S. companies by a foreign government but does not require that a finding of reciprocity is a precondition to NRTL accreditation.

Contrary to the ACIL's argument, OSHA's preliminary finding was adequate, even though it did not include findings and did not invite public comment on "the reciprocity issue". Initially, even as to substantive issues, the preamble to § 1910.7 (see 53 FR at 12115, 4/12/88) makes it clear that the Secretary is under no compulsion in the preliminary finding to explain every factor that went into her decision.[2] Moreover, section I.A.1.b. of Appendix A is *not* a substantive prerequisite for recognition as an NRTL. The substantive requirements for recognition as an NRTL are contained in the definitional provisions of 29 CFR 1910.7, which address an applicant's ability to effectively carry out a testing and certification program that will assure the safety and integrity of certain workplace materials and equipment.[3] The procedural requirements in the Appendix make it clear that an application is to address these substantive criteria for recognition and that public comment is to be invited on the applicant's fulfillment of these substantive criteria.

OSHA's notice and preliminary finding properly addressed and asked for public comment on the substantive requirements for recognition as an NRTL. OSHA properly refrained from soliciting public comment on the policy of the Canadian government towards U.S. certification organizations. The requirement that the Secretary consider the policy of a foreign government clearly involves sensitive issues of foreign trade policy and may include consideration of areas far broader than those covered by the NRTL regulation. Moreover, a complete public inquiry into such an issue may not be advantageous to the successful implementation of a pragmatic foreign trade policy. While the Appendix requires the Secretary to take the policy of a foreign government into account, there are no criteria for how the Secretary will decide the issue, what factors will be used, and what weight should be given to competing considerations. As such these issues are neither suitable nor appropriate issues for public comment.

The ACIL offered a number of other objections to the recognition of CSA. We show below that these objections are without merit. Moreover, they are of questionable relevance to the recognition because they do not address the capability of CSA to effectively implement a certification or approval program for certain materials or equipment used in American workplaces. The Agency believes that the ACIL's factual concerns have been or are being addressed[4] or fail to support their objections to OSHA's actions herein.

For example, the ACIL concern that OSHA recognition would allow CSA unrestricted access to the American market while U.S. based laboratories were excluded from the Canadian market has been dispelled by recent events including the recognition of an American testing and certification laboratory by the Standards Council of Canada and on-going negotiations between the Standards Council of Canada and OSHA on a memorandum of understanding to help streamline accreditation under both systems. Another objection, that the SCC does not impose any costs on Canadian organizations that apply for SCC accreditation but does charge American laboratories, is addressed in Article 605 of the CFTA which permits either party to waive accreditation fees for domestic entities during a ten year transition period. And no substantial support is offered for the contention that manufacturers will give their business to an organization that can simultaneously certify products for both the U.S. and the Canadian market which will lead to a temporary monopoly for CSA and that it will be difficult for U.S. labs "to ever recover their lost customers because the total market will have shrunk."

Accordingly, OSHA concludes that CSA meets the eligibility provisions of appendix A.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

Based upon the on-site review report and the products and standards in question, CSA's Rexdale facility has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks.

The Rexdale (Toronto) facility includes the corporate headquarters, a standards division, finance and administration division, and certification and testing division. The laboratory is owned by CSA and consists of a two story building covering 250,000 square feet, situated on ten acres. Approximately 100,000 square feet of floor space are allocated to product testing. The laboratory, established in 1919, has been at this location since 1954.

Natural gas, electric, oil, and water utilities are available in the laboratory for product testing. Environmental conditions in the laboratory are controlled. The temperature and humidity variations throughout the laboratory are recorded as required by specific test requirements. There are rooms and chambers used to control and monitor environmental conditions for specific product testing. The calibration room also has relative humidity control.

The laboratory has a shipping and receiving department for receipt, retention, and disposal of samples for testing. Incoming samples are identified with numbered tags and then delivered to the testing areas with a duplicate numbered tag attached. A secondary numbered tag is prepared in triplicate for sample disposition purposes after testing is complete. A copy of each tag

[2] The preamble states "Paragraph B.4 provides for a preliminary finding by the Assistant Secretary. . . . Each preliminary finding is a straightforward yes or no decision. Documentation is not required of the Assistant Secretary. . . ."

[3] With this in mind, the regulation addresses such issues as the capability of the staff, proper testing equipment, procedures, facilities, appropriate calibration and quality control programs, the use of appropriate test standards, control of the mark, inspection of the production run to assure conformance with test standards, economic independence of the laboratory and the necessity of having procedures to produce objective findings and handle complaints and disputes under a fair and reasonable system.

[4] In spite of its best efforts in dealing with this issue, the Agency notes that the ACIL's concerns appear to be expanding from the time of their first comment (6/2/92) through their most recent comment (11/13/92) wherein they suggest for the first time that the Agency must (1) make an assessment of all the barriers imposed by the foreign lab's government, (2) describe how OSHA considered all the disparities in treatment and (3) explain why those disparities do not warrant withholding recognition until the foreign government grants equal rights to U.S. laboratories.

is retained by the shipping and receiving department. One copy of the secondary tag is routed to the customs department and a second copy is sent to the jobholder. The jobholder completes this copy when all product evaluation is finished and returns it to the shipping and receiving department for sample disposition. The sample information is maintained on a computer data base. All storage locations are secure and pose no adverse environmental conditions on the samples.

Visitors must enter the front lobby area and are issued name tag labels by a receptionist. All visitors are escorted. A card access system is utilized for staff to enter or leave the facility. Separate test and conference areas are available for clients requiring confidentiality. There are 24 hour, 7 day per week security guards. Staff entering the facility outside normal working hours are required to sign an in/out log book. Indoor and outdoor monitoring cameras are utilized. Staff must wear name/photo identification badges.

The Certification and Testing (C&T) Division, Toronto facility, of the Canadian Standards Association employs approximately 370 staff as follows:

12—Management
84—Professional Engineers
139—Technologists (Testing & Certification)
24—Technologists (Inspection)
71—Support Staff
40—Other Support Staff (Corporate C&T)

Of this staff, some 45 are considered to be key personnel, as follows by position:

4—General Managers/Directors
8—Managers
13—Senior Engineers
14—Team Coordinators
6—Engineering & Quality Assurance

CSA submitted personal resumes and position descriptions for the key C&T Division personnel, which include general accountability, reporting relationships, specific accountabilities, dimensions, and nature and scope. All personnel appear to be suitably educated and trained to carry out their assigned duties.

Test equipment is available to perform testing in accordance with the standards. Test equipment not available is purchased as required.

An inventory list identifies over 7000 pieces of equipment by inventory number, instrument name, model and serial number, location in laboratory, range, accuracy, and manufacturer. The calibration lab maintains a separate equipment inventory list. Operational status and calibration information is maintained on instrument history files in the calibration laboratory.

Manufacturer's instructions on use and maintenance of test equipment are on file in the calibration laboratory. Instruction manuals are available at the appropriate work stations. Test equipment subjected to overloading or mishandling, or giving suspect results, is returned to the calibration laboratory. Defective equipment is retained in the instrumentation repair department. After repairs are completed, the instruments are recalibrated before release. Tests that have been performed with defective equipment are reevaluated.

The manager of service quality has responsibility for the operation of the metrology laboratory which includes three full-time calibration technologists who report, in turn, to a team coordinator.

All electrical measuring instrumentation is calibrated once per year at a minimum. Where equipment manufacturer recommended calibration intervals are exceeded, the instrument history records are used to determine any necessary reduced calibration intervals. New and repaired test equipment is calibrated prior to use. Power supplies, although not accurately calibrated, have their output set using calibrated equipment. Dated calibration labels are affixed to the instruments to indicate the calibration status.

Calibration and repair records are maintained on the metrology laboratory computer database. The data is maintained for the life of the equipment. The metrology laboratory computer database generates monthly recall lists on instruments due for calibration the following month. The team coordinators and quality assurance representatives ensure that the instruments are returned for calibration.

Calibration standards are traceable to the National Research Council of Canada (NRCC) or to the National Institute of Standards and Technology (NIST).

Published standards, test procedures, the quality assurance manual, divisional quality documents, and divisional operating procedures all contain construction or testing parameters to be met by the product being evaluated. These documents specify, as required, chronological order of evaluation. Experienced and trained personnel are responsible for conducting various stages of the investigation. The testing personnel are generally technical college graduates.

At the time of the on-site evaluation, not all requests for testing were documented. A directive has been issued requiring the documentation in the job files of all requests for tests or evaluations that are received from customers.

The engineering and quality assurance group develops, reviews and maintains the divisional quality documents (procedures). Procedures are reviewed once per year. Senior staff, audits and investigations staff, and engineering and quality assurance representatives are responsible for determining if procedures are followed. Work orders are prepared for the testing staff which specify the standards and clause numbers to be followed.

A letter is sent to the clients describing the construction or test deficiencies encountered during the course of the evaluation. No approval is granted until all deficiencies have been resolved.

The shipping/receiving department applies identification labels directly on the test samples to enable identification after they have been removed from shipping cartons. Technicians apply further identification tags, labels or direct markings to differentiate between similar samples or sets of samples.

Technical policy decisions regarding standards interpretations and deviations are developed by a consensus of technical experts. The laboratory distributes technical letters describing standards policy decisions. The engineering and quality assurance group is responsible for the development and issuance of technical policy decisions.

The test procedures contain the following: Instructions on equipment; preparation of test samples; standard testing techniques; references to specific standards including titles and dates; testing equipment and accuracies; precautionary statements for operator safety; test data to be obtained, measurement resolution and data recording time; ambient conditions and adverse environmental conditions; and acceptance criteria during tests.

Test procedures are reviewed and approved by the engineering and quality assurance group. The procedures are reviewed once per year.

Test data sheets and attached work orders contain the following: standard and clause numbers; product model number; measuring and test instruments; test date and file number, signature of tester and reviewer; ambient conditions; test observations and deviations; test data in the form of compliance, non-compliance, or the need for further review. An Engineering Policy has been issued that requires the documentation of the rationale for the

waiving of any tests specified in the applicable standard.

The Certification and Testing Division maintains a quality assurance (QA) system for CSA's world-wide network. The QA Program of the Testing Laboratory is registered by Quality Management Institute (QMI) to ISO 9003 and Z299.3. The Corporate Engineering and Quality Assurance (EQA) Group has the responsibility and authority for overseeing all activities related to the Quality Program. The object of the QA system is to ensure technical excellence, consistency of interpretation and application of standards, consistency of implementation of certification programs and procedures, the integrity of the CSA Mark, and continuous improvement. In addition, the QA System is designed to meet National and International Accreditation Criteria. The QA System is documented as follows:

—*Quality Assurance Policy Manual* (QAPM). It contains the quality policies for the Certification and Testing Division and establishes the responsibilities for implementation of these policies.

—*Quality Assurance Manual* (QAM). These manuals describe in detail the system and procedures outlined in the QAPM. They are issued by each Operation Unit after approval by EQA.

—*Divisional Quality Documents* (DQDs). They are issued and controlled by Engineering and Quality Assurance (EQA) and consist of additional operating procedures and guidelines to be used by operations staff.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

The Canadian Standards Association maintains effective procedures for producing creditable findings or reports that are objective and without bias as demonstrated by its application as well as the on-site review report.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for controlling all technical and quality records is described in the Quality Assurance Manuals for each CSA Office.

The certification reports contain the following: Name and location of submitter and factory; title, number, and date of standard used for evaluation; file number, report date, edition number and revision date; description of product including drawings, specifications, and photographs; conditions of product use; construction and testing narratives which describe how the product(s) comply with the standard; tests and results of tests; deviations and technical rationale for acceptance.

Some reports were found to be out of chronological order and resolutions to problems were sometimes located in separate files. Extra copies of documentation were found in some files which made the files cumbersome and fastening problems existed on some of the larger files. A modification to the CSA file system has been implemented which will address the problems.

The jobholder, or certification engineer, is responsible for the preparation and review of the final report. The test report is written by the technician. The senior technician also is responsible for reviewing and signing the test report before it is reviewed by the certification engineer. Certification reports are revised with replacement pages. A new report is prepared if extensive changes are required. Copies of the certification report are given to the customer, jurisdictional authorities, where required, and are placed in follow-up inspection files and main certification files.

CSA has in force an appeals procedure, designed primarily for their clients, which consistes of a comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter. All complaints and disputes are resolved, whenever possible, by those directly involved with the work contested or at the level of authority appropriate for the nature of the complaint/dispute. If the issue cannot be resolved, there are specific steps, including appeals, which may be followed.

There is also a system in effect enabling any interested party to file complaints concerning certification related matters, manufacturing related matters, or test standard discrepancies. Upon receipt of a complaint from a concerned party, the appropriate CSA section takes the matter under advisement to determine what corrective action should be taken. All complaints are investigated to determine if and what corrective action may be necessary.

CSA routinely investigates incidents involving CSA marked products. This is done with the help of regulatory and law enforcement authorities, consumers and manufacturers. The investigations are performed by the Special Support Services Group. Their mandate is to protect the integrity of the Registered CSA Mark. The Special Support Services Group investigates fires, examines products, does research, conducts fact finding studies, analyzes failures and trends and, when required, presents evidence in court.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. CSA has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

The applicant provides for the implementation of control procedures for identifying the listed and labeled equipment or materials, inspection of the production run of such items at factories for product evaluation purposes to assure conformance with applicable test standards, and the conducting of field inspections to monitor and to assure the proper use of its identifying mark or labels on products. A submitter must enter into a written contract (service agreement) with CSA to permit the use of the CSA Mark on the product. This agreement clearly specifies the submitter's responsibilities and the terms and conditions for maintaining certification, such as the right of access by CSA inspection staff to listed factories, and notifying CSA when changes are made to certified products. These terms and conditions are designed to protect the integrity of the CSA Mark, which is also registered as a certification mark with the U.S. Patent Office.

CSA established a comprehensive field services program to ensure that manufactured products bearing any CSA Mark continue to meet the applicable requirements. The program consists of three elements:

Follow-up Inspections;

Re-examination Testing; and
Field Monitoring.

Follow-up inspections are conducted at the point of manufacturing and labeling to ensure, among other things, that:

—The CSA Mark is applied only to certified products;
—That the terms of the Agreement are met when the CSA Mark is used;
—Defects noted during previous inspections have been corrected;
—The manufacturer is aware of any new services and requirements;

The inspections are unannounced and are based on performing a minimum of four inspections per factory per year. The frequency varies with production volumes, the types of products and the manufacturer's track record.

When products fail to meet the requirements, Field Service Representatives take action to have the manufacturer correct the defect immediately, quarantine the stock until the product can be reworked or re-evaluated by certification staff, and remove the CSA Mark from the product.

In cases where it is difficult to determine if a product or component complies with the requirements strictly by visual examination, such products are re-examined and tested on a yearly basis.

CSA has an independent, special investigation unit, the Audits and Investigations Group, to monitor products in the field, investigate field complaints, and provide feedback to the standards writing and certification process.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

The applicant has demonstrated that it is an independent, not-for-profit membership association, without share capital, incorporated under the laws of Canada in 1919, engaged in developing national standards and providing a certification service for manufacturers wishing to have their products certified as complying with national standards or standards of foreign countries. The applicant further demonstrated that the organization has no affiliation with manufacturers or suppliers of the products submitted for testing and certification. Several documents were submitted as a part of the CSA application to address the issue of independence.

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an ANSI safety designated product standard. As to the non-ANSI UL test standards for which CSA has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). (See 54 FR 25643, 6/16/89). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

The laboratory subscribes to the ANSI/UL standards updating service. Standards and revisions are distributed to appropriate laboratory personnel. Revised or superseded standards are archived.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, and public comments, OSHA finds that the Canadian Standards Association, Rexdale facility, has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Canadian Standards Association, Rexdale facility, is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

CSA has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI Z21.1—Household Cooking Gas Appliances
ANSI Z21.5—Gas Clothes Dryers
ANSI Z21.10—Gas Water Heaters
ANSI Z21.11—Gas-Fired Room Heaters
ANSI Z21.12—Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.47—Gas-Fired Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 20—General-Use Snap Switches
ANSI/UL—Electric Amusement Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Electrical Cabinets and Boxes
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas

ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices
ANSI/UL 114—Electric Office Appliances and Business Equipment
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating Pads
ANSI/UL 133—Wires and Cables With Varnished Cloth Insulation
UL 141—Garment Finishing Appliances
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 231—Electrical Power Outlets
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL—Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
ANSI/UL 399—Drinking-Water Coolers
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 764A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Motor Operated Commercial Food Preparing Machines
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment

ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Groups C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
UL 896—Oil-Burning Stoves
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commerical Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
UL 1059—Terminal Blocks
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
UL 1092—Process Control Equipment
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio- and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio- and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types

ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1676—Discharge Path Resistors
UL 1681—Wiring Device Configurations
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
ANSI/UL 1773—Termination Boxes
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

The Canadian Standards Association must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any Canadian Standards Association program which is available only to qualified manufacturers and is based upon the evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to CSA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

All products certified within this program shall be tested and certified only at the Rexdale facility. Products which may have been previously evaluated at any of CSA's other facilities must be re-evaluated at the Rexdale facility in order to be considered to have been approved under the NRTL program.

In order to distinguish between products tested and certified by CSA under the OSHA/NRTL program at the Rexdale facility from all other CSA facilities or from non-NRTL programs, the following procedures shall be followed for all products tested and certified at the Rexdale facility under the OSHA/NRTL program:

Where the CSA registered certification mark is utilized on a label on the product, the label will also bear the acronym "NRTL";

The product shall also be clearly identified in the Directory of CSA Certified Products by using the "NRTL" acronym.

CSA shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

CSA will continue to meet the requirements for recognition in all areas where it has been recognized; and

CSA will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its cognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on December 24, 1992, and will be valid for a period of five years from that date, until December 24, 1997, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 18th day of December, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92-31279 Filed 12-23-92; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-077]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: January 26, 1993, 9 a.m. to 4 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Borgo, Code K, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Emerging Vision for Committee
—Emerging Issues for Small Disadvantaged Business Communities and NASA; Priorities for 1993
—Selection of Working Groups and Functional Directors
—Working Groups' Breakout Sessions
—Working Groups' Submittal of Proposed 1993 Projects

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: December 18, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-31245 Filed 12-23-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

John F. Kennedy Assassination Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of creation of collection.

SUMMARY: In accordance with the President John F. Kennedy Assassination Records Collection Act (Pub. L. 102-526, 106 Stat. 3443), NARA announces the establishment of the Kennedy Assassination Records Collection on December 28, 1992. Federal agencies may begin transferring assassination records which are open and available for public access to the Collection on that date. All relevant Federal records, regardless of the current agency of custody, will be incorporated eventually into the Collection.

FOR FURTHER INFORMATION CONTACT: Mary Ronan, Access Staff, National Archives and Records Administration, 202-501-5380.

Dated: December 21, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-31284 Filed 12-23-92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by January 25, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202-682-5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 Presenting and Commissioning: Artists' Projects Regional Initiative Application Guidelines.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit arts organizations that apply for funding under the Presenting and Commissioning Program Artists Projects Regional Initiative category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the application review process.

Estimated Number of Respondents: 20.

Average Burden Hours per Response: 25.

Total Estimated Burden: 500.

Bobbi Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 92-31208 Filed 12-23-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #2 Section) to the National Council on the Arts will be held on January 12-13, 1993 from 9 a.m.-6:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 12 from 9 a.m.-9:15 a.m. for opening remarks.

The remaining portions of this meeting on January 12 from 9:15 a.m.-6:30 p.m. and January 13 from 9 a.m.-6:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: December 21, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-31282 Filed 12-23-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Atmospheric Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: February 8, 1993, 9 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G St. NW., Washington, DC.

Contact Person: Dr. Timothy Eastman, Program Director, Division of Atmospheric Sciences, rm. 644, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-0040.

Agenda: To review and evaluate Geospace Environment Modeling proposals as part of the selection process for awards.

Date and Time: February 17-18, 1993; 9 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G St. NW., Washington, DC.

Contact Person: Drs. Richard A. Behnke, Robert M. Robinson, and Sunanda Basu, Division of Atmospheric Science, rm. 644, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7618.

Agenda: To review and evaluate Coupling, Energetics, and Dynamics of Atmospheric Regions proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31230 Filed 12-23-92; 8:45 am]

BILLING CODE 7555-01-M

Ocean Sciences Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: January 26-28, 1993; 8:30 a.m.-5 p.m.

Place: Embassy Room, Board Room, St. James Room, room 116 and room 117, St. James Hotel, 950 24th St., NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7924.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Sciences Research Section (OSRS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31233 Filed 12-23-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: January 27, 1993; 7:30 p.m. to 9 p.m., January 28, 1993; 8:30 a.m. to 5 p.m., January 29, 1993; 8:30 a.m. to 5 p.m., January 30, 1993; 8:30 a.m. to 3 p.m.

Place: The Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Jim Lightbourne, Program Director, 1800 G Street, NW., rm 1210, Washington, DC 20550. Telephone: (202) 357-7051.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Teacher Preparation Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31231 Filed 12-23-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 3, 1993, 7:30 p.m. to 9 p.m.; February 4, 1993, 8:30 a.m. to 5 p.m.; February 5, 1993, 8:30 a.m. to 5 p.m.; February 6, 1993, 8:30 a.m. to 3 p.m.; February 10, 1993, 7:30 p.m. to 9 p.m.; February 11, 1993, 8:30 a.m. to 5 p.m.; February 12, 1993, 8:30 a.m. to 5 p.m.; February 13, 1993, 8:30 a.m. to 3 p.m.;

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA. 22202.

Type of Meeting: Closed.

Contact Person: Dr. Duncan McBride, Program Director, 1800 G Street, NW., rm 1210, Washington, DC 20550. Telephone: (202) 357-7051.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Instrumentation & Laboratory Improvement/ Leadership Laboratory Improvement Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 21, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-31232 Filed 12-23-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Meeting

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on January 14-15, 1993, in the Plaza I Room at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear

Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to review the NRC's recent aging research activities and plans; research related to proposed changes in seismic requirements for nuclear power plants; performance assessment and other selected elements of the NRC's high-level waste disposal research program; NRC research activities and plans with respect to SBWR, a passive advanced boiling-water reactor and AP600, a passive advanced pressurized-water reactor; and the NRC's research program on human-system interfaces in digital instrumentation and controls (DI&C) for nuclear power plants; and to discuss NSRRC operations.

The planned schedule is as follows:

Thursday, January 14, 1993

8:30 a.m.–9 a.m. Introduction: NSRRC Chairman; RES Director.

9 a.m.–12:15 p.m. NSRRC operations.

1:30 p.m.–2:30 p.m. Research program on nuclear power plant aging. The discussion will include consideration of the report of the Subcommittee on Aging on its meeting of September 16, 1992.

2:30 p.m.–3:30 p.m. High-level waste research issues, including performance assessment research. The discussion will include consideration of the report of the Waste Subcommittee on its meeting of December 1, 1992.

3:45 p.m.–5:15 p.m. SBWR research program; selected elements of AP600 research. The discussion will include consideration of the report of the Advanced Reactor Subcommittee on its meeting of December 2–3, 1992.

Friday, January 15, 1993

8 a.m.–10 a.m. Research program on human-system interfaces in digital instrumentation and controls (DI&C) for nuclear power plants; plans for revisiting DI&C. The discussion will include consideration of the report of the Advanced Instrumentation and Control and Human Factors Subcommittee on its meeting of December 9–10, 1992.

10:15 a.m.–12 noon Proposed changes in seismic requirements for nuclear power plants.

1:15 p.m.–2:30 p.m. Committee discussions.

NRC staff will be present and provide further input as required.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing of written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492–3904), between 8:15 a.m. and 5 p.m.

Dated: December 18, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–31183 Filed 12–23–92; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; McDowell Property, Bernalillo County, NM

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the McDowell Property, located in Albuquerque, Bernalillo County, New Mexico, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until March 24, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Fred Ambrogi, Resolution Trust Corporation, c/o NorthCorp Realty Advisors, Inc., 707 Broadway, NE., Suite 101, Albuquerque, NM 87102. (505) 246–9330, Fax (505) 246–9352.

SUPPLEMENTARY INFORMATION: The McDowell Property is located on the west side of Albuquerque, New Mexico, at the northeast quadrant of the intersection of Unser Boulevard and Ouray Boulevard. The property has archaeological value and is adjacent to Petroglyph National Monument which is managed by the National Park Service. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property consists of approximately 65 acres of undeveloped land in two contiguous parcels. The property is situated on the western edge of Albuquerque's developing urban area. The Ricanada area of the basalt escarpment, which comprises the southern portion of Petroglyph National Monument, lies a short distance to the west and northwest. The terrain slopes gradually from the base of the volcanic escarpment on the west to the Rio Grande River about two miles to the east of the property. Several isolated occurrences of cultural significance have been found on the site including lithic and groundstone artifacts, rock features, and two quarry areas.

Property size: Approximately 65 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before March 24, 1993, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by March 24, 1993 to Mr. Fred Ambrogi at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: McDowell Property

Federal Register Publication Date: December 24, 1992.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: December 18, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–31287 Filed 12–23–92; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31613; File No. SR-PSE-92-34]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Extension of the Options Trading Crowd Performance Evaluation Pilot Program

December 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 7, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE seeks an extension until October 1, 1993, of its Options Trading Crowd Performance Evaluation pilot program.[1] Currently, under the pilot program, the Options Allocation Committee ("Committee")[2] conducts periodic evaluations of options trading crowds to determine whether they have fulfilled performance standards relating to quality of markets, competition among market makers, observance of ethical standards, and administrative factors. In making its evaluations, the Committee may consider any relevant information, including the results of a trading crowd evaluation questionnaire, trading data, reports filed with the Exchange (*i.e.*, Order Book Official Unusual Activity Reports), and the regulatory history of the members in the crowd. As part of the program, the Committee distributes trading crowd evaluation questionnaires to virtually every floor broker and floor brokerage firm on the options trading floor. Floor brokers approved by the Committee complete the questionnaires. Trading crowds rated in the bottom 10% of the aggregate results of overall evaluation scores are presumed to have failed to meet minimum performance standards. The Committee may call an informal meeting or conduct a formal hearing with a trading crowd for failure to meet minimum performance standards. At the formal hearing, rights of confrontation and rights to counsel apply. Based on the information adduced at the formal hearing, the Committee has the authority to take action against a trading crowd or individual market makers in the crowd, such as a restriction on the allocation of new options classes or a reallocation of existing options classes.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE implemented its Options Trading Crowd Performance Evaluation pilot program in April 1988. The PSE represents that, in its view, the pilot program's evaluations have enhanced the quality of the markets provided by PSE market makers. However, the Exchange believes that additional time is needed to fully evaluate the merits of the program due to several factors, and, accordingly, requests a one year extension of the pilot program through October 1, 1993.[3]

The PSE notes that as a result of the multiple trading environment, the trading crowd evaluations play a vital role in the PSE's determinations to allocate and reallocate options issues. As such, the trading crowd performance evaluations serve to ensure that the investing public is being afforded competitive markets. Accordingly, the PSE believes the extension of the current pilot is necessary while the process is evaluated and adjustments are made. In addition, the PSE notes that the pilot program contributes to the maintenance of good options markets at the PSE, thereby helping the Exchange to maintain its competitiveness.

The PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it seeks to improve the Exchange's markets, to promote just and equitable principles of trade and to afford protection to the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[4] Specifically, the Commission finds that the extension of the pilot is consistent with the Act because it is likely to encourage improved market maker performance consistent with the protection of investors and the public interest. In this regard, the Commission notes that the PSE has stated that the trading crowd evaluations play a vital role in the allocation and reallocation of options issues. Accordingly, the Commission believes that the evaluation process is important in providing specialists with an initiative to strive for optimal

[1] On April 22, 1988, the Commission approved the PSE's Options Trading Crowd Performance Evaluation program on a two-year pilot basis. See Securities Exchange Act Release No. 25611 (April 22, 1988), 53 FR 15325 (order approving SR-PSE-87-28). Subsequently, the Commission approved an extension of the pilot program through October 1, 1992. See Securities Exchange Act Release No. 29930 (November 12, 1991), 56 FR 58598 (order approving File No. SR-PSE-91-30).

[2] Previously, the evaluations were conducted by the PSE's Options Listing Committee. The Committee assumed the evaluation function in June 1992. See Securities Exchange Act Release No. 30843 (June 19, 1992), 57 FR 28869 (order approving File No. SR-PSE-92-07).

[3] In January 1990, the pilot program was expanded to include the evaluation of Lead Market Makers ("LMMs"). *See* Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462.

[4] 15 U.S.C. 78f(b)(5) (1987).

performance as they compete for additional options allocations.

Consistent with its original approval and subsequent extension of the pilot program,[5] the Commission also believes that the program should further the PSE's ability to ensure liquid and continuous markets for options traded on its floor. In particular, responses to the trading crowd evaluation questionnaire should help the PSE monitor the performance of LMMs and market makers and determine whether market makers are making continuous, two-sided markets in all option series for each option class located at a trading station. The questionnaire should also help the PSE determine whether deep and liquid markets are provided as a result of competition among market makers. The Commission believes that the proposal should protect investors and the public interest by setting minimum standards of market maker performance and that the implementation of more stringent, formalized market maker standards will enhance the integrity of the PSE's options markets and contribute to investor confidence.

Before the Commission approves the pilot program on a permanent basis, however, the PSE must provide the Commission with a report assessing the effectiveness of the pilot program, any problems associated with its implementation, and any proposed modifications to the program and the reasons for these modifications. The Commission expects that this report will describe:

(1) Whether the pilot program has improved the performance of the PSE's market makers and LMMs, as determined by the trading crowd evaluation questionnaires and other relevant data;

(2) The number of market makers and trading crowds that fall below acceptable performance levels;

(3) The number of informal meetings and formal hearings commenced pursuant to the program;

(4) The results of any remedial actions taken pursuant to the program;

(5) A list of options reallocated due to substandard performance and the market makers involved; and

(6) The accuracy and usefulness of the questionnaire as a means of evaluating trading crowd performance.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the continuation of the pilot program. In addition, because there were no comments submitted previously on the evaluation proposal and because of the importance of maintaining the quality and efficiency of the PSE's options markets, the Commission believes it is consistent with the Act to approve the extension of the pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission'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 the file number in the caption above and should be submitted by January 19, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PSE–92–34) to extend the PSE's Options Trading Crowd Performance Evaluation pilot program until October 1, 1993, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–31288 Filed 12–23–92; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* note 1, *supra.*

[6] 15 U.S.C. 78s(b)(2) (1982).

Order of Suspension of Trading

December 18, 1992.

In the Matter of Trading in the Securities of: Sanyo Industries, Inc. File Number 500–1.

It appears to the Securities and Exchange Commission (Commission) that there is a lack of current and accurate information concerning the securities of Sanyo Industries, Inc. concerning, among other things, (1) questions regarding the identity of persons having undisclosed control of the company, and (2) questions concerning the identities of persons having beneficial ownership of the company's securities, and the resulting impact on the market for Sanyo Industries, Inc.'s securities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above listed company is suspended for the period from 9:30 A.M. E.D.T., December 21, 1992 through 11:59 P.M. E.D.T, on January 5, 1993.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–31289 Filed 12–23–92; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2613]

Declaration of Disaster Loan Area; South Carolina

Saluda County and the contiguous counties of Aiken, Edgefield, Greenwood, Newberry, and Lexington in the State of South Carolina constitute a disaster area as a result of damages caused by severe storms, high winds and tornadoes which occurred on November 22, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 4, 1993 and for economic injury until the close of business on September 7, 1993 at the following address: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625

	Percent
For economic injury:	
Businesses and small agricultural co-operatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 261312 and for economic injury the number is 777600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 4, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-31291 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

Microloan Demonstration Program

AGENCY: Small Business Administration.

ACTION: Notice of request for proposals availability and filing deadline.

SUMMARY: Public Law 102-140, the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1992 added section 7(m) to the Small Business Act, 15 U.S.C. 636(m), which authorizes the Small Business Administration (SBA) to conduct a Microloan Demonstration Program (Program). Public Law 102-366, the Small Business Credit and Business Opportunity Enhancement Act of 1992, amended this authority. SBA issued interim final regulations implementing each law on January 31, 1992, 57 FR 3848, and October 23, 1992, 57 FR 48309, respectively. This notice announces the availability of a Request for Proposals for entities seeking to participate in the program, as well as a February 15, 1993 filing deadline for such proposals.

DATES: Request for Proposals Packages will be available beginning December 29, 1992.

ADDRESSES: Request for Proposals Packages may be obtained by written request submitted to: U.S. Small Business Administration, Office of Financing, 409 Third Street, SW., 8th Floor, Washington, DC 20416, Attn: Microloan Proposals, Mail Code 6120 or by telephone at (202) 205-6570.

SUPPLEMENTARY INFORMATION: Section 7(m) of the Small Business Act authorizes SBA to conduct a Microloan Demonstration Program. The program has as its purpose to provide assistance to women, low-income, the minority entrepreneurs, and business owners, and other such individuals possessing the capability to operate successful business concerns and to assist small business concerns in those areas suffering from a lack of credit due to economic downturn. Under the Program, SBA is authorized to make direct loans to qualified intermediary lenders who will use the proceeds to make short-term, fixed interest rate microloans, of not more than $25,000, to startup, newly established, and growing small business concerns. In conjunction with the loans made to intermediary lenders, SBA may make grants to such intermediaries to be used to provide intensive marketing, management and technical assistance to microloan borrowers under this Program.

SBA will accept responses from those entities seeking to be accepted into the Program as an intermediary. To be eligible, an organization, *inter alia*, must be a private, non-profit entity; a private, non-profit, community development corporation (CDC); a consortium of private, non-profit organizations or CDCs; or, in certain circumstances, a quasi-governmental economic development entity. Further, an entity meeting one of the above descriptions must have at least one year of experience making microloans to small business concerns and itself providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its microloan borrowers.

In addition, SBA is authorized to make limited grants to eligible and qualified non-profit entities, which are not intermediaries, to provide marketing, management, and technical assistance to assist low income individuals seeking to start or enlarge their small business concern. Such a grant may be made only if the non-profit entity agrees to work with low income individuals to secure loans in amounts not to exceed $15,000, in the aggregate, from private sector lenders, regardless of whether the non-profit organization provides a loan guarantee.

Those organizations believing themselves eligible and wishing to participate in the Program may obtain a Microloan Demonstration Program Request for Proposals Package by contacting SBA at the above set forth address. Completed proposals must be received by SBA no later than 4 p.m. Eastern Standard Time, February 15, 1993.

Charles R. Hertzberg,

Associate Administrator for Financial Assistance.

[FR Doc. 92-31292 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Public Law 97-35) and the SBA share of immediate participation loans is 6⅞ percent for the fiscal quarter beginning January 1, 1993.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the January-March quarter of FY 93, this rate will be 7⅞ percent.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 92-31295 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

National Advisory Council Public Meeting

The U.S. Small Business Administration, National Advisory Council Executive Committee, will hold a public meeting from 8:30 a.m. to 4 p.m. on Friday, January 15, 1993 at the U.S. Small Business Administration, 409 Third Street, SW., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Dorothy Overal, Office of Advisory Councils, U.S. Small Business Administration, 409 Third Street, SW., suite 5525, Washington, DC 20416, (202) 205-7650.

Dated December 18, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-31293 Filed 12-23-92; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, will hold a public meeting from 9 a.m. to 2 p.m. on Tuesday, January 12, 1993 at the Federal Building, 400 North 8th Street, room 7230, Richmond, Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Dratin Hill, Jr., District Director, U.S. Small Business Administration, Federal Building, P.O. Box 10126,

Richmond, Virginia 23240, (804) 771–2400, Ext. 140.

Dated: December 21, 1992.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–31294 Filed 12–23–92; 8:45 am]

BILLING CODE 8025–01–M

Notice Delegating Loan Approval Authority to Specific Agency Field Personnel

AGENCY: Small Business Administration.

SUMMARY: This notice sets the delegated authority of certain specific Small Business Administration (SBA) field personnel to approve SBA guaranteed loans. This authority is based upon the education, training, or experience of such personnel and is meant to expedite Agency action in processing loan applications.

EFFECTIVE DATE: This notice is effective December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, D.C. 20416, Tel. (202) 205–6490.

SUPPLEMENTARY INFORMATION: On December 19, 1991, SBA published in the **Federal Register** a final rule amending § 101.3–2 of part 101, Title 13, Code of Federal Regulations, which set forth a clarified standard delegation of authority to conduct program activities in SBA field offices (56 FR 65823). Previously, § 101.3–2 had set forth the standard delegation of authority to SBA field personnel as well as all deviations from the standard based upon education, experience, and/or training.

The December 19, 1991 publication eliminated all deviations in favor of a standard delegation of authority. In addition, the rule provided authority by which SBA might, as it deemed appropriate, increase, decrease, or set the level of authority for any individual SBA field official in a regional, district, or branch office, based upon education, training, or experience by publication of a notice in the **Federal Register**.

The Agency believes that, when appropriate, delegating increased levels of authority to field personnel yields increased benefits for program participants and SBA. SBA is authorized to guaranty up to 90% of a loan depending upon total loan amount. Further, SBA has certain authority to make direct loans. As such, it is essential that the Agency have qualified loan officers to process expeditiously and accurately the applications submitted. Agency officials in the field who are delegated greater levels or authority in light of their additional education, training, or experience allow for loan applications of greater amounts being processed where both the lender and the borrower are located. In this fashion, the loan applicant and the lender are both served with quicker and more accurate processing, while the Agency is served by quality lending and, in the case of guaranteed loans, better relations with its participating lenders.

This notice sets the delegated authority of a specific SBA official to approve direct loan applications based upon such official's education, training, and experience. The SBA Assistant Branch Manager for Finance and Investment in Gulfport, MS. has successfully completed all three commercial credit analysis training courses offered by the Agency. Such training qualifies this official to better analyze and process loan applications.

SBA assistant branch managers do not have, as a standard, delegated authority to approve SBA direct loans. This notice sets the delegated direct loan approval authority for the Assistant Branch Manager for Finance and Investment in Gulfport, MS. at $250,000. This delegation of authority is specific to the individual presently incumbent and continues only so long as this individual remains in such position.

Dated: December 15, 1992.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 92–31328 Filed 12–23–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03–5066]

Alliance Enterprise Corp.; Application for Transfer of Ownership

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1992)) for a transfer of ownership of Alliance Enterprise Corporation, Three Christine Center, Suite 1300, 201 North Walnut Street, Wilmington, DE 19801 under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

The present shareholder plans to sell 100 percent of its shares of ownership in the Licensee to MESBIC Ventures Holding Company, North Central Plaza 1, Suite 710, 12655 North Central Expressway, Dallas, Texas 75243. MESBIC Ventures Holding Company will be the 100% owner of MESBIC Ventures, Inc., a licensed SSBIC, located at same address. The operations of Alliance will be moved to Dallas and managed by MESBIC Ventures, Inc.

Present and proposed change in ownership is as follows:

Name	Present percent of ownership	Proposed percent of ownership
Sun Company, Inc.	100	0
MESBIC Ventures Holding Co.	0	100

The proposed shareholders of more than 10% of the common shares of MESBIC Ventures Holding Company are as follows: NationsBank of Texas, NA (29% of total common shares to be outstanding), and Sun Company, Inc. (18%).

Matters involved in SBA's consideration of the application include the 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 further given that any person may, not later than 15 days from the date of publication of this notice, submit written comments on the proposed transfer of ownership to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in Dallas, Texas and Wilmington, Delaware.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies.)

Dated: December 17, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–31327 Filed 12–23–92; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–5235]

Power Ventures, Inc.; Application for Transfer of Ownership

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1992)) for a transfer of ownership of Power

Ventures, Inc., 829 Highway 270 North, Malvern, Arkansas 72104 under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

The present shareholder plans to sell 100 percent of its shares of ownership in the Licensee to MESBIC Ventures Holding Company, North Central Plaza 1, suite 710, 12655 North Central Expressway, Dallas, Texas 75243. MESBIC Ventures Holding Company will be the 100% owner of MESBIC Ventures, Inc., a licensed SSBIC, located at the same address. The operations of Power Ventures will be moved to Dallas and managed by MESBIC Ventures, Inc.

The present and proposed change in ownership is as follows:

Name	Present % of ownership	Proposed percent of ownership
Stihl Southwest, Inc	100	0
MESBIC Ventures Holding Co	0	100

The proposed shareholders of more than 10% of the common shares of MESBIC Ventures Holding Company are as follows: NationsBank of Texas, NA (29% of total common shares of be outstanding), and Sun Company, Inc. (18%).

Matters involved in SBA's consideration of the application include the 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 further given that any person may, not later than 15 days from the date of publication of this notice, submit written comments on the proposed transfer of ownership to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in Dallas, Texas and Little Rock, Arkansas.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies).

Dated: December 17, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–31296 Filed 12–23–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1745]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea, Working Group on Containers and Cargoes Bulk Cargoes Panel; Meeting

The Bulk Cargoes Panel of the Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 27, 1993, at 10 a.m. in room 4315 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to establish U.S. positions on matters to be addressed at the 32d Session of the International Maritime Organization's (IMO's) Subcommittee on Containers and Cargoes (BC 32) to be held February 8–12, 1993.

Items of particular interest that will be discussed include:

1. Amendments to IMO's *Code of Safe Practice for Solid Bulk Cargoes* for various solid bulk cargoes.
2. Development of new criteria for liquefaction and shifting of bulk cargoes.
3. Revision of IMO's *Recommendations on the Safe Use of Pesticides in Ships.*
4. Requirements for dangerous solid bulk cargoes under the International Convention for the Safety of Life at Sea (SOLAS).
5. A proposal by another government that IMO's *Code of Safe Practice for Solid Bulk Cargoes* be made mandatory through an amendment of the International Convention for the Safety of Life at Sea.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing CDR K.J. Eldridge or Mr. F.K. Thompson, U.S. Coast Guard (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: December 15, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–31203 Filed 12–23–92; 8:45 am]

BILLING CODE 4310–07–M

Office of the Secretary

[Public Notice 1743]

Delegation of Authority No. 199; to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby delegate to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs the functions vested in the Secretary of State by sections 804(b), 805(a)(4), 806, 807(a), 807(b) and 813 of the North Pacific Andromous Stocks Act of 1992, Title VIII of Public Law 102–567 ("the Act"), and by any amendments to the Act as may be made from time to time.

Notwithstanding any provision of this Delegation of Authority, the Secretary of State or the Deputy Secretary of State may at any time exercise any function delegated by this Delegation of Authority.

Dated: December 11, 1992.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 92–31255 Filed 12–23–92; 8:45 am]

BILLING CODE 4710–10–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 11 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1993 meetings are scheduled as follows:

1. January 14, 9 a.m. to 12:30 p.m., Little Rock, Arkansas, Region 2 Advisory Board.
2. January 21, 9 a.m. to 12:30 p.m., Miami, Florida, Region 1 Advisory Board.
3. January 26, 9 a.m. to 12:30 p.m., Colorado Springs, Colorado, Region 5 Advisory Board.
4. January 28, 9 a.m. to 12:30 p.m., San Diego, California, Region 6 Advisory Board.
5. February 9, 9 a.m. to 12:30 p.m., San Antonio, Texas, Region 4 Advisory Board.
6. February 25, 9 a.m. to 12:30 p.m., Detroit, Michigan, Region 3 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Little Rock, Arkansas—Camelot Hotel, 424 W. Markham.
2. Miami, Florida—Sheration Biscayne Bay, 495 Brickell Avenue.

3. Colorado Springs, Colorado—Antlers Doubletree Hotel, 4 South Cascade Avenue.
4. San Diego, California—San Diego Concourse Convention Center, 202 C Street.
5. San Antonio, Texas—Hilton Palacio Del Rio, 200 South Alamo.
6. Detroit, Michigan—Westin Hotel, Renaissance Center.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose

The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda

Topics to be addressed at the six meetings will include the impact of RTC activities on: local real estate markets; hard-to-sell assets; RTC's affordable housing disposition program; and RTC's sales strategies, goals and contractor's program. A detailed agenda will be available at the meeting.

Statements

Interested persons may submit to an advisory board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meeting will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: December 21, 1992.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 92–31263 Filed 12–23–92; 8:45 am]

BILLING CODE 2222–01–M

Privacy Act Systems of Records

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of the existence and character of systems of records and of routine uses.

SUMMARY: The purpose of this document is to publish notice of the existence and character of systems of records under the control of the Thrift Depositor Protection Oversight Board and of each routine use of the records contained in such systems. The notices are required by the Privacy Act of 1974, as amended. Publication of this document will provide notice of the Board's systems of records, as defined by the Privacy Act, and also provide an opportunity for interested persons to submit written data, views, or arguments concerning intended uses of information in such systems.

DATES: Comments must be received on or before January 25, 1993.

ADDRESSES: Comments may be mailed to Office of General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street, NW, Washington, DC 20232.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, telephone (202) 786–9681.

SUPPLEMENTARY INFORMATION: The Thrift Depositor Protection Oversight Board ("Oversight Board") is a corporate instrumentality of the United States. Its principal duty is to oversee the Resolution Trust Corporation, which manages and resolves cases involving failing and failed thrift institutions the accounts of which were formerly insured by the Federal Savings and Loan Insurance Corporation.

Pursuant to 12 U.S.C. 1441a(a)(2), the Oversight Board is an agency of the United States for the purposes of the Privacy Act of 1974, 5 U.S.C. 552a. Elsewhere in this issue of the **Federal Register** the Oversight Board is publishing a final rule establishing procedures to implement the Privacy Act of 1974, 5 U.S.C. 552a.

A report describing the Oversight Board's systems of records has been submitted to the Office of Management and Budget ("OMB") and the Congress pursuant to the Privacy Act and OMB Circular No. A–130. A waiver of the 60-day review period has been requested. Unless comments cause or require revisions, the systems will be established and the routine uses effective January 25, 1993.

The specific data elements of the Oversight Board's systems of records are set forth below, introduced by a table of contents.

Table of Contents

OB–001 Oversight Board Payroll, Attendance, and Leave System
OB–002 Grievances Filed Under Administrative Grievance Procedures
OB–003 General Correspondence Files
OB–004 Congressional Correspondence and Report Files
OB–005 Freedom of Information Record System
OB–006 Litigation Information System
OB–007 Contractor Information System
OB–008 Public Affairs Information System
OB–009 Advisory Board Member Files

OB–001

SYSTEM NAME:

Oversight Board Payroll, Attendance, and Leave System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Oversight Board, including special government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and time and attendance records and other records relating to pay and leave. The system includes identifying information such as an employee's name, date of birth, home address, mailing address, social security number and home telephone as well as information concerning an employee's position, grade or pay level, earnings, annual and sick leave accrual rate and balance, and deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a, 31 U.S.C. 3512.

PURPOSES:

Records in this system are used to insure that each employee receives the proper pay, proper deductions and authorized allotments are made from employees' pay, and employees are credited and charged with the proper amounts of sick and annual leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To disclose information to the General Services Administration in providing payroll support functions for the Oversight Board, including, but not limited to, issuance of payroll checks, savings bonds, and earning and leave statements, and preparation of W–2 forms.

2. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal,

or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto.

3. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

4. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. To disclose information to the Department of Justice, in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

6. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

7. To disclose information to the Merit Systems Protection Board in connection with appeals and other functions promulgated in 5 U.S.C. 1204.

8. To disclose information to the Office of Special Counsel in connection with the investigation of alleged or possible prohibited personnel practices and other functions promulgated in 5 U.S.C. 1212.

9. To disclose information to the Internal Revenue Service and to agencies of jurisdictions that are authorized to tax an employee's compensation when necessary to verify or determine tax information or computations.

10. To disclose information to a Federal, State, county, municipal, or local agency when necessary to adjudicate a claim under a program of such an agency for a benefit, such as unemployment or disability compensation or affordable housing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by the name of the employee on whom they are maintained.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computerized information is reached through passwords or codes. Hard copy files are kept in locked metal cabinets.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with the General Records Schedule of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by employees, timekeepers, supervisors, and the General Services Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–002

SYSTEM NAME:

Grievances filed under Administrative Grievance Procedures.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons filing grievances with the Oversight Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information or documents relating to the grievance and personal relief sought, documented materials used in consideration of the grievance, and correspondence related to the deposition of the grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a, 5 CFR part 771.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or

implementing a statute, rule, regulation, or order issued pursuant thereto.

2. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

3. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. To disclose information to the Merit Systems Protection Board in connection with appeals and other functions promulgated in 5 U.S.C. 1204.

7. To disclose information of the Office of Special Counsel in connection with investigation of alleged or possible prohibited personnel practices and other functions promulgated in 5 U.S.C. 1212.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by the name of the complainant.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computerized information is reached through passwords or codes. Hard copy files are kept in locked metal cabinets.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the General Records Schedule of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7. Review of such a request will be limited in scope to determination of the accuracy of documentation and will not include a review of the merits of an agency action, determination, or finding.

RECORD SOURCE CATEGORIES:

Employees, persons testifying or providing information under administrative procedures, fact-finders in administrative proceedings, and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–003

SYSTEM NAME:

General Correspondence Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and staff of Congress, Federal, State, and local officials, officers and employees of Federal, State, and local agencies, representatives of news media, and members of the general public who have contacted the Oversight Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence received and sent by or on behalf of the Oversight Board; and profile descriptions that contain identifying information concerning the correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

2. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member of employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records

is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

3. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual, who may be the writer, recipient, or subject of correspondence.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through codes. Hard copy files are kept in lockable cabinets.

RETENTION AND DISPOSAL:

Records are maintained for five years and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Correspondence Manager, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Individuals who have corresponded with the Oversight Board; members and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–004

SYSTEM NAME:

Congressional Correspondence and Report Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Congressional Affairs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress; officers and employees of the Oversight Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and control information recording requests, inquiries, and statements of Members of Congress, referrals of constituents' inquiries, and responses to such requests, inquiries, and referrals. Reports, briefing papers, and summaries of briefings of and meetings with Members of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records and information in these records may be used:

1. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

2. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

3. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual Member of Congress or of a member or employee of the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords or codes. Hard copy files are kept in lockable cabinets.

RETENTION AND DISPOSAL:

Upon a person's ceasing to be a Member of Congress, records concerning

such person are transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President for Congressional Affairs, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Members of Congress who have corresponded with the Oversight Board; members and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–005

SYSTEM NAME:

Freedom of Information Record System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including representatives of organizations, requesting access to inspect or copy records of the Oversight Board under the Freedom of Information Act; and individuals submitting business information to the Oversight Board who request confidential treatment of such information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for access to or copies of information of the Oversight Board and replies on behalf of the Oversight Board; control information identifying the requesters; requests for confidential treatment of business information submitted to the Oversight Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

2. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

3. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. By the National Archives and Records Administrative and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

5. To disclose information to the Department of Justice for the purpose of obtaining its advice in the event that the Oversight Board deems it desirable or necessary in determining whether particular records are required to be disclosed under the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual who requests access to or copies of information of the Oversight Board or confidential treatment for business information submitted to the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords and codes. Hard copy files are kept in lockable cabinets with limited access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the General Records Schedule of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Correspondence Manager, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A

request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Individuals who have requested information of the Oversight Board under the Freedom of Information Act or have requested confidential treatment for business information submitted to the Oversight Board; members and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–006

SYSTEM NAME:

Litigation Information System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the General Counsel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are parties to administrative or judicial claims filed against the Oversight Board or a member, officer, or employee of the Oversight Board or who seek disclosure of information of the Oversight Board by order of a court.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records generated in connection with the litigation, administrative claim, or court order.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto.

2. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

3. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. To disclose information to the Department of Justice, in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders in lockable cabinets.

RETRIEVABILITY:

Indexed by the name of a party to the litigation or administrative claim against the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Files are kept in lockable cabinets with limited access.

RETENTION AND DISPOSAL:

Records of a case are retained for five years after its conclusion and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Individuals filing administrative or judicial claims against the Oversight Board or its members, officers, or employees; Department of Justice personnel; and Oversight Board personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–007

SYSTEM NAME:

Contractor Information System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals contracting with or seeking to contract with the Oversight Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contracts of the Oversight Board and records generated under the Oversight Board's contracting procedures, including documentation of

qualifications of individuals seeking to contract with the Oversight Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto.

2. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

3. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. To disclose information to the Department of Justice, in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual contracting with or seeking to contract with the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords or codes. Hard copy files are kept in lockable cabinets.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the General Records Schedule of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Individuals contracting with or seeking to contract with the Oversight Board; officers and employees of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–008

SYSTEM NAME:

Public Affairs Information System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Public Affairs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members, officers, and employees of the Oversight Board; Members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographies, speeches, and Congressional testimony of current and former members, officers, and employees of the Oversight Board; news media articles and press releases concerning current and former members, officers, and employees of the Oversight Board; correspondence with Members of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

2. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee in his or her

individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

3. To disclose information to the Department of Justice in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board; or (b) any member or employee of the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

Indexed by the name of an individual Member of Congress or of a current or former member, officer, or employee of the Oversight Board.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords or codes. Hard copy files are kept in lockable cabinets.

RETENTION AND DISPOSAL:

These records are maintained for three years and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President for Public Affairs, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with CFR 1503.7.

RECORD SOURCE CATEGORIES:

Members of Congress who have corresponded with the Oversight Board; members and officials of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OB–009

SYSTEM NAME:

Advisory Board Member Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Advisory Board Affairs; Office of the General Counsel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the National and Regional Advisory Boards and candidates for membership of the Advisory Boards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical and financial information concerning Advisory Board members and candidates for membership; financial disclosure statements of candidates, and background checks of candidates conducted by the Secret Service. Travel authorizations and vouchers. Correspondence of Advisory Board Members and candidates for Advisory Board membership.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1441a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to disclose relevant information to the appropriate Federal, State, or local agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto.

2. To provide information to a Member of Congress or to a congressional staff member from the record of an individual in response to an inquiry from a congressional office made at the written request of an individual about whom the record is maintained.

3. To disclose information in court or in an administrative proceeding being conducted by a Federal agency when: (a) The Oversight Board; or (b) any member or employee or the Oversight Board, including a special government employee, in his or her official capacity; or (c) any member or employee of the Oversight Board, including a special government employee, in his or her individual capacity if the Department of Justice has agreed to represent the member or employee; or (d) the United States, is a party to the judicial or administrative proceeding or has an interest in the proceeding, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

4. To disclose information to the Department of Justice, in a proceeding before a court, adjudicative body, or other administrative body when: (a) The Oversight Board, or (b) any member or employee of the Oversight Board in his or her official capacity, including any special government employee, and any Advisory Board member; or (c) any member or employee of the Oversight Board, including any special government employee, or any Advisory Board member in his or her individual capacity if the Department of Justice has

agreed to represent such member or employee; or (d) the United States, is a party to litigation or has an interest in such litigation, and by careful review, the Oversight Board determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the Oversight Board to be for a purpose that is compatible with the purpose for which the records were collected.

5. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RRETRIEVABILITY:

Indexed by the name of an Advisory Board member or candidate for Advisory Board membership.

SAFEGUARDS:

Access to these records is limited to personnel whose official duties require such access. Computer information is reached through passwords or codes. Hard copy files are kept in locked cabinets.

RETENTION AND DISPOSAL:

Records concerning candidates and former members are maintained for three years and then transfer to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Advisory Board Affairs, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232; General Counsel, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232.

NOTIFICATION PROCEDURE:

An individual may inquire of the Privacy Officer of the Oversight Board at the address given above whether or not a system of records includes information concerning such individual. Any such inquiry must comply with 12 CFR 1503.3.

RECORD ACCESS PROCEDURE:

An individual may request the Privacy Officer at the address given above for access to records pertaining to such individual in a system of records. Any such request must comply with 12 CFR 1503.4.

CONTESTING RECORD PROCEDURES:

An individual may contest the contents of his or her record by requesting the Privacy Officer at the address given above for amendment. A request for amendment of records must comply with 12 CFR 1503.7.

RECORD SOURCE CATEGORIES:

Advisory Board Members and candidates for Advisory Board membership; and officers and employees of the Oversight Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The specific exemption of 5 U.S.C. 552a(k)(5) for investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Advisory Board membership, but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

Dated: December 18, 1992.

Peter H. Monroe,

President.

[FR Doc. 92-31206 Filed 12-23-92; 8:45 am]

BILLING CODE 2222-01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Greater Pittsburgh International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Administration (FAA) announces its determination that the noise exposure maps submitted by the Allegheny County Department of Aviation for the Greater Pittsburgh International Airport and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for PIT under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 8, 1993.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 10, 1992. The public comment period ends January 24, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA-610, Fitzgerald Federal Building, JFK Int'l Airport, Jamaica, NY 11430, (718) 553-0902. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the PIT Airport are in compliance with applicable requirements of part 150, effective December 10, 1992. Further, the FAA is reviewing a proposed noise compatibility program for the airport which will be approved or disapproved on or before June 8, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150 promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Allegheny County Department of Aviation, submitted an update of the PIT Airport part 150 Study on November 17, 1992. This document contains updated Noise Exposure Maps representing existing (1991) noise impact conditions and future (1996) conditions. The existing noise exposure maps were prepared using activity data for the period September 1990 to August 1991. The future noise exposure map represents activity levels projected for calendar year 1996 and reflect changes in airfield use resulting from the relocation of passenger facilities to the airport's new Midfield Terminal in October 1992. It was requested that the

FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Allegheny County. The specific maps under consideration are the Existing (1991) Noise Exposure Map in the paper pocket following Page 4–24 of Volume I and the Future (1996) Noise Exposure Map in the paper pocket following Page 5–25 of Volume I.

The FAA has determined that these maps for PIT are in compliance with applicable requirements. This determination is effective on December 10, 1992. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plan, or a commitment to approve a noise compatible program or to fund the implementation of the program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative location of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under the Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overleying of noise exposure contours onto the maps depicting properties on the surface rest exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of FAR part 150, that the statutory required consultation has been accomplished.

The FAA formally received the noise compatibility program for PIT, on November 17, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 8, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. The public comment period ends January 24, 1993. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination at the following locations:

FAA, Eastern Regional Office, Fitzgerald Federal Building, JFK Int'l Airport, Airports Division, Room 337, Jamaica, NY

FAA, Harrisburg Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA

Commonwealth of Pennsylvania, Bureau of Aviation, Department of Transportation, 208 Airport Dr., Harrisburg Int'l Airport, Middletown, PA

County of Allegheny, Department of Aviation, Pittsburgh International Airport, Landside Terminal, Suite 4000, Pittsburgh, PA

Questions may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Jamaica, NY on December 10, 1992.

Louis P. DeRose,

Manager, Airports Division.

[FR Doc. 92–31244 Filed 12–23–92; 8:45 am].

BILLING CODE 4910–13–M

[Docket No. 26987]

Draft Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over the State of New Jersey; Public Hearings and Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearings and meeting.

SUMMARY: The FAA intends to conduct hearings in New Jersey and a meeting on Staten Island to gather comments on the Draft Environmental Impact Statement (DEIS) released on November 12, 1992.

COMMENT PERIOD: Due to the high degree of public interest in the DEIS and technical complexity of the issues raised, the comment period has been extended to March 5, 1993.

Written comments must be received at the following address by March 5, 1993: Federal Aviation Administration, Office of the Chief Counsel: Docket Number 26987, 800 Independence Avenue SW., Washington, DC 20591.

During the comment period, the FAA will conduct seven public hearings in New Jersey to solicit both written and oral comments on the DEIS. A public meeting will also be held on Staten Island, New York. All persons wishing to make oral presentations at the public hearings and the public meeting are strongly urged to provide a written copy of their statements at the hearing/meeting or at the FAA address provided in the above paragraph.

The following is a listing of the dates, times and locations or the hearings in New Jersey and the meeting on Staten Island:

Date	Time/Location
January 5, 1993.	7–11 p.m.
January 6, 1993.	5 p.m., and 7–11 p.m., Cranford—Coachman Hotel (Days Inn), Exit 136 Garden State Parkway, 10 Jackson Drive, Cranford, New Jersey.
January 7, 1993.	1–5 p.m. and 7–11 p.m., Tinton Falls—Holiday Inn, Exit 105 Garden State Parkway, 700 Hope Road, Tinton Falls, NJ.
January 11, 1993.	1–5 p.m. and 7–11 p.m., Runnemede—Holiday Inn, 109 9th Avenue, Runnemede, NJ.
January 12, 1993.	1–5 p.m. and 7–11 p.m., Bernardsville—Old Mill Inn, Route 202 & North Maple Avenue, Bernardsville, NJ.
January 13, 1993.	1–5 p.m. and 7–11 p.m., Rechelle Park—Ramada, 375 W. Passaic Street, Rochelle Park, NJ.
January 14, 1993.	1–5 p.m. and 7–11 p.m., Parsippany—Holiday Inn, Route 46 East, Parsippany, NJ.
January 25, 1993.	3–5 p.m. and 7–11 p.m., Staten Island—P. S. 44, 80 Maple Parkway, Staten Island, NY.
January 26, 1993.	1–5 p.m. and 7–11 p.m., New Brunswick—Hyatt Regency, 2 Albany Street, New Brunswick, NJ.

The FAA will consider and respond to all comments directly related to the scope of the DEIS. The geographic scope delineated by Congress for the EIS was the environmental effects of the Expanded East Coast Plan over the State of New Jersey and adjacent coastal waters. Please note, however, that the

most useful comments are those which provides facts and analyses to support the reviewer's recommendations or conclusions on specific topics contained in the document. Should any comments be received after the close of the comment period, FAA cannot assure that they will be considered or addressed in the final EIS.

The FAA will issue a final EIS that will include corrections, clarifications and responses to comments on the DEIS.

Issued in Washington, DC, on December 17, 1992.

Norbert A. Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 92-31179 Filed 12-21-92; 8:45 am]

BILLING CODE 4910-13-M

Deadline for Submission of Preapplication/Application for Airport Grant Funds Under the Airport Improvement Program (AIP) for Fiscal Year 1993

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces January 31, 1993, as the deadline for the submission of preapplications and applications for airport grant funds under the Airport Improvement Program (AIP) for fiscal year 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP-520, on (202) 267-8809.

SUPPLEMENTARY INFORMATION: Section 509(e) of the Airport and Airway Improvement Act of 1982 (AAIA) provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for passenger and cargo entitlement funds. Notification of the sponsor's intent to apply during fiscal year 1993 for any of its entitlement funds, including those unused from priors years, shall be in the form of a project preapplication or application (SF 424) submitted to the FAA field office no later than January 31, 1993.

The FAA also recommends that all other airports or planning agencies expecting to apply for airport grant funds do so early in the fiscal year. Such prospective applicants should contact the appropriate FAA field office for information on that office's deadline. These offices will assist in the preparation of preapplications/applications and provide procedural information as needed.

Prompt submission of complete requests by the deadline date will allow earlier funding decisions by the FAA regarding the availability of discretionary funds for program changes. It will permit completion of procedural requirements necessary for placing projects under grant and beginning construction in a timely manner within the fiscal year 1993 construction season. To achieve this, Airport sponsors should work with their respective FAA field offices to meet the deadlines established by those offices for completion of documentation for final applications, including construction bid prices, in order to have all entitlement funds under grant as early as possible in the fiscal year. Failure to meet those deadlines could result in the deferral of award of a sponsors' entitlement funds until next fiscal year.

Issued in Washington, DC, December 18, 1992.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 92-31239 Filed 12-23-92; 8:45 am]

BILLING CODE 4910-13-M

Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 13, 1993, at 9 a.m.

ADDRESSES: The meeting will be held in the Regional Airline Association Board Room, Third Floor, 1101 Connecticut Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App II), notice is hereby given of a meeting of the Air Carrier Operations Subcommittee to be held on January 13, 1993, in the Regional Airline Association Board Room, Third Flood, 1101 Connecticut Ave., NW., Washington, DC. The agenda for this meeting will include progress reports from the Fuel Requirements Working Group, Autopilot Engagement Working Group, Flight Crewmember Flight/Duty/Rest Requirements Working Group, and Controlled Rest on the Flight Deck Working Group. Each working group Chair will report on the progress of the working group. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 18, 1992.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-31243 Filed 12-23-92; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

The Edmund S. Muskie Fellowship Program

AGENCY: United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from accredited US institutions offering degrees at the master's level in business administration, economics, law, or public administration to host graduate students from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan for degree, certificate or professional development programs under the auspices of the 1993 Edmund S. Muskie Fellowship Program. Formerly known as the Benjamin Franklin Fellowship Program, this initiative seeks to provide qualified students with one or two year programs of graduate-level education and relevant internships.

DATES: Deadline for Proposals: All copies must be received at the appropriate office (listed below) by 5 p.m. Washington, DC time on Wednesday, February 17, 1993. Faxed documents will not be accepted, nor will documents postmarked on February 17, 1993, but received at a later date. It

is the responsibility of each applicant to ensure that proposals are received by the above deadline.

ADDRESSES: The original and four copies of the proposal should be submitted by the deadline and addressed as follows:

For Degree Programs in Business Administration: The Edmund S. Muskie Fellowship Program, c/o ACTR/ACCELS, 1776 Massachusetts Avenue, NW., Suite 300, Washington, DC 20036.

For Degree Programs in Economics: The Edmund S. Muskie Program, c/o IREX, 1616 H Street, NW., Washington, DC 20006.

For Degree Programs in Law: The Edmund S. Muskie Fellowship Program, c/o The Soros Foundation, 888 Seventh Avenue, Suite 1901, New York, NY 10106.

For Degree Programs in Public Administration: (Applications may be sent to either organization, but need not be submitted to both.)

The Edmund S. Muskie Fellowship Program, c/o ACTR/ACCELS, 1776 Massachusetts Avenue, NW., Suite 300, Washington, DC 20036; or

c/o The Soros Foundation, 888 Seventh Avenue, Suite 1901, New York, NY 10106.

For Professional Development Programs in Business Administration, Economics, Law, or Public Administration: The Edmund S. Muskie Fellowship Program, c/o Martha Loerke, The Institute of International Education, 809 United Nations Plaza, New York, NY 10017–3580.

FOR FURTHER INFORMATION CONTACT: Interested U.S. institutions should write ACTR/ACCELS, IIE, IREX, or the Soros Foundation to request application packets, which include guidelines and award criteria.

SUPPLEMENTARY INFORMATION: The Edmund S. Muskie Program is supported by grants from USIA to the following organizations: The American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study (ACTR/ACCELS), the Institute of International Education (IIE), the International Research & Exchanges Board (IREX), and the Soros Foundation. Under these grants ACTR/ACCELS, IIE, IREX, and the Soros Foundation are responsible for the selection, academic placement, and monitoring of the Fellows. All interested applicants should apply directly to the appropriate organization at the address listed above.

Academic Programs

Muskie Fellows will enter U.S. graduate programs in the 1993 fall semester.

Degree Programs

In general, Fellows studying business administration and economics will take part in two-year academic programs leading to the degree of Masters of Business Administration (MBA) or Master of Arts (MA), respectively. Internships will be held during the summer between the first and second years of study. Fellows in Law will take part in a nine-month academic program leading to the Master of Law degree (LLM), followed by a three-month internship. Public administration Fellows will take part in one or two-year academic programs leading to the Masters of Public Administration (MPA) or the Master of Arts (MA) degree. Three-month internships will take place during the summer of 1994, after one year of academic study.

Professional Development

The Professional Development awards are specifically designed for mid-career professionals with at least two years substantive work experience prior to application. The non-degree programs in business administration, economics, and public administration generally include two semesters of academic study at the graduate level, followed by up to three months of practical training. The degree program for mid-career professionals in law will also include two semesters of coursework leading to the Master of Laws (LLM) with up to three months of practical training after the period of academic study. Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the Untied States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Program Overview

The Edmund S. Muskie Program was established in 1992 to encourage democratic and economic development in Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzebekistan. Fellows will be identified through an open competition and rigorous selection process administered by ACTR/ACCELS, IIE, IREX, and the Soros Foundation, in conjunction with professional associations and U.S. faculty from the four academic fields, who review applications and interview semi-finalists in-country. Semi-finalists in all disciplines will take the Test of English as a Foreign Language (TOEFL). Candidates for degree programs in business administration will take the Graduate Management Admission Test (GMAT), and candidates for degree programs in economics will take the general and subject Graduate Record Examination (GRE).

To be eligible for a Muskie Fellowship, applicants must be citizens of one of the fifteen nations targeted by the Program, have successfully completed an undergraduate program, be proficient in spoken and written English at the time of application, demonstrate professional aptitude and leadership potential in the field of specialization, and be under the age of forty. Applicants for professional development programs must have a minimum of two years professional work experience in addition to an undergraduate degree. Individuals currently enrolled in academic programs in the U.S., persons working or earning a living in the United States, spouses of U.S. citizens, or individuals who have applied for an immigrant visa or political asylum to any country are not eligible for the Muskie Program. Muskie Fellows, under the terms of the grant and under the laws governing the student visa required for participation in the Program, must return to their home country for a period of at least two years immediately upon completion of the academic program and internship. No financial or administrative support or provision is made for dependents under the Muskie Program.

Muskie Fellows will receive scholarships for international transportation, domestic transportation within the United States, stipend, health insurance, room/board, and tuition. U.S. institutions hosting Muskie Fellows are asked to provide cost-sharing for tuition

and/or room and board expenses, so that greater numbers of students may take part in the program. Currently 155 students are enrolled at U.S. institutions under the auspices of the 1992 Muskie Program. Approximately 150 Fellows will be selected for participation in the 1993 Muskie Program.

Program Requirements and Review Criteria

U.S. institutions may apply to receive Fellows individually or in groups of 5–10 people representing one or any combination of the four disciplines. Host U.S institutions for 1993 Muskie Fellows will be selected by ACTR/ACCELS, IIE, IREX, the Soros Foundation, and USIA, based on the following criteria:

—Strength of the academic program;
—Experience working with and providing a full range of support services for international students;
—Ability to arrange professional affiliations and internships;
—Capacity to assign a faculty advisor and a Muskie Program coordinator to provide academic support and enrichment;
—Commitment to contribute substantial cost-sharing, such as tuition scholarships, fellowships, or reduced room and board expenses.
—Evaluation plan for monitoring the academic progress and integration of Fellows into the campus and community; and
—Adherence of proposed activities to the criteria outlined above and the goals of the Edmund S. Muskie Fellowship Program.

USIA retains the right to determine final selection decisions with regard to the competition for institutions to host Muskie Fellows.

Some Fellows will be placed at universities or colleges in clusters of 5–10, and institutions are encouraged to receive and provide commensurate cost-sharing for such groups. The academic interests and needs of candidates selected as Fellows will also be considered in the selection of U.S. receiving institutions. Institutions currently hosting Fellows under the 1992 Program are eligible to apply to receive students in 1993 but should submit a proposal under these guidelines. The Agency reserves the right to determine final placement decisions.

Proposals must be submitted to ACTR/ACCELS, IIE, IREX, or the Soros Foundation, according to discipline and type of program (degree or professional development), as indicated above. All programs in law must lead to the Master of Laws (LLM) degree.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA, ACTR/ACCELS, IIE, IREX, or Soros Foundation representative. Explanatory information provided by USIA, ACTR/ACCELS, IIE, IREX, or the Soros Foundation that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

Applicants will be notified in writing of the results of the review process on or about April 15, 1993. Final placement of students at institutions is subject to the specific academic interests and needs of individuals selected as Muskie Fellows.

Options for Renewal

Subject to the availability of funding and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: December 18, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92–31228 Filed 12–23–92; 8:45 am]

BILLING CODE 8230–01–M

Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

TITLE: Central and Eastern European Training Program *(CEETP–3).*

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for non-profit organizations to develop training programs in the areas of (1) independent media development, (2) local government/public administration and (3) business administration for countries of Central and Eastern Europe as specified below. These projects should link the U.S. organization's international exchange interests with counterpart institutions and groups in the partner countries.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals. After the deadline for submitting proposals, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to Central and Eastern European Training Program *(CEETP–3).* This announcement number is *E/P–93–8.* Please refer to this title and number in all correspondence or telephone calls to USIA.

Dates: *Deadline for Proposals:* All copies must be received at the U.S. Information Agency by 5 p.m., Washington DC time on February 26, 1993. Faxed documents will not be accepted, nor will documents postmarked February 26, 1993, but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. CEETP–3 grant project activity should begin after June 15, 1993.

Addresses: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: CEETP–3 E/P–93–8, Office of Grants Management (E/XE), 301 Fourth Street SW., room # 336, Washington, DC 20547.

For information contact; Interested organizations/institutions should contact: European Division, Office of Citizen Exchanges (E/P), room 216, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, telephone 202/619–5348, fax 202/619–4350, to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Objectives of Central & East European Training Program (CEETP–3)

Overview: Proposals must be for projects which encourage the growth of democratic institutions and political and economic pluralism, and must show tolerance and sensitivity toward cultural and ethnic differences. They should lay the groundwork for new and continuing links between American and Central/East European professional organizations. Grant proposals which are overly ambitious or general will not be competitive. Doing a few tasks well is preferred. Other objectives which apply to all three theme areas:

—The advancement of mutual understanding through targeted professional development programs for Central/Eastern European leaders;
—The development of culturally sensitive and relevant study tours in

the United States for small groups of key senior leaders to observe theories and concepts at work in the United States;

—The transfer at minimal cost of relevant knowledge through short courses and intensive workshops (preferably of at least two weeks duration) conducted in Central/Eastern Europe;

—Well-planned internships in the U.S. and extended learning programs overseas (from four to ten weeks, with considerable in-country cost-sharing);

—The transfer of American academic and professional expertise through consultations in Central/Eastern Europe for periods of not less than one month;

—The development of specialized materials for secondary and post-secondary teachers, plus special training workshops for such teachers;

Programmatic Considerations

Pursuant to the Bureau's authorizing legislation, grant programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

The Office of Citizen Exchanges strongly encourages the coordination of these activities between respected universities, professional associations, and significant cultural, educational and political institutions in the U.S. and abroad. In addition, coordination in the design of program with U.S. Information Agency officers overseas and with foreign government officials will likely make the proposal more competitive. The themes addressed in these exchange programs must be of long-term importance rather than focussed on current events or short-term issues.

In every case, a compelling rationale for the development and execution of an exchange program must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project and its enduring impact.

USIA will give priority to proposals from U.S. organizations which have partner organizations in Central/Eastern Europe, which will assist logistically and will contribute to the realization of program goals and objectives and will themselves be enhanced by the program. Applicants are encouraged to demonstrate partner relationships by providing copies of correspondence or other materials as appendices to proposals.

The CEE partner institutions are encouraged to provide cost-sharing or significant in-kind contributions such as local housing, transportation, interpreting, translating and other local currency costs and to assist with the organization of projects. USIA is interested in multi-phase programs. A model program could include a planning visit by the American organizer; an in-country workshop or seminar led by American experts; a travel/study program in the United States for selected foreign participants; U.S.-based internships where appropriate; and, finally, follow-up consultations overseas by American organizers. Internships usually work best when arranged for the most promising participants in earlier, in-country workshops.

The development of new curricula and instructional materials in Central/Eastern European languages is encouraged; however, USIA does not pay for publication of materials for distribution in the United States.

Planning Trips

USIA grants will pay for planning trips to partner CEE countries by staff or consultants for consultations and planning meetings with partner institutions, but these should be trips which build on previous communications and agreements for cooperation.

Seminars and In-Country Workshops

Seminars and workshops should be at least two weeks in duration. CEE language skills on the part of American experts are desirable but not essential. American presenters should be experienced trainers and professionals in the relevant field (local government administration, business, or media) and be sufficiently knowledgeable of local conditions and needs to tailor presentations.

Orientation Activities

All CEETP–3 grant projects should include a pre-departure orientation to introduce travelers, in both directions, to administrative and substantive details of the grant program. On arrival in the USA, all projects should begin with two to three days of local orientation to such matters as geographic and historical setting, medical insurance, health, cultural values and practices, the roles of police and mass media and other sectors of society which visitors may encounter, and the like. In addition, there should be an orientation for hosts, whether families or individuals or institutions; if overseas visitors will stay longer than a couple of weeks, it is advisable to established some sort of support network to monitor the project and resolve problems which develop.

The purpose in all these orientations is not only to inform participants about agenda and logistics but also to raise issues of economic, social, political, and cultural sensitivities, knowledge, and practice.

Finally, there should be a re-entry orientation and project evaluation just before visitors return home to ease their re-entry, to promote understanding, to identify strengths and weaknesses in the program, and to make adjustments in the remainder of the program where possible.

Study Tours in the United States

Study tours are generally three-four weeks in length and can be a mix of site visits, mini-workshops, and consultations. The purpose of these visits is to provide the participants a first-hand look at local government administration, business, and the media as organized in the United States, as well as an introduction to the cultural and geographic richness of the United States.

U.S.-Based Internships

For the purposes of this competition, internships are practical work experiences in state or local government, businesses, or media organizations. Active, productive internships are preferred over passive job shadowing. They are not university-based residency programs or research opportunities. Participants must be fluent in English. The length of stay for an internship should be at least one month, including orientation activities, but probably not longer than ten weeks. USIA gives priority to proposals which demonstrate private sector cost-sharing, either in the form of in-kind contributions or through corporate or foundation support. Funding from private sources is encouraged to cover food, lodging, and pocket money for the participant. In no case could the intern receive a wage or be "hired" by the sponsoring institution.

Well-designed internships require considerable planning and monitoring. Critical to the success of internship programs is the matching of expectations of host institution and participant. USIA will give priority to proposals that include a detailed plan for how internships will be developed and organized, including the recruitment of institutions for placements and their preparation, the detailed course of work for participants, extra curricular activities, on-going monitoring, contingency planning for any required changes, and final evaluation.

Internships should begin with a basic orientation program as described above but also with due emphasis on American work habits and detailed information on the particular area of interest (public administration, business, or media). For internships of an extended duration, organizations may wish to design a mid-point workshop which brings participants together for a few days to evaluate the experience and make mid-course corrections if necessary.

Materials Development

USIA encourages the development, where needed, of written, audio and video materials in CEE languages to enhance the training programs. For example, if not already available, glossaries of specialized terms in the three fields (public administration, business, and media) might be developed.

In developing materials, consideration should be given to their wider use, beyond the immediate training program. USIA is interested in organizations' ideas on how to "reuse" specialized materials by providing them to universities, libraries, or other institutions for use by a larger audience.

Local Government

Preference will be given to projects in Albania, Bulgaria, Romania, The Czech and Slovak Federal Republic, Hungary and Poland. USIA is interested in proposals for training programs which will foster effective administration of local and regional governments. Programs might examine and seek to improve relationships among local executive, legislative, and judicial elements, or they might address the knowledge and skills necessary to administer one or more of these branches of local government.

Program topics might include one or more of the following: judicial administration, budget development, financial management, tax policies and mechanisms, election practices, management of municipal services, privatization of government property, consumer protection, business regulation (as opposed to control), licensing, environmental protection. Programs might further the development of information and library systems relevant to local government improve committee and staff structures, research capability, legislation drafting capability, structural and procedural needs of local governments. Training should be conducted mostly in local centers, preferably situated outside the capital cities.

Business Administration

Preference will be given to projects with Albania, Bulgaria, Romania, Estonia, Latvia, Lithuania, the Czech and Slovak Federal Republic, Hungary, and Poland. In Poland, Hungary, and the Czech and Slovak Federal Republic, projects which take place outside Warsaw, Budapest, and Prague will be given priority.

While this topic is broad, proposals should focus primarily on management training, small business development (including incubators and Small Business Centers), agri-business, banking, credit practices, financial management, marketing management, industrial relations, and/or privatization.

Program design should clearly differentiate CEE target audiences, such as professors and instructors of economics, senior business leaders, government officials, or promising practitioners, and demonstrate how the proposed agenda addresses the selected audience(s).

USIA has a strong interest in programs on the development of business structures and the creation of jobs in non-urban areas.

Mass Media Development

Preference will be given to projects with Albania, Bulgaria, Croatia, Romania, Estonia, Latvia, Lithuania, the Czech and Slovak Federal Republic, Hungary, Poland, Macedonia, and Slovenia. The focus of the proposals should be directed toward the development of a free and independent media, since this is a sector of the society which has benefitted least from the new wave of democratization.

Programs in this general topic fall under two training sub-categories: working reporters and media business management. Preference will be given to mass media training programs which contain a U.S. internship component. For training programs in CEE, preference will be given to those of at least two weeks duration; they could focus on either basic journalism or business management techniques. Mass media proposals may also focus on curriculum reform and development of schools of journalism.

Training, especially for journalists outside of the CEE capital cities, should emphasize skills such as effective writing, investigative reporting, objectivity, evaluation of sources, clear labelling of editorials and opinion pieces, conformance to copyright laws, and ethics.

Media management training (both print and broadcast) should focus on management of media as a profitable business. Topics to be addressed might include management techniques, desk top publishing, advertising, marketing, distribution, public relations, staff development, accountability, and the pitfalls of journalistic advocacy, among others.

Scope

USIA is interested in proposals for programs with one or more of the CEE countries, but they should focus on one of the three major topics: independent media development, local governance, or business administration. A program that is broader in scope is less likely to receive USIA support. Grantee organizations are not limited to one-country projects. However, if developing a multi-country or regional project, serious thought should be given to political, organizational, and budgetary implications.

USIA will consider geographic distribution in selecting grantee institutions to ensure a wide distribution of this program.

USIA encourages proposals which feature "train the trainers" models; the creation of indigenous training centers; enhancement for university departments; schemes to create professional networks or professional associations to disseminate information, and other enduring aspects.

Guidelines and Restrictions

In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution.

Selection of Participants

All grant proposals must clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of internships in USA should include letters tentatively committing host institutions to support the internships.

USIA does not support proposals limited to conferences or seminars of only a few days length which are organized as plenary sessions, major speakers, and panels with a passive audience. It will support conferences only insofar as they are a minor part of a larger project in duration and scope which is receiving USIA funding from this competition. Furthermore, grants are not given to support projects whose focus is limited to technical issues, or for research projects, for publications intended for dissemination in the

United States, for individual student exchanges, for film festivals or exhibits. Nor does this Office provide scholarships or other support for long-term (i.e., a semester or more) academic studies.

Competitions sponsored by other offices of USIA's Educational and Cultural Bureau are also announced in the **Federal Register**, and may have different guidelines or restrictions.

Funding

The amount requested from USIA should not exceed $200,000. However, exchange organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location or activity in order to facilitate USIA decisions on funding.

While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for USIA funding support is keen.

The following project costs are eligible for consideration for funding: 1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities.

Note: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in Central/Eastern Europe, the Federal per diem rates must be used.

3. Interpreters. Interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each DOS interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance. Participants and escorts are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $15–20 for a lunch and $20–30 for a dinner; this includes room rental if applicable. The number of invited guests may not exceed participants by more than a factor of two to one.

9. Administrative Costs. USIA-funded administrative costs are limited to 22% of total funds requested. Administrative costs are defined as salaries for grantee organization employees, benefits, other direct and indirect costs incurred in the United States. Overseas administrative costs, such as employee compensation in an office abroad, are not counted in this 22% limit. Important note for universities: The U.S. Information Agency's Bureau of Educational and Cultural Affairs defines U.S. faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

10. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel. Please Note: All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of European Affairs. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant all preparation and submission costs are at the applicants expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit relevance, originality, rigor and substance to the USIA mission. They should demonstrate the match of U.S. resources to a clearly defined need.

2. *Institutional Ability/Capacity/Record:* Applicant institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by the Office of Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. *Program Planning:* A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area.

6. *Cross-Cultural Expertise and Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as relevant knowledge of target area/country.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and attainable. Proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* Overhead and administrative costs should be kept as

low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity success. In this respect the applicant should include a draft survey questionnaire or other technique and a methodology to use to link outcomes to original project objectives. Applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1993.

Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 18, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-31185 Filed 12-23-92; 8:45 am]

BILLING CODE 8230-01-M

Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) announces a request for proposals from not-for-profit organizations to conduct an initiative grant exchange program designed to encourage increased private sector commitment to and involvement in international exchanges between U.S. and African journalists. All international participants will be nominated by USIA personnel overseas. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

ANNOUNCEMENT NUMBER: The announcement number is E/P-93-7. Please refer to this number in all correspondence and telephone calls to the Agency.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, February 26, 1993. Faxed documents will not be accepted, nor will documents postmarked February 26, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin after June 26, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: Citizen Exchange: Initiative Grant Competition FY-93-7, Office of Grants Management (E/XE), room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), room 224, USIA, Washington, DC 20547, telephone: (202) 619-5326, to request detailed application packets which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation guidance. Please specify the name of USIA Program Officer Stephen Taylor on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, "programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life."

Professional Development of African Print and Broadcast Media Journalists and Managers

The Office of Citizen Exchanges (E/P) of the United States Information Agency (USIA) proposes the development of a two-way exchange program for print and broadcast journalists and media managers in anglophone, francophone and lusophone Africa. The first phase of the program would provide a series of at least 20 intensive workshops in Africa aimed at strengthening skills in the areas of political affairs reporting, economic affairs reporting and management of media organizations. During the second phase, the grantee institution would organize internships of 4-6 weeks at appropriate U.S. publications and broadcast services for 25 African participants. The project would be designed to prepare African trainers to replicate the training activities for other audiences in Africa.

A U.S. not-for-profit institution or institutions will design and execute the program and select the American presenters. The institution should demonstrate extensive experience and success in coordinating international exchange programs for senior-level foreign participants. The potential grantee institution should have substantive working relationships with U.S. public and private sector organizations responsible for promoting journalistic professionalism and successful business management. The African participants will be nominated by overseas personnel of the United States Information Service (USIS) and selected by the United States Information Agency (USIA). The program will begin in the summer of 1993.

It is desirable that the first phase of the program be completed, and the second phase be underway, within twelve months after the initial grant award from USIA. While coordination of all activities by a single grantee organization would be attractive, the number and variety of workshops and follow-on internships may require subcontracting or the award of two smaller grants in order to achieve successful completion of program activities in a timely manner. Thus, USIA will consider proposals to conduct all elements of the program, as well as proposals to develop either the anglophone or francophone portions of the program, in combination with activities for lusophone participants.

Funding

Competition for USIA funding is keen. The selection of a grantee

institution will depend on program substance, cross-cultural sensitivity, the applicant's familiarity with professional journalistic standards and the U.S. and foreign media, and ability to successfully carry out the program. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process.

Funds requested from USIA cannot exceed $550,000 for support of this program. However, organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000.

Administrative costs. USIA-funded administrative costs are limited to twenty-two (22%) per cent of the total funds requested from USIA. Administrative costs are defined as salaries, benefits, other direct and indirect costs. Important note for universities: The U.S. Information Agency's Bureau of Educational, and Cultural Affairs defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of African Affairs and the Office of Contracts. Proposals may also be reviewed by the Agency's Office of the General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

The award of any grant is subject to the availability of funds.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Institution Reputation/Ability Evaluations:* Institutional grant recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal and no longer than two pages each.

4. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substance and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. *Cost Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institution direct funding contributions.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 20, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 18, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-31186 Filed 12-23-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held January 26 and 27, 1992, by the Department of Veterans Affairs, in the Conference Room 7 of the Ramada Renaissance Hotel—TechWorld, 999 Ninth Street, NW., Washington, DC. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Acting Secretary of Veterans Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The committee will meet on January 26 from 8:30 a.m. until 4:30 p.m. and will reconvene on January 27 at 8:30 a.m. and adjourn at 12 noon. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes,

Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202–535–7165) prior to January 22, 1992.

Changes in geriatric programs and update on allied health care training will be the primary topics for discussion.

Dated: December 15, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–31273 Filed 12–23–92; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held in room 442, of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC, on January 29, 1993, at 10 a.m. The committee members will review Department of Veterans Affairs construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Krishna K. Banga, Acting Director, Structural Engineering Service, Office of Construction Management, Department of Veterans Affairs Central Office (phone 202–233–2864) prior to January 27, 1993.

Dated: December 15, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–31274 Filed 12–23–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

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).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 14, 1993.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Slatersville Congregational Church, On the Common, Slatersville, RI, for the following reasons:

1. Presentation of North Smithfield significance and projects.
2. Corridor video.
3. Report of Executive Committee on budget and administration.
4. Report of Boundary Committee.
5. Status of demonstration projects.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 730, Uxbridge, MA 01569. Telephone: (508) 278–9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address noted on this letterhead.

James R. Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 92–31465 Filed 12–22–92; 2:14 pm]

BILLING CODE 4310-70-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 59378, December 15, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 12:00 noon, Monday, December 21, 1992.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed computer maintenance contract for the Federal Reserve System. (This item was originally announced for a closed meeting on December 14, 1992.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–31383 Filed 12–22–92; 2:13 pm]

BILLING CODE 6210-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: January 21, 1993, 1:00 p.m.-5:30 p.m.

January 22, 1993, 9:30 a.m.-3:30 p.m.

PLACE: The Warwich Hotel, 1776 Grant Street, Denver, Colorado 802103.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Chairman's report
Executive Director's report
NCLIS AMERICA 2000: Library Partnership Ad Hoc Committee report
Status of NCLIS publications:
- NREN open forum report
- Pathways to Excellence: A Report on Improving Library and Information Services for Native American Peoples
- NCLIS Annual Report, FY 1991–92

Ward E. Shaw, Chairman of CARL Systems, Inc., Colorado Alliance of Research Libraries and CARL Systems, Inc. (tentative)
Nancy Bolt, Colorado State Librarian (tentative)
Committee reports:
- Budget and Finance Committee
- International
- Legislative and Library Statistics
- Public Affairs
- Recognition

Public Comment
Unfinished Business

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, NCLIS, suite 310, 1111–18th Street, NW., Washington, DC 20036, (202) 254–3100.

Dated: December 17, 1992.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 92–31472 Filed 12–22–92; 2:58 pm]

BILLING CODE 7527-01-M

Corrections

Federal Register
Vol. 57, No. 248
Thursday, December 24, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1965

Elimination of Loan Cost Payments Through the "MISPAY" Accounting System at the National Finance Center

Correction

In rule document 92–19250 beginning on page 36589 in the issue of Friday, August 14, 1992, make the following correction:

§ 1965.104 [Corrected]

On page 36593, in the first column, in the amendment to § 1965.104, the text set out for paragraph (c)(1)(ii) should be removed.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[AD–FRL–4532–8]

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

Correction

In proposed rule document 92–27549 beginning on page 55632 in the issue of Wednesday, November 25, 1992, make the following corrections:

1. On page 55632, in the first column, under the heading **ADDRESSES**, in the third paragraph, in the last line, "No. A–90–30" should read "No. A–90–39".

2. On page 55637, in the third column, in the third full paragraph, in the fourth and fifth lines, "low NO technology" should read "low NO_x burner technology".

3. On page 55639, in the second column, in the second full paragraph, in the seventh line, "producers" should read "produces".

4. On the same page, in the 2nd column, in the 3rd full paragraph, in the 16th line, "mumber" should read "number".

5. On page 55640, in the second column, in the third full paragraph, in the second line, "will-fired" should read "wall-fired".

6. On the same page, in the same column, in the same paragraph, in the 13th and 18th lines, "No_x" should read "NO_x".

7. On the same page, in the third column, in the 5th, 8th, and 16th lines, "No_x" should read "NO_x".

8. On the same page, in the same column, in the first full paragraph, in the first line, "No_x" should read "NO_x".

9. On page 55648, in the first column, in the last paragraph, in the sixth line, "reduction" should read "reductions"

10. On page 55659, in the first column, in the 2nd full paragraph, in the 19th line, "phase" should read "phrase".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 91N–0278]

RIN 0905–AD66

New Drug, Antibiotic, and Biological Drug Product Regulations; Accelerated Approval

Correction

In rule document 92–30129 beginning on page 58942 in the issue of Friday, December 11, 1992, make the following corrections:

On page 58843, in the third column, in the first full paragraph, in the seventh and eighth lines, "ddi)" and "ddc)" should read "ddI)" and "ddC)".

BILLING CODE 1505–01–D

federal register

Thursday
December 24, 1992

Part II

Environmental Protection Agency

40 CFR Parts 261, et al.
Wood Preserving; Identification and Listing of Hazardous Waste; et al., Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, and 302

[FRL-4155-5]

RIN 2050-AD35

Wood Preserving; Identification and Listing of Hazardous Waste; Standards and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by modifying the technical standards for drip pads used to collect preservative drippage from treated wood and modifying the listings of three categories of hazardous waste from the wood preserving industry. These listings include wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use or have used pentachlorophenol (F032), that currently use creosote (F034), or that currently use inorganic preservatives containing arsenic or chromium (F035). This action modifies portions of the regulations that were previously finalized by EPA on December 6, 1990 (50 FR 50450). Portions of that final rule were administratively stayed on June 13, 1991 (56 FR 27332), and again on February 6, 1992 (published in the **Federal Register** on February 18, 1992 [57 FR 5859]). Today's amendments constitute final action on the June 1991 Administrative Stay and result in termination of that stay. The February 6, 1992 stay is also terminated as a result of today's action. This notice also modifies the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list of hazardous substances to reflect the modifications to the F032, F034, and F035 hazardous waste listings.

DATES: This final rule will become effective on December 24, 1992 except for the amendments to the following provisions which are effective on June 24, 1993: §§ 264.570(c)(1), 264.573(a)(4)(i), and (b)(3), 265.440(c)(1), 265.443(a)(4)(i) and (b)(3) and the revision of hazardous waste number F032 in § 261.31. See section VII of Supplementary Information for further details.

ADDRESSES: The official record of this rule-making is identified by Docket Number F92-WP2F-FFFFF and is located at the following address: EPA RCRA Docket Clerk, Room 2427 (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page. Copies of materials relevant to the CERCLA portions of this rulemaking also are located in room 2427 at the above address.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424-9346 (toll-free) or (703) 920-9810, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553-7672 (toll-free) or (703) 486-3323, locally. For technical information on the modifications to the hazardous waste listings and drip pad standards, contact Mr. David J. Carver at (202) 260-6775, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-5650.

SUPPLEMENTARY INFORMATION: The contents of the preamble are listed in the following outline:

I. Legal Authority
II. Background
A. General
B. Administrative Stays
III. Summary of the Regulation
A. Overview of the Proposed Rule
B. Overview of the Final Rule
IV. Summary of Public Comments and Responses
A. Provisional Elimination of the F032 Waste Code
B. February 6, 1992 Deadline
C. Mixture Rule and Contained-In Policy
D. Narrowing of Wastewater Listings
E. Storage Yard Drippage
F. Revisions to Drip Pad Cleaning Requirements
G. Policy to Allow Installation of Either a Surface Coating, Sealer, or Cover or a Liner and Leak Detection System
H. Drip Pad Coating, Sealer and Cover Permeability
I. Other Issues
V. State Authority
A. Applicability of Final Rule in Authorized States
B. Effect on State Authorizations
VI. CERCLA Designation and Reportable Quantities
VII. Compliance Deadlines
VIII. Regulatory Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
IX. Paperwork Reduction Act

I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a), 3001(b) and (e)(1), and 3004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a) and 6921(b) and (e)(1) (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a).

II. Background

A. General

Section 3001(e)(1) of RCRA requires EPA to determine whether to list as hazardous wastes containing chlorinated dioxins and chlorinated dibenzofurans. As part of this mandate, the Agency initiated a listing investigation of dioxin-containing wastes from pentachlorophenol wood preserving processes and pentachlorophenate surface protection processes. Two other similar wood preserving processes that use creosote and aqueous inorganic formulations containing chromium or arsenic were also included in this investigation.

On December 30, 1988, EPA proposed four listings pertaining to wastes from wood preserving and surface protection processes, as well as a set of standards for the management of these wastes (53 FR 53282). The Agency finalized three generic hazardous waste listings for wastes from wood preserving processes and promulgated standards for the management of these wastes on drip pads (40 CFR parts 264 and 265, subpart W) on December 6, 1990 (55 FR 50450).

The purpose of this final rule is to amend the F032, F034, and F035 listings and portions of the subpart W requirements for drip pads. As explained briefly above, the EPA proposed these amendments in a notice published in the **Federal Register** on December 5, 1991 (56 FR 163848). As with the original final rule, the scope of today's amendments does not include wastes that are included in the K001 listing (bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol).

B. Administrative Stays

1. June 6, 1992 Administrative Stay

On December 31, 1990, the American Wood Preservers Institute (AWPI) formally requested a stay of the effective date for compliance with the final rule, and also filed a petition for judicial review of the rule. EPA issued an Administrative Stay on June 13, 1991 (see 56 FR 27332). Elements of the December 6, 1990 final rule subject to that stay are the following:

- The F032, F034, and F035 listings in the process area only (until February 6, 1992 for existing drip pads and until May 6, 1992 for new drip pads);
- The requirement for impermeably sealed or coated surfaces for new drip pads, until further administrative action is taken;
- The applicability of the F032 waste code to wastes generated by previous users of pentachlorophenol, provided that they are regulated as F034 or F035, until further administrative action is taken; and
- The applicability of the F032, F034, and F035 listings to wastewaters that do not contact listed process wastes, until further administrative action is taken.

This stay further required that a facility adhere to several conditions in order to be eligible for the stay. The Agency did this in an effort to limit the extension provided by the stay to those facilities making bona fide efforts to comply with the original final rule. The conditions of the stay are as follows.

(1) By August 6, 1991, a facility must have notified the proper authorities of its intent to either install or upgrade a drip pad, or cease operations by August 7, 1991;

(2) By November 6, 1991, a facility must have provided evidence of *bona fide* efforts to comply with its earlier stated intent;

(3) By February 6, 1992, a facility must have completed any upgrades to existing pads, including installation of an impermeable coating, sealer, or cover; and

(4) By May 6, 1992, a facility must have completed installation of new pads.

The staying of the F032, F034, and F035 listings in the process area does not require further administrative action to effect termination of the stay. The remaining elements of the June 1991 stay require specific administrative action to effect their termination. These elements of the December 1990 final rule were proposed for modification in the December 5, 1991 NPRM and are being finalized today. Accordingly, today's final rule constitutes the final administrative action that terminates the stay of these provisions.

2. February 6, 1992 Administrative Stay

Because the Agency had not promulgated today's final rule prior to the February 6, 1992 deadline set forth in the June 13, 1991 Administrative Stay, the Agency issued a subsequent Administrative Stay on February 6, 1992 (57 FR 5859). This action stayed the impermeability requirements for existing drip pad coatings, sealers, and covers until October 30, 1992. Because today's final rule amends the impermeability requirement, replacing it with a specific hydraulic conductivity standard, the February 6, 1992 stay is no longer applicable. The Agency is establishing today a new compliance date for the hydraulic conductivity standard (see section VII). Facilities with existing drip pads must meet the new hydraulic conductivity standard before the compliance date established in today's rule, and not the October 30, 1992 deadline set in the administrative stay.

III. Summary of the Regulation

A. Overview of the Proposed Rule

In the December 5, 1992 **Federal Register**, EPA proposed to revise several elements of the wood preserving hazardous waste regulations and requested comment on those issues. The Agency proposed the following actions: (1) Eliminate the F032 classification for certain wastes generated by past users of chlorophenolic formulations that any wastewaters, drippage, process residuals, or spent preservatives are regulated as F034 wastes, F035 wastes, or wastes exhibiting the Toxicity Characteristic (TC); (2) narrow the scope of the wastewater listings contained in the F032, F034, and F035 listings to include only those wastewaters that come in contact with process contaminants; (3) require contingency plans and cleanup of storage yard drippage in response to incidental drippage in storage yards; (4) remove the requirement that new drip pad coatings, sealers or covers be impermeable; (5) add a requirement that new drip pads have leak collection devices; (6) revise the requirement that all existing drip pad coatings, sealers, or covers be impermeable to reflect data on the permeabilities of available coatings, sealers, or covers; (7) require that drip pad surface materials be chemically resistant to the preservation being used and that these surface materials be maintained free of cracks, gaps, corrosion, or other deterioration that would increase their hydraulic conductivity above the 1×10^{7}cms level and lead to a potential for releases to the environment; (8) revise the requirement that drip pads be cleaned weekly to a requirement that drip pads be cleaned in a manner and frequency such that the entire surface of drip pads can be inspected weekly; (9) revise the schedule for upgrading existing drip pads to allow 15 years for the incorporation of liners and leak detection systems; and (10) revise the CERCLA designation of hazardous substances to reflect the modifications in the listings.

The Agency also requested comment as to whether the standards for new drip pads should allow the choice of either a highly impermeable surface (e.g., sealers, coatings, or covers for concrete drip pads) or a liner with a leak detection and collection system.

B. Overview of the Final Rule

Today's rule finalizes modifications proposed on December 5, 1991 (56 FR 63848) to the wood preserving waste listings and drip pad regulations originally promulgated on December 6, 1990 (55 FR 50450). The modifications being finalized today are summarized below.

1. Provisional Elimination of the F032 Waste Code

The listing description for F032 promulgated in the December 6, 1990 final rule includes wastes generated at wood preserving plants that currently use or previously used chlorophenolic formulations. That final rule also contained a provision whereby a facility owner/operator could "delete" the F032 waste code from the wastes if the facility's process no longer uses chlorophenolic formulations and the facility meets other criteria outlined in § 261.35 (see 55 FR 50483). In the December 5, 1991 NPRM, EPA proposed to eliminate the applicability of the F032 listing to wastes generated by past users of chlorophenolic formulations that have ceased using such formulations, provided that any wastes generated exhibit the Toxicity Characteristic or meet the listing description of F034 or F035 (56 FR 63849).

In today's rule, the Agency is finalizing a portion of this provision. Today's action eliminates the applicability of the F032 waste code to wastes generated by wood preserving operations that previously used, but no longer use, chlorophenolic preservatives, provided that any wastewaters, process residuals, drippage, or spent preservatives generated by those operations are

regulated as F034 or F035 wastes. EPA has made this elimination of the F032 waste code conditional in order to ensure continued protection of human health and the environment. Given this approach, the wastes generated by past users of chlorophenolic formulations will continue to be subject to appropriate management standards under Subtitle C. There is no additional environmental benefit to be gained from regulating wastes from past users of chlorophenolic formulations as F032 wastes, provided the wastes are regulated as F034 or F035 wastes. It is important to note, however, that although F034 and F035 do not include dioxin as a basis for listing, wastes generated by past users of chlorophenolic formulations that are reclassified as F034 or F035 may contain dioxin due to cross-contamination with wastes formerly classified as F032. As discussed in the December 1991 NPRM, this will be relevant in establishing treatment standards under the Land Disposal restrictions program of 40 CFR 268.

As discussed above, the December 1991 NPRM proposed to extend eligibility for the provisional elimination of the F032 waste code to wastes that exhibit that TC as well as wastes meeting the F034 or F035 listings. The Agency has decided not to finalize the TC portion of the proposed conditional elimination for wastes from past users of chlorophenolic preservatives. Therefore, TC wastes generated by past users of chlorophenolic formulations which do not meet the F034 or F035 listing descriptions are still considered F032 wastes, unless the generator satisfies the cleaning and replacement requirements of 40 CFR 261.35.

2. Narrowing of the Wastewater Listings

EPA is promulgating amendments to the listings of F032, F034 and F035, as proposed, to exclude wastewaters that have not come into contact with process contaminants. For purposes of today's rule (and as stated in the June 13, 1991 Administrative Stay), EPA intends "process contaminants" to include hazardous constituents from formulations of preservative and any F032, F034 of F035 wastes. Therefore, wastewaters that never conduct these process contaminants do not fall within the scope of the listings, as amended today. Rainwater, however, that is collected on drip pads and conveyed to a collection system would be considered a hazardous waste if it becomes mixed with hazardous wastes from wood preserving operations. This contaminated rainwater would then meet the definition of a wastewater generated from the facility and would have to be treated as a listed hazardous waste.

3. Drippage in Storage Yards and Contingency Plans

On December 5, 1991, the Agency proposed to require owners/operators of wood preserving plants to develop and implement a contingency plan for immediate response to incidental drippage in storage yards. Today, EPA is finalizing this requirement as proposed and is providing guidance through this preamble discussion of what EPA intends by "immediate response." With respect to the word "immediate," the Agency intends, absent extenuating circumstances, that owners/operators respond to storage yard drippage that occurs when a facility is in operation within one consecutive working day. A facility is considered in operation on any day in which it is treating wood. For facilities which are not in operation during a storage yard drippage event, the Agency expects the facility to clean up drippage within 72 hours of occurrence. EPA recognizes that the term "immediate" must take into account the nature of the incident as well as facility-specific factors. The above clarification of "immediate" recognizes that facilities have "down" times, and that a facility may not have adequate staff available during down times, weekends, or holidays.

It is important to note that the timing of response to drippage is based on when the drippage actually occurs, rather than when the drippage is detected in the storage year. The approach promulgated today places the responsibility for checking storage yards for drippage on the facility owner/operator. Regular checks of storage yards, particularly following the initial storage of newly treated wood, allow owners/operators to response to drippage as required by today's rule.

With respect to the word "response," EPA intends to include cleanup and removal of preservative drippage from the storage yard which is consistent with Federal Regulations. Because response must be "immediate," as discussed above, drippage would not remain in the storage yard long enough to cause significant contamination of the soil or other environmental media. Therefore, extensive remediation will not be necessary for periodic cleanup of drippage in accordance with the contingency plan. For purposes of today's rule, removal of visible drippage from storage yards will satisfy the requirements for immediate response. Today's rule does not require sampling and analysis for confirmation of contamination in storage yards. If historical contamination exists at a wood preserving plant, any remediation would proceed under an enforcement order and would be independent of any response to incidental storage yard drippage required by this rule.

Today's rule requires facility owners/operators to maintain a written plan that describes how the facility will respond to incidental drippage in the storage yard. As described in the NPRM, and as finalized in today's rule, this plan, at a minimum, must describe how the owner/operator will do the following:

(i) Clean up of the drippage
(ii) Document the clean-up of the drippage
(iii) Retain the documents regarding the clean up for three years; and
(iv) Manage the contaminated media in a manner which is consistent with Federal regulation.

The NPRM stated that the contingency plan meet the requirements of subpart D of 40 CFR part 264/265. By this, the Agency did not intend, and is not requiring in today's rule, that the contingency plan for responding to incidental storage yard drippage meet the detailed content requirements for subpart D. The Agency believes that those requirements exceed what is necessary for a written plan for responding to incidental storage yard drippage. Today's rule still requires that a written plan be developed and maintained at the facility, and that the plan be available for inspection by the Agency or its representatives.

With respect to the requirement that the cleanup of incidental drippage in the storage yard be documented, the Agency will consider an annual certification, signed and on company letterhead, that the owner/operator has cleaned up in accordance with today's final rule requirements, to be adequate documentation. Individual facilities, however, may elect to keep more detailed records, including records for each cleanup incident, to defend, for example, against potential claims of liability.

4. New Drip Pad Coating, Sealer or Cover Impermeability Requirement

As proposed in the December 5, 1991 NPRM, EPA is revising the 40 CFR subpart W regulations for drip pads by removing the requirement that new drip pads have an impermeable surface coating, sealer or cover. Furthermore, the Agency has decided to remove the requirement for new drip pads to have liners and leak detection with leak collection if coatings and sealers are chosen. As discussed in the proposal, the Agency requested comment on the

relative merits of allowing industry a choice for new drip pads of having a surface protection system on the drip pad surface or a liner and leak detection system below pad with no surface protection. The Agency has decided to allow regulated community to choose between these two options.

In the NPRM, the Agency noted that the design criteria for coatings could be more complex than the design criteria for a liner and leak detection system. Specifically, EPA was concerned that coatings would not be an effective barrier unless operators applied coatings and sealers to the drip pad which are chemically resistant to the preservatives in use and which are maintained against corrosion and wear. Therefore, EPA is today promulgating requirements to ensure that new drip pads with coatings, including extensions to existing drip pads, are designed and maintained to be an effective barrier to migration of contaminates from the drip pad.

Today's requirements for existing drip pad surface protection will be applicable to new drip pads. A new drip pad without a liner and leak detection system will be in compliance with subpart W requirements if the owner/operator applies a surface protection system to the pad which meets the permeability requirements for existing drip pads and is chemically resistant to the preservative being used. Likewise, a new drip pad following these technical requirements must be inspected and certified annually by an independent qualified registered professional engineer.

It is the Agency's belief that a drip pad with a liner and leak detection system may require less maintenance than a drip pad with a surface coating only, potentially saving a facility a substantial amount of money over the lifetime of a new pad. However, commenters to the proposed rule pointed out specific situations where coatings may be more cost effective. New drip pads may be located in specific environmental locations (i.e. with a high seasonal water table) or a facility situation (i.e. an extension to the existing drip pad that does not have a liner) in which it is less expensive to use coatings than a liner and leak detection system. Further, if the cost of highly impermeable coatings declines in the future, allowing the two compliance options in today's rule could reduce overall compliance costs. Since the Agency finds that either requirement for new drip pads promulgated today provides for adequate protection of human health and the environment, the Agency has decided to allow the regulated community the flexibility to choose either compliance option. However, the Agency believes that either requirement for new drip pads promulgated today provide for adequate protection of human health and the environment.

5. Leak Collection Systems for New Drip Pads

The EPA is finalizing the proposal that new drip pads which are equipped with a liner and leak detection system also be equipped with a leak collection system below the pad and above the liner so that any leakage through the pad can be collected and removed. With a leak collection system in place, water and preservative formulations that leak through the pad can be removed before they even reach the liner. This collection system will also aid the facility in determining whether or not (and the extent to which) pad failure has occurred. The leak collection system required by today's rule is to be a collection device separate from than the sump system used to collect drip pad washdown water. The purpose of this separate collection device is to differentiate between washdown water and leachate collection which could occur due to drip pad permeation. Owners and operators must document, in the facility's operating record, the date, time, and quantity of leakage collection when it is removed from the collection device. This information will be useful to the Agency in enforcing the requirement that new drip pads be maintained in a structural sound manner. This leak collection requirement will apply to all new drip pads which are fitted with a liner and leak collection system constructed after the publication date of today's rule, except for those pads constructed after such time, for which the owner/operator has entered into binding financial or other agreements for construction prior to the publication date of today's rule. As stated in the NPRM, the requirement to install a leak collection system on new drip pads does not affect the responsibility of an owner/operator to remove some or all of a drip pad to clean up any release of hazardous waste to the environment in the event such a release occurs. This requirement, however, should minimize the frequency of these potentially costly cleanup activities.

6. Existing and New Drip Pad Coating, Sealer, and Cover Permeability Requirements

EPA is aware that the requirement for an absolutely impermeable surface cannot be practicably met. The Agency's intent in the December 6, 1990 rule was to require a surface coating, sealer, or cover for concrete drip pads (or similar porous or easily-fractured materials of construction) that would provide incremental protection against permeation of preservative through the drip pad and thus serve to ensure less permeability than would be achieved by the drip pad alone. This requirement would be applicable to concrete or other porous or easily fractured materials of construction but may not be applicable to other materials of construction such as steel.

Today's rule finalizes the proposed standard that existing drip pad coatings, sealers, or covers have a hydraulic conductivity of less than or equal to 1×10^{-7} cm/second. This requirement, which was proposed for existing drip pads, also applies to new drip pads for which the owner/operator has chosen surface protection over liners and leak detection, and collection, as described elsewhere in the preamble. The Agency recognizes that the most common material for drip pad construction has been concrete. Thus, the conductivity value of 1×10^{-7} cm/s has been derived from the theoretical conductivity of unfractured, well constructed concrete. Available data reflect that coatings, sealers and covers that meet this standard are currently on the market.

A common unit of measurement within the protective coating and sealer industry to express a coating, sealer, or liner's hydraulic conductivity is a mass flux number given in units of grains per ft^2. The hydraulic conductivity value of 1×10^{-7} cm/s can be expressed as a flux with an equivalent value of 1×10^{-7} grams/cm^2/s or in English units of 5.168 grains/ft^2/hr, assuming that values for water are used in the calculation. Additionally, to convert from grains per hour per ft^2 to units of cm/s, one has to multiply by 1.934964×10^{-8} (ft^2)(hr)(cm)/(s)(grains). This flux number was obtained by assuming that a worst case scenario would exist if pure water was used to permeate through a pad, instead of preservative. The Agency has no data on the infiltration rates of preservatives but it is logical that water would permeate a drip pad somewhat more rapidly than a preservative formulation. The Agency believes that the adoption of a 1×10^{-7} cm/s hydraulic conductivity based on a worst case scenario is reasonable. Indeed, because wastes mixed with rainwater or other water may be present and may permeate the pad, the Agency stands by its calculation. Therefore, the density term in the calculation was chosen for water at room temperature and atmospheric pressure. The details of

this calculation along with any assumptions can be found in the docket for this rule.

In the NPRM, EPA identified ASTM Method E-96 Procedure E as an accepted method for measuring the infiltration rate of water vapor into a drip pad surface. EPA continues to support this method as acceptable, although its use is not required and other appropriate methods may be used.

7. Selection of a Chemically Compatible Surface Material for Existing and New Drip Pads

Today's rule also promulgates a requirement that existing and (if applicable) new drip pads be constructed with coatings, sealers, or covers that are chemically compatible with the preservatives being used. Furthermore, these surface materials must be maintained free of cracks, gaps, corrosion, or other deterioration that would increase the hydraulic conductivity of drip pad coatings, sealers, and covers above the 1×10^{-7} cm/s level and lead to a potential for releases to the environment. There is no testing requirement associated with this provision; an owner/operator is not required to demonstrate through testing that a surface material is compatible with the preservatives being used.

8. Drip Pad Cleaning Requirements

The Agency is revising the drip pad cleaning requirements as proposed. Cleaning of drip pads is required in a manner and frequency to be determined on a facility-specific basis by the owner/operator to allow weekly inspections of the entire surface of the drip pad. The current requirements to document the date and time of each cleaning to which revisions were not proposed remain unchanged.

9. Timeframe for Existing Drip Pads To Comply With New Drip Pad Standards

The Agency is not finalizing the proposal to allow 15 years from the effective date of today's rule for owners/operators of existing drip pads to meet the new drip pad standards. The requirements at 40 CFR part 265, subpart W are amended today to reflect these changes. In addition to removing the 15 year upgrade requirement, the Agency is removing the requirement that owners/operators of existing drip pads document the age of their drip pad. Because this requirement was directly related to the 15 year upgrade requirement, there is no logical reason to maintain it in the absence of that upgrade provision. As discussed elsewhere in this preamble, the Agency has elected to allow facilities to comply with the standards for new drip pads by choosing between liner and leak detection and surface protection. Because the substantive requirements for existing pads (particularly the requirement of an annual, certified written assessment of the drip pads compliance with regulatory standards) are the same as those being promulgated today for new drip pads for which surface protection has been elected over liners, the proposed 15 year upgrade deadline has become unnecessary and irrelevant.

For example, at the end of the proposed 15 year period, an owner/operator could choose to continue meeting the surface protection requirement, or could retrofit an existing pad or build a new pad to include a liner and leak detection system. Since the surface protection option is consistent with the standards that owners/operators are already required to meet for existing drip pads, the owner/operator is able to meet the standards for new drip pads without adapting to different standards. Thus, at the end of the 15 year period, an owner/operator in compliance with the requirements for existing drip pads would be in compliance with the standards for new drip pads as well. As stated elsewhere in this preamble, Agency believes that a well constructed drip pad that complies with the surface protection requirement may provide sufficient protection for a period greater than 15 years. The annual certification requirement for drip pads with surface protection is intended to ensure that drip pads meet these requirements.

Of course, today's rule allows the owner/operator to install a drip pad with a liner or retrofit an existing pad with a liner to meet the standards for new drip pads. Under today's rule, there is no requirement that the owner/operator do so within 15 years. The decision to choose the liner option, as well as the decision of when to install or retrofit a drip pad to meet those requirements are left to the individual facility. It is important to note, however, that the Agency is maintaining the requirement that owners/operators develop a written plan for upgrading, repairing, and modifying the drip pad if the owner/operator chooses to meet the standards for new drip pads by installing a liner and leak detection system. Any such plan must still be submitted to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications will be complete.

10. CERCLA Hazardous Substance Designation

All hazardous wastes listed pursuant to RCRA 3001 are hazardous substances as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The designations for F032, F034, and F035 in Table 302.4 (40 CFR 302.4) are revised today to reflect the modifications to their listing descriptions under RCRA (40 CFR 261.31). Reportable quantities (RQ's) for these revised CERCLA designations are set at one pound, consistent with the RQ's established in the December 6, 1990 final rule, for the initial CERCLA listings for F032, F034, and F035.

IV. Summary of Public Comments and Responses

The Agency received several comments on the NPRM, covering a range of issues. These major issues presented in these comments and the Agency's responses are addressed separately below for clarity and ease of understanding. A complete summary of comments received and the Agency's responses thereto are contained in the separate document entitled "Response to Public Comment" which is located in the docket associated with today's rulemaking. The major issues from public comments, however, are summarized and responded to in this section.

A. Provisional Elimination of F032 Waste Code

Several comments were received on the conditions for elimination of the F032 waste code from wastes generated at plants that previously used, but no longer use, chlorophenolic formulations. As proposed in December 1991, these conditions required that any wastes generated by past users of chlorophenolic formulations either exhibit the TC or be regulated as F034 or F035 wastes to qualify for elimination of the code. Industry commenters generally supported the provisional elimination of the waste code. Two commenters, however, requested that EPA remove the reference to TC wastes. The commenters stated that listed wastes are subject to a different regulatory regime than are characteristic wastes. Thus, while the Agency could be sure that F034 and F035 wastes generated by past users of chlorophenolic preservatives would be subject to the identical scheme of regulation as F032 wastes, the same cannot be said of TC wastes generated by past users.

The Agency agrees with the commenters' rationale and has decided not to include TC wastes within the conditional elimination for wastes from past users of chlorophenolic formulations. TC wastes were originally added to the conditional elimination proposal to regulate wastes in States that are authorized for the base RCRA program but have not adopted the F034 or F035 listings. The Agency notes that its regulations require all States authorized for the base program to pick up the F034 and F035 listings by the end of December 1992 (See 40 CFR 271.21). As the commenter stated, the regulatory standards that apply to F032, F034 and F035 wastes are identical; therefore, the Agency can be assured that wastes generated by past users of chlorophenolic formulations that are reclassified as F034 or F035 will be managed consistently. In addition, it is programmatically more difficult to establish and implement land ban treatment standards for cross-contaminated wood preserving wastes under the TC than under the F034/F035 listings. The F034/F035 listings involve a clearly defined industry and a significantly smaller universe of wastes than that which is potentially captured by the TC.

One commenter urged the Agency to expand the provision for deletion of the F032 code to include wastes generated by past users of chlorophenolics that are not regulated as hazardous wastes. Such an approach would undermine the central premise of the F032 waste code deletion concept. As discussed above, EPA wants to ensure that wastes from which the F032 code is deleted continue to be managed properly under the Subtitle C regime. In this way, the deletion provision has not established a regulatory loophole of any kind but continues to provide protection of human health and the environment.

Finally, one commenter stated that the F032 waste code appeared to overlap with the existing F027 listing, in that spent formulations would be regulated as F027. The Agency clarifies here that the F027 listing applies only to discarded unused formulations containing tri-, tetra-, or pentachlorophenol. Therefore, spent formulations are not covered by the F027 listing. On the other hand, the listing descriptions for F032, F034 and F035 explicitly include spent formulations from wood preserving processes. The same commenter suggested that EPA clarify that the F032, F034 and F035 listings do not include wastes from the wood surface protection industry. EPA believes that the listing descriptions for F032, F034 and F035 are clear as to which wastes they encompass. On December 30, 1988, the Agency proposed to list wastes from wood surface protection processes as F033 (53 FR 53330). This listing was not finalized along with the rest of the wood preserving rule on December 6, 1990; a possible F033 listing will be pursued in the future as a separate Agency action. Today's rule, as with the December 6, 1990 rule, does not apply to wastes from the wood surface protection industry.

B. February 6, 1992 Deadline

One commenter (a wood preserving industry trade group) requested a six month extension of the February 6, 1992 deadline for existing pads to comply with the numerical standard for coating, sealer and cover permeability. The Agency has already recognized that February 6 presented an impractical deadline for compliance with standards for existing drip pads that the Agency proposed to modify but had yet to amend by that date. In order to remedy this situation, EPA issued an Administrative Stay on February 6, 1992 (57 FR 5859; February 18, 1992), staying the impermeability requirement for drip pad surfaces until October 30, 1992. However, as explained elsewhere in this notice, today's final rule modifies the permeability standard for existing drip pads, and establishes a new compliance date for meeting the new standard (see section VII). The effective date established in the February 1992 stay is no longer applicable; rather, facilities must now meet the later compliance deadline associated with the permeability standard promulgated today.

C. Mixture Rule and Contained-In Policy

Several commenters were concerned with the management of media contaminated with wood preserving wastes, particularly in light of the court remand of the mixture and derived-from rules (*Shell Oil Co.* v. *EPA*, 950 F. 2d 741, D.C. Cir. 1991). At the outset, neither the mixture rule nor the derived-from rule (which the Agency reinstated on March 3, 1992, 57 FR 7628), applies to environmental media. These rules concern the regulatory status of solid wastes. Two commenters urged EPA to develop risk-based *de minimis* levels for listed hazardous wastes that are "contained in" environmental media.

One commenter argued that EPA should not include environmental media within the listings themselves. EPA emphasizes that the listings for F032, F034, and F035 as promulgated on December 6, 1990, and as modified today, do not specifically include environmental media in the listing criteria. Environmental media can be classified as listed hazardous wastes, however, through application of the "contained-in" policy, whereby soils, rainwater, and other media that come into contact with listed hazardous wastes are themselves hazardous wastes (*i.e.*, they "contain" hazardous wastes). For example, soil that comes into contact with spent creosote formulations at a wood preserving plant and is subsequently excavated or otherwise actively managed, will carry the F034 listing.

Another commenter suggested that environmental media should be considered hazardous wastes only if they exhibit a characteristic of hazardous waste. Consideration of such an approach is far broader than the specific issues in this rulemaking and is outside the scope of the December 1991 NPRM.

Several commenters requested that EPA clarify that stormwater run-off is not a hazardous waste under 40 CFR 261.3(c)(2)(i). This regulatory citation refers to the "derived-from" rule, which states generally that any solid waste generated from the treatment, storage, or disposal of a hazardous waste, is itself a hazardous waste. This provision specifically exempts precipitation run-off from the derived-from rule (i.e., precipitation run-off is not considered to be "derived from" the treatment, storage or disposal of a hazardous waste and, therefore, is not itself a hazardous waste).

The nature of the Subpart W standards for drip pads, however, distinguishes them from the regulations governing other more conventional hazardous waste management units. The definition of drip pad in 40 CFR 260.10 states that a drip pad is "designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants" (55 FR 50482). In the July 1, 1991 technical correction notice, EPA amended the applicability sections of Subpart W in parts 264 and 265 to reflect that drip pads were intended to convey precipitation and surface water run-on as well as treated wood drippage (56 FR 30193). Additional language in the preamble to the December 1991 NPRM indicates the Agency's position on precipitation at wood preserving plants. In the discussion of wastewater listings, EPA states that rainwater (precipitation run-off) collected in a fashion that keeps it segregated from preservative formulations or listed wastes would not be considered a hazardous waste (56 FR 63850). On the other hand (and as

discussed above), rainwater that falls on a drip pad and contacts preservative formulations or listed wastes and is then collected is itself a hazardous waste by virtue of the contained-in policy (*i.e.*, the rainwater, which is an environmental medium, "contains" the hazardous waste). Because drip pads are hazardous waste management units designed and maintained to convey treated wood drippage, precipitation and surface water run-on to an associated collection system, the exemption for precipitation run-off in 40 CFR 261.3(c)(2)(i) does not apply to drip pads.

D. Narrowing of Wastewater Listings

The majority of commenters supported the Agency's proposal to narrow the wastewater listings to exclude wood preserving wastewaters that do not come into contact with process contaminants. One commenter believed that EPA should not regulate wastewaters that simply come into contact with process contaminants. The Agency disagrees and is not expanding this revision beyond what was proposed. Wastewaters that come into contact with process contaminants at wood preserving plants have the potential to solubilize and mobilize hazardous constituents and, therefore, warrant regulation as a hazardous waste under RCRA.

E. Storage Yard Drippage

The majority of commenters on the issue of incidental drippage in storage yards requested that EPA clarify what is meant by "immediate response" to such drippage. EPA appreciates the commenters' concerns and is providing guidance on the Agency's use of the term "immediate response" in today's rule. This guidance can be found in section III.B.3. of this preamble.

One commenter objected to the Agency requiring response to drippage in storage yards on the grounds that EPA has not shown any environmental benefit to be gained from such a requirement. The commenter went on to say that contamination in storage yards is limited to the first few feet of soil. EPA believes that this last statement about storage yard contamination justifies the requirement for responding to drippage in treated wood storage yards. There are several cases of historical contamination resulting from incidental drippage from treated wood stored outside on the ground. Since facility owners/operators are required to implement a contingency plan for responding to visible drippage from treated wood, the likelihood of incidental drippage causing long term contamination is greatly minimized, if not eliminated. As a result, EPA believes that the requirement to respond to preservative drippage in storage yards is consistent with the RCRA mandate to protect human health and the environment.

F. Revisions to Drip Pad Cleaning Requirements

All commenters supported the proposed changes to the drip pad cleaning requirements. One commenter stated that the recordkeeping requirement associated with the pad cleaning provisions is unnecessary and should be dropped. The Agency disagrees; the records maintained by facilities showing how often drip pads are cleaned and what cleaning procedure is used can provide valuable information for Agency and State officials conducting inspections of the site. For example, these records could show inspectors that aqueous preservatives do not obscure the drip pad and that weekly inspections can be conducted without frequent water washings of the pad. EPA notes that the recordkeeping requirement was promulgated as part of the original final rule on December 6, 1990. The December 1991 NPRM dealt only with the frequency of pad cleaning.

G. Policy to Allow Installation of Either a Surface Coating, Sealer, or Cover or a Liner and Leak Detection System

Two commenters favored the concept of allowing facility owners/operators the choice of installing either a surface coating, sealer, or cover or a liner and leak detection system on a new drip pad. One State agency commented that surface coatings alone do not provide adequate protection in cases of pad failure. The Agency disagrees. As discussed in the NPRM, the Agency believes that surface coatings, sealers, and covers provide a primary barrier against continuous chemical attack and limit permeation of preservatives through the pad. Liners, on the other hand, provide backup protection against unpredictable chemical exposure that could occur due to concrete micro-cracking without the use of coatings or sealers. EPA believes both options adequately protect human health and the environment. As discussed earlier, EPA is providing a choice to facilities to use either surface protection which meets the permeability and chemical resistance requirements of this rule or a liner and leak detection system to protect against releases into subsurface soils, ground water, and surface waters.

However, as discussed in the NPRM, the EPA believes that additional benefits could accrue with both the use of a liner and leak detection, and leak collection system and the use of sealers and coatings. Section VIII of this rule provides additional discussion of the costs of each option. Although not required, the EPA recommends the use of coatings and sealers and a liner and leak detection and leak collection system. EPA notes that the use of a surface coating, sealer, or cover can eliminate or minimize the amount of leakage to the liner and leak collection system.

One commenter suggested a change in the regulatory language to clarify which drip pads are required to meet the hydraulic conductivity standard of today's rule. EPA notes that the regulatory language promulgated today clearly specifies which drip pads are required to be equipped with a sealer, coating, or cover that meets the hydraulic conductivity standard. The Agency has not made the change suggested by the commenter. In addition to requiring a coating/sealer system on existing drip pads, today's rule allows an owner/operator to satisfy the standards for new drip pads by choosing to use either a coating/sealer system *or* a liner and leak detection and leak collection system.

One manufacturer of protective coatings commented that owners/operators should not be given the option of using either a sealer or a coating since most would not choose coatings due to cost. The Agency appreciates the commenter's interest in this matter but believes that sealers are also acceptable as a primary barrier against chemical attack of drip pads. In particular, the commenter objected to the use of penetrating sealers, stating that the breakdown of the sealer will allow absorption of CCA into the pad. The Agency disagrees with the commenter. Performance data provided by manufacturers indicate that penetrating sealers are capable of providing adequate protection from permeation of preservatives through drip pads, particularly given the pad cleaning requirements included in today's rule. In order for a facility owner/operator to inspect drip pads in accordance with Subpart W standards, water washings of the pad must occur at a frequency sufficient to allow visual inspection of the entire pad surface on a weekly basis.

H. Drip Pad Coating, Sealer, and Cover Permeability

The comments received on the numerical standard for drip pad coating, sealer, and cover permeability were generally favorable. One commenter, however, strongly disagreed with the

Agency's reliance on the calculation indicating 4 gallons per day of leakage from 2000 square feet of wetted concrete, indicating that very few wood preserving plants have four gallons per day of drippage in any event. The commenter went on to say that if concrete leaked that badly, most of the regulated community would believe that the primary liner had failed. As discussed in section III.B.6 of this preamble, the Agency stands by this calculation and its assumptions, which represent a worst case scenario. In addition to the discussion of the permeability standard in the NPRM (56 FR 63851), supporting documentation for the numerical standard can be found in the docket for this rulemaking. The reader is referred to these sources for background information. Today, the Agency is finalizing the performance standard as proposed, requiring that drip pad coatings, sealers or covers have a hydraulic conductivity of less than or equal to 1×10^{-7} cm/s.

One commenter suggested that EPA adopt ASTM Method E–96 Procedure BW for determining hydraulic conductivity. As discussed above, EPA has recommended ASTM Method E–96 Procedure E as an accepted method for measuring the rate of infiltration of water vapor into a drip pad surface. The Agency continues to recommend this method but does not preclude the use of other acceptable methods, such as the one referred to by the commenter. More information concerning water vapor transmission testing can be found in the docket of the December 5, 1991 NPRM (56 FR 63848).

I. Other Issues

EPA requested comment on several other issues that are not specifically addressed above. These are: (1) The addition of a requirement that new drip pads have leak collection systems, (2) a requirement that drip pad surface protection materials be chemically compatible with the preservatives being used, and (3) the revision of the schedule for upgrading existing drip pads to allow 15 years from publication of today's rule for owners/operators to meet the standard for new drip pads. EPA is finalizing the first two issues, but EPA is not finalizing the proposal to allow 15 years for owners/operators of existing drip pads to meet the new drip pad standards. As discussed elsewhere in this preamble, the Agency has elected to allow facilities to comply with the standards for new drip pads by choosing between liner and leak detection and surface protection.

With respect to the issue of the 15 year upgrade period, one commenter interpreted the NPRM to require owners/operators to demonstrate that no releases have occurred before the Regional Administrator will grant an extension of the 15 year deadline. EPA clarifies here that the regulations in subpart W do not require an owner/operator to make such a showing. Paragraph (b)(2) of §§ 264.571 and 265.441 states that the RA will grant a petition for extension of the 15 year period based on a finding that the drip pad meets all the requirements of §§ 264.573 and 265.443, other than those for liners and leak detection and collection systems, and that the pad will continue to be protective of human health and the environment.

One commenter asserted that plants using more than one type of preservative should be able to label their wastes with one waste code most appropriate for the nature of the waste, rather than ascribing two or three waste codes to the same waste. The Agency disagrees. It is not uncommon for wastes generated at one facility to carry multiple RCRA waste codes. Some overlap does occur among different hazardous waste listing descriptions. However, it is important to note that the listing of each hazardous waste under RCRA is based on a unique set of hazardous constituents contained in the waste (see part 261, appendix VII). For example, F032 is listed, in part, due to the presence of dioxins in the waste, whereas F034 is listed because it contains naphthalene and other hydrocarbons, but no dioxin. It is important that hazardous waste generators classify their wastes correctly when shipping them for subsequent management so that the owner/operator of the treatment, storage, and disposal facility (TSDF) has full knowledge of the composition of the waste. In this way, the TSDF can make an informed decision concerning proper treatment or disposal of the waste and ensure that protection of human health and the environment is not compromised.

V. State Authority

A. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the Federal HSWA requirements apply in authorized States in the interim.

Pursuant to section 3001(e) of RCRA, a provision added by HSWA, EPA added F032 to the list of hazardous wastes from nonspecific sources (40 CFR 261.31) in the December 6, 1990 rule. Thus, the changes finalized in today's rule in connection with F032, including modifications to the drip pad standards, will take effect in all States (authorized and unauthorized) on the effective date.

The elements of today's final rule as they apply to F034 and F035 wastes are not immediately effective in authorized States since the requirements are not imposed pursuant to HSWA. These regulations will apply in authorized States when F034 and F035 become hazardous wastes in that State, and when the State is authorized for the drip pad standards. However, should F034 or F035 wastes exhibit the Toxicity Characteristic, which was promulgated under HSWA authority and is effective in authorized States, such wastes managed on drip pads must meet the modified Subpart W standards. Today's amendments include a technical correction to footnote 2 of Table 1 in 40 CFR 271.1(j). To clarify this point, Table 1 identifies the Federal program requirements that are promulgated pursuant to HSWA, and that take effect in all States, regardless of their authorization status.

B. Effect on State Authorizations

1. HSWA Provisions

Because portions of the final rule are promulgated pursuant to HSWA, a State submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 1993 (see 40 CFR 271.24(c)).

2. Non-HSWA Provisions

As described above, other portions of today's notice will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA. In authorized States, these requirements will not be applicable until the States revise their programs to adopt equivalent requirements under State law.

3. Modification Deadlines

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that States with final authorization must modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this regulation will be determined by the date of promulgation of the final rule in accordance with section 271.21(e)(2). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs already may have regulations similar to those in today's final rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements that States must meet when submitting final authorization applications.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. (See 40 CFR 271.1(i).) For example, the modification to the F032 listing is less stringent than the Federal program because it exempts wastes generated by past users of chlorophenolic formulations from the F032 listing under certain conditions. As a result, authorized States are not required to modify their programs to pick up this provision. On the other hand, the requirement that owners/operators develop and implement a contingency plan for response to incidental drippage in storage yards increases the stringency of the Federal program. Consequently, this provision must be adopted by authorized States.

VI. CERCLA Designation and Reportable Quantities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA Section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the releases at 1-800-424-8802 or (202) 426-2675. In addition, Section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a CERCLA hazardous substance or an extremely hazardous substance of the appropriate State Emergency Response Commission (SERC) and to the Local Emergency Planning Committee (LEPC) when the amount released equals or exceeds the RQ for the substance or one pound where no RQ has been set. It is important to note that the RQ is measured by the volume of the hazardous substance released into the environment, not the volume of any resulting contaminated media.

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (48 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, then the Clean Water Act mixture rule may be applied. According to this rule, developed in connection with the Clean Water Act section 311 regulations and also used in notification under CERCLA and SARA (50 FR 13463; April 4, 1985), the release of mixtures and solutions containing hazardous wastes would need to be reported to the NRC, and to the appropriate LEPC and SERC, when the RQ of any of its component hazardous substances is equalled or exceeded. This mixture rule provides that "[d]ischarges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ (44 FR 50767; August 29, 1979). RQs of different hazardous substances are not additive under the Clean Water Act mixture rule, such that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

Under section 102(b) of CERCLA, all hazardous waste streams newly designated under RCRA will have a statutorily imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemakings with respect to the amended waste stream listings, the Agency today is amending the descriptions of waste streams F032, F034, and F035 at 40 CFR 302.4, the codified list of CERCLA hazardous substances. In the December 1991 NPRM, EPA proposed an RQ of one pound for F032, F034 and F035. Because the basis for listing these three wastes has not changed from the original final rule in December 1990, the final RQs remain at one pound, as originally promulgated.

VII. Compliance Deadlines

Section 3010(b) of RCRA (42 U.S.C. 6930(b)) specifies that a regulation within subtitle C will take effect on the date six months after the date of promulgation. At the time a regulation is promulgated, the Administrator may provide for a shorter period prior to an effective date, or an immediate effective date for "a regulation with which the Administrator finds the regulated community does not need six months to come into compliance."

All elements of this final rule, with the exception of the four listed below, become effective on December 24, 1992, since each of these modifications has the effect of minimizing or relieving existing regulatory requirements. (See also section 553(d)(1) of the Administrative Procedures Act, 5 U.S.C. 553.)

Other Effective Dates

[1]. With respect to meeting the drip pad permeability requirements of this final rule (264.573(a)(4)(i), 265.443(a)(4)(i)), the Agency is establishing a new effective date of June 24, 1993, by which time owners and operators of drip pads must comply with the standard. The Agency is establishing this new date to provide facilities adequate time to comply with this new permeability requirement. The Agency recognizes that the upcoming cold weather and rainy seasons in parts of the country may hinder the proper curing of coatings or sealers and that this compliance period should address any such concerns.

(2). With respect to the requirement that new drip pads for which owners/operators have chosen liners and leak detection also have a leak collection system (264.573(b)(3), 265.443(b)(3)), the Agency is establishing an effective date of June 24, 1993.

(3). With respect to the provisional elimination of the F032 waste code (Today's revision to the listing of hazardous waste No. F032 in § 261.31 with respect to the potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes), the Agency is establishing an effective date of June 24, 1993.

(4). With respect to the requirements for contingency plans for incidental drippage in storage yards (264.570(c)(1), 265.440(c)(1)), the Agency is establishing an effective date of June 24, 1993.

VIII. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, a Federal agency must determine whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. Today's final rule is not major because it will not result in an effect on the economy of $100 million or more, will not result in significantly increased costs or prices (indeed, it will likely result in decreased costs), will not have a significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order for these modifications. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Although the Agency is not required to prepare a Regulatory Impact Analysis for this rule, for the benefit of the regulated community, the economic impacts of modifications presented in this rule are discussed below. Where the Agency has insufficient data to quantify the impact, economic effects are qualitatively discussed.

The exclusion from the listing descriptions for wastewaters that have not come into contact with process contaminants will result in a decrease in costs to the extent that segregation of wastewater results in a decreased hazardous waste generation rate. For example, collection of rainwater in a vessel rather than on a drip pad could result in decreased hazardous waste generation. Because generated hazardous waste is taxed in some locations, there may be additional cost savings in the form of a decrease in tax liability. Increases in cost may be incurred in the form of expenditures for collection equipment that may be required to segregate such wastewaters. The Agency has insufficient information to quantify such cost savings or additional costs attributable to the wastewater exclusion.

The removal of the applicability of the F032 listing to past users of chlorophenolic formulations who currently generate F034 or F035 wastes will have a negligible impact on costs. The regulatory requirements associated with a waste that is listed as F032 are not substantially different from those associated with wastes listed as F034 or F035 wastes.

The requirement to clean up incidental and infrequent drippage in storage yards will have cost effects that are highly site, weather, and situation dependent. There will also be costs associated with documenting the cleanup of storage yard drippage and the collection of leachate from new drip pads with liners. Costs associated with this requirement are also dependent on the efforts undertaken by individual plants to eliminate or minimize such drippage to incidental amounts. These efforts would include the use of vacuum cycles and holding treated wood on drip pads for an appropriate amount of time.

The removal of the requirement that new drip pads have an impermeable coating, sealer, or cover will decrease costs by the amount attributable to the application of coatings, sealers or covers. The installation cost of low cost sealers and coatings ranges between $2 to $5 per square foot of drip pad, the savings to a plant with a 10,000 square foot drip pad would range from $20,000 to $50,000.

The change in the drip pad cleaning requirements from a weekly basis to as needed to conduct weekly drip pad inspections will also reduce costs. Cost reductions will mostly benefit users of inorganic preservatives that are dissolved in water. Such aqueous solutions will tend not to obscure drip pad surfaces and will result in a greatly decreased frequency of cleaning. Facilities using oil-based preservatives, particularly creosote, will not benefit to the same degree because such formulations tend to obscure the drip pad surface. The cost savings may result primarily from reduced taxes on hazardous waste generation. The Agency has insufficient data to quantify these cost effects.

The change in drip pad coating, sealer, and cover permeability requirements (from "impermeable" to $\leq 1\times10^{-7}$ centimeters per second) should have no cost effects. The regulations promulgated today give an actual value for hydraulic conductivity and, therefore, provide the owner/operator with useful information in making purchasing decisions regarding drip pad coatings, sealers, or covers.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, no RFA is required.

The Agency examined the potential effects on small entities for the December 6, 1990 final rule. In that rule,

EPA concluded that the rule did not have a significant effect on a substantial number of small entities. Therefore, EPA did not prepare a formal Regulatory Flexibility Analysis (RFA) in support of the rule. Details on small business impacts are available in the Regulatory Impact Analysis for the rule. Today's final rule reduces the potential effects identified for the December 6, 1990 rule, particularly by removing the applicability of the F032 listing to past users of chlorophenolic formulations who generate F034 or F035 wastes. As a result, a formal RFA was not prepared in support of today's rule.

IX. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0115.

Public reporting burden for this collection of information is estimated to average about 338 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Jonathan Gledhill."

List of Subjects

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 271

Administrative practice and procedures, Air pollution control, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: October 30, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6934, and 6938.

2. In § 261.31 the table is amended by revising the F032, F034, and F035 listings.

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
*	*	*

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

4. Section 264.570 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 264.570 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement at § 264.573(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992

except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

* * * * *

(c) The requirements of this subpart are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan must describe how the owner or operator will do the following:

(i) Clean up the drippage;

(ii) Document the cleanup of the drippage;

(iii) Retain documents regarding cleanup for three years; and

(iv) Manage the contaminated media in a manner consistent with Federal regulations.

5. Section 264.571 is amended by revising the last sentence of paragraph (a), and revising paragraph (b) to read as follows:

§ 264.571 Assessment of existing drip pad integrity.

(a) * * * The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573 of this subpart, except the standards for liners and leak detection systems, specified in § 264.573(b) of this subpart.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) of this subpart, and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.573 of this subpart. The plan must be reviewed and certified by an independent qualified registered professional engineer.

* * * * *

6. Section 264.572 is revised to read as follows:

§ 264.572 Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) all of the requirements of §§ 264.573 (except 264.573(a)(4)), 264.574 and 264.575 of this subpart, or

(b) all of the requirements of §§ 264.573 (except § 264.573(b)), 264.574 and 264.575 of this subpart.

7. Section 264.573 is amended by revising paragraphs (a)(4) and (b) introductory text and paragraph (i) and adding paragraph (b)(3) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4)(i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with § 264.572(a) instead of § 264.572(b).

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this Section.

* * * * *

(b) If an owner/operator elects to comply with § 264.572(b) instead of § 264.572(a), the drip pad must have:

* * * * *

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

* * * * *

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner/operator must determine if the residues are hazardous as per 40 CFR 262.11 and, if so, must manage them under parts 261–268, 270, and section 3010 of RCRA.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

8. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) 6924, 6925, and 6935.

9. Section 265.440 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 265.440 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads. The requirement at § 265.443(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992.

* * * * *

(c) The requirements of this subpart are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such

infrequent and incidental drippage. At a minimum, the contingency plan must describe how the facility will do the following:

(i) Clean up the drippage;

(ii) Document the cleanup of the drippage;

(iii) Retain documents regarding cleanup for three years; and

(iv) Manage the contaminated media in a manner consistent with Federal regulations.

10. Section 265.441 is amended by revising the last sentence of paragraph (a), and revising paragraph (b) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

(a) * * * The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 265.443 of this subpart, except the standards for liners and leak detection systems, specified in § 265.443(b) of this subpart.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b) of this subpart, and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 265.443 of this subpart. The plan must be reviewed and certified by an independent qualified registered professional engineer.

* * * * *

11. Section 265.442 is revised to read as follows:

§ 265.442 Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) All of the applicable requirements of §§ 265.443 (except § 265.443(a)(4)), 265.444 and 265.445 of this subpart, or

(b) All of the applicable requirements of §§ 265.443 (except § 265.443(b)), 265.444 and 265.445 of this subpart.

12. Section 265.443 is amended by revising paragraphs (a)(4) and (b) introductory text, and paragraph (i) and adding paragraph (b)(3) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4)(i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with § 265.442(a) instead of § 265.442(b).

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for subsection (b).

* * * * *

(b) If an owner/operator elects to comply with § 265.442(b) instead of § 265.442(a), the drip pad must have:

* * * * *

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.

* * * * *

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

13. The authority citation for part 271 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

14. In Table 1 of 271.1(j), footnote 2 is revised to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

* * * * *

[2] These regulations, including test methods for benzo(k)fluoranthene and technical standards for drip pads, implement HSWA only to the extent that they apply to the listing of Hazardous Waste No. F032, and wastes that are hazardous because they exhibit the Toxicity Characteristic. These regulations, including test methods for benzo(k)fluoranthene and technical standards for drip pads, do not implement HSWA to the extent that they apply to the listings of Hazardous Waste Nos. F034 and F035.

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

15. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

16. In 302.4 the table is amended by revising the listings for waste streams F032, F034, and F035. The appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
* * *	*	*			*	*	
F032 ..... Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with §261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	.....	.....	1*	4	F032	X	1(0.454)
* * *	*	*			*	*	
F034 ..... Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use cresote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	.....	.....	1*	4	F034	X	1(0.454)
F035 ..... Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	.....	.....	1*	4	F035	X	1(0.454)
* * *	*	*			*	*	

† Indicates the statutory source as defined by 1, 2, 3, 4, or 5 below.

* * * * * * * *

1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

4 Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

* * * * * * *

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federal register

Thursday
December 24, 1992

Part III

Department of Education

34 CFR Part 280
Magnet Schools Assistance Program;
Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 280

RIN: 1810-AA63

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Magnet Schools Assistance Program (MSAP). These amendments are needed to improve administration of the program and to enable the Secretary to select applications for funding that best demonstrate promise of achieving the purposes of the program.

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

FOR FURTHER INFORMATION CONTACT: Sylvia Wright, Chief, Magnet Schools and Desegregation Branch, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC 20202-6246. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These amendments are based on the Department's experience in implementing the program over several years. These final regulations also complement the President's AMERICA 2000 strategy by requiring that, in order to receive MSAP assistance, local educational agencies (LEAs) demonstrate how well their proposed magnet schools will provide high-quality educational programs in desegregated learning environments that are designed to improve significantly the academic and vocational skills of America's students.

On August 12, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (57 FR 36324).

As a result of public comments since publication of the NPRM, the Secretary has made the following revisions:

- Section 280.20 has been revised to clarify that, in determining the eligibility of an applicant's voluntary desegregation plan, an LEA will be asked to submit additional information only after the Secretary has reviewed the enrollment data and other materials the LEA has submitted with its application and determined that additional information is necessary to assist the Secretary in determining the eligibility of the LEA's plan.
- Section 280.32(d) has been revised to explain further the factors used to evaluate an applicant's need for assistance.

Note: These final regulations do not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes to sections of the regulations that were not discussed in the NPRM—are not addressed.

Executive Order 12291

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

Intergovernmental Review

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

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

Assessment of Educational Impact

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

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

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, Magnet schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program)

Dated: December 18, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 280 of title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for Part 280 continues to read as follows:

Authority: 20 U.S.C. 3021-3032, unless otherwise noted.

2. Section 280.2 is amended by redesignating the undesignated introductory text as paragraph (a), redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively, and adding a new paragraph (b) to read as follows:

§ 280.2 Who is eligible to apply for a grant?

* * * * *

(b) The Secretary approves a voluntary plan under paragraph (a)(2) of this section only if he determines that for each magnet school for which funding is sought—

(1) The magnet school will reduce, eliminate, or prevent minority group isolation within the period of the grant award, either in the magnet school or in a feeder school, as appropriate; and

(2) The establishment of the magnet school will not result in an increase of minority enrollment, at the magnet school or at any feeder school, above the districtwide percentage of minority group students in the LEA's schools at the grade levels served by that magnet school.

(Authority: 20 U.S.C. 3022)

3. Section 280.4 is amended by designating "Minority group isolation" in paragraph (b) as a separate definition by italicizing the words "Minority group isolation" and adding a definition for "Feeder school" in alphabetical order to read as follows:

§ 280.4 What definitions apply to this program?

* * * * *

Feeder school means a school from which students are drawn to attend a magnet school.

* * * * *

4. Section 280.20 is amended by adding new paragraphs (f) (4) and (5), redesignating the current paragraph (g) as paragraph (i), and adding new paragraphs (g) and (h) to read as follows:

§ 280.20 How does one apply for a grant?

* * * * *

(f) * * *

(4) For an LEA that seeks assistance for existing magnet schools—

(i) Enrollment numbers and percentages, for minority and non-minority group students, for each magnet school for which funding is sought and each feeder school—

(A) For the school year prior to the creation of each magnet school;

(B) For the school year in which the application is submitted; and

(C) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures); and

(ii) Districtwide enrollment numbers and percentages for minority group students in the LEA's schools, for grade levels involved in the applicant's magnet schools (e.g., K–6, 7–9, 10–12)—

(A) For the school year prior to the creation of each magnet school;

(B) For the school year in which the application is submitted; and

(C) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures).

(5) For an LEA that seeks assistance for new magnet schools—

(i) Enrollment numbers and percentages, for minority and non-minority group students, for each magnet school for which funding is sought and for each feeder school—

(A) For the school year in which the application is submitted; and

(B) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures); and

(ii) Districtwide numbers and percentages of minority group students in the LEA's schools, for the grade levels involved in the applicant's magnet schools (e.g., K–6, 7–9, 10–12)—

(A) For the school year in which the application is submitted; and

(B) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures).

(g) An applicant that does not have an approved desegregation plan, and demonstrates that it cannot provide some portion of the information requested under paragraphs (f)(4) and (5) of this section, may provide other information (in lieu of that portion of the information not provided in response to paragraphs (f)(4) and (5) of this section) to demonstrate that the creation or operation of its proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's schools and would not result in an increase of minority student isolation at one of the applicant's schools above the districtwide percentage for minority students at the same grade levels as those served in the magnet school.

(h) After reviewing the information provided in response to paragraph (f)(4) or (5) of this section, or as provided under paragraph (g) of this section, the Secretary may request other information, if necessary (e.g., demographic data concerning the attendance areas in which the magnet schools are or will be located), to determine whether to approve an LEA's plan.

* * * * *

(Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 3027)

5. Section 280.31 is revised to read as follows:

§ 280.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation.* (25 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the applicant demonstrates—

(i) The effectiveness of its management plan to ensure proper and efficient administration of the project;

(ii) The effectiveness of its plan to attain specific outcomes that—

(A) Will accomplish the purposes of the program;

(B) Are attainable within the project period;

(C) Are measurable and quantifiable; and

(D) For multi-year projects, can be used to determine the project's progress in meeting its intended outcomes;

(iii) The effectiveness of its plan for utilizing its resources and personnel to achieve the objectives of the project, including how well it utilizes key personnel to complete tasks and achieve the objectives of the project;

(iv) How it will ensure equal access and treatment for eligible project participants who have been traditionally underrepresented in courses or activities offered as part of the magnet school, e.g., women and girls in mathematics, science or technology courses, and disabled students; and

(v) The effectiveness of its plan to recruit students from different social, economic, ethnic, and racial backgrounds into the magnet schools.

(b) *Quality of personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the personnel the applicant plans to use on the project.

(2) The Secretary determines the extent to which—

(i) The project director (if one is used) is qualified to manage the project;

(ii) Other key personnel are qualified to manage the project;

(iii) Teachers who will provide instruction in participating magnet schools are qualified to implement the special curriculum of the magnet schools; and

(iv) The applicant, as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, religion, color, national origin, sex, age, or disability.

(3) To determine personnel qualifications the Secretary considers experience and training in fields related to the objectives of the project, including the key personnel's knowledge of and experience in curriculum development and desegregation strategies.

(c) *Quality of project design.* (35 points) (1) The Secretary reviews each application to determine the quality of the project design.

(2) The Secretary determines the extent to which each magnet school for which funding is sought will—

(i) Foster interaction among students of different social, economic, ethnic, and racial backgrounds in classroom activities, extracurricular activities, or other activities in the magnet schools (or, if appropriate, in the schools in which the magnet school programs operate);

(ii) Address the educational needs of the students who will be enrolled in the magnet schools;

(iii) Carry out a high quality educational program that will substantially strengthen students' knowledge of mathematics, science, history, English, foreign languages, art, music, or vocational skills;

(iv) Encourage greater parental decisionmaking and involvement; and

(v) Improve the racial balance of students in the applicant's schools by reducing, eliminating, or preventing minority group isolation in its schools.

(d) *Budget and resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources and the cost-effectiveness of the budget for the project, including—

(1) The adequacy of the facilities that the applicant plans to use;

(2) The adequacy of the equipment and supplies that the applicant plans to use; and

(3) The adequacy and reasonableness of the budget for the project in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary determines the extent to which the evaluation plan for the project—

(1) Includes methods that are appropriate for the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including its goals for desegregating its students and increasing student achievement; and

(3) Includes methods that are objective and that will produce data that are quantifiable.

(f) *Commitment and capacity.* (10 points) (1) The Secretary reviews each application to determine whether the applicant is likely to continue the magnet school activities after assistance under this part is no longer available.

(2) The Secretary determines the extent to which the applicant—

(i) Is committed to the magnet schools project; and

(ii) Has identified other resources to continue support for the magnet school activities when assistance under this program is no longer available.

(Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 3021–3032)

6. Section 280.32 is revised to read as follows:

§ 280.32 How is special consideration given to applicants?

(a) *How special consideration is given.* In addition to the points awarded under § 280.31, the Secretary gives special consideration to the factors listed in paragraphs (b) through (f) of this section. The maximum number of points awarded for each factor is stated in parentheses.

(b) *Recentness of the implementation of the approved desegregation plan.* (5 points)

(1) The Secretary reviews each application to determine the recentness of the implementation date of the approved desegregation plan or modification of the plan.

(2) The Secretary determines the recentness of the plan by assigning each application to one of the following categories:

(i) Applications based on plans or modifications of plans with implementation dates not more than five years before the July 1 that follows the deadline date for applications. (5 points)

(ii) Applications based on plans or modifications of plans with implementation dates more than 5 years but not more than 10 years before the July 1 that follows the deadline date for applications. (3 points)

(iii) Applications based on plans or modifications of plans with implementation dates more than 10 years but not more than 15 years before the July 1 that follows the deadline date for applications. (1 point)

(iv) Applications based on plans or modifications of plans with implementation dates more than 15 years before the July 1 that follows the deadline date for applications. (0 points)

(c) *Involvement of minority group children.* (5 points)

(1) The Secretary gives special consideration to the proportion of minority group children involved in the approved desegregation plan.

(2) The Secretary determines the percentage that represents a comparison of the number of minority group children involved in the applicant's approved desegregation plan to the number of minority group children enrolled in the applicant's schools.

(3) The Secretary awards one point for each 20 percentage points the applicant receives under paragraph (c)(2) of this section.

(d) *Need for assistance.* (15 points) (1) The Secretary evaluates the applicant's need for assistance under this part, by considering—

(i) The costs of fully implementing the magnet schools project as proposed;

(ii) The resources available to the applicant to carry out the project if funds under the program were not provided;

(iii) The extent to which the costs of the project exceed the applicant's resources; and

(iv) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet school project—e.g., the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.

(2) The applicant receives up to 15 points, depending on the extent of its need for assistance.

(e) *Degree of achievement.* (15 points) (1) The Secretary determines the extent to which the project for which assistance is sought affords promise of achieving the purposes of this program as listed in § 280.1.

(2) In determining the degree to which the magnet school affords promise of achieving the purposes stated in § 280.1, the Secretary will evaluate the likelihood that the applicant's plan to achieve desegregation through the use of a magnet school program will be successful in reducing, eliminating, or preventing minority group isolation in light of its overall strategy. Factors the Secretary will consider include, but are not limited to—

(i) The needs assessment conducted by the applicant;

(ii) The site selection for each magnet school;

(iii) The special curriculum selected for each magnet school; and

(iv) If appropriate, the applicant's past performance in achieving desegregation through use of a magnet school.

(f) *Collaborative efforts.* (5 points) The Secretary determines the extent to which the project for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate State educational agency, or any other organization.

(Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 3028)

Appendix—Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations.)

§ 280.2 Who is eligible to apply for a grant?

Comment: One commenter suggested that urban districts be granted more than two years to show that a newly created magnet program has reduced, eliminated, or prevented minority group isolation. The commenter indicated that the two-year time frame is unrealistic in light of the barriers these districts must overcome to reduce racial isolation and suggested that a three- or four-year time frame for reporting progress or a longer grant period would be more realistic.

Discussion: The Secretary has interpreted the Magnet Schools Assistance Act (MSAA) to require a two-year limit on grant awards under this program. See 20 U.S.C. 3031. In addition, the Secretary believes it is reasonable to expect that within the two-year grant period an LEA can demonstrate a positive change in minority group isolation in its schools, as a result of the implementation of a magnet school. The Secretary appreciates the difficulty that all school

districts face in implementing voluntary desegregation plans and, accordingly, has not established numerical benchmarks to measure how well an LEA has performed under a MSAP grant. However, the Secretary seeks to award MSAP grants to those LEAs that best demonstrate promise of achieving the purposes of this program.

Changes: None.

Comment: One commenter suggested that the Secretary introduce some flexibility into the requirement that magnet schools not result in increases in minority enrollments in the magnet or feeder schools above the relevant districtwide average. The commenter suggested that a margin of five percent be permitted, because in many urban school districts the non-minority enrollment is very small and therefore districts struggle to enroll and maintain a critical mass of non-minority students in their schools. Thus, the movement of a single non-minority student may have a significant impact on the percentage of minority group students in a particular school.

Discussion: Use of an LEA's districtwide average as the standard for evaluating the effect of a magnet school on other schools in an LEA provides a school district with sufficient flexibility to tailor a desegregation plan to its needs so that the district can maximize its opportunities to promote desegregation. It also provides the Secretary with a standard that can be applied uniformly to all school districts when determining the eligibility of their voluntary desegregation plans, and that can be used as a reasonable gauge to measure if an applicant is attempting to reduce, eliminate, or prevent minority group isolation.

Changes: None.

§ 280.20 How does one apply for a grant?

Comment: One commenter explained that neither the old regulations nor these revised regulations address the difficulty that districts with open enrollment plans have, when seeking approval of a voluntary desegregation plan, in demonstrating the effect of the magnet school on surrounding schools, because the traditional concept of a "magnet feeder school" does not apply to these districts. The commenter suggested that districts with open enrollment plans be permitted to demonstrate the effectiveness of a magnet school by providing data on student assignment patterns for neighboring schools, that would have been applicable had the districts not had open enrollment.

Discussion: The Secretary believes that the regulations address this concern. Under § 280.20(g) of the regulations, an LEA that demonstrates that it cannot provide reliable data on magnet feeder schools may provide other information to the Secretary in support of its desegregation plan. This section provides an applicant flexibility in demonstrating the potential effectiveness of its magnet school if, because of the design of its desegregation plan, an applicant does not have data on feeder schools as required under § 280.20(f). Therefore, districts with open enrollment plans may provide other information to demonstrate that creation or operation of their magnet schools complies with the eligibility requirements of this program.

Changes: None.

Comment: One commenter suggested that § 280.20(f)(4)(iii) be clarified to indicate—(1) when the applicant would be required to submit "other information that the Secretary determines is necessary;" (2) whether the information would be required of all or only some applicants; and (3) whether the example provided is used for illustrative purposes only. If additional information will be required of all applicants, the commenter suggested that the regulations indicate how applicants will be notified of the additional requirements.

Discussion: The Secretary recognizes that there may be limited circumstances when an LEA may not be able to provide the information requested under § 280.20(f)(4) or (5) in the manner required by the regulations, or may not provide enough information with its application to allow the Secretary to fairly evaluate its desegregation plan. The Secretary does not expect that every applicant will be asked to provide additional information in support of its desegregation plan. However, the Secretary wants to ensure that each applicant is given a full and fair opportunity to demonstrate its eligibility for this program. Therefore, if, after review of enrollment data provided with an application, or other information provided by an LEA to demonstrate its eligibility, the Secretary does not have sufficient information to approve a desegregation plan, the Secretary will request that an LEA provide additional information. Reference to providing the Secretary with demographic data to support a desegregation plan is included in this discussion for illustrative purposes only.

Changes: The Secretary has deleted §§ 280.20(f)(4)(iii) and (5)(iii) and added a new section (h) to explain that, after reviewing the enrollment information provided with an LEA's application, or other information provided by the LEA under paragraph (g), the Secretary may request additional information necessary to evaluate the LEA's desegregation plan.

Comment: One commenter suggested that the regulations indicate where in the application the applicant should provide desegregation plan data (e.g., enrollment numbers and percentages).

Discussion: Instructions for submitting enrollment numbers and percentages, and any other information to support an application, will be provided in the application package.

Changes: None.

Comment: One commenter recommended that the regulations require applicants to submit in their application the data needed to ascertain their compliance with civil rights laws. The commenter expressed concern that some districts seeking MSAP funds maintain racially identifiable classes as a result of ability grouping and assign faculty and staff in a manner to identify its schools for a particular race of students.

Discussion: Under § 280.20, an LEA must provide assurances of its compliance with civil rights laws in its application and upon request, must provide the Assistant Secretary for Civil Rights with any information the Assistant Secretary finds is necessary to determine whether the assurances will be met. This provision of the regulations was not changed by the NPRM.

Changes: None.

§ 280.31 What selection criteria does the Secretary use?

Comment: One commenter objected to the proposed reduction of points for the quality of project personnel under § 280.31(b), because it believes the success of each project depends on experienced key personnel who are knowledgeable about desegregation and magnet schools.

Discussion: The Secretary agrees that a project must have qualified staff if it is to be successful and therefore has assigned significant points for this criterion. However, the Secretary has found that almost all applicants propose to use personnel who are qualified to conduct the project activities. In assigning the relative weights for the selection criteria, the Secretary determined that the criteria for project design and implementation, i.e., "quality of project design" and "plan of operation," provide a more meaningful indication of the likelihood of an applicant's success in meeting the purposes of the MSAP.

Changes: None.

Comment: One commenter felt that the regulations should address perceived deficiencies in the program. Specifically, the commenter recommended that the regulations be amended to limit funding to only magnet schools that serve the school's entire student population and that operate throughout the regular school day, to allow expenditures only for the operation of the magnet school, and to disallow expenditures for a year of planning.

Discussion: The MSAA defines a magnet school as "a school or educational center that offers a special curriculum capable of attracting students of different racial backgrounds." The MSAA does not limit eligibility for MSAP funding to a magnet school that only involves an entire student population and that only operates throughout the regular school day. However, under § 280.31(c), the Secretary evaluates how well an LEA's magnet school will assist an LEA to desegregate its schools. In this way, the Secretary selects for awards those applicants that best demonstrate promise of achieving the purpose of the program. In addition, although the MSAA permits funds to be used for planning and promotional activities, planning activities are limited to no more than 10 percent of a grant award in any given year.

Changes: None.

Comment: One commenter felt that assigning points under § 280.31(c)(2)(iii) for a project's conformance with the President's AMERICA 2000 strategy goes beyond the purpose of the law and therefore the existing regulations should not be changed.

Discussion: Points are not assigned for a project's conformance with the President's AMERICA 2000 strategy. The selection factor evaluating the type of educational program that an LEA will provide is based on the requirement in the MSAA that the magnet school provide courses of instruction to substantially strengthen a student's knowledge of academic subjects and marketable vocational skills. The subjects that are identified under this factor are specifically included in the MSAA in describing the "Uses of funds."

Changes: None.

Comment: One commenter felt that the points assigned to "commitment and capacity" under § 280.31(f) should be increased, to make continuation of projects after Federal funding ends a stronger requirement. The commenter indicated that if the magnet programs are reducing minority group isolation and are improving academic achievement they should be continued. The commenter noted that under the current point assignment, programs are sometimes decreased or eliminated after the Federal funding ends.

Discussion: The Secretary believes that the criterion "Commitment and capacity" has been assigned significant points relative to the other selection factors, to ensure that applicants for MSAP funds will continue magnet schools programs. Data from previously funded magnet schools grants confirms that most MSAP-funded programs are continued after Federal funding ends. In addition, an applicant must demonstrate under other selection factors, e.g., "Collaborative efforts," that it has sought other resources through which funds needed to continue a project could be acquired.

Changes: None.

§ 280.32 How is special consideration given to applicants?

Comment: Two commenters felt the 10 points awarded for "recentness of implementation of the approved desegregation plan" should be retained. One commenter explained that reducing the points for this factor reduces the advantage for newly desegregating districts that attempt to win public acceptance of plans through the use of new magnet schools. Another commenter felt that districts that continually revise desegregation plans to adapt to changing circumstances and student needs should be rewarded.

Discussion: The regulations continue to provide an advantage to school districts that are implementing new or recently revised plans, but reduce the relative weight of this special consideration factor. The Secretary has found that this criterion has not resulted in a meaningful distinction among applicants since most applicants have received maximum points for it. For example, in the fiscal year 1991 grant competition, 85 percent of the applicants received the maximum score. The district's desire to meet the educational needs of its students and its desire to retain the support of the community should be sufficient incentive for implementing new plans or for modifying existing plans.

Changes: None.

Comment: One commenter said that reducing the points awarded for "involvement of minority group students" from 10 to 5 reduces the competitive advantage for districts that are truly striving to meet the purposes of the MSAP by undertaking massive, districtwide desegregation.

Discussion: The points for the proportion of minority group children involved in the applicant's desegregation plan was reduced because most applicants have received the maximum points for this criterion and therefore it has not helped to determine the relative merit of applications. Also, the Secretary found that applicants who had made progress in desegregating some schools in their districts were being penalized for their success. The reduction in points for this criterion is intended to ensure that the weight given is reasonably consistent with its value in determining the likely success of the applicant's plan to achieve the purpose of the MSAP.

Changes: None.

Comment: One commenter stated that the language of the regulations under "need for assistance" is inadequate to prevent wealthy districts from receiving funds while poor districts are left unfunded. Another commenter suggested that the factors used to evaluate an applicant's need for assistance be expanded to give applicants further guidance on what information should be provided to address this criterion (e.g., how will the Secretary assess an applicant's ability to finance the project). The commenter also noted that this criterion now refers only to the difficulty of carrying out the project for which assistance is sought and not the difficulty of carrying out the applicant's desegregation plan and the project for which assistance is sought.

Discussion: "Need for assistance" is an important criterion for funding under the MSAP and, accordingly, is a relatively heavily weighted factor. The Secretary agrees that additional guidance on the factors that the Secretary will consider in evaluating this criterion will assist an applicant in demonstrating its need for assistance and will provide the Secretary with information to better distinguish among applicants seeking funding. Information provided in an application in response to this criterion may include (1) a budget for fully implementing the magnet schools project or a narrative discussion of costs for fully implementing the project that includes a breakdown of all of the resources that will be needed to fund the project; (2) a description of any special costs that, because of the design of the project, would be incurred in order to implement the project fully; and (3) a description of why the applicant does not have sufficient funds without assistance under this program to fully implement the project.

Changes: The Secretary has revised this section to explain further the factors used to evaluate an applicant's need for assistance. The Secretary will evaluate

an applicant's need for assistance based on how much it will cost the applicant to fully implement the magnet schools project proposed in the application and the resources available to the applicant to implement the project if funds under the MSAP were not provided. The Secretary will also consider how the design of the project impacts on the applicant's ability to successfully implement the desegregation plan as proposed.

Comment: One commenter suggested that if the Secretary wants to reduce the collective weight of the special consideration factors, the points assigned to "collaborative efforts" could be reduced because the commenter felt that this factor does not deserve equal weight with "quality of personnel" and "commitment and capacity," and does not merit more weight than "budget and resources."

Discussion: The NPRM did not propose a change in the points assigned for this criterion. Currently, five points are awarded under § 280.32(f) for this criterion.

Changes: None.

[FR Doc. 92-31222 Filed 12-23-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: Provides grants to eligible local educational agencies to support magnet schools that are part of approved desegregation plans.

Eligible Applicants: Local educational agencies.

Deadline for Transmittal of Applications: February 19, 1993.

Deadline for Intergovernmental Review: April 20, 1993.

Applications Available: January 4, 1993.

Available Funds: $107,532,800.

Estimated Range of Awards: $200,000–$4,000,000.

Estimated Average Size of Awards: $1,792,000.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86; and (b) the regulations in 34 CFR part 280 as amended. (Please note that amendments to 34 CFR parts 75 and 77 of EDGAR were published in the **Federal Register** on Wednesday, July 8, 1992, (57 FR 30328). Final regulations amending 34 CFR part 280 are published in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: Applicants must submit with their applications one of the following types of desegregation plans (1) a plan required by a court order; (2) a plan required by a State agency or official of competent jurisdiction; (3) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of 1964 (Title VI plan); or (4) a voluntary plan adopted by the applicant.

An applicant that submits a plan required by a court, State agency or official of competent jurisdiction, must obtain approval for any modification to the plan from the court, agency, or official that originally approved the plan. A previously approved desegregation plan that does not include the magnet school or program for which an applicant is now seeking assistance under this program must be modified to include the magnet school component, and the modification to the plan must be approved by a court, agency or official, as appropriate. An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof to ED to approval of all modifications to their plans by March 26, 1993. If an applicant submits a modification to a previously approved Title VI plan, the proposed modification will be reviewed by OCR for approval as part of this magnet schools application process.

An applicant submitting a desegregation plan as described in 1, 2, or 3 above, must provide an assurance that the plan is being implemented as approved. An applicant submitting a voluntary plan or a modification to a Title VI plan for approval by the Secretary must provide a copy of a school board resolution or other evidence of final official action adopting and implementing the plan, or agreeing to adopt and implement it if Magnet Schools Assistance Program funds are made available.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC 20202–6246. Telephone (202) 401–0358. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3021–3032.

Dated: December 18, 1992.

John T. MacDonald,

Assistant Secretary,

Elementary and Secondary Education.

[FR Doc. 92–31223 Filed 12–23–92; 8:45 am]

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federal register

Thursday
December 24, 1992

Part IV

Department of Health and Human Services

Administration for Children and Families

Administration for Native Services; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612-932]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, (ACF), Department of Health and Human Services, (DHHS).

ACTION: Announcement of availability of competitive financial assistance for Alaskan Native social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1993 funds for social and economic development projects. Financial assistance provided by ANA is designed to promote the goal of self-sufficiency for Alaskan Natives through support of locally determined social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are February 5, 1993 and May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson (202) 690-7727 or Hank Aguirre, (202) 690-7714, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., 344F, Washington, DC 20201-0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1993 financial assistance to promote the goal of social and economic self-sufficiency for Alaskan Natives through social and economic development (SEDS) strategies. Funds will be awarded under section 803 of the Native American Program Act of 1974, as amended, (42 U.S.C. 2991b) for local governance and social and economic development projects.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement. A Native American community is self-sufficient when it can generate and control the resources which are necessary to meet the needs of its members and to meet its own social and economic goals.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaskan Native villages, and in the leadership of Native American groups. Progress toward the goal of self-sufficiency requires active development with regard to the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and economic well-being of individuals, families and communities. Progress towards self-sufficiency is based on the community's ability to develop a social and economic development strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals.

The Administration for Native Americans bases its program and policy on three interrelated goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

To achieve these goals, ANA supports tribal and village governments, and other Native American organizations, to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities. The ANA SEDS approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community makes such self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

(2) Economic, governance, and social development are interrelated, and development in one area should be balanced with development in the others in order to move toward self-sufficiency. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to develop self-sufficient communities.

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health and economic well-being are maintained within the community and that support governance and economic goals.

Without a careful balance between all of these, a community's development efforts could be jeopardized. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services. Conversely, inadequate social support services and training could seriously impede productivity and local economic development. Additionally, the governmental infrastructures must be put in place to support or institute social and economic development and growth.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is to develop those social and economic development strategies (SEDS) that support their local goals, resources, and cultural values. The Administration for Native Americans assists local communities to undertake one-to-three year development projects that are a part of long-range comprehensive plans to move toward social and economic self-sufficiency. The Administration for Native Americans expects its applicants to have undertaken a long-range planning process to address the community's development. Such long-range planning must consider the maximum use of all available resources, directing those resources to development opportunities, and addressing how to overcome the local issues that hinder social and economic growth in the community. The Administration for Native Americans encourages applicants to design project

strategies to achieve their specific but interrelated governance, and social and economic objectives and to use available human, natural, financial, and physical resources to which the applicant has access. Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund, such as construction, will be financed through other sources.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but supported by funds other than ANA's. The Administration for Native Americans does not fund programs which operate indefinitely or would have a need for ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. However, ANA will consider funding core administrative capacity building projects at the village government level if the villages do not have governing systems in place. "Core administration" is defined as those functions which provide the ongoing management and administrative support to an organization. The management and administrative functions needed to carry out an ANA approved project are not considered "core administration." However, ANA does fund the salaries of approved staff for the time to implement a funded ANA project. The Administration for Native Americans does not provide funds for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Goal 1: Governance Development. Effective governance is a necessary foundation and condition for the social and economic development of Indian tribes, Alaskan Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the governmental, judicial and/or administrative infrastructures of tribal and village governments; (2) increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of and exercising legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States.

Under its governance development goal, ANA strongly encourages tribal and village councils, and other governing bodies, to strengthen and streamline their established administrative and management procedures that influence their institutional management systems. The purpose of this capacity is to develop and implement effective social and economic development strategies and their comprehensive community long term goals and to improve their day-to-day governmental management. By improving governance and management capabilities, Indian Tribes, Alaskan Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Applications in this area are generally under the following categories:

- Status clarification
- Tribal recognition
- Amendments to tribal constitutions; court procedures and functions; bylaws or codes; council or executive branch duties and functions;
- Improvements in administration and management of tribes/villages.

Goal 2: Economic Development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and economic well-being of individuals and families, and preserve the values, language, and culture of the community.

Social and Economic Development Strategies (SEDS)

Building on developing the foundation for strong local governance, ANA supports tribal and village governments' and other Native American organizations' corollary plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies and their objectives should describe in detail how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, SEDS strategies that combine balanced social and economic and governance goals should also address how to obtain independent sources of revenue for the community or how the venture supports the long-term goals.

Alaska Initiative

Based on the three ANA goals, in fiscal year 1984, ANA implemented a special Alaska social and economic development initiative. The purpose of this special effort was to provide financial assistance at the village level or for village-specific projects aimed at improving a village's social and economic development. This program announcement continues to implement this initiative. ANA sees both the nonprofit and for-profit corporations in Alaska as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantages of the opportunities afforded to Alaskan Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance:

- Initiate a demonstration program at a regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base.
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management, resources assessment and development, and studies of the potential impact of land use upon the environment and the subsistence ecology.

• Assist village consortia in the development of tribal constitutions, ordinances, codes and court systems.

• Develop agreements between the State and villages that transfer programs, jurisdictions, and/or control to Native entities.

• Strengthen village government control of land management, including land protection.

• Develop tribal courts, adoption codes, and/or related comprehensive children's codes.

• Assist in status clarification.

• Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health and well being of a community and its people.

• Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia in order to maximize tribal government resources, i.e., to develop model codes, tribal court systems, governance structures and organic documents.

• Assist villages in developing and coordinating plans for the development of water and sewer systems for use within the village boundaries.

• Assist villages in establishing structures through which youth would participate in the governance of the community and be trained to assume leadership roles in village governments.

Economic Development:

• Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaskan Natives, (3) are capable of high productivity at a small scale of operation, and (4) complement traditional and necessary seasonal activities.

• Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.

• Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars in villages.

• Assist in new or expanded native-owned businesses.

• Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.

• Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills, earthquakes, etc.

Social Development:

• Assist villages in developing programs to deliver needed social services.

• Assist in developing training and education programs for those jobs in education, government and health usually found in local communities; and work with the various agencies to encourage job replacement of non-Natives by Natives.

• Coordinate land use planning with village corporations and city government.

• Develop local models related to comprehensive planning and delivery of social services.

• Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.

• Develop or coordinate activities with State-funded projects in decreasing the incidence of child abuse and neglect, fetal alcohol syndrome, or Native suicides.

• Assist in obtaining licenses to provide housing or related services from State or local governments.

• Develop businesses to provide relief for caretakers needing respite from demanding care work, child care, chore service, etc.

C. Eligible Applicants

• Current ANA grantees in Alaska funded under Section 803 of the Native American Programs Act whose project period terminates in fiscal year 1993 (October 1, 1992–September 30, 1993) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document);

• Alaskan Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects;

• Nonprofit Native organizations in Alaska with village specific projects; and

• Nonprofit Alaskan Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

If the applicant is a nonprofit organization, proof of nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in its application. Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

Note: In fiscal year 1993, Alaskan Native entities are eligible to submit an application under either program announcement 93612–931 or 93612–932, but are limited to a single application for each closing date.

An Alaskan Native applicant may apply for the:

(1) February 5, 1993 closing date for Program Announcement 93612–931 OR for Program Announcement 93612–932; and

(2) May 14, 1993 closing date for Program Announcement 93612–931 OR for Program Announcement 93612–932.

D. Available Funds

Approximately $1.5 million of financial assistance is anticipated to be available under this program announcement for Alaskan Native projects. This program announcement is being issued in anticipation of the appropriation of funds for FY 1993, and is contingent upon final appropriations.

ANA plans to award approximately 15–18 grants under this announcement. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period is up to $150,000, commensurate with approved multi-village objectives. Each eligible applicant can receive only one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop mutli-year projects. However, applicants should understand that a multi-year project is a project on a single theme that requires more than 12 months to complete. The project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period. Funding after the first 12 month budget period of an approved multi-year project is non-competitive.

Applications for continuation grants funded under these awards beyond the

one-year budget period, but within the two or three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds (based on an award of $100,000, per budget period for three years), must include a match of at least $25,000 (20% total project cost per budget year). An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, room 344F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: Earldine Glover, Phone: (202) 690–7727.

Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: ANA 93612–932.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with Native American Tribes, communities and organizations evaluates each application against the published criteria in this announcement. The review will result in a numerical score attributed to each application. The results of this review assist the Commissioner to make final funding decisions.
- The Commissioner's funding decision also takes into account the analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- That the application narrative, forms and materials submitted are adequate to allow the review panel to undertake an indepth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the five evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purpose of this announcement), include a social and economic development strategy, and address the specific developmental steps toward self-sufficiency that the specific tribe or Native American community is undertaking.

The five programmatic and management criteria are closely related to each other. They are considered as a whole also in judging the overall quality of an application. Points are awarded only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated

social and economic development strategy.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

(2) *Organizational Capabilities and Qualifications.* (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes related specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly described each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) *Project Objectives, Approach and Activities.* (45 points)

The application proposes specific project objective work plans with activities related to the SEDS strategy and the overall long-term goals. The objective work plan(s) in the application include(s) project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- are measurable and/or quantifiable in terms of results or outcomes;
- are based on the fully described and locally determined balanced SEDS strategy narrative for governance or social and economic development;
- clearly related to the community's long-range goals which the project addresses;
- can be accomplished with the available or expected resources during the proposed project period;
- indicate when the objective, and major activities under each objective, will be accomplished;
- specify who will conduct the activities under each to achieve the objective; and
- support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points)

The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the community meet its goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points)

There is a detailed budget provided for each budget period requested. The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable profit within a future specified time frame.

J. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) *Program Guidance*

- The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development leading to its self-sufficiency. The Administration for Native Americans does not fund on the basis of need alone.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these and/or progress to date, as well as the size of the population to be served. The appropriateness and potential of the proposed project in strengthening and promoting the goal of the self-sufficiency of a community will be determined by reviewers.
- An application should describe a clear relationship between the proposed project, the SEDS strategy, and the community's long-range goals or plan.
- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact on the community that the project will have.
- Supporting documentation or other testimonies from concerned interests other than the applicant should be included to provide support for the feasibility and the commitment of other resources to implement or conduct the proposed project.

In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or to start a business if the applicant includes a business plan that clearly describes its feasibility and the plan for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these as a guide to its development of an economic development project or business that is part of the application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.
- A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, the delivery of human services such as health, day care, counseling, education, and training.

(2) *Technical Guidance*

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• The Administration for Native Americans will accept only one application from any one applicant for each closing date. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from an Indian Tribe, Alaskan Native village or other applicant must be from the governing body of the applicant.

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The Approach Page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• Village governments or other applicants without established accounting systems must arrange for qualified, acceptable accounting services prior to release of grant funds.

Note: Subpart H, 45 CFR part 74 and subpart C, 45 CFR part 92, address those elements of a generally acceptable accounting system for Federal grantees. The financial management standards in subparts H and C, for example, include:

(1) Accurate, current and complete disclosure;

(2) Records which show source and application of funds;

(3) Effective control and accountability of funds and property;

(4) Comparison of actual and budgeted amounts;

(5) Procedures to minimize time lapsing between transfer and disbursement of funds;

(6) Procedures to determine allowability and allocation of funds;

(7) Accounting records with source documentation;

(8) Periodic audits; and

(9) A follow-up system.

(3) *Projects or activities that generally will not meet the purposes of this announcement.*

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS strategy long-range development plan. The Administration for Native Americans is not interested in funding "wish lists" of business possibilities. The administration for Native Americans expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies on the potential success to the business prior to the submission of the application.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions.

• Project goals which are not responsive to one or more of the three interrelated ANA goals (Government Development, Economic Development, Social Development).

• Proposals from consortia of tribes and villages that are not specific with regard to support from, and roles of, member tribes and villages. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.

• Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see ACF Grants Administration Manual Ch. 3, § E.)

• Projects originated and designed by consultants who are not members of the applicant organization, tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment (i.e., oil rigs, agricultural equipment, etc.) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are February 5, 1993 and May 14, 1993.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines. Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

(1) Received on or before the deadline date at the address specified in Section H, Application Submission, or

(2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: November 23, 1992

S. Timothy Wapato,

Commissioner, Administration for Native Americans.

[FR Doc. 92–31297 Filed 12–23–92; 8:45 am]

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federal register

Thursday
December 24, 1992

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 14, et al.
Requirements for Approval of Flame-Resistant Conveyor Belts; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18 and 75

RIN 1219–AA65

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement new procedures and requirements for testing and approval of flame-resistant conveyor belts to be used in underground mines. The proposed revisions would replace the existing flame test for acceptance of flame-resistant conveyor belts specified in agency regulations. The proposal would also include current terminology. Currently regulations require that conveyor belts be flame resistant in accordance with specifications of the Secretary. Conforming amendments to safety standards are being proposed as part of this rulemaking.

DATES: Written comments must be submitted on or before February 22, 1993.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia Silvey, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposal contains information collection requirements in §§ 14.4, 14.7 and 14.8. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA (see address at the end of this discussion). The respondents would be mine equipment manufacturers. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collected information. In each instance, the resultant information collected would be used by MSHA to assess compliance with the proposed requirements. The information collection requirements contained in the proposal are discussed below.

Proposed § 14.4 would require applicants seeking approval of flame-resistant conveyor belts to submit an application for approval. MSHA estimates there would be 250 applications submitted the first year, 150 applications during the second year, and 60 applications in the third and following years. The time needed to prepare and submit each application is projected to be 5 hours for each approval application for a conveyor belt that is not similar to one previously approved (original application) for the applicant and 2 hours for each extension of approval or approval application of a conveyor belt similar to one that has been previously approved. The proposal would not require submittal of duplicative documentation on extension of approval and approval applications for conveyor belts similar to a previously approved belt. Hence these applications would take less time to prepare than original applications. MSHA estimates that initially the first year, there would be 200 original applications submitted, each requiring 5 hours to prepare, and 50 applications similar to ones previously submitted, each requiring 2 hours to prepare. The estimated burden hours are 1100. During the second year, MSHA estimates there would be 75 original applications submitted, each requiring 5 hours to prepare, and 75 similar applications, each requiring 2 hours to prepare. The estimated burden hours are 525. In the third and following years, MSHA estimates there would be 60 applications, each requiring 2 hours to prepare. The estimated burden hours are 120.

The proposal would require applicants to maintain records on the distribution of all conveyor belt bearing an approval marking as set forth in § 14.7(d). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply; therefore, no burden hours are assigned to this requirement.

Proposed § 14.8(d) requires applicants to report to MSHA any knowledge of any conveyor belt distributed with flame resistance characteristics not in accordance with the approval specifications. MSHA estimates that, in a worse case, manufacturers would submit 12 reports per year requiring 15 minutes per report. Estimated burden hours are 3.

Send comments regarding these burden estimates or any other aspects of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, and to the Office of Information and Regulatory Affairs of OMB, Attention: Steve Semenuk Desk Officer for the Mine Safety and Health Administration, room 3001, New Executive Office Building, Washington, DC 20503.

II. Background

Conveyor belt systems are used extensively in underground mines to transport mined material. MSHA estimates there are about 3,000 feet (900 meters) of conveyor belt in an average small underground coal mine (covering 1,500 feet (450 m) for conveyance and return) and 28,000 feet (8,500 m) of conveyor belt in an average large underground mine. Because of the fire hazards in underground coal mines, existing MSHA safety standards require that conveyor belts be flame resistant in accordance with specifications of the Secretary by passing the flame test for conveyor belt specified in § 18.65. That test is conducted in a 21-inch (53.3 cm) cubical test gallery with belt samples 6-inches (15.2 cm) long by ½-inch (1.27 cm) wide by belt thickness.

MSHA requires mine operators to report any mine fires that either are not extinguished within 30 minutes of discovery or involve a serious injury. MSHA's Belt Entry Ventilation Review: Report of Findings and Recommendations (1989) contains a historical review of reportable underground coal mine fires involving conveyor belts. In addition, two other MSHA reports contain information on underground coal mine fires involving conveyor belts. These reports are Coal Mine Fires Involving Track and Belt Entries, 1970–1988, dated November 19, 1990 and Mine Fire Prevention and Response Strategies, dated October 31, 1991. An analysis of information from these reports follows.

From 1970 through 1990, 307 underground coal mine fires were reported and investigated by MSHA. Conveyor belts were identified to be involved in 42 of these fires. The 42 fires represent 14 percent of the total number of fires over this 21-year period. Moreover, belt fires as a percentage of total fires have shown increases over the last twelve years with half of the belt fires occurring in the last eight years.

From an analysis of the available data, approximately 75 percent of the belt fires occurred in the mainlines, with about 25 percent of the belt fires occurring in the panel or section beltlines. Two of the 42 belt fires, or

about 5 percent resulted in the mine being sealed. These data also indicate that about 30 percent of the belt fires resulted in flame traveling for hundreds of feet. Such fires create a severe hazard to the health and safety of miners.

When belt fires reach the propagation stage, they produce more fire gases and spread faster than the fires of surrounding coal surfaces. The belt fires that have occurred since 1970 have burned as much as 2,000 feet (600 m) of belt before the fire was extinguished.

The 21 underground coal mine fires from 1983 through 1990 that involved conveyor belts and the large-scale flammability studies of conveyor belts conducted by the Bureau of Mines, U.S. Department of the Interior (BOM) in cooperation with MSHA have shown that the flame test specified in § 18.65 is not optimal for evaluating the flammability of conveyor belts. For example, some conveyor belts that passed the current flame test readily propagated flame and were completely consumed by fire in large-scale gallery tests that were more representative of the mine environment. As a result, BOM and MSHA worked together to develop a revised test that would more effectively assess the flame resistance of conveyor belts than the flame test in § 18.65.

The Agency is aware that in recent years the United Kingdom has developed a conveyor belt evaluation program that provides the U.K. with a product having flame resistance superior to that provided by existing part 18 requirements in the United States. Germany and the U.K. are currently involved with the other European nations to negotiate a common standard.

The revised test is intended to address the resistance of conveyor belts to both ignition and flame propagation. It is designed to significantly reduce or eliminate the hazard of flame propagation along the belt.The revised test would identify conveyor belts which are difficult to ignite and are self-extinguishing under the test conditions. Therefore, conveyor belts passing the revised test would not only be resistant to ignition, but also highly resistant to flame propagation.

This proposal would replace the current regulations covering the testing and acceptance for flame resistance of conveyor belts found in 30 CFR part 18 with new regulations incorporating the revised flame test.

III. Discussion and Summary of Proposed Rule

The test procedures and criteria in subpart B are the result of the BOM and MSHA's cooperative efforts to develop a more appropriate laboratory-scale flammability test for conveyor belts. The primary concerns were to develop procedures that are objective, repeatable and which appropriately assess the flammability of conveyor belts in the context of the mining environment in which they are used.

Development of Laboratory—Scale Test and Procedures

A large-scale flammability test for conveyor belt was jointly developed by the BOM and MSHA. Experimental tests were conducted in the BOM surface fire gallery located at the Lake Lynn Laboratory. The fire gallery consisted of a 90-foot (27.4 m) long by 12.5-foot (3.8 m) wide arched tunnel (81 square feet (7.5 m^2) cross-sectional area) coupled, by means of a transition section, to a 6-foot (1.8 m) diameter axivane fan. The gallery contained a typical conveyor belt structure. A 30-foot (9.1 m) length of belt, typically 42-inches (107 cm) wide, was placed on the top rollers of the structure. The ignition source was a 2-gallon (7.6 liter) liquid fuel fire (700 kilowatts (2520 millijoules)) in a 3-foot (0.9 m) by 2-foot (0.6 m) tray located below the upstream end of the belt sample. The gallery airflow was set at 300 feet per minute (ft/min) (91.4 m/min) (24,300 CFM (688 m^3/min)). Previous studies on the effect of ventilation on conveyor belt fires with rubber and polyvinyl chloride (PVC) belts had shown that flame propagation at these test conditions was most likely to occur with this airflow. (see "Effect of Ventilation on Conveyor Belt Fires" by C.P. Lazzara and F.J. Perzak, presented at the Symposium on Safety in Coal Mining, Pretoria, South Africa (October 1987) and "Impact of Entry Air Velocity on the Fire Hazards of Conveyor Belts" by H.C. Verakis and R.W. Dalzell, presented at the 4th International Mine Ventilation Congress, Brisbane, Australia (July, 1988) and "Reducing the Fire Hazard of Mine Conveyor Belts" by H.C. Verakis, presented at the 5th U.S. Mine Ventilation Symposium, West Virginia University in Morgantown, WV (June 4, 1991) which detail these studies.)

A belt passed the large-scale flammability test if a portion of the 30-foot (9.1 m) long sample, across its width, remained undamaged by fire (excluding blistering). Sixteen different formulations of conveyor belts, 8 rubber and 8 PVC, that passed the current MSHA flammability test (30 CFR 18.65) were subjected to the large-scale gallery test. Six of these formulations passed the test and ten failed. For the belts that failed, flame propagation rates varied from about 1 foot (0.3 m) per minute to 30 feet (9.1 m) per minute. Results from the large-scale test were repeatable and the test provided an appropriate method for evaluating the flame resistance of conveyor belts in a manner that was more representative of the mining environment than the current test.

The large-scale test requires an expensive fire gallery facility and large amounts of belt. This makes it expensive to conduct testing. It would not be feasible for belt manufacturers to construct the large-scale fire gallery and perform the test. It would not be feasible for MSHA or the BOM to use the large-scale facility for approval testing. Therefore, the BOM began development of a laboratory-scale flammability test for conveyor belts that provide results comparable with the large-scale test. To develop the laboratory-scale test the ventilated tunnel dimensions were selected on the basis of experience with fire testing and the development of flammability tests. Other values such as sample size, the air velocity and ignition time were varied to obtain comparable results to the large-scale test. The laboratory-scale test developed consists of a horizontal 5.5-foot (1.68 m) long by 1.5-foot (0.46 m) square ventilated tunnel. The size of the belt test sample is 60 inches (152.4 cm) long by 9 inches (22.9 cm) wide. The tunnel airflow is 200 feet per minute (61 m/min) (450 CFM (12.7 m^3/min)) and the ignition source is a gas burner applied to the upstream end of the sample for 5 minutes. A belt formulation passes the test if, in each of three separate trials, there remains a portion of the sample, across its entire width, undamaged by fire.

Samples of the same 16 formulations of belts that were examined in the large-scale gallery test were subjected to the laboratory-scale test and the results compared. Of these, 8 were rubber belt formulations, and 8 were PVC formulations. Of the 16 formulations examined, one formulation passed the laboratory-scale test but failed the large-scale gallery test and one formulation passed the large-scale gallery test and failed the laboratory-scale test.

The development of flammability tests is not an exact science. Because of the difficulty in designing a laboratory-scale test that is in complete agreement with a large-scale test, the comparison of test results obtained between these two procedures is considered to be very good. MSHA solicits comments on the appropriateness of the laboratory-scale test.

The laboratory-scale flammability test described above and in subpart B of this proposed rule was found to produce

repeatable, objective test results. MSHA and the BOM believe this test appropriately assesses the flame resistance of conveyor belts in a relatively inexpensive manner that is more representative of the mining environment than the present test. The laboratory-scale test procedure also provides results comparable with the large-scale test with control of certain critical factors. (See "Conveyor Belt Flammability Tests: Comparison of Large-Scale Gallery and Laboratory-Scale Tunnel Results" by C.P. Lazzara and F. J. Perzak, presented at the 23rd International Conference of Safety In Mines Research Institutes, Washington, D.C. (September 11–15, 1989) which details this agreement).

Due to the fire dynamics during testing, certain design characteristics essential in obtaining uniform and consistent test results are specified in subpart B. These include tunnel dimensions, sample size and distance of sample rack to tunnel roof. These factors are critical for obtaining agreement and repeatable test results. For example, the requirements for construction of the laboratory-scale tunnel described in subpart B minimize thermal losses through the walls. The specified burner provides a controlled and consistent flame during the ignition period and was found to be a reliable and uniform ignition source. Variations in the principal parts of the apparatus and procedures will affect the burning process, yielding unreliable results. However, where variations do not affect the reliability of the test results, design characteristics have not been specified.

IV. Section-by-Section Discussion

Subpart A—General Provisions

Section 14.1 Purpose and effective date.

This section is derived from existing § 18.1 and would establish the requirements for conveyor belts to be approved under part 14. Conveyor belts are used for the transportation of coal and other mining products in underground mines. Because of the hazard presented by fires in underground coal mines, existing 30 CFR 75.1108 requires the use of flame-resistant conveyor belts as determined by specifications of the Secretary. Under this proposal, MSHA would modify the existing requirements specified for acceptance of conveyor belts contained in §§ 18.6(c), 18.6(i), and 18.65 after a review of the public record and consideration of all comments.

The proposal would take effect 60 days from the publication of the final rule. At the same time, the applicable portions of part 18 referring to conveyor belts would be modified. After this date, all applications for approval of conveyor belts would be required to meet the requirements of this part, and applications for acceptance of conveyor belts would no longer be processed under part 18.

MSHA is implementing a voluntary acceptance program concurrent with the publication of this proposal. Under this program manufacturers may submit applications to MSHA's Approval Certification Center requesting the testing of their conveyor belts in accordance with the test procedures outlined in proposed § 14.22. Acceptance numbers will be issued to conveyor belts meeting the acceptable performance criteria, identifying those conveyor belts that have demonstrated this improved flame resistance. The inception of this program would not affect the existing acceptance program conducted under part 18. MSHA intends to continue to offer the new voluntary acceptance program for evaluation of belts with improved flame resistance until the effective date of the final rule for this part.

MSHA anticipates that, as a result of manufacturers' participation in the voluntary acceptance program, a substantial number of conveyor belts in compliance with the improved flame-resistance requirements would be commercially available on the effective date of the final rule. Based upon this projection, as well as the performance of belt samples during the development of the proposed test, MSHA believes the manufacturers will be able to submit applications for approval of conveyor belts in accordance with the final rule shortly after its publication. MSHA has, therefore, proposed the effective date of the final rule to be 60 days after its publication.

Section 14.2 Definitions.

The following definitions which apply to the approval of conveyor belts are designed to clarify the requirements of this part. Many are derived from existing § 18.2, although some are new.

Applicant. This term, which is derived from existing § 18.2, would identify an applicant as an individual or organization that manufactures or controls the production of the conveyor belt and that applies to MSHA for approval of that conveyor belt.

Approval. This term would replace the "Acceptance" terminology defined in existing § 18.2. An approval would be defined as a document issued by MSHA which states that a conveyor belt has met the requirements of this part. It also would authorize an approval marking identifying the conveyor belt as approved.

This would be consistent with other recent MSHA approval regulations which define "approved" as the general term which indicates that products have met MSHA's technical requirements and have been designed and manufactured to ensure that the products will not present a fire, explosion, or other specified safety hazard related to use.

Conveyor belt. This term is new. It would define a conveyor belt to be a flexible strip of material that is typically constructed of interwoven fabric or plies and polymeric compounds and used to transport coal or other extracted minerals.

Extension of approval. This term, which is new as applied to conveyor belts, would define an extension of approval as a document issued by MSHA which states that a change to a conveyor belt previously approved by MSHA under this part meets the requirements of this part. It would also authorize the continued use of the approval marking after the appropriate extension number has been added. The definition of this term would, like that of "approval", provide for consistent terminology.

Load bearing cover. This term is new and would describe the top cover of a conveyor belt. The load bearing cover is designed to be the surface upon which the extracted minerals are conveyed

Post-approval product audit. This term is new. It would be defined as MSHA's examination, testing, or both, of an approved conveyor belt selected by MSHA to determine whether it meets the technical requirements and has been manufactured as approved.

Section 14.3 Observers at tests and evaluations.

This section is derived from existing § 18.9(a) and would specify those individuals who could be present during testing and evaluation conducted under this part. These individuals would be limited to personnel of MSHA, BOM, representatives of the applicant and such other persons as agreed upon by MSHA and the applicant. This section is intended to protect proprietary information which could be available to observers at tests and evaluations conducted under this part.

Section 14.4 Application procedures and requirements.

This section, which is derived from existing § 18.6, would set forth the procedures and requirements for requesting approval of a flame-resistant conveyor belt. It does not contain

specific provisions concerning the fees to be charged for approval of a flame-resistant conveyor belt. Instead, § 14.4(b) would require that fees, calculated pursuant to Part 5, Fees for Testing, Evaluation, and Approval of Mining Products, (52 FR 17506) be submitted with each application for approval or extension of approval.

Fees for MSHA processing of an application under part 14 would be subject to an hourly rate charge for evaluation and testing. On hourly rate actions, applicants would be billed for the fee when processing of the action is completed.

MSHA would charge $39 per hour for evaluation and $41 an hour for testing with an application fee of $100 for processing requests for approval or extension of approval of flame-resistant conveyor belt under part 14. These fees are based on the fee adjustments published in the **Federal Register** on December 20, 1991, (56 FR 66299) effective January 1, 1992.

This rule would organize the application procedures into two types of approval actions: Approval and extension of approval. In requesting an approval for a flame-resistant conveyor belt, MSHA would require the submission of all information necessary to properly evaluate a conveyor belt as it relates to the approval requirements. If, after receipt of an approval, the applicant requests approval of a similar conveyor belt or an extension of approval for the original conveyor belt, the applicant would not be required to submit documentation duplicative of previously submitted information. Only information related to changes in the previously approved conveyor belt would be required, avoiding unnecessary paperwork.

This proposal would include a requirement that changes in the specifications of a previously approved flame-resistant conveyor belt must be approved by MSHA. This would avoid unauthorized changes being made that could affect the flame resistance of the conveyor belt.

Section 14.4(c) would require an applicant to submit information to characterize the identification and construction of a conveyor belt. The applicant would have the option to either provide the complete formulation of a conveyor belt or to specify each fire retardant ingredient by percentage along with a listing of each flammable and inert ingredient. While the submission of this information is not specifically addressed, existing § 18.6(c) and current application procedures for acceptance of conveyor belts require formulation information to be provided.

The proposal provides that an application for approval of a conveyor belt that is similar to a previously approved conveyor belt would include an explanation of any changes from the existing approval, along with the approval number of the belt which most closely resembles the new one. Documentation which is listed in the prior approval need not be resubmitted.

Section 14.4(d) would require an application for extension of approval to include a description of the proposed change to an approved belt and the MSHA approval number for the belt for which the extension is requested. The applicant would not be required to submit documentation duplicative of previously submitted information. Only information related to changes in the previously approved product would be required, avoiding unnecessary paperwork. Section 14.4(e) would provide that a determination by MSHA would be made if additional information, samples and testing are needed to evaluate the application. Additional samples may be requested by MSHA as a result of erroneous test results as discussed below in the flame-resistance test procedures. There may be instances where MSHA would not need to conduct testing to determine the flammability of a conveyor belt based on its previous experience in testing and evaluating similar belts. An applicant may also provide a statement of MSHA for consideration which explains the reasons why flame testing of a conveyor belt is not necessary in a given case.

Section 14.5 Test samples.

Section 14.5, derived from § 18.6(g) and (h), would require that three unrolled, flat samples of conveyor belt, 60 inches (152.4 cm) long by 9 inches (22.9 cm) wide, be submitted for flame testing when requested by MSHA. The test for flame resistance would require that three samples be tested to determine acceptable performance. The purpose of providing the samples in an unrolled, flat state is to prevent difficulty in mounting samples for testing. If samples would be received in a rolled (coiled) state, additional time would be needed for MSHA to flatten the samples for subsequent mounting.

Curling of samples can cause erroneous test results and has, at times, presented a problem during testing. MSHA and BOM have determined that most of this curling effect resulted from the conveyor belts having a "pre-set" from being rolled prior to testing. The requirements of § 14.5 along with the preconditioning of samples in § 14.22(a)(1) have been designed to address and minimize this problem.

Section 14.6 Issuance of approval.

This section is derived from existing § 18.10 and would specify the actions to be taken by MSHA upon review of applications for approval of conveyor belts.

Paragraph (a) would require MSHA to issue, following completion of the evaluation and testing of a conveyor belt provided for under this part, a written notice of approval or the reason for denying approval of the product.

Paragraph (b) would retain the provision of existing § 18.10(c) that an applicant is not to advertise or otherwise represent a conveyor belt as approved until MSHA has issued an approval for that product.

Section 14.7 Approval marking and distribution record.

This section is derived from existing § 18.65(f), with modifications, and would provide for the marking of approved conveyor belts and the retention of initial sale records.

Paragraph (a) would clarify the Agency's policy that approved products be marketed only under the name specified in the approval. This provision, common to all products bearing an MSHA approval, would ensure that the product is easily identifiable as one to which the approval applies.

The provisions of paragraph (b) would require a legible and permanent approval marking to be at least ½-inch (1.27 cm) high, at intervals not exceeding 60 feet (18.3 m), and repeated at least once every foot (30.5 cm) across the width of the belt. They are modified in part from the existing § 18.65(f). This modification in marking is being proposed to allow for greater ease of identification of a conveyor belt in use. As the belt passes along the conveyor framework, the edges can wear. The resulting fraying of conveyor belts which occurs during normal use can cause the approval markings on these belts to be illegible. The relocation of the markings from the edge of the belt to across its width would permit identification of the conveyor belt for a longer time period.

The proposal would specify that the approval marking be repeated at least once every foot (30.5 cm) across the width of the belt. This would ensure that a portion of the making would be present should a belt be worn along the edges or cut into narrower widths. The proposed change to a 60-foot (18.3 m) distance between the approval markings would correspond to the present requirement that the approval marking be placed at 30-foot (9.1 m) intervals

alternately along the edges of the belt. For example, when placing markings according to the present requirement at the 30 foot (9.1 m) intervals alternately along the edges of a belt, the distance between the marking along one edge of a belt is 60 feet (18.3 m).

The proposed change from the existing requirement of metal stencils used during the vulcanizing process to produce depressed letters, to the requirement that the approval marking be "legibly and permanently marked" would provide flexibility in marking and allow for technological advances in the manufacturing process for conveyor belts. This proposed modification acknowledges current manufacturing procedures and materials that allow conveyor belts to be manufactured without including the vulcanizing process.

Paragraph (c) would retain the existing provision that allows MSHA to accept permanent marking other than that described in paragraph (b) where the conveyor belt construction does not permit such marking.

Paragraph (d) would require applicants to maintain records of the initial sale of each belt having an approval marking. These sale records would be expected to be maintained for the projected service life of the belts, as determined by the applicant. This approach recognizes that the life of a belt varies depending on factors such as its physical characteristics, use as a main line or section belt, the type of material being transported and belt maintenance. Since belts in service may need to be traced for corrective action, it is necessary to have records of the belts as long as they are in use. Maintaining records on the sale of belts would be necessary so that deficient products which may present a hazard to miners can be traced and withdrawn from use until appropriate corrective action could be taken by the approval-holder. The proposal does not specify the type of record to be maintained. MSHA believes most manufacturers would use existing record systems to fulfill this requirement. The information that would be needed on initial sales would be the customer name and address and belt identification on a batch or lot basis.

Section 14.8 Quality assurance.

The provisions of proposed § 14.8 are new for conveyor belts. However, they are very similar to provisions contained in other recent MSHA regulations concerning approval of products for use in underground mines. The MSHA approval label is relied upon in the mining community as an indication that the product is safe for use in mines. Section 14.8 would set forth the elements of a quality assurance program which MSHA believes are essential to ensure the required level of flame resistance can be expected from any conveyor belts distributed.

Under § 14.8(a) of this proposed rule, the approval-holder would be required to flame test a sample of each batch or lot of conveyor belt or inspect, test, or both, a sample of each batch or lot of the materials that contribute to the flame-resistance characteristic to ensure that the finished product will meet the flame test.

Section 14.8(b) would require that instruments used for the inspection and testing in § 14.8(a) be properly calibrated and sufficiently accurate. The minimum frequency of calibration that would be required is that recommended by the instrument manufacturer and the calibration would need to be traceable to standards set by the National Institute of Standards and Technology (formerly National Bureau of Standards), U.S. Department of Commerce, or other nationally recognized standards. The instruments used would be required to be accurate to at least one significant figure beyond the desired accuracy. The use of instruments to such degree of accuracy would be consistent with testing protocol.

Section 14.8(c) would require that production documentation be controlled so that the conveyor belt is manufactured as approved. While many constructions and formulations would meet the technical requirements of this proposal, the conveyor belt that is manufactured and distributed under an approval must conform to the specifications to which the approval was issued. This aspect of the proposal would require approval-holders to ensure that the conveyor belt produced does not differ from the conveyor belt approved by MSHA. The proposal does not specify which documents must be controlled, but would instead obligate each approval-holder to implement document control procedures to ensure that the product conforms to the approval.

In MSHA's present conveyor belt acceptance program, the manufacturer is obligated to maintain the quality of the accepted conveyor belts. Manufacturers already have quality control programs which monitor the production of accepted conveyor belts and therefore, no additional cost is anticipated from these provisions.

Adherence to the proposed requirements for quality assurance would provide substantial protection against the distribution of defective conveyor belts. However, MSHA recognizes that this could occur. In such an event, § 14.8(d) would require the approval-holder to report immediately to the Agency any knowledge that conveyor belts have been distributed which do not meet the requirements upon which the approval is based. This knowledge could come from the results of audits conducted by the approval-holder, reports from users, or other sources. Upon receiving such a report, MSHA would work with the approval-holder to implement appropriate corrective action.

Since conveyor belts not meeting the technical requirement of this part could create a hazard, immediate notification should be by expeditious means, such as by telephone. The notification should include a description of the nature and extent of the problem, the locations where the conveyor belt has been distributed, and the approval-holder's plans for corrective action. Corrective action may include recalling the conveyor belt or restricting its use pending conformance with the approval specifications. MSHA would review all the information provided, including the approval-holder's program of corrective action. MSHA would work with the approval-holder, if necessary, to develop an appropriate program. If appropriate corrective action cannot be agreed upon by the approval-holder and MSHA, the Agency may seek revocation of the approval, or other action as necessary.

Section 14.9 Disclosure of information.

This section is derived from existing § 18.9 and addresses the disclosure of information on conveyor belts tested and evaluated under part 14. MSHA intends to continue the current practice of treating information on product specifications and performance as proprietary information and will protect its disclosure to the fullest extent consistent with The Freedom of Information Act (FOIA, 5 U.S.C. 522). Under § 14.9(b) of the proposed rule, MSHA would notify the applicant of requests for product information received by the Agency and provide the manufacturer the opportunity to present its position on disclosure. Information identified by the manufacturer as proprietary would not be disclosed, unless, as provided by FOIA, MSHA determines that disclosure would further the public interest and would not impede the discharge of any of the functions of the Agency.

Section 14.10 Post-approval product audit.

This section, also new, would provide for approved conveyor belts to be subject to periodic audit by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. A consistent approach on the issue of product audits with that outlined in parts 7 (Product testing by applicant or third party) and 15 (Requirements for approval of explosives and sheathed explosive units) would be maintained by this section. This aspect of the proposed rule, by providing a mechanism for independent evaluation by MSHA of approved products on a random basis, would complement the quality assurance provisions that would require approval-holders to manufacture their conveyor belts as approved. Moreover, it would be consistent with recommendations from interval reviews of MSHA's approval program. Approved conveyor belts audited by MSHA would be selected by the Agency as representative of those distributed for use in mines. Upon request, a final report of such audits would be provided to the approval-holder.

In determining which approved conveyor belts would be subject to audit at any particular time, MSHA would consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations may include product complexity, the manufacturer's previous conveyor belt audit results, product population in the mining community and the time since the last audit or since the conveyor belt was first approved. Use of these factors would be consistent with the approach taken in all of MSHA's other approval programs where approved products are audited.

Under this proposed rule, approved conveyor belts could be obtained for audit from the approval-holder or from sources other than the manufacturer, such as mine suppliers or distributors. The provisions of paragraph (b) would, however, require the approval-holder to provide, at MSHA's request, three samples of an approved conveyor belt of the size needed for flame testing at no cost to MSHA for an audit. Such requests, except for cause, would be made no more than once a year. The Agency would examine, evaluate and conduct any testing necessary when requesting an approved conveyor belt for audit from the approval-holder. Approval-holders would be notified by MSHA of the time for any audit-related testing of approved conveyor belts to allow them an opportunity to witness such tests. MSHA could obtain conveyor belts for audit from the approval-holder or other sources, such as mine suppliers or distributors at any time at MSHA expense.

Based on MSHA's experience, the Agency anticipates few instances in which more than this quantity of approved conveyor belts would be required "for cause" from any one manufacturer in any one year. There are circumstances, however, under which an additional audit would be appropriate to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approved belt, evidence of unapproved changes to belts, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval-holder. Under these circumstances, the approval-holder would be required to provide, at no cost to MSHA, additional approved conveyor belts so the Agency can ensure that the approval-holder is meeting the obligation to manufacture the product as approved.

Should discrepancies be found during MSHA audits of approved conveyor belts, MSHA would require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval-holder recalling the lot, batch, or roll of conveyor belt; or issuing user notices. Revocation of the approval by MSHA may result when discrepancies in approved products are not successfully corrected.

Section 14.11 Revocation.

Section 14.11 is derived from existing § 18.16, as well as § 7.9 and § 15.11. It would be identical to the revocation provisions in other recent approval regulations as MSHA believes that all approval-holders must be accorded the same rights and subject to the same process regardless of the approval regulations under which the approval was granted.

The proposed rule would provide that MSHA may revoke an approval granted under part 14 whenever a conveyor belt fails to meet the technical requirements specified in this part or creates a hazard when used in a mine. The Agency recognizes that an MSHA approval is important to the marketability of a product used in the mining industry. For this reason, it has been MSHA's practice to treat approval-holders as "licensees" under the Administrative Procedure Act (APA, 5 U.S.C. 558). Consistent with this practice, the proposed rule would provide that approval-holders be accorded certain protection prior to revocation of an approval. This protection would include being provided with (1) a written notice of the Agency's intent to revoke a product approval, with an explanation of the reasons for the proposed revocation, (2) an opportunity to demonstrate or achieve compliance with the technical requirements for approval, and (3) an opportunity for a hearing upon request.

Paragraph (d) would permit MSHA to suspend an approval without prior notice to the approval-holder, if a conveyor belt poses an imminent hazard to the safety or health of miners. Under such circumstances, an approval could be suspended immediately to protect the safety and health of any affected miner. If during the manufacturing of a certain lot of belting, specifications have been so altered that the belt's flame resistance has been rendered ineffective or flammability is increased, an imminent hazard may arise. Upon suspension of an approval, the conveyor belt involved is no longer approved and MSHA will require mine operators to withdraw the conveyor belt from use during the course of any suspension. MSHA would also immediately advise the affected approval-holder of any suspension so effective corrective action could be started as soon as possible. The provisions of this paragraph, as proposed, are in accord with the APA.

Subpart B—Technical Requirements

Section 14.20 Flame resistance

This section is based upon joint work of BOM and MSHA to develop a revised test for flame resistance that would be more representative of the mining environment than the present test specified in § 18.65. It would require that conveyor belts be flame resistant when tested in accordance with the flame test specified in § 14.22.

Section 14.21 Belt flame test apparatus

This section describes the principal parts of the apparatus used for the flame test of conveyor belts. Copies of drawings which depict some aspects of the test apparatus would be available from MSHA upon request.

Paragraph (a) would require a horizontal test chamber (tunnel) 5.5 feet (1.68 m) long by 1.5 feet (0.46 m) square (inside dimension) which is constructed from 1-inch (2.5 cm) thick Marinite I, or

equivalent insulating material. Marinite I was selected because it is a noncombustible, insulating material that minimizes thermal losses through the walls and is able to withstand repeated test fires without cracking or warping. The chamber dimensions were established based upon comparison of test results with the large-scale belt flammability studies. Paragraph (b) describes a 16-gauge (0.16 cm) stainless steel duct section, tapering over at least a 24-inch (61 cm) length and lined with ½ inch (1.27 cm) thick ceramic blanket insulation or equivalent insulating material, that would connect the test chamber to a 1-foot (30.5 cm) diameter exhaust duct, or equivalent. Stainless steel would minimize corrosion and the tapered duct section would provide a smooth airflow to enter the exhaust duct. The tapered duct is lined with blanket insulation to minimize high duct temperatures and thermal expansion.

Paragraph (c) would require a U-shaped gas-fueled impinged jet burner igniting source. The U-tube would measure 12 inches (30.5 cm) long and 4 inches (10.2 cm) wide with two parallel rows of 6 jets each. The burner jets are canted so that they point toward each other in pairs and the flames from these pairs impinge upon each other. The burned fuel would be methane or natural gas of suitable purity. This burner was chosen because it is commercially available and provides a reliable, reproducible ignition source that can burn methane or natural gas. Use of the specified burner and gaseous fuel, in conjunction with the other parameters, resulted in agreement between the laboratory-scale (tunnel) test results with the large-scale belt flammability studies.

Paragraph (d) would require a removable steel rack, consisting of 2 rails and supports constructed from slotted angle iron, to hold a belt sample. The rack dimensions of 7 inches (17.8 cm) wide, 60 inches (152.4 cm) long and 5 inches (12.7 cm) between the rails would be specified in the proposal. MSHA and BOM consider these dimensions to be critical to the repeatability of the flammability tests. Typically, commercially available, 1-inch (2.5 cm) by 1¾ inch (4.4 cm) by ⅛ inch (0.3 cm) thick angle iron with predrilled ¼ inch (0.6 cm) diameter holes spaced 1-inch (2.5 cm) apart would be used. The top surface of the rack would be 8 ± ⅛ inches (22.9 ± 0.3 cm) from the inside roof of the test chamber. The rack materials and dimensions were selected so that the rack would adequately support the belt sample, withstand repeated tests with only minor warping due to heat and minimize the thermal mass due to the sample support method. The distance from the top surface of the rack to the inside roof of the test chamber was established based on comparison of the test results with the large-scale belt flammability studies.

Section 14.22 Test for flame resistance of conveyor belts

Paragraph (a) would specify the test procedures to be followed to determine the flame resistance of conveyor belts. It would specify that the test be conducted in the sequence described, as well as require the use of a flame test apparatus meeting the specifications of § 14.21. Paragraph (a)(1) would require 3 belt samples, 60±¼ inches (152.4±0.6 cm) long by 9±⅛ inches (22.9±0.3 cm) wide. The belt samples would be preconditioned by being laid flat at 70±10 °F (21±5 °C) for at least 24 hours prior to the test. The number of samples and the sample dimensions are based on comparison of the test results to the large-scale belt flammability studies. Preconditioning of the samples by laying them flat at 70±10 °F (21±5 °C) for a least 24 hours ensures that the samples are at laboratory temperatures, facilitates sample mounting and minimizes curling during the test. A conveyor belt that has been rolled prior to testing is more likely to rebound to the rolled position during testing. This action is considered "curling" and may lead to erroneous test results. Samples which have been rolled prior to testing can develop sufficient curling forces to overcome the holding capabilities of the cotter pins installed to retain the sample on the rack. Should curling occur, MSHA would be required to test additional samples to ensure reliable test results have been obtained. MSHA and BOM have determined, through their joint testing experience, that the use of flat, unrolled samples greatly reduces the occurrence of this phenomenon.

Paragraph (a)(2) would require that the belt sample be placed on the rails of the rack with the load bearing cover (top cover) up, as appropriate. In some cases, a belt may be constructed without having a designated top cover and would be mounted without regard to cover orientation. For example, many PVC belts are constructed with a solid woven carcass such that a top or bottom cover is not designated. Therefore, either side of the belt could be mounted as the load bearing cover. The sample would extend 1±⅛ inch (2.5±0.3 cm) beyond the front of the rails and about inch (2.5 cm) from the outer lengthwise edge of each rail. This would center the longitudinal axis of the sample along the centerline of the rack with about the first inch of the sample in the ignition area and not in contact with the rack. The 1-inch (2.5 cm) overlap facilitates ignition of the belt sample by minimizing the thermal heat sink created by the sample rack. A greater overlap would result in the sample curling or pulling back from the burner during the ignition period.

Paragraph (a)(3) would require that the belt sample be fastened to the rails of the rack by drilling (or punching) holes along the long edges of the sample and using square steel washers and cotter pins as fasteners. Each washer is typically ¾ inch (1.9 cm) square and 1/16 inch (0.2 cm) thick with a 3/16 inch (0.5 cm) diameter hole. A washer is placed over each sample hole and a cotter pin is inserted through the hole in the belt and rail. The cotter pin is spread apart to secure the sample to the rail. The locations of the fasteners were chosen so that the majority (6 of 10) would be in the ignition area to minimize the belt sample pulling away from the burner, or lifting and curling during the ignition period. Additional fasteners could be used in the ignition region for belts that lift excessively. The fasteners would facilitate the secure mounting of the belt sample. They are not of such size to influence the test results due to heat absorption, even if additional fasteners are used.

Paragraph (a)(4) would require that the rack and mounted sample be centered in the test chamber with the front end of the sample 6±½ inches (15.25±1.27 cm) from the entrance of the chamber. This location was selected to reduce the disturbance of the airflow entering the test chamber and was also based on comparison of the test results to the large-scale belt flammability studies.

Paragraph (a)(5) would require the airflow passing over the belt sample to be 200±20 ft/min (61±6 m/min) as measured by a nominal 4-inch (10.2 cm) diameter vane anemometer, or equivalent device, placed on the centerline of the belt about 1 foot (30.5 cm) from the chamber entrance. The airflow and measuring location were selected based on comparison of the test results with the large-scale belt flammability studies.

Paragraph (a)(6) would require that before the start of a test, the inner surface temperature of the chamber roof measured at points approximately 6, 30, and 60 inches (15.2, 76.2, and 152.4 cm) from the front entrance not exceed 95 °F (35 °C) at any of these points with the specified airflow passing through the chamber. The temperature of the air

entering the chamber during a test would also be required to be not less than 50 °F (10 °C). These temperature limits were selected to assure the reproducibility of the test results and to maintain the comparison obtained with the large-scale belt flammability studies.

Paragraph (a)(7) would specify the burner to be positioned in front of the belt sample's leading edge such that, when ignited, the flames from the two rows of jets impinge in front of the belt's edge and distribute uniformly on the top and bottom surfaces of the sample. This alignment of the burner would provide for uniform heating of the sample, which is necessary to maintain the consistency of the test results.

The exact burner orientation to provide for uniform distribution of flame on the top and bottom surfaces of the test sample may vary depending upon the belt sample's thickness. Based upon comparison tests and experience gained in developing the proposed flame test procedure, the burner must be canted downward, at about a 15° angle, and located about ¾-inch (1.9 cm) in front of the sample's leading edge. Tilting of the burner compensates for the buoyancy of the burner flames. The burner alignment to be used may be determined by experimental means prior to igniting the samples under test.

Paragraph (a)(8) would require that the gas flow to the burner be adjusted to 1.2 ± 0.1 standard cubic feet per minute (SCFM) (34 ± 2.8 liters per minute) and be maintained at this value throughout the ignition period. One standard cubic foot is defined as the amount of gas which occupies one cubic foot at 72 °F and one atmosphere pressure (1 cubic liter at 22 °C and 101 kPa). The specified gas flow provides a stable flame and was selected based on comparison of the test results with the large-scale belt flammability studies.

Paragraph (a)(9) would require that the burner flame be applied to the front edge of the belt sample for an ignition period of 5.0 to 5.1 minutes. At the conclusion of the ignition period, the burner would be lowered and its flame extinguished. This ignition period was based on comparison of the test results with the large-scale belt flammability studies.

After completion of the test, paragraph (a)(10) would require the undamaged portion across the entire width of the sample be determined. Blistering, without charring, would not be considered damage since blistering could result from the effects of heat rather than the presence of flame. Determining the undamaged portion across the entire width of the sample is necessary for specifying acceptable performance.

Paragraph (b) would require, for acceptable belt performance that each of the tested samples exhibit an undamaged portion across its entire width. This criteria was established based on comparison of the test results with the large-scale belt flammability studies.

Paragraph (c) would specify that MSHA reserves the right to modify the test requirements for flame resistance of conveyor belts constructed with thicknesses of more than ¾-inch (1.9 cm). Extensive flame testing of belts of this thickness (more than ¾-inch (1.9 cm)) has not been conducted because insufficient quantities of these belts have been available for testing. Therefore, the test results cannot be sufficiently predicted. As information becomes available, MSHA may need to modify the testing apparatus and procedures to provide comparison of test results between the large-scale belt flammability test and the tests specified in this subpart for belts with thicknesses of more than ¾-inch (1.9 cm).

Section 14.23 New technology.

This section is derived from existing § 18.20(b). The wording would be consistent with that used for the new technology provisions in parts 7 and 15 and would allow MSHA to approve a conveyor belt which incorporates technology for which the requirements of this part are not applicable, provided the Agency determines that the conveyor belt is as safe as those which meet the requirements of this part.

Part 75—Conforming Amendments

The proposal to MSHA's current requirements for acceptance of conveyor belts as flame resistant would also necessitate certain conforming amendments to the agency's safety standards for underground coal mines in 30 CFR part 75. Currently, MSHA's standard at § 75.1108 requires that all conveyor belts purchased for use underground be flame resistant according to specifications established by the Secretary. Further, § 75.1108–1 specifies that conveyor belts which are approved as flame resistant under part 18 meet the requirements of § 75.1108. The proposal would modify these existing standards to require the acquisition of conveyor belts evaluated by MSHA as flame resistant under the revised flame test.

The revised test, as discussed earlier, would identify conveyor belts that are both difficult to ignite and also self-extinguishing under the test conditions. Therefore, conveyor belts passing the revised test would not only be resistant to ignition, but also highly resistant to flame propagation.

Several benefits are expected to accrue from the use of belts meeting the revised flame resistance test. These belts would reduce the number of fires in belt entries because propagation of fire would be severely limited. In turn, the probability that combustibles in the belt entry would ignite would be reduced.

MSHA believes that the fires that do occur in belt entries would be more quickly extinguished because the belt would not readily contribute to fire propagation. The severity of the fire and it potential for exposing miners to hazards would thus be reduced. Therefore, belts meeting the revised flame resistance test would reduce the number and the size of fires in the belt entry and, in so doing, the potential for disaster.

As set out in the proposal, the revisions to part 75 would take effect in two stages. The proposed timetable is intended to introduce conveyor belt that has demonstrated increased flame-resistant qualities soon after the product is anticipated to be commercially available. Further, it would replace part 18 belt with belts meeting the revised test as belts are purchased for use in mines on and after a proposed date. This parallels the existing § 75.1108 statutory requirement which states that belt purchased for use in mines on and after a specified date be flame resistant.

The first change to part 75 would become effective at the same time that the revised approval requirements for conveyor belts in part 14 would take effect, i.e., 60 days after publication of the final rule. The proposal would amend § 75.1108–1 to state that, in addition to belts accepted as flame resistant under part 18, conveyor belts approved or accepted by MSHA as flame resistant using the revised flame test under either part 14 or the voluntary acceptance program would meet the requirements of § 75.1108. This modification explicitly would acknowledge the acceptability of a belt which passes the revised flame test as complying with the specifications of the Secretary. The conveyor belts which would be evaluated and accepted under the voluntary acceptance program have demonstrated a much higher degree of flame resistance compared to belts tested under § 18.65. For this reason, MSHA would consider belts accepted under the voluntary program to be comparable to belts approved under proposed part 14 and thus permitted to be used underground.

The second phase, being proposed now, would take effect one year later. At

that time, § 75.1108–1 would be amended by adding a new paragraph to require that all conveyor belts purchased for use in underground coal mines on and after one year from the effective date of part 14 be approved by MSHA as flame resistant under part 14 or accepted by MSHA as flame resistant under the voluntary acceptance program. Mine operators would be able to use part 18 approved belt inventories in their possession which were purchased prior to one year from the effective date of the final rule. After that inventory of part 18 belts is exhausted and existing part 18 belts wear out, the operator would be required to purchase belts meeting the revised flame test.

MSHA believes that a one year period would provide sufficient time for conveyor belt manufacturers to produce and make available to mine operators commercial quantities of conveyor belt meeting the revised flame test. This belief is based upon several factors. Belt manufacturers have been aware of, and monitoring the development of, a revised flame test for conveyor belts since BOM and MSHA initiated their belt fire studies in 1985. As the Government's work on the revised test progressed, belt producers were engaged in research and development to formulate belts that would pass a revised test addressing propagation of fire.

On January 19, 1989, MSHA held a public meeting to discuss the development of a revised laboratory-scale flame resistance test (54 FR 1802). At that time, the Agency, in conjunction with BOM, announced its willingness to test belts using the laboratory scale belt flame test apparatus at no charge. Many manufacturers have submitted samples of their conveyor belts to BOM and MSHA for this testing. As of December 1, 1991, fifteen manufacturers have had one or more different belt constructions demonstrate the ability to pass the revised test for flame resistance. These include both rubber and PVC formulations.

In addition, as indicated earlier, MSHA is implementing a voluntary acceptance program to evaluate the flame resistance of conveyor belt using the revised flame test set out in the proposal. MSHA would require belts meeting the performance criteria after testing to be marked with an acceptance number. The acceptance number would identify those belts as meeting the revised flame resistance test. The agency is aware that some manufacturers have already received orders from mine operators for belts which would pass the revised test. Further, when compatible belts identified by MSHA as having passed the revised flame resistance test become commercially available, mine operators with granted modifications under § 75.326 to use belt air to ventilate will be required to purchase belts meeting the revised test.

The Agency anticipates that manufacturers' participation in the voluntary program will result in sufficient quantities and types of improved flame-resistant conveyor belt being available for purchase by mine operators after one year. However, MSHA solicits information specifically from manufacturers on whether this time period is adequate to supply mine operators with the kind and quantity of belt needed for use in underground coal mines.

Derivation Table

The following derivation table lists: (1) Each section number of the proposed rule (New Section) and (2) the section number of the existing standard from which the proposed section is derived (Old Section).

New section	Old section
14.1	18.1.
14.2	18.2.
14.3	18.9(a).
14.4	18.6.
14.5	18.6(g) and 18.6(h).
14.6	18.10.
14.7	18.65(f).
14.8	New.
14.9	18.9.
14.10	New.
14.11	18.16.
14.20	New.
14.21	New.
14.22	New.
14.23	18.20(b)

Distribution Table

The following distribution table lists: (1) Each section number of the existing standard (Old Section) and (2) each section number of the proposed part 14 (New Section).

Old section	New section
18.1	14.1.
18.2	14.2.
18.6	14.4 and 14.5.
18.9	14.3 and 14.9.
18.10	14.6.
18.16	14.11.
18.20(b)	14.23.
18.65(f)	14.7.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify the potential costs and benefits associated with subpart B. This analysis has formed the basis for the Preliminary Regulatory Impact Analysis (PRIA). In this analysis, MSHA has determined that this rule neither results in major cost increases nor has an effect of $100 million or more on the economy. A copy of the PRIA is available upon request.

MSHA estimates that the annual cost of the proposed rule to mine operators would be between $6.7 million and $8.2 million. As belt manufacturers incur increased research and development cost, their cost would be about $1.2 million the first year, $467,000 the second year, and about $36,500 each year thereafter.

There have been 307 reportable fires in underground coal mines since 1970. Of these, 42 fires involved the conveyor belt and as much as 2,000 feet (600 m) of belt has burned before a fire could be extinguished. One miner suffered a fatal heart attack fighting a conveyor belt fire. Another miner suffered a non-fatal heart attack and several miners have had to be hospitalized and treated for smoke inhalation. The conveyor belt meeting the revised test is expected to be difficult to ignite and extremely resistant to flame propagation. Thus, the number and size of fires in the belt entry will be reduced, as will the potential for disaster.

The Agency has not proposed exemption of small mines from any provision of the proposal. Of the approximately 1,800 underground coal mines affected by the proposed rule, MSHA estimates that 969 are small businesses employing fewer than 20 miners. The annual cost of compliance per miner is estimated to be between $50 and $70 in a small underground coal mine. This cost represents less than 0.095 percent of the average small mines value of shipments.

The Agency solicits comments and data on how the proposed rule would affect all belt manufacturers and all underground coal mines, including small manufacturers and small mine operators. In particular, MSHA requests information on: (1) The quantity of belt currently in use that would pass the proposed test; (2) the size of the market for used underground conveyor belt; (3) the cost of belt that will pass the revised flame test ("new" belt) versus belt that passes the current flame test ("old" belt); (4) whether costs of the "new" belt will decline as production increases and by how much; and (5) whether "new" belts are compatible with "old" belts, with existing hardware, and whether PVC and rubber belts can be spliced together.

V. Metric Measurements

Under section 5164 of the Omnibus Trade and Competitiveness Act of 1988, MSHA intends to begin providing both

metric and English specifications in its rules to assist industry in converting to metric measurements where appropriate. In most cases, the conversion from English units to metric units was made by rounding to one decimal place. However, where tolerances are indicated, rounding of the metric measurement was made to two decimal places to keep the numbers within tolerances. MSHA requests comments on the metric conversion and equivalences of the English inch-pound measurements in this proposed rule.

List of Subjects in 30 CFR Part 14

Approval of equipment, Mine safety and health, Underground mining.

Dated: December 18, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

It is proposed that chapter I of title 30, of the Code of Federal Regulations be amended as follows:

1. Add a new part 14 to subchapter B chapter I, title 30 of Code of Federal Regulations to read as follows:

PART 14—REQUIREMENTS FOR APPROVAL OF FLAME-RESISTANT CONVEYOR BELT

Subpart A—General

Sec.
14.1 Purpose and effective date.
14.2 Definitions.
14.3 Observers at tests and evaluations.
14.4 Application procedures and requirements.
14.5 Test samples.
14.6 Issuance of approval.
14.7 Approval marking and distribution records.
14.8 Quality assurance.
14.9 Disclosure of information.
14.10 Post-approval product audit.
14.11 Revocation.

Subpart B—Technical Requirements

14.20 Flame resistance.
14.21 Belt flame test apparatus.
14.22 Test for flame resistance of conveyor belts.
14.23 New technology.

Authority: 30 U.S.C. 957.

Subpart A—General

§ 14.1 Purpose and effective date.

This part establishes the flame resistance requirements for MSHA approval of conveyor belts for use in underground mines. Applications for approval or extension of approval submitted after [60 DAYS FROM PUBLICATION OF THE FINAL RULE] shall meet the requirements of this part.

§ 14.2 Definitions.

The following definitions apply in this part.

Applicant. An individual or organization that manufactures or controls the production of a conveyor belt and that applies to MSHA for approval of that conveyor belt.

Approval. A document issued by MSHA which states that a conveyor belt has met the requirements of this part and which authorizes an approval marking identifying the conveyor belt as approved.

Conveyor belt. A flexible strip of material typically constructed of interwoven or fabric plies and polymeric compounds which is used to transport coal or other extracted minerals.

Extension of approval. A document issued by MSHA which states that the change to a product previously approved by MSHA under this part meets the requirements of this part and which authorizes the continued use of the approval marking after the appropriate extension number has been added.

Load bearing cover. The cover of a conveyor belt upon which extracted minerals are conveyed.

Post-approval product audit. Examination, testing, or both, by MSHA of an approved conveyor belt selected by MSHA to determine whether it meets the technical requirements and has been manufactured as approved.

§ 14.3 Observers at tests and evaluations.

Only personnel of MSHA and the Bureau of Mines, U.S. Department of the Interior, representatives of the applicant and such other persons as agreed upon by MSHA and the applicant shall be present during tests and evaluations conducted under this part.

§ 14.4 Application procedures and requirements.

(a) *Application.* Requests for an approval or an extension of an approval under this part shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, P.O. Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

(b) *Fees.* Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

(c) *Approval.* Each application for approval of a conveyor belt shall include the following, except that any document which is the same as the one listed by MSHA in a prior approval need not be submitted. Such documents shall be noted in the application.

(1) A technical description of the conveyor belt which includes—

(i) Trade name or identification number;

(ii) Cover compound type and designation number;

(iii) Belt thickness and thickness of top and bottom covers;

(iv) Presence and type of skim coat;

(v) Presence and type of friction coat;

(vi) Carcass construction (number of plies, solid woven);

(vii) Carcass fabric by textile type and weight (ounce per square yard);

(viii) Presence and type of breaker or floated ply; and

(ix) The number, type and size of cords for metal cord belts.

(2) Formulation information on the compounds in the conveyor belt by either—

(i) Specifying each ingredient by its chemical name along with its percentage (weight) and tolerance of percentage range, or;

(ii) Specifying each flame retardant ingredient by its chemical or generic name with its percentage and tolerance or percentage range or its minimum percent. List each flammable ingredient by chemical, generic, or trade name along with the total percentage of all flammable ingredients. List each inert ingredient by chemical, generic, or trade name along with the total percentage of all inert ingredients.

(3) The name, address and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(4) Identification of any similar conveyor belt for which the applicant already holds an approval by including—

(i) The MSHA assigned approval number of the conveyor belt which most closely resembles the new one, and

(ii) An explanation of any changes from the existing approval.

(d) *Extension of approval.* Any change in an approved conveyor belt from the documentation on file at MSHA that affects the technical requirements of this part shall be submitted for approval prior to implementing the change. Each application for an extension of approval shall include—

(1) The MSHA-assigned approval number for the conveyor belt for which the extension is sought;

(2) A description of the proposed change to the conveyor belt; and

(3) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(e) MSHA will determine if testing, additional information, samples, or material are required to evaluate an application. If the applicant believes that flame testing is not required, a

statement explaining the reasons for not testing shall be included in the application.

§ 14.5 Test samples.

Upon request by MSHA, the applicant shall submit 3 unrolled, flat conveyor belt samples for flame testing. Each sample shall be 60±¼-inches long (152.4±0.6 cm) long by 9±⅛-inches (22.9±0.3 cm) wide.

§ 14.6 Issuance of approval.

(a) MSHA will issue an approval or a notice of the reasons for denying approval after completing the evaluation and testing provided for by this part.

(b) An applicant shall not advertise or otherwise represent a conveyor belt as approved until MSHA has issued an approval.

§ 14.7 Approval marking and distribution records.

(a) An approved conveyor belt shall be marketed only under the name specified in the approval.

(b) Approved conveyor belt shall be legibly and permanently marked for the usable life of the belt with the assigned MSHA approval number. The approval marking shall be at least ½-inch (1.27 cm) high, placed at intervals not exceeding 60 feet (18.3 m) and repeated at least once every foot (30.5 cm) across the width of the belt.

(c) Where construction of the conveyor belt does not permit marking in accordance with the foregoing, other permanent marking may be accepted by MSHA.

(d) Applicants shall maintain records of the initial sale of each belt having an approval marking. The record retention period shall be at least the expected service life of the belt.

§ 14.8 Quality assurance.

Applicants granted an approval or an extension of approval under this part shall—

(a) Flame test a sample of each batch or lot of conveyor belts or inspect, test, or both, a sample of each batch or lot of the materials that contribute to the flame-resistance characteristic to ensure that the finished product will meet the flame-resistance test.

(b) Calibrate instruments used for the inspection and testing in paragraph (a) of this section at least as frequently as, and according to, the instrument manufacturer's specifications, using calibration standards traceable to those set by the National Institute of Standards and Technology, U.S. Department of Commerce or other nationally recognized standards and use instruments accurate to at least one significant figure beyond the desired accuracy.

(c) Control production documentation so that the product is manufactured as approved.

(d) Immediately report to the MSHA Approval and Certification Center, any knowledge of a conveyor belt that has been distributed that does not meet the specifications of the approval.

§ 14.9 Disclosure of information.

(a) All information concerning product specifications and performance submitted to MSHA by the applicant shall be considered proprietary information.

(b) MSHA will notify the applicant of requests for disclosure of information concerning its conveyor belts and shall give the applicant an opportunity to provide MSHA with a statement of its position prior to any disclosure.

§ 14.10 Post-approval product audit.

(a) Approved conveyor belts shall be subject to periodic audits by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. Any approved conveyor belt which is to be audited shall be selected by MSHA and be representative of those distributed for use in mines. Upon request the approval-holder may obtain any final report resulting from such audit.

(b) No more than once a year, except for cause, the approval-holder at MSHA's request, shall make 3 samples of an approved conveyor belt available at no cost to MSHA for an audit. The approval-holder may observe any tests conducted during this audit.

(c) An approved conveyor belt shall be subject to audit for cause at any time MSHA believes that it is not in compliance with the technical requirement upon which the approval was based.

§ 14.11 Revocation.

(a) MSHA may revoke for cause an approval issued under this part if the conveyor belt—

(1) Fails to meet the technical requirements; or

(2) Creates a hazard when used in a mine.

(b) Prior to revoking an approval, the approval-holder shall be informed in writing of MSHA's intention to revoke. The notice shall—

(1) Explain the specific reasons for the proposed revocation; and

(2) Provide the approval-holder an opportunity to demonstrate or achieve compliance with the product approval requirements.

(c) Upon request, the approval-holder shall be afforded an opportunity for a hearing.

(d) If a conveyor belt poses an imminent hazard to the safety or health of miners, the approval may be immediately suspended without a written notice of the Agency's intention to revoke. The suspension may continue until the revocation proceedings are completed.

Subpart B—Technical Requirements

§ 14.20 Flame resistance.

Conveyor belts shall be flame resistant when tested in accordance with the test for flame resistance specified in § 14.22 of this part.

§ 14.21 Belt flame test apparatus.

The principal parts of the apparatus used to test for flame resistance of conveyor belts are as follows—

(a) A horizontal test chamber 5.5 feet (1.68 m) long by 1.5 feet (0.46 m) square (inside dimensions) constructed from 1-inch (2.5 cm) thick Marinite I, or equivalent insulating material.

(b) A tapered 16-gauge (0.16 cm) stainless steel duct section tapering over a length of at least 24 inches (61 cm) from a 20-inch (51 cm) square cross-sectional area at the test chamber to a 1 foot (30.5 cm) diameter exhaust duct, or equivalent. The interior surface of the tapered duct section is lined with ½-inch (1.27 cm) thick ceramic blanket insulation, or equivalent insulating material. The tapered duct must be tightly connected to the test chamber.

(c) A U-shaped gas-fueled impinged jet burner ignition source, measuring 12 inches (30.5 cm) long and 4 inches (10.2 cm) wide, with two parallel rows of 6 jets. Each jet is spaced alternately along the U-shaped burner tube. The 2 rows of jets are canted so that they point toward each other and their flames impinge upon each other in pairs. The burner fuel is at least 98 percent methane (technical grade, or natural gas containing at least 96 percent combustible gases which includes not less than 93 percent methane.)

(d) A removable steel rack, consisting of 2 parallel rails and supports that form a 7-inch (17.8 cm) wide by 60-inch (152.4 cm) long assembly to hold a belt sample. The 2 rails, with a 5-inch (12.7 cm) space between them, comprise the top of the rack. The rails are constructed of slotted angle iron with holes along the top surface. The top surface of the rack shall be 8 ± ⅛ inches (20.3 ± 0.3 cm) from the inside roof of the test chamber.

§ 14.22 Test for flame resistance of conveyor belts.

(a) *Test procedures.* The test is conducted in the following sequence using a flame test apparatus meeting the specifications of § 14.21 of this part—

(1) Lay three samples of the belt, 60±¼-inches (152.4±0.6 cm) long by 9±⅛-inches (22.9±0.3 cm) wide, flat at 70±10 °F (21±5 °C) for at least 24 hours prior to the test.

(2) For each test, place a belt sample with the load bearing cover up, as appropriate, on the rails of the rack so that the sample extends 1±⅛-inch (2.5±0.3 cm) beyond the front of the rails and about 1 inch (2.5 cm) from the outer lengthwise edge of each rail.

(3) Fasten the sample to the rails of the rack with steel washers and cotter pins of such length that at least ¾-inch (1.9 cm) extends below the rails. Equivalent fasteners may be used. Make a series of 5 holes, about 9/32-inch (0.7 cm) in diameter along both edges of the belt sample starting at the first rail hole within 2 inches (5.1 cm) from the front edge of the sample. Make the next hole about 5 inches (12.7 cm) from the first, the third about 5 inches (12.7 cm) from the second, the fourth about midway along length of sample, and the fifth near the end of the sample. After placing a washer over each sample hole, insert a cotter pin through the hole and spread it apart to secure the sample to the rail.

(4) Center the rack and sample in the test chamber with the front end of the sample 6±½ inches (15.25±1.27 cm) from the entrance.

(5) Measure the airflow with a nominal 4-inch (10.2 cm) diameter vane anemometer, or an equivalent device, placed on the centerline of the belt about 1 foot (30.5 cm) from the chamber entrance. Adjust the airflow passing through the chamber to 200±20 ft/min (61±6 m/min).

(6) Before starting, the inner surface temperature of the chamber roof measured at points approximately 6, 30, and 60 inches (15.2, 76.2, and 152.4 cm) from the front entrance of the chamber, shall not exceed 95 °F (35 °C) at any of these points with the specified airflow passing through the chamber. The temperature of the air entering the chamber during a test shall not be less than 50 °F (10 °C).

(7) Center the burner in front of the sample's leading edge with the plane, defined by the tips of the burner jets, approximately ¾-inch (1.9 cm) from the front edge of the belt.

(8) With the burner lowered away from the sample, set the gas flow at 1.2±0.1 standard cubic feet per minute (SCFM) (34±2.8 liters per minute) and ignite the gas. Maintain the gas flow throughout the ignition period.

(9) After applying the burner flame to the front edge of the sample for a 5.0 to 5.1 minute ignition period, lower the burner away from the sample and extinguish the burner flame.

(10) After completion of the test, determine the undamaged portion across the entire width of the sample. Blistering without charring does not constitute damage.

(b) *Acceptable performance.* For 3 tested samples, each sample shall exhibit an undamaged portion across its entire width.

(c) MSHA reserves the right to modify the procedures of the flammability test for belts constructed of thickness more than ¾-inch (1.9 cm) to provide agreement with results of the large-scale belt flammability tests on these belts.

§ 14.23 New technology.

MSHA may approve a conveyor belt that incorporates technology for which the requirements of this part are not applicable if the Agency determines that the conveyor belt is as safe as those which meet the requirements of this part.

PART 18—[AMENDED]

2. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

§ 18.1 [Amended]

3. Section 18.1 is amended by revising the phrase "cables, hoses and conveyor belts" to read "cables or hoses".

§ 18.2 [Amended]

4. Section 18.2 is amended by revising the phrase "cable, hose or conveyor belt" in the definitions of "Acceptance", "Acceptance Marking", and "Applicant" to read "cable or hose" and removing the definition for "Fire-resistant".

§ 18.6 [Amended]

5. Section 18.6(a) is amended by revising the phrase "cables, hose or conveyor belt" to read "cables or hose".

6. Section 18.6(c) is removed and reserved.

7. Section 18.6(i) is amended by revising the phrase "cable, hose or conveyor belt" to read "cable or hose" and removing the words "conveyor belt—a sample of each type 8 inches long cut across the entire width of the belt."

§ 18.9 [Amended]

8. Section 18.9(a) is amended by revising the phrase "cable, hose or conveyor belt" to read "cable or hose".

§ 18.65 [Amended]

9. Section 18.65 is amended in the heading by removing the phrase "conveyor belting and" and removing and reserving paragraph (a)(1) and removing and reserving paragraph (f)(1).

10. Section 18.94(a)(2) is revised to read as follows:

§ 18.94 Application for field approval; contents of application.

(a) * * *

(2) The trade name and the flame resistance acceptance or approval number of any cable, cord, hose, or conveyor belt installed on the machine for which prior acceptance or approval by MSHA has been issued.

* * * * *

PART 75—[AMENDED]

11. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

12. Revise § 75.1108–1 to read as follows:

§ 75.1108–1 Approved conveyor belts.

(a) Effective [60 DAYS FROM PUBLICATION OF THE FINAL RULE] conveyor belts meet the requirements of § 75.1108 if they are—

(1) Approved by MSHA as flame resistant under part 14;

(2) Accepted by MSHA as flame resistant under the voluntary acceptance program; or

(3) Accepted by MSHA as flame resistant under part 18.

(b) On and after [ONE YEAR FROM EFFECTIVE DATE OF THE FINAL RULE] all conveyor belts purchased for use in underground coal mines shall be approved by MSHA as flame resistant under part 14 or accepted by MSHA as flame resistant under the voluntary acceptance program.

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December 24, 1992

Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Operation and Maintenance of Machinery and Equipment in Underground Coal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA80

Safety Standards for Operation and Maintenance of Machinery and Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's (MSHA) safety standard, which addresses the operation and maintenance of equipment in underground coal mines. The revision would clarify that adding or removing conveyor belting is a maintenance activity covered by the standard.

DATE: All comments and information must be submitted by February 22, 1993.

ADDRESS: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no paperwork requirements.

II. Background

MSHA is proposing to revise its existing safety standard that applies to mechanical work on equipment in underground coal mines. The revision would clarify that adding or removing conveyor belting would be considered maintenance for purposes of 30 CFR 75.1725(c). This revision is proposed under section 101 of the Federal Mine Safety and Health Act of 1977, (30 U.S.C. 811).

On June 25, 1992, the Federal Mine Safety and Health Review Commission (FMSHRC) issued a decision in the case of Southern Ohio Coal Co., 14 FMSHRC 978. In that decision, the Commission reversed an administrative law judge's decision, and concluded in part that extending the conveyor belt, which the mine operator was doing, did not constitute "maintenance" within the meaning of 30 CFR 75.1725(c).

The Commission held that the judge misinterpreted the definition of "maintenance." The Commission determined that the judge's literal interpretation of the terms "maintenance" and "extension" was incorrect when applied to the actual work of extending the belt. Instead, the Commission interpreted the term "maintenance" to mean the act of keeping something in a state of repair or in good order. The Commission concluded that a belt extension was an improvement rather than maintenance, as it shortened the distance between the belt's feeder and the working face.

The accident that gave rise to the case occurred on May 5, 1989, and was followed by the issuance of a citation during MSHA's accident investigation. On the day of the accident a work crew was extending a belt approximately 100 feet toward the face of the mine when the deenergized belt was restarted in order to remove slack from the belt. When the belt was restarted, one miner who was still working on the belt, was caught in a belt chain and thrown from the belt, sustaining an injury to his leg.

The Commission decision also raised other safety issues related to maintenance and repair of mechanical equipment. The Agency also is considering whether other safety procedures are necessary to protect miners while performing work on mechanical equipment.

III. Discussion of Proposed Rule

MSHA's existing standard in 30 CFR 75.1725(c) allows repairs or maintenance on machinery only when the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. Since promulgation of this standard in 1973, the Agency has consistently interpreted the requirement to include the types of activities that this revision would address.

The proposed rule would revise paragraph (c) of § 75.1725 to clarify that activities involved in adding or removing conveyor belting are considered maintenance. MSHA believes this revision would eliminate confusion with respect to enforcement of this standard. This approach is consistent with current enforcement of this provision.

Moving or extending conveyor belts becomes necessary as mining progresses and penetrates deeper into the coal seam. The hazards that miners are exposed to while extending the conveyor belt are essentially the same as those involved in more routine belt maintenance such as replacement of rollers and installing and splicing new sections of belt. Similar hazards exist when conveyor belts are shortened by removing belt as mining sections retreat. Therefore, MSHA believes that it is important to clarify that power must be removed from conveyor belts when these activities take place.

IV. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis (RIA) be done for any rule that would have an annual effect of $100 million or more on the economy or result in a major increase in costs or prices for consumers or individual industries. The Agency has determined that the revision would not be a major action.

The Regulatory Flexibility Act requires that agencies evaluate the potential economic impact of any regulatory actions on small entities. MSHA has determined that this proposal would not have a significant economic impact on a substantial number of small entities.

It is standard operating procedure for mine operators to deenergize electrical equipment before performing maintenance on such equipment, including extending or shortening the conveyor belt. The Agency contends that the proposed revision would clarify the regulatory language to reflect more accurately the existing requirements which have been enforced since the standard was promulgated originally in 1973.

List of Subjects in 30 CFR Part 75

Mandatory safety standards, Mine safety and health, Underground coal mines.

Dated: December 18, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, subchapter O, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.1725 is proposed to be amended by revising paragraph (c) to read as follows:

§ 75.1725 Machinery and equipment; operation and maintenance.

* * * * *

(c) Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make

adjustments. All activities involved in adding or removing conveyor belting are considered maintenance for purposes of this paragraph.

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Part VII

Environmental Protection Agency

40 CFR Part 261

Suspension of Toxicity Characteristics Rule for Non-UST Petroleum Product-Contaminated Media and Debris; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-4548-6]

Suspension of the Toxicity Characteristics Rule for Non-UST Petroleum Product-Contaminated Media and Debris

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to suspend the Toxicity Characteristics (TC) rule (Hazardous Waste Codes D018 through D043 only) for three years for environmental media and debris contaminated by petroleum products released from sources other than RCRA subtitle I-regulated underground storage tanks (hereafter, these releases and sources of release will be referred to as "non-UST"). During the three year suspension, the Agency would collect additional data, perform additional analyses, and explore other administrative and legal mechanisms to better tailor RCRA regulatory requirements to the unique issues associated with remediation of petroleum releases. The suspension would be applicable only in states that certify that they have in place effective authorities and programs to compel cleanup of non-UST petroleum product spills and control the disposition of wastes generated from such cleanup actions. The suspension would apply only to wastes generated from state supervised or approved cleanup sites, and sites being remediated under Federal authorities.

DATES: Written comments on this proposed rule should be submitted on or before February 8, 1993.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS-305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference number F-92-STPP-FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260-9327. Copies of docket materials may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: General questions about the regulatory requirements under RCRA should be directed to the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 260-3000 (local). For the hearing impaired, the number is (800) 553-7672 (toll-free), or (202) 260-9652 (local).

Specific questions about the issues discussed in this proposed rule should be directed to David M. Fagan, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4740.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are issued under the authority of sections 2002 and 3001 *et seq.* of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6912 and 6921 *et seq.*

II. Background

A. Toxicity Characteristics Rule

1. General

Under current regulations, EPA uses two procedures to define wastes as hazardous: *Listing and hazardous characteristics*. The listing procedure involves identifying industries or processes that produce wastes that pose hazards to human health and the environment. The second procedure involves identifying properties or "characteristics" that, if exhibited by any waste, indicate a potential hazard if the waste is not properly managed. Toxicity is one of four characteristics that must be considered when identifying a waste as hazardous. The others are ignitability, reactivity, and corrosivity.

The Toxicity Characteristics (TC) Rule was promulgated on March 29, 1990, 55 FR 11798 (March 29, 1990), was amended on June 29, 1990, and became effective on September 25, 1990. The TC rule has three main features. First, it replaced the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP). Second, it added 25 organic chemicals to the list of toxic constituents of concern and established regulatory levels for these organic chemicals. These levels were based on health-based concentration thresholds and a dilution/attenuation factor (DAF) that was developed using a subsurface fate and transport model. (A concentration threshold indicates how much of a chemical adversely affects human health, while the dilution/attenuation factor indicates the extent to which the concentration of a chemical is expected to be reduced during transport to and through ground water. The levels set in the TC rule were determined by multiplying the health-based number by a dilution/attenuation factor of 100.

The overall effect of the TC rule was to subject additional wastes to regulatory control under subtitle C of RCRA. A waste may be a "TC waste" if any of the chemicals listed in the rule, such as benzene, are present in waste sample extract (i.e. leachate) resulting from application of the TCLP to that waste. If chemicals are present at or above the specified regulatory levels, the waste is a "TC waste," and is subject to all RCRA hazardous waste requirements. Among these wastes are petroleum contaminated media and debris that fail the TC.

2. Deferral of the Application of the TC Rule to Petroleum Contaminated Media and Debris From Subtitle I—Regulated Underground Storage Tanks

Also on March 29, 1990, the Agency made a decision to defer a final determination regarding the application of the TC to media and debris contaminated with petroleum from underground storage tanks (USTs) subject to the part 280 (*i.e.* RCRA Subtitle I corrective action) requirements. 55 FR 11836. The UST regulations governing cleanups at these sites were deemed adequate to protect human health and the environment in the interim.

At that time the Agency had insufficient information concerning the full impact of the TC rule on UST cleanups, particularly regarding the amount of contaminated media that would become hazardous waste and the type of management feasible and appropriate for such waste (*e.g.* on-site treatment, off-site disposal). However, available information suggested that the impact might be very severe in terms of the administrative feasibility for both the subtitle C and subtitle I programs. In addition, a preliminary assessment indicated that the number of UST cleanup sites and the amount of media and debris at each site that would exhibit the toxicity characteristic could be extremely high, with EPA expecting hundreds of thousands of UST releases to be uncovered in the next few years. EPA believed that subjecting each of these sites to subtitle C requirements could overwhelm the hazardous waste

permitting program and the capacity of existing hazardous waste treatment, storage, and disposal facilities. Moreover, EPA believed that the imposition of these requirements could delay cleanups significantly, require an enormous commitment of federal resources, and undermine the State and local focus of the UST program.

The application of the TC rule to UST cleanups was deferred to allow cleanups under the UST program to proceed while the Agency evaluated the extent and nature of the impacts of Subtitle C on the UST program. Specifically, the Agency is currently studying the characteristics of UST sites (*i.e.* number of UST sites by media type, volumes of media and debris typically removed, fraction of these media and debris that exhibit the TC, if any, etc.), current practices and requirements for management of these media and debris, and how contaminated media and debris from these sites are managed under the Subtitle I state programs. The Agency is also evaluating the impact that Subtitle C management of petroleum-contaminated media and debris from USTs would have on the Agency's and States' hazardous waste management programs. In addition, the inclusion of these media and debris in the Subtitle C management system is being evaluated in comparison to the available capacity for commercial hazardous waste treatment, storage, and disposal. EPA is also studying whether the Agency can make regulatory changes to the subtitle C program which will better tailor the current hazardous waste rules to these particular current hazardous waste rules to these particular types of wastes and the context in which they are managed. (See 57 FR 21450, May 20, 1992.) The Agency plans to complete these studies later in 1992 and make its final determination early in 1993.

B. State Petitions for Rulemaking

Since the Agency announced its decision to defer the TC for UST petroleum contaminated media and debris, a number of States and other affected parties have requested that EPA consider expanding the deferral to include other petroleum contaminated media and debris. In particular, rulemaking petitions were received from the States of New York, Nevada, South Dakota, North Dakota, Maryland, and Maine, requesting that the current UST deferral be expanded to media contaminated from surface and subsurface discharges of petroleum products (from non-UST sources) that are currently being adequately addressed by existing State programs. In addition, the Agency has received letters from several other States which support the requests, concerns, and ideas expressed in the above-mentioned petitions.

The States believe that the numbers and volumes of petroleum releases from non-UST sources almost certainly exceed those from USTS. They argue that there is no technical basis for distinguishing between contaminated media and debris generated from UST cleanups (which is not subject to RCRA subtitle C), and that generated from other cleanups (which potentially is subject). In addition, this distinction presents substantial difficulties for the regulated community, which must determine whether a specific spill derives from an UST or from other sources, and it severely complicates enforcement.

These States further state that they have active and effective response programs for cleanup of spills and other releases of petroleum into the environment. For example, New York has an extensive petroleum cleanup program that, in its judgment, places a stringent set of requirements on petroleum-contaminated media. In New York, any soil left on site must be treated to the point where the extract from a TCLP test meets the New York State groundwater standard for benzene of 5 ppb.

According to the petitioning States, the toxicity characteristics rule has seriously impacted the operations and effectiveness of their programs. For example, in North Dakota the advent of the TC rule placed several existing environmental control rules and programs in conflict with each other. Reclassifying certain petroleum releases as hazardous waste that were previously handled outside of the hazardous waste program by the state above-ground storage tanks program, potentially places an extreme burden on that State's Hazardous Waste Program. In general, States argue that application of the toxicity characteristic to petroleum contaminated media and debris will place extraordinary demands on the RCRA permit program, which in turn could severely affect States' efforts to permit other RCRA facilities that are of higher environmental priority.

Finally, some states have pointed out that the toxicity characteristic has created a disincentive for private party cleanup initiatives by imposing RCRA permit requirements on many of those actions. In addition, some have suggested that the TC rule has created an incentive to simply dilute contaminated media (or delay testing in order to allow certain TC constituents to volatilize) so that the contaminated media no longer exhibit the toxicity characteristic.

C. Public Meetings

In September and December, 1991, EPA met with various affected parties (including representatives from the States, Congressional staff, environmental groups, and the waste-treatment and generating industries) to discuss issues related to the cleanup of petroleum contamination and the potential impacts of the TC rule on this cleanup. During these meetings, the Agency listened to various opinions and views concerning the impact of the TC rule and the potential impacts of a possible Agency decision to expand the UST deferral to all petroleum contaminated media and debris.

EPA was struck by the unanimity of opinion among the thirteen states present concerning the detrimental impacts of the TC rule on their ability to achieve timely and effective cleanup of spilled petroleum product. EPA was also struck by the concern being expressed by State environmental regulators about the adverse environmental impacts resulting from the application of the TC rule to petroleum releases from above-ground sources. The State representatives indicated that subtitle C regulation of petroleum contaminated media and debris would significantly increase the cost of cleanup of these releases, substantially delay cleanup, and in some cases (by delaying cleanup) negatively impact human health and the environment.

A number of States have funds that provide for some reimbursement of cleanup costs for above ground (as well as underground) petroleum spills. Many cleanup contractors provide cleanup services to responsible parties (RPs) "on credit," knowing that they will be paid by the RPs shortly after the work is completed. According to these States, if petroleum cleanup wastes are regulated under RCRA subtitle C, the resulting dramatic increase in costs of waste management would significantly impair the ability of the State to reimburse future cleanups. If there is no guarantee that payment will be forthcoming, several States believe that remediation contractors will be much less willing to respond promptly to spills. Further, it is unlikely that States will substantially increase these funds for the foreseeable future. The net result, according to these States, will be that fewer sites will be remediated. With fewer sites being addressed, spilled material will migrate further and potentially expose more

people, fish, and wildlife to contamination.

Unremediated spills of petroleum product onto soil can result in petroleum product reaching groundwater through infiltration, and, surface water through run-off. Benzene, a common constituent of many types of petroleum products, is carcinogenic and moderately toxic to aquatic organisms.

In the view of many States, the delays associated with RCRA subtitle C management would allow for the volatilization and migration of certain TC constituents such as benzene to the extent that the media may no longer fail the TC. These States point to RCRA testing and permitting as significant sources of delay. In addition, States cautioned EPA to recognize that, because of the high costs associated with subtitle C management and the high volatility of certain TC constituents of petroleum, there is a significant disincentive to promptly report and remediate petroleum spills.

Groups representing the generating industries (*e.g.*, petroleum and petrochemical industries) at the meetings generally agreed with the views being expressed by the States, although several stated that the problem was not unique to petroleum-contaminated media, but rather should be extended to other types of TC hazardous contaminated media.

Environmental interest group representatives were sensitive to the importance of the issues being raised by the States, but saw the States' position as similar to other claims that regulations deter effective actions. The environmental representatives agreed on the merits of streamlining the administrative procedures and processes (e.g., RCRA subtitle C permitting) for petroleum spill response actions, but felt that regulatory control was necessary to ensure environmental safety. They were also concerned about the extent to which State regulatory programs for non-UST spill cleanups are in fact adequately protective of human health and the environment, and the extent to which States place sufficient emphasis on spill prevention. The environmental group representatives also argued that certain features of a RCRA permit which they believe are important—particularly, public involvement and facility-wide corrective action—would be lost if EPA adopted the approach suggested in the States' petitions.

Certain representatives of the hazardous waste treatment industry expressed strong concerns with the Agency pursuing a suspension of the TC rule as the mechanism for solving the implementation problems posed by Subtitle C regulation of petroleum contaminated media and debris. According to these representatives, EPA should consider streamlining the RCRA permitting process for the cleanup and disposal of petroleum contaminated media and debris. They specifically suggested that EPA consider issuing permits-by-rule for petroleum contaminated media and debris, as well as for other cleanup wastes. They also expressed concern that the States' approach would effectively exempt petroleum-contaminated media from RCRA technical standards, in particular the land disposal restrictions. Other representatives of the treatment industry, however, supported the States' approach and favored expanding it to other cleanup wastes.

III. Basis for the Proposed Suspension

A. Purpose of the Suspension

The purpose of today's notice is to propose a suspension of the 1990 Toxicity Characteristics (TC) rule as it applies to non-UST petroleum product-contaminated media and debris for a period of three years.[1] As discussed in more detail below, the Agency believes that the States have raised sufficient concerns about the environmental impacts of applying the TC rule to petroleum contaminated media and debris to warrant study of this issue in the same manner in which the Agency is currently conducting analysis for petroleum contaminated media and debris from USTs. EPA believes, in addition, that the TC should be suspended in the interim while the Agency fully studies this issue and prepares any regulatory adjustments necessary and appropriate for the regulation of this material under the RCRA subtitle C program. Thus, the purpose of this suspension is to give the Agency three years in which to collect additional information on the nature, scope, and environmental impacts of regulating non-UST petroleum product-contaminated media and debris under RCRA Subtitle C and determine whether and how such regulation should be established.

This suspension does not constitute a final decision by the Agency on how to integrate the TC with existing State petroleum cleanup programs. Rather, EPA bases the suspension on the significant issues raised by the States and a recognition that increased human and environmental exposures to petroleum product would likely occur without a period for EPA to undertake additional data gathering and analyses. EPA will make a final decision and implement any regulatory adjustments at the end of the three year suspension.

During the three year suspension, EPA believes that existing State laws and programs will adequately protect human health and the environment. To ensure such protection, EPA is proposing that the suspension would apply only where media or debris is cleaned up under State oversight through enforcement orders or other explicit written State approval. States would have to certify to the EPA Regional Administrator that they have legal authorities and programs in place to administer and enforce those authorities, that can compel cleanup of non-UST petroleum product-contaminated media and debris, and control the treatment, storage and disposal of such waste when cleaned up.

B. Available Information on Scope of the Problem and Impacts of Subtitle C

1. Nature and Frequency of Petroleum Product Contamination

Petroleum product releases occur daily throughout the United States in the course of the transport and storage of the billions of gallons of petroleum product used in this country each year. The majority of spills are under 1,000 gallons and occur from transmission pipelines, gathering lines, pump stations, storage tanks, and transport vehicles. According to a recent American Petroleum Institute survey of 42 States, over 36,000 above ground petroleum product spills occurred in the United States in 1990 alone. The API survey also indicated that over 23,000,000 gallons of product were released in 24 States in 1990. Information from the States of New York and Texas indicate that the majority of petroleum product spills occur to land. Based on these data and data submitted by the State of New York, EPA estimates that over 3.5 million tons of petroleum contaminated environmental media (mostly soil) and debris were created in 1990 alone as a result of these spills.

Regulating the disposal of these contaminated media and debris under Subtitle C of RCRA potentially means: (1) Characterization for TC (which may often involve testing) at as many as 36,000 locations per year, (2) manifesting from many thousands of points of generation (when contaminated media and debris are

[1] Since the scope of today's proposal includes groundwater contaminated with petroleum product, this proposal, if finalized, would supersede the exclusion for injected groundwater from hydrocarbon recovery operations, which was due to expire on January 25, 1993: See 40 CFR 261.4(b)(11), and 56 Fed. Reg. 13406 (April 2, 1991).

disposed of off-site) per year, and (3) treating, storing, and/or disposing of a substantial portion of the 3.5 million tons per year of petroleum contaminated soil in RCRA permitted hazardous waste facilities. If on-site RCRA treatment, storage, or disposal were to be the chosen alternative at even one-half of these 36,000 sites each year, the number of new RCRA hazardous waste permits needed to address petroleum product cleanup would vastly surpass the 4,500 facilities which make up the current RCRA TSDF universe.

In addition to spills which occur as a result of the day-to-day use of petroleum product, EPA expects that there will be many potentially large, complex petroleum product contaminated sites which require remediation as well. One example is the Oil City site in Syracuse, New York, where there has been a great deal of interest on the part of the local government and private parties in converting this 800 acre former petroleum tank terminal property to residential and commercial use. The regulation of petroleum product contamination under RCRA subtitle C at this and other similar sites creates a significant disincentive to private parties to conduct any cleanup activities. Such cleanups can generate hundreds of thousands of cubic yards of contaminated media and cost tens to hundreds of millions of dollars to cleanup. Since few private uses of this land would create economic benefits of this magnitude, the Oil City site and similar sites may not be cleaned up for the foreseeable future.

The nature of petroleum as an environmental contaminant was another factor in the Agency's decision to propose the TC Suspension for petroleum contaminated media. EPA believes that there are significant differences between the investigation and remediation requirements for media known to be contaminated with petroleum (from UST or non-UST sources) and other types of contamination often found at RCRA facilities and other contaminated sites. For sites contaminated with petroleum products, the source(s) of the contamination (e.g., transportation spills, pipeline leaks, aboveground tank spills) can often easily be identified, the substance (petroleum) is known, and therefore the properties and exposure pathways of the contamination, and potential remedial approaches, can also be identified without extensive investigations. In contrast, at other contaminated sites, identifying the sources of contamination, their properties and potential risks, and remedial options will often require extensive and protracted investigations and analysis.

Thus, the Agency believes that for many sites contaminated with petroleum, investigation and remediation can be relatively straightforward. As such, EPA believes that a simplified or streamlined permitting approach, or some other type of simplified administrative mechanism, could be appropriate for dealing with petroleum contaminated sites (see discussion of alternative approaches in Section III. D. of this preamble).

2. Impacts of Subtitle C Regulation on Pace of Cleanup

Information provided by the States suggests that subtitle C regulation of petroleum contaminated media and debris may have profound impacts on the ability of States with existing spill response programs to promptly initiate cleanup. Information from State case studies suggests that at many sites, the initiation of cleanup could be delayed between three and 18 months. The sources of the delay include: sampling and testing requirements associated with the TCLP, the need to register as a hazardous waste generator and obtain a generator identification number, and the increased complexity of evaluating and implementing remedial measures that comply with subtitle C. One example of the increased complexity of implementing remedial measures is the need to specifically evaluate on-site versus off-site options for the management of hazardous waste. This would include identifying RCRA permitted TSDFs that would accept the waste and balancing transportation and off-site disposal costs, risks, and benefits with the costs, risks and benefits of on-site management.

On-site treatment will frequently be the preferred option for sites involving large amounts of contamination. In cases where such treatment would require RCRA permitting, the permitting process would require an additional one to three years. These delays would likely allow volatilization of certain TC constituents such as benzene, and result in further vertical migration of contaminants into the soil and groundwater. This would increase the volume of contaminated soil and the probability that ground water would be impacted by a spill.

It is difficult to quantify at this time the precise differences nationally in the pace of petroleum cleanups with and without subtitle C regulation. The pace of cleanup in a State is highly dependent on the specific provisions of the State program, the available State resources for responding to spills, and the amount of flexibility provided for in authorized State RCRA programs. However, many States which petitioned EPA believe that they do a good job in responding quickly and adequately to petroleum spills. Moreover, based on available information, EPA believes that Subtitle C regulation could significantly increase the time required to initiate and complete remediation. In States with adequate spill response programs and controls on the disposal of cleanup wastes, EPA believes this delay would result in increased risk to human health and the environment.

3. Impacts of Subtitle C Regulation on the Costs of Cleanup

It is clear that Subtitle C regulation of petroleum contaminated soil and debris can substantially increase the cost of remediation. A primary source of the increase is the relative expense of Subtitle C soil treatment technologies compared to those likely to be used in States with spill response programs. Depending upon the treatment technology selected, per site cleanup costs for soil treatment would likely increase by as much as 300 to 900 percent over existing costs.[2]

For example, unit costs for thermal treatment that is being used in one state UST program averages $55.00 per cubic yard of petroleum contaminated soil, compared to treatment costs of $1,060 per cubic yard of soil for subtitle C incineration, and disposal costs of $510.00 for subtitle C landfills.[3] Thus, for every 100 cubic yards of TC hazardous soil, the increase in treatment costs would be between $45,500 and $100,500 per site.

It is unclear whether the increased costs of subtitle C treatment of petroleum product-contaminated soil can be justified on the basis of a reduction in human health risk. In a study on the impacts of removing the TCLP deferral for petroleum-contaminated media at UST sites, it was concluded that one component of risk, residual risk, will likely not decrease with subtitle C management, since Subtitle I cleanup standards are generally more stringent than those implied by the TCLP regulatory standard for benzene.[4] Also ambiguous is the effect of subtitle C management on

[2] Office of Policy Analysis, U.S. EPA, "DRAFT Report: The Impacts of Removing the TCLP Deferral for Petroleum-Contaminated Media at Underground Storage Tank Sites," (April 1992) Appendix B: Minnesota Case Study, p. 27.

[3] Office of Policy Analysis, U.S. EPA, "DRAFT Report: The Impacts of Removing the TCLP Deferral for Petroleum-Contaminated Media at Underground Storage Tank Sites," (April 1992), p. 3–2.

[4] *Ibid*, p. 1–3.

risks associated with soil treatment and disposal. Because the predicted mix of soil treatment technologies includes a variety of methods that would likely vary over time, assessing the ultimate effect on human health risks is extremely complex, and thus a more detailed study of the risk characteristics of the various soil treatment and disposal technologies is needed.[5]

Also, EPA believes that these increased costs of waste management will reduce the number of spills responded to and remediated by States in State-funded petroleum spill cleanup programs. For example, the petroleum spill response program in New York is financed by a dedicated but limited funding source. When there is no responsible party capable of responding to a spill of petroleum product, the New York program takes action using funds specifically dedicated to this purpose. States have argued that regulating these cleanups under subtitle C would increase costs by a factor of 3.[6] Unless New York decides to dedicate significant additional funds to the program, New York will have to substantially decrease the number of spills addressed by State-funded response programs. This same result is expected in other states that have similar programs. Thus, nationally, EPA expects overall petroleum product spill response efforts to decrease as a result of the TC regulation.

EPA also believes that the increased costs of waste management under subtitle C creates substantial disincentives to prompt reporting and cleanup of petroleum spills by responsible parties. Although this disincentive holds true as well to some degree for all subtitle C wastes, EPA believes that petroleum contaminated media are different because of the common and widespread use of petroleum products in this country. Billions of gallons of petroleum product is stored, transported, and used throughout this country every year. In New York state alone, over 10,000 petroleum product spills were reported to the New York Department of Environmental Conservation during the 1989–1990 state fiscal year.

If regulated parties believed that they could escape liability for these releases, little private remediation would likely occur. If severe regulatory disincentives dissuaded responsible parties from reporting even a fraction of these spills, federal and State programs would not know about these spills and therefore could not evaluate them. Therefore, significant volumes of petroleum product would be released to the environment. EPA believes that it is important, given the widespread use of petroleum products, not to create significant disincentives to cleanup actions that provide benefit in terms of reducing risk to human health and the environment.

C. Definition of Hazardous Waste

Today's action is also consistent with the Agency's intention to apply Subtitle C standards to waste which is truly hazardous in the context in which it is actually managed. EPA believes that for those petroleum product-contaminated wastes managed under State oversight as part of effective State cleanup programs, there is a very low likelihood of mismanagement of the waste. Thus the wastes may not be "hazardous" as defined under RCRA Section 1004.

Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended, establishes a federal program for the comprehensive regulation of hazardous waste. Section 1004(5) of RCRA defines hazardous waste, among other things, as solid waste that may "* * * pose a substantial present or potential hazard to human health and the environment when improperly treated, stored, transported, disposed, or otherwise managed." Under RCRA Section 3001, EPA is charged with defining which solid wastes are hazardous and "should be subject to" Subtitle C requirements either by identifying the characteristics of hazardous waste or listing particular hazardous wastes.

The hazardous waste characteristics promulgated by EPA designate broad classes of wastes which are hazardous by virtue of an inherent property. In the 1980 rule which established EPA's general framework for identifying hazardous waste, EPA set forth two basic criteria for identifying hazardous waste by inherent properties. First, waste exhibiting the property must meet the statutory definition of "hazardous waste"; *e.g.* the waste exhibiting the property must pose a substantial hazard to the environment when improperly managed. Second, the property must be measurable by available standardized testing protocols or reasonably detectible by generators using their knowledge of the waste. 40 CFR 260.10.

EPA has historically identified such waste by assuming that the waste would be mismanaged and evaluating the waste's hazard under such circumstances. See 45 FR 33113 (May 19, 1980). EPA has used a "reasonable worst-case" mismanagement scenario (codisposal in a municipal landfill) to identify these wastes. See 55 FR 11800 (March 29, 1990). However, EPA believes that, based on a decade of experience with hazardous waste management, this mismanagement assumption may no longer be accurate or necessary in defining wastes which should be subject to RCRA hazardous waste requirements.

The Agency believes that it is appropriate to begin tailoring the scope of its hazardous waste characteristic program to reflect how wastes are actually managed, rather than how they might be managed under a worst-case analysis. Today's rule reflects this more tailored approach.

This approach is authorized by the definition of "hazardous waste" in RCRA section 1004(5). Section 1004(5)(B) defines as "hazardous" wastes which may present a hazard "when mismanaged," thus authorizing EPA to determine whether, and under what conditions, a waste may present a hazard and regulating the waste only under such conditions, *i.e.*, when mismanaged. (Note that this is in contrast to section 1004(5)(A) under which EPA regulates as hazardous wastes which are inherently hazardous no matter how managed.)

In addition, EPA believes that section 3001 provides EPA with the flexibility to consider the necessity for, and appropriateness of, hazardous waste regulation for wastes which meet the section 1004(5) criteria. Section 3001 specifies that EPA must make a determination of whether such wastes "should" be subject to the provisions of subtitle C in determining whether to list or otherwise identify wastes as hazardous under that Section. Thus, section 3001 authorizes EPA to determine whether Subtitle C regulation is appropriate in determining whether to designate a waste as "hazardous." EPA thus may determine that subtitle C regulation is not appropriate because such wastes are not "hazardous" when properly managed and, based on information available to the Agency, unlikely to be mismanaged. Regulation of such waste under subtitle C would not be "necessary to protect human health or the environment" (see RCRA sections 1003(a)(4), 3002(a), 3003(a), 3004(a)).

Moreover, EPA interprets its existing regulatory criteria for identifying hazardous waste as providing the flexibility to consider actual management of the waste in order to determine whether to designate such waste as "hazardous." EPA's criteria for identifying hazardous waste

[5] *Ibid*, p. 4–6.

[6] New York State's petition to Administrator Reilly, U.S. EPA, August 17, 1990, p.2. (Baseline cost estimate was not provided.)

characteristics codifies the statutory definition of hazardous waste and thus provides EPA with the same flexibility accorded by the statute to consider actual management practices in determining whether a waste is hazardous. Where mismanagement of the waste is likely to be implausible or has been adequately addressed by other programs, EPA need not identify the waste as hazardous under the regulatory criteria.

As a result, EPA believes that the Agency should tailor its hazardous waste identification program, (see 57 FR 21450, May 20, 1992), to ensure that the stringent Subtitle C program for hazardous waste regulation applies only to waste which is truly hazardous in the context of the way in which the waste is actually, or reasonably likely to be, managed. EPA believes, based on a decade of experience with hazardous waste management, that waste containing hazardous constituents at levels below concern from a human health and environment perspective should not be subject to full Subtitle C management. EPA has proposed concentration-based levels for comment in 57 FR 21450 (May 20, 1992).

EPA has already promulgated several modifications of the 1990 toxicity characteristics rule in several respects based, at least in part, on the manner in which the particular waste is actually managed. 56 FR 13406 (April 2, 1991); 55 FR 11836 (March 29, 1990). Today's proposal is consistent with, and furthers, this approach to identifying hazardous waste characteristics. Because EPA believes that it can be confident that remedial waste managed subject to State oversight and the conditions set forth in this proposal would not be "mismanaged," the waste may not be "hazardous" under RCRA section 1004(5) and "should" not be regulated as hazardous under RCRA section 3001(u).

D. Alternative Approaches

EPA recognizes that not all groups consider the approach it is taking in today's proposal is the most appropriate. The Hazardous Waste Treatment Council, for example, suggests that EPA address the TC issues that have been raised by the States though some means of simplifying the permitting of petroleum cleanups, rather than by suspending the applicability of the TC. The Treatment Council specifically suggested the use of permits by rule as a mechanism which could alleviate the administrative impacts of addressing petroleum contaminated media under RCRA subtitle C, while maintaining the controls and standards (including the land disposal restrictions) provided under subtitle C.

In the context of other previous rulemakings, the Agency has explored the concept of alternative, and more streamlined, types of RCRA permits that could be used to expedite cleanup-type situations. One example is the proposed rulemaking for mobile treatment units (see 52 FR 20914, June 3, 1987). The primary legal impediments to this type of permit are the need to provide for site specific public participation (as required under RCRA section 7004), and the requirement to address facility-wide corrective action (under section 3004(u)). Given that these permits would have to address these statutory requirements, and that doing so would require a considerable time and resource commitment on the part of the issuing government agency(s), as well as the permittee, it may be that creating some such type of permit for petroleum cleanup situations would actually have little "streamlining" effect.

Some have also suggested the use of emergency permits as another alternative to RCRA subtitle C permitting. Emergency permits could be used in some situations involving petroleum releases, albeit not to extended cleanup operations, nor currently to sites where cleanup is not being conducted in response to an actual "emergency" situation. However, one option, upon which we are seeking comment, concerns modifying the emergency permit provisions to accommodate petroleum spill remediation.

Even if the administrative problems associated with issuing permits for petroleum release cleanup activities could be resolved, we recognize that several of the problems cited by the States in this regard may remain. For example, several States point to the need for persons conducting cleanups to register as a hazardous waste generator and obtain a generator identification number as a source of delay in being able to legally allow transport of contaminated media and debris from the spill site to subtitle C disposal. The volumes of such materials requiring RCRA Subtitle C management could also potentially create serious capacity problems for the hazardous waste treatment, storage and disposal system. EPA is specifically soliciting comment and data on the volume of contaminated media and debris associated with petroleum product spill cleanup and the impact of this on the capacity of the existing hazardous waste system.

As discussed above, EPA believes that the existing legal framework in RCRA creates impediments to adapting subtitle C permit requirements to address the problems posed by thousands of petroleum product contaminated sites. However, other modifications to RCRA requirements may be much less problematic. The Agency will continue to examine these types of options, and others, as alternatives to or as additions to today's proposed TC suspension. The Agency invites comment as to how such options may fulfill the general objective of removing unnecessary procedural and substantive subtitle C requirements for petroleum release response, while ensuring that petroleum contaminated media are managed in a manner protective of human health and the environment. Specifically, comment is solicited on the following options:

- Expanding the permit exemption in § 270.1(c)(2)(i) for less than 90-day treatment and storage of on-site generated hazardous wastes. This exemption could be extended for some longer time period specifically for on-site petroleum response actions (e.g., 180 days).
- Providing permits by rule or class permits specifically for remediation of petroleum contaminated media (see preceding discussion).
- Changing the existing emergency permit requirements (§ 270.61) to provide for such permits for short term cleanup actions for petroleum releases that may not actually pose "imminent and substantial threats" to human health and the environment.
- Creating a new type of unit subject to the less than 90-day storage and treatment permit exemptions, that would otherwise be regulated as waste piles, and thus not eligible for this exemption (such units, employing flexible membrane liners and vapor recovery are currently in use, and can remediate relatively large volumes of contaminated soils).
- Developing differential regulatory controls based on the size of the petroleum release (e.g., 10,000 gallons of released product). Under this system, larger spills requiring large scale, long term remediation might be subject to full Subtitle C controls, while smaller releases could be eligible for more streamlined procedural requirements and/or less stringent substantive standards.

In regard to these alternatives, comment is requested particularly in regard to their legal feasibility in light of existing RCRA statutory requirements.

E. Relationship of This Proposal to Contaminated Media Cluster

It should be noted that the Agency has underway a broader consideration of

contaminated media issues related to the issues addressed in this proposal. To improve the overall quality of its regulatory decisionmaking and to develop more integrated approaches to environmental problems, the Agency has begun to look at groups or clusters of regulations. One of these regulatory clusters, the "contaminated media cluster," is charged with developing a more integrated approach among Agency policies and regulations dealing with waste remediation.

The contaminated media cluster project is gathering information to develop a comprehensive view of the quantities and types of waste needing remediation, the types of risks they represent, the current regulatory and statutory framework, elements of an effective cleanup process, and the costs and benefits of cleanups. The culmination of that work will be a regulatory strategy that will include a set of objectives and operating principles for the Agency's remediation programs. Although the cluster effort is not yet complete, this proposed TC suspension rule for petroleum contaminated media and debris has been closely coordinated with the regulatory cluster on contaminated media.

F. Relationship of This Proposal to the Ground Water Protection Principles

This proposed rule is consistent with the Ground Water Protection Principles. One of the Principles states that "With respect to Federal, State, and local responsibilities, the primary responsibility for developing and implementing comprehensive ground-water protection programs continues to and should be vested with the States." Thus, today's proposed TC Suspension and the Ground Water Protection Strategy both reflect the general objective of giving States the lead role in implementing these types of environmental programs.

IV. Explanation of Today's Proposal

A. Scope

1. Wastes Subject to the Proposed Suspension

The proposed suspension of the TC rule (for D018–D043) will be limited to environmental media (groundwater, surface water, soils, and sediments) and debris (see definition in 57 FR 1015, January 9, 1992) that are contaminated by releases of petroleum product from sources other than Subtitle I regulated underground storage tanks (*e.g.* aboveground storage tanks, pipelines, transportation vehicles). Note that the proposal would suspend the TC rule for the 25 organic constituents only (hazardous waste codes D018–D043), and not for the original EP toxic constituents (metals, insecticides, and herbicides; hazardous waste codes D001–D017). EPA believes that suspending the TC rule for the 25 organic constituents will have the effect of suspending RCRA Subtitle C regulation of the treatment, storage, and disposal of petroleum product contaminated media and debris. This is EPA's clear intent. If EPA finds through comments on this proposal or new data that additional EP toxic constituents occur in media resulting from petroleum product contamination, EPA intends to expand the list of constituents subject to the petroleum product suspension in the final rule to include such additional EP constituents. EPA solicits comments on its intention to expand the list of constituents if comments or new data show that this is needed in order to fully suspend the TC regulation for this material.

For the purpose of today's proposal, petroleum product is defined as: (1) Crude petroleum oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and (2) petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, and lubricants. This definition is a modified version of that in the Subtitle I regulations, as it does not include petroleum solvents and used oils.

Today's proposed exclusion would not affect the regulatory status of media or debris contaminated with petroleum-derived listed hazardous wastes (e.g., F037, F038). Although some have suggested that EPA extend the proposed suspension to media and debris contaminated with petroleum-derived wastes (e.g., sludges, landfill leachates, and tank bottoms), in addition to petroleum products, EPA is not at this time proposing to suspend the TC rule for these wastes. These wastes generally contain contaminants of concern at higher concentrations than do petroleum products, can contain hazardous constituents other than those found in petroleum products, and are generally not covered by existing stated petroleum product spill response programs.

EPA is also not extending the application of the TC suspension to used oil, or used-oil processing residuals.[7] Used oil can be contaminated with hazardous constituents other than those found in petroleum product, and these constituents may be present in significant concentrations. Further, state rulemaking petitions submitted to EPA do not specifically request a suspension of the TC rule for media and debris contaminated by used oil. Therefore, this proposed rule does not affect the UST deferral for petroleum contaminated media.

The Agency is soliciting comment on an alternative approach in which the TC suspension for environmental media and debris contaminated by petroleum product would be limited to a subset of the 25 organic constituents. The alternative approach would provide a TC suspension only for those contaminants identified in 40 CFR 261.24 (hazardous waste codes D018–D043) which are known to be indigenous to petroleum product. The Agency is considering the following three contaminants in this regard—benzene, cresols, and methyl ethyl ketone. These contaminants have been identified as indigenous to petroleum product, based on data derived from the delisting program. (See 40 CFR 260.22.) The Agency requests comment on this particular list, as well as on other TC contaminants identified by hazardous waste codes D018–D043 which may also be indigenous to petroleum product. The Agency is considering this approach because it is concerned about the improper application of this suspension to media and debris contaminated by other D018–D043 constituents. In this scenario, the actual source of contamination could be non-petroleum product constituents, or a mixture of such constituents with those common to petroleum product, but the responsible party may argue that the source was petroleum product. On the other hand, petroleum products are complex mixes of chemicals, and adequately characterizing them by a limited subset of codes D018–D043 constituents could prove difficult, as well as require expensive testing, with no commensurate benefit. The Agency requests comment on this alternative approach.

The Agency also considered an alternative that would broaden the scope of the suspension beyond

[7] As defined in 40 CFR 266.40(b), used oil is any oil refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities. A new definition in 40 CFR 279.1, when it becomes effective, is as follows: "Used oil means any oil defined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities."

petroleum product, to include media and debris contaminated by any TC constituent. At this time, the Agency is not proposing to expand the suspension beyond petroleum contaminated media and debris. The Agency believes that there are compelling human health and environmental reasons for proposing the suspension of the TC rule for petroleum contaminated media and debris, and that it should act as quickly as possible to remedy the current situation. Including other TC contaminated media and debris in this proposal would require substantial further analysis, which could delay EPA in addressing the petroleum issue. Moreover, while many States may have adequate petroleum spill response programs, these states may not have programs to adequately manage other TC contaminated media and debris, which could result in these materials being unregulated.

Nevertheless, the Agency notes that similar concerns have been raised by many in the regulated community and States about the disincentives to cleanup associated with RCRA subtitle C regulation of media and debris contaminated by any TC constituent, and that EPA is concerned about these impacts. The Agency requests comment on expanding the scope of the suspension beyond petroleum product to include media and debris contaminated by other TC constituents.

The Agency also considered the particular issue raised by coal tar contaminated media and debris generated from the remediation of historic manufactured gas plant (MGP) sites. For many decades, manufactured coal gas was the primary source of gas for many American cities. There are in excess of 1500 old MGP sites in the United States, all thought to be similar in the nature and extent of coal tar-related contamination. According to electric utility industry sources, a substantial number of these sites will undergo assessment and possibly cleanup in the near future, and many companies planning such remediation activities were hoping to use their own high efficiency utility boilers to burn coal tar remediation-related wastes. The utility industry has expressed to the Agency its concern that the advent of the TC rule has created a disincentive to conduct these cleanups because these wastes may no longer be able to be burned as fuel in their boilers.

EPA is currently exploring various options to encourage responsible parties to undertake the assessment and any necessary remediation of historic MGP sites within the framework of the existing RCRA program. One option under consideration is to include coal tar wastes within the scope of this proposal to suspend the TC rule for petroleum product. However, EPA is not including coal tar wastes in this proposed suspension at this time. First, the primary intent of this suspension is to respond to the requests made by States in their rulemaking petitions to EPA; that is, to suspend the TC rule for media and debris contaminated by petroleum products. Second, although EPA believes that there may be important environmental reasons for including coal tar wastes within the scope of this suspension, EPA lacks information on whether coal tar remediation and waste disposal in utility boilers is effectively regulated outside the RCRA Program by state and local governments.

Should information submitted in response to this proposed rule support a determination that the cleanup and burning of coal tar contaminated media and wastes in high efficiency boilers is effectively regulated by States, EPA may extend the suspension in the final rule to include coal tar contaminated media. The suspension would, however, only apply in States that certify that they have in place adequate authorities and programs to compel MGP site cleanup and control the burning of wastes generated from such cleanup actions.

The Agency requests comment on an option that would include coal tar wastes within the scope of this suspension. The Agency also requests comment on the following: The extent to which coal tar cleanup operations are currently being adequately regulated by state and/or local authorities; the cost of remediation of coal tar contaminated media under Subtitle C and under alternative approaches; the risk posed to human health and the environment by not regulating coal tar wastes under Subtitle C but under alternative approaches; and, the most effective approaches to remediating old coal gasification sites.

2. Size of Release

EPA is proposing that the suspension of the TC rule apply to any non-UST petroleum product release, regardless of the volume of spilled material or amount of contaminated media or debris. Some have suggested, however, that the Agency narrow the suspension to contaminated media and debris resulting from spills of less than 10,000 gallons (this volume is the National Contingency Plan definition of a major discharge of oil to inland waters and an established point of reference for defining a large spill). These parties have suggested this narrowing because there may be unique issues posed by larger releases, and in some States, petroleum spill response programs may not be well suited to address these unique issues. EPA requests comment on the extent to which State spill response programs address the unique issues posed by larger releases.

Recent experiences in EPA's Regional VIII office with large petroleum spills (i.e., spills greater than 10,000 gallons) indicate that larger spills tend to have multi-media environmental impacts and require long term oversight. It is not unusual for a particularly large spill to contaminate surface water, sediment, air, soil, and ground water and require years to remediate. It has been suggested that States may not always have the necessary expertise or resources to oversee remediation of these types of spills.

On the other hand, the State that first approached the Agency on the issue of a TC deferral—New York—did so because of the difficulties that the TC was presenting at a large cleanup site, involving many thousands cubic yards of contaminated soil. In this case, the State hoped to conduct on-site treatment under its State cleanup program; securing a Federal permit (the State is not yet authorized for the TC) would significantly delay the project. In fact, the problem presented by Subtitle C regulation may be greater at these large sites, because smaller sites often can be handled expeditiously within the existing permitting system as emergency responses, wastewater treatment units, or 90-day treatment units, or will not involve on-site treatment. Furthermore, it may be difficult to determine in all cases the volume of material released after the fact, particularly where the release is not a surface spill but rather has occurred as leakage over an extended period of time.

EPA is soliciting comment on whether a limit should be placed on the volume of spills covered under the deferral. In particular, comments should address the extent to which States with petroleum response programs do or do not have the regulatory authority, technical expertise, and/or capability to properly oversee the long term cleanup of large, multi-media spills or other releases of petroleum product. However, as discussed in Section C below, the Agency is not proposing an extensive review of State programs. Any review of this type would be overly prescriptive and deny States the flexibility to tailor response programs to specific spills or site conditions. To the extent that comments and data submitted in response to this proposal support a determination that State petroleum spill

response programs are generally not adequate to respond to large petroleum spills, EPA could limit the suspension in the final rule to contaminated media and debris generated as a result of spills of less than 10,000 gallons of petroleum product. Alternatively, if data suggest that certain States have the ability to adequately respond to larger spills, EPA could, in the final rule, suspend the TC rule for all volumes of spills in states with this capability and limit the suspension to smaller volumes in States that lack the capability.

B. Timing

EPA is proposing that this suspension of applicability of the TC to non-UST petroleum contaminated media and debris be no longer than three years from the effective date of the final rule. Although EPA believes that available data on the negative impacts of Subtitle C regulation of petroleum contaminated media are sufficient to support a 3 year suspension, EPA recognizes that additional data and analyses may suggest the need for a refinement of the basic approach taken in this proposal to better ensure that human health and the environment are being adequately protected. During the three-year period, EPA will conduct studies similar to those now underway pursuant to the UST deferral, including:

- A comprehensive study of the characteristics of sites and wastes affected by application of the TC to contaminated media and debris resulting from non-UST spills of petroleum product, including an analysis of potential cross-media impacts.
- A national survey of state petroleum spill response programs.
- A comprehensive evaluation of the potential economic and environmental impacts of subtitle C regulation of these materials on the Agency's and States' hazardous waste management programs, and an evaluation of the available capacity of commercial hazardous waste treatment, storage and disposal facilities.
- A comprehensive evaluation of whether some alternative regulatory structure would be more appropriate (such as streamlining or otherwise revising subtitle C requirements for these wastes) then the currently available alternatives of a complete suspension of the TC rule or full subtitle C regulations.

EPA considered proposing to suspend the TC rule for a shorter time frame, such as two years or one year. However, given the scope and complexity of the issues involved and the studies to be performed during the suspension, EPA believes that it may need a full three years in order to fully address the issues and develop a generally acceptable permanent solution. EPA is, however, soliciting comment on whether the three year time frame is reasonable and necessary. Comment is solicited regarding alternative time frames for the proposed suspension.

C. Limiting Suspension to States With Effective Programs

EPA is proposing that this suspension be limited to states that certify to the EPA Regional Administrator that they have effective programs in place to response to and remedial non-UST petroleum releases and control remediation-related contaminated media and debris.[8] This is similar to the standard for delegation to State petroleum cleanup programs under section 9003(h)(7) of RCRA (L.U.S.T. Trust Fund and cleanup authorities). EPA believes that limiting the suspension in this manner will provide adequate protection of human health and the environment from the potential impacts associated with the remediation of petroleum product, while at the same time allowing remediations to proceed expeditiously.

EPA considered not limiting the suspension to states with effective petroleum response programs in place. In other words, the TC could be suspended completely as it would apply to petroleum product contaminated media and debris, on a national basis. Such a suspension would be based on the assumption that such contaminated materials inherently do not merit Subtitle C regulation, and that specific state controls *are not* needed to ensure protection of human health and the environment. EPA decided not to propose this option, since the Agency believes that petroleum product contaminated media and debris can pose potential threats if mismanaged. A "blanket" suspension of the TC in this context would likely leave non-UST petroleum spills largely unregulated in some States, with the resulting potential for mismanagement of what may be large volumes of contaminated media and debris. Further, limiting the suspension to states with effective petroleum spill response programs may provide an incentive for states without such programs to establish them.

EPA also considered an alternative for this proposed rule that would have granted the suspension only to states that could demonstrate that their petroleum response programs complied with a comprehensive, Federally defined set of criteria. Under this approach, EPA could develop a very detailed set of requirements explicitly defining the types of legal authorities that states must have, requirements for how releases must be investigated, standards for management of cleanup wastes, cleanup levels to be achieved, and program administration requirements (e.g., staffing levels, qualifications of personnel, etc.). EPA believes that this type of approach would be overly prescriptive, and would not allow states flexibility to tailor response programs to specific responses, or to reflect different conditions across states. For example, cleanup of petroleum releases in a State like Alaska, where much of the State can be reached only by air, might of necessity be approached differently than in a more populated state. Furthermore, this approach would take undue time to put into effect. Not only would cleanups be significantly delayed, but EPA's experience with State authorization under Subtitle C suggests that few if any States would be able to complete the authorization process before the termination of the three-year suspension.

Today's proposal, in specifying requirements for adequate state programs for purposes of obtaining the TC suspension, outlines a set of criteria that the Agency believes will allow flexibility for States, while ensuring effective and protective responses to petroleum product releases in States in which the suspension would apply.

As proposed today, the primary standard for determining adequacy of State programs would be whether a State has both legal authorities (including enforcement authorities), and an administrative program structure sufficient to require cleanup of non-UST petroleum product releases, and to control the management of petroleum contaminated media and debris that are generated from cleanup activities. Specific remedial requirements that may be applied to a particular release situation will continue to be determined by the State, according to applicable State regulations and guidelines. Although States will have to be able to impose appropriate controls on management and disposal of petroleum contaminated media and debris, such controls would be determined by the State.

Similarly, although today's proposal requires that States must, to obtain the TC suspension, have programs in place to effectively administer and enforce the

[8] The proposed suspension would also apply to petroleum product contaminated media and debris that are generated and managed pursuant to Federal remedial authorities, as explained in the following section (E) of this preamble.

requisite cleanup authorities, it does not place any particular requirements as to how such programs must be structured, the type of State agency responsible for implementation of cleanup actions, or any other specific administrative requirements.

One of the key issues associated with today's proposal is the scope of the suspension in a State which receives the suspension; that is, would the suspension apply to all non-UST petroleum contaminated media and debris in that State, or only that which is generated to sites that are being cleaned up under the State program. EPA is proposing today that the suspension would be limited to petroleum contaminated media and debris that are managed pursuant to State-supervised cleanup actions. EPA believes that applying the suspension to all petroleum-contaminated media or debris would contradict one of the basic premises of today's proposal; that is, that the State programs will provide adequate protection in lieu of subtitle C controls. If contaminated media or debris are being managed outside the controls or oversight of the State, such protections cannot be assured.

EPA is not specifying exactly how, or to what degree, States must exercise oversight or enforcement of cleanup actions, so that the proposed suspension would apply to those cleanup wastes. At a minimum, however, it is proposed that such cleanups be conducted under State enforcement orders, or some other written approval from the State agency. EPA recognizes that in emergency situations involving catastrophic releases over the weekend or holidays, written approval may not be able to be provided in advance of emergency response actions. In these cases, verbal direction and approval may be given, to be followed up with written approval on the next working day following the incident.

In addition to specifying criteria for effective State programs, EPA also considered adding a requirement for States to have in place petroleum spill prevention programs which would require inspections and maintenance of non-UST potential sources of release, as well as the development of detailed and specific spill contingency plans. EPA is not proposing this as a criterion because it is unsure of the extent to which generally accepted industry practices and/or existing State laws and regulations require these measures. Moreover, EPA recognizes that there already exist strong incentives for private parties to prevent spills. EPA is soliciting comment, however, on whether the final rule should include such provisions, and on the extent to which such requirements are already in place in individual States. EPA would review this in the same manner as other criteria (See Section D below.)

D. Procedure for Granting the TC Suspension

Under today's proposal, the applicability of the TC would be suspended for media and debris contaminated with petroleum product, based on a certification by the Director of the State hazardous waste program and the State Attorney General that the state petroleum release response program meets the criteria in 261.4(b)(11)(iv).[9] The certification would be made to the EPA Regional Administrator. EPA would review the certification for completeness; if complete, EPA would publish a notice in the **Federal Register** to formally put the suspension into effect in that State.

Under this proposed approach, it is expected that some States will have response programs in place that address only certain types of releases or certain contaminated media. The certifications must therefore explicitly identify the jurisdiction and coverage of the program; the **Federal Register** notice will accordingly specify any limitations to the scope of the suspension in a particular State. The limitations specified in the **Federal Register** notice will be based on the State's own assessment of the limitations in the jurisdiction and coverage of its program.

Today's proposal in effect provides a self-certification process for the States in determining eligibility for the TC suspension. Thus, EPA's review of the certifications submitted by states would be limited to determining whether the certification includes the requisite information and documentation, as specified in the proposed 261.4(b)(11)(v) and (vi). It would not be the role of the Agency during its review to analyze the State's certification or to make a judgment as to the effectiveness of the state's petroleum response program. EPA is proposing that its review be completed within 90 days of receipt. EPA is soliciting comment on the desirability of such a deadline.

In developing today's rule, EPA considered alternative processes for granting the TC suspension that would have created more rigorous review and approval procedures which EPA would follow in granting the suspension to the States. Under this type of process, EPA would have the responsibility of making qualitative assessments as to how effective or "adequate" each State program is. In practice, this type of process would be similar to the current state authorization process for the RCRA subtitle C program.

EPA does not believe that an "authorization-type" process is necessary for the purpose of determining whether States should be eligible for the TC suspension as proposed today. Such a process would likely result in considerable delays in putting the suspension into effect, and would also be resource-intensive for EPA and the States. Further, many states have been on the forefront of this issue for years, establishing programs and funding mechanisms to ensure environmentally protective responses to petroleum spills in their states. Given this, and the relatively limited scope of the proposed suspension in terms of time (*i.e.*, three years) and its regulatory effect, the Agency believes that a more straightforward, self-certification process is most appropriate for this proposed rule.

Proposed § 261.4(b)(11)(v) would require States to submit certain information describing the States' legal authorities and program(s) for petroleum release response. EPA will use this information in conducting the analyses during the suspension period for making a final determination of how the TC should be applied to petroleum contaminated media and debris.

E. Applicability of Suspension to Remedial Actions Under Federal Authorities

In addition to suspending (under certain conditions) the applicability of the TC to petroleum contaminated media and debris for State cleanup actions, today's proposal would provide the same suspension for cleanups that are conducted under Federal statutory authorities. These authorities include the RCRA corrective action authorities of sections 3004(u), 3004(v), 3008(h) and 7003, and the Oil Pollution Act (OPA).

EPA believes that the scope of and degree of control over remedial activities that is provided under RCRA and OPA is certainly equal to, and may in most cases surpass that of State petroleum response programs. Therefore, the Agency is confident that management of petroleum contaminated media at such federally supervised cleanup sites would be fully protective of human health and the environment during the three year suspension period. In addition, several other reasons for granting the proposed suspension for State cleanups apply equally to Federal-

[9] This procedure applies to States that are not authorized for the TC. See discussion in Section VI of this preamble.

lead remediation—potential impacts on subtitle C treatment and disposal capacity, the substantial cost impacts of subtitle C management of these materials with little associated benefits, and the need to obtain RCRA permits for potentially large numbers of units in which petroleum contaminated media and debris will be managed.

EPA solicits comment on extending today's proposed TC suspension to Federally supervised cleanup actions, particularly in regard to whether cleanups supervised by Federal agencies under authorities other than RCRA and OPA should also be eligible for this suspension.

V. Relationship to Other Programs

A. Deferral of the Application of the TC Rule to Petroleum Contaminated Media and Debris From Subtitle I—Regulated USTs

This action would not affect the UST deferral from the TC rule, since it applies only to non-UST petroleum product contaminated media and debris. As explained previously, the Agency is currently evaluating the extent and nature of the potential impact of the TC rule on UST cleanups, as well as the impact that Subtitle C management of petroleum contaminated media and debris from USTs would have on the Agency's and States' hazardous waste management programs. The Agency plans to make its final determination on the UST deferral in early 1993.

The Agency believes it is appropriate to examine the application of the TC rule to petroleum contaminated media and debris from USTs and non-UST sources separately. Programs that regulate USTs and non-UST sources or petroleum contaminated media and debris can be distinct, with their own regulatory and administrative structures. Hence, the impacts of the TC rule on UST and non-UST cleanups can differ. For this reason, the ultimate determinations as to how to regulate UST and non-UST petroleum contaminated media and debris could be different.

B. Enforcement

Effect of Today's Proposal on Section 7003 Authority

The proposed suspension does not affect the Agency's ability to use RCRA section 7003 to compel clean-up of a petroleum release in cases when the Agency has determined that an imminent and substantial endangerment may be present. Product which has been spilled or otherwise placed into or on any land or water and not promptly recovered is a waste material (see 40 CFR 260.10 and 40 CFR 261.2(b)(1)). This includes spilled petroleum product. (See *Zands* v. *Nelson*, 779 F. Supp. 1254 (S.D.Cal.1991)). RCRA Section 7003 applies to solid waste *or* hazardous waste. Therefore, spilled petroleum is potentially subject to this statutory authority, regardless of whether or not it may meet the definition of a characteristic hazardous waste, e.g., TC for benzene.

If the proposed suspension goes into effect, materials other than petroleum that are listed in subpart D of 40 CFR part 261 or that exhibit a characteristic of hazardous waste as defined in subpart C of 40 CFR part 261, will continue to be considered hazardous wastes when spilled or dumped. Handlers misrepresenting such material as non-hazardous waste are in violation of RCRA subtitle C and subject to enforcement.

Effect of Today's Proposal on RCRA Sections 3004(u) and 3008(h) Authorities

Today's proposal has no effect on the scope of 3004(u) and 3008(h) authorities, since those authorities are not limited to hazardous waste, but apply also to hazardous constituents. Since petroleum product contains hazardous constituents, sections 3004(u) and 3008(h) authorities can still be used by the Agency to compel cleanup of petroleum releases at facilities regulated under RCRA subtitle C.

C. Corrective Action

Effect of Today's Proposal on Corrective Actions Underway

As explained in the previous section of this preamble, the proposed suspension of the TC is not expected to have significant impacts on the Agency's ability to require cleanup of facilities under the corrective action authorities of RCRA, Section 7003, 3004(u) or 3008(h). Such authorities are not limited to cleanup of hazardous wastes. This is the case of facilities and sites that are potentially subject to corrective action under these authorities, as well as facilities where the corrective action process is already underway. In addition, the suspension would not be expected to affect States' abilities to require cleanup under State response authorities.

In the case of cleanup operations already underway that involve management of TC hazardous contaminated media, today's proposed suspension could have an effect on the specific requirements that would be applicable to the treatment, storage, disposal or transportation of such hazardous media. For example, a remedial action may be underway which involves excavation of petroleum contaminated soils, and storage of those hazardous soils in a pile at the facility. The pile would be subject to the applicable RCRA subpart L standards for piles, including requirements for liners, ground water monitoring, closure, and other standards. If the proposed TC suspension were to become effective during this cleanup action, the subpart L pile standards would no longer apply, since the contaminated soils would no longer be hazardous. However, the waste management requirements specified in existing orders or permits would remain in effect, despite the suspension, unless the requirements were modified by the regulatory authority.

Effect of Today's Proposal on RCRA Permitting Requirements

There may be a situation in which the Agency has required a RCRA permit for the remedial action at a site solely due to petroleum product contamination of environmental media and debris. Under today's proposal, the permit in this case would no longer be required, since the petroleum product contaminated media and debris would not be considered hazardous waste. The Agency is not aware of any such facility, therefore the impact of today's proposal on permitting is assumed to be minimal.

VI. State Authorization Considerations

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State

until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in the authorized State in the interim.

B. Effect of Today's Proposal on State Authorization

Today's proposal provides, for a limited period of time, a less stringent standard for petroleum product contaminated media than is imposed in the Toxicity Characteristics regulation. In order to promote environmentally beneficial petroleum product cleanup operations, today's proposed rule provides that wastes generated from such cleanup operations would not be hazardous wastes under Federal regulations until 3 years after the promulgation of today's rule in those states that certify to EPA that they have in place effective petroleum product spill response programs. For states that have adopted the TC regulation, today's proposal is less stringent; therefore, states are not required to adopt it. For states that have not adopted the TC regulation, EPA implements the TC regulation and would implement this suspension of the TC regulation, if finalized, for wastes from petroleum product spills.

However, the relationship of state certification for the proposed suspension to the state's authorization status needs clarification. For states that are not authorized for the base RCRA program, as well as for those states that are RCRA-authorized but not TC-authorized, state certification raises no special state authorization issues. These states could simply certify that they have both legal authorities and an administrative program structure sufficient to require cleanup of non-UST petroleum product releases, and to control the management of petroleum contaminated media and debris that are generated from cleanup activities. In this manner, these states would qualify for the Federal suspension of the TC regulation, without raising any state authorization issues.

States that are both RCRA- and TC-authorized, however, would have to make a decision about whether to adopt a similar suspension, and, if they choose to adopt such a procedure, they would also have to make a decision at the state level on the need to change their state regulations. Some states may choose not to change their regulations, but rather to use a state waiver authority to lift the TC requirements in these cleanup situations. Use of such waiver authority would have to be in a manner no less stringent than the Federal TC suspension.

In cases where a state chooses to certify and chooses to change its regulations, the new state regulations must be no less stringent than the Federal suspension. If State TC regulations are changed in a manner that is less stringent than this proposed suspension (*e.g.*, the State suspension is longer than three years or addresses more than just petroleum product), EPA will not authorize the change and will enforce the more stringent Federally-authorized State TC rule provisions pursuant to Section 3009 of RCRA.

EPA also considered an alternative approach for States that are both RCRA- and TC-authorized. Under this approach, EPA would require authorization of the new State regulations before the suspension could become effective, in order to guarantee that the new State regulations would be no less stringent than the Federal program. The Agency rejected this option because of the need to move cleanups more promptly. Furthermore, the Agency does not believe this would be a workable approach since the three-year suspension would likely run out by the time a State made the necessary changes to its regulations suspending the TC rule, and then applied for and received authorization for these changes.

Finally, for States that have adopted the TC rule but are not yet authorized for it, if these States wish to pursue the suspension, EPA will accept their certification for the purposes of the Federal TC suspension. The State may also need to take other actions (*e.g.*, use of waivers) to satisfy State law requirements.

VII. Risk Assessment/Screening Analysis

EPA performed a screening risk analysis in order to investigate the discussion set forth in the state petitions, which argue that the state programs would be at least as protective as subtitle C management of petroleum contaminated soils. States argue that state program clean-ups would address sites more quickly than clean-ups under the Subtitle C program and therefore more promptly and more effectively reduce risk to human health and the environment.

Any delays under the subtitle C program would increase the incremental risk of subtitle C clean-up versus TC-suspension state management practices if 1) state programs control risks from the spill more quickly than efforts under the subtitle C program and do not experience similar delays and 2) state management practices are as (or almost as) protective as subtitle C management practices.

EPA conducted a screening risk analysis to identify potential increased risks to human health due to delays in clean-up. The screening analysis is based on modeling the fate and transport of benzene from petroleum from the soil surface, through the unsaturated zone and into the groundwater. Because this analysis is a screening analysis, the models use simplified and conservative assumptions, and represent worst case scenarios.

For this screening analysis, EPA modeled the fate of gasoline spilled onto three types of soil: Gravel, sand and clay. Depending on the soil type, the estimated time for a leachate exhibiting the TC for benzene to reach a depth of 3 meters ranges from 1–25 months, and twice that time to reach a depth of 6 meters. In addition, the screening analysis revealed that groundwater may be potentially contaminated above the MCL standard for benzene (5 ppb) in certain locations. Field studies have demonstrated that under some conditions, such as fractured environments, petroleum has been reported to travel more quickly and to reach groundwater in a matter of hours.

Another effect of the penetration of petroleum products through the soil is an increase in the volume of contaminated soil over time and therefore, in most instances, an increase in the amount of TC hazardous waste which would need to be cleaned-up. This results in both an increase in clean-up costs and a potential increase in exposure. EPA will study this effect of delays in clean-ups and is requesting comments on the areal extent of contamination resulting from various size spills of various types of petroleum products.

In summary, the results of this screening analysis indicate that gasoline spill clean-up delays of a few months could result in (1) increased areal extent of contamination, which increases the volume of soil requiring excavation or remediation and thereby increasing potential for exposure and (2) contamination of groundwater, thereby adding to cleanup costs and potentially

posing health risks if groundwater is used for drinking water. The Agency will continue to assess potential risks of petroleum spills. Towards this end, the Agency is requesting comments and information regarding spill size, resulting contamination over time and exposures over time for recent petroleum spills which may be useful in preparation for the final rule.

In order to analyze any change in risk between the TC Suspension and subtitle C management, the Agency will consider the environmental fate of the remediated waste. While the Agency has some information on the residual risks of waste management and disposal under subtitle C, the Agency has less information on State management and disposal requirements for these petroleum wastes. The Agency has limited data on the quantities of material that would be managed in this manner, and on the actual impacts on exposure pathways, and so solicits comment on this issue.

The risk screening analysis used simplified and conservative assumptions, and the results are therefore very preliminary. However, it is clear that in many instances immediate remediation of petroleum spills will reduce risk to human health and the environment in comparison with lengthy delays in clean-up. More information on this analysis is included in the Technical Background Document for Screening Risk Analysis of the TC Suspension for Petroleum-Contaminated Media, RCRA docket number F–92–STPP–FFFFF.

In addition, because of the volatile nature of many petroleum constituents, such as benzene, delayed clean-ups of petroleum contaminated soil may also pose a potential risk to human health through the air pathway. EPA requests comments on the potential exposure rates and risks from the air pathway, both due to delayed clean-ups and due to uncontrolled remediation activities. EPA is particularly interested in laboratory studies, field observations, modeling results or other information about the length of time over which, and the rate at which, benzene (or other constituents) in petroleum products volatilize after a spill or release into the environment, and the effects of competing processes such as percolation through the soil (speed and depth) and biodegradation on the rate of volatilization.

VIII. Cost Savings Analysis

EPA has identified several possible sources of cost savings under a TC suspension for petroleum contaminated media. Cost savings result from the difference between waste management costs under state petroleum response programs and costs under Subtitle C programs.

Below is a discussion of sample cost estimates provided by states and other sources. An EPA memo, "Cost Discussion References for Management and Disposal of Petroleum Product Contaminated Media and Debris," is available in the docket.

Based on limited information available from the states, on-site management technologies of petroleum contaminated media could be similar under state programs and under subtitle C programs. Thus the cost difference between the two on-site remediation regulatory scenarios—state programs and subtitle C programs—may be primarily associated with the difference in administrative costs. EPA solicits comments on subtitle C administrative costs as compared to state program administrative costs, including information on whether new subtitle C permits are likely to be obtained at petroleum spill sites. No information is available on owner/operator administrative costs under state programs, but under Subtitle C programs total TSD permit cost estimates provided by states (Minnesota and Vermont) range between $21,000 and $80,000. Because of this high cost of a subtitle C TSD permit, which would be required for many on-site remediations of hazardous waste, petroleum contaminated soil management and disposal is more likely to be conducted off-site under the subtitle C regulatory scenario.

However, subtitle C off-site remediation unit costs would still be greater than state program remediation unit costs, both (1) due to fees charged by treatment, storage and disposal facilities and (2) due to transportation costs to the disposal site.

In addition, some states have asserted that clean-ups under Subtitle C would take longer than state programs, allowing contamination to spread and resulting in a much larger volume of soil and/or groundwater to be remediated.

In summary, unit costs for subtitle C waste management of petroleum contaminated soil tend to be higher than for state program management of soil. The reason for this cost difference depends on whether the soil is managed on- or off-site.

Subtitle C management	State program management (TC suspension)	Source of cost savings for TC suspension
On-site	On-site	Avoided Subtitle C administrative costs.
On-site	Off-site	Avoided Subtitle C administrative costs.
Off-site	On-site	Avoided transportation costs; difference between Subtitle C disposal fees and on-site remediation costs.
Off-site	Off-site	Lower transportation costs; lower disposal fees.

Estimates of actual unit cost savings vary, depending on location (i.e. distance from a subtitle C disposal facility) and on remediation method chosen. State estimates of transportation costs to a Subtitle C facility range from $30/ton (Texas) to $300/ton (Minnesota).

[Note: One cubic yard of contaminated soil is assumed to weigh one ton.]

Subtitle C landfill cost estimates provided by states range from $140/ton (Minnesota) to $2,000/ton (New York) and incineration costs estimates provided by states range from $420/ton to $1,700/ton (Minnesota).

Conversely, potential waste management costs using methods that state programs might choose under a TC suspension are substantially lower. State estimates of transportation costs to subtitle D landfills range from $5/ton (Texas) to $20/ton (Vermont). Subtitle D landfill cost estimates provided by states range from $30 (Minnesota, including transport) to $300/ton (New York, not including transport). On-site remediation techniques, such as thermal treatment or bioremediation, are generally less expensive than off-site techniques [states provided ranges from $30/ton (Minnesota, thermal treatment) to $120/ton (Minnesota, bioremediation)] but are reported to be as high as $1,000/ton (Texas, for bioremediation). These cost ranges are based on studies of five different states (Minnesota, Florida, New York, Vermont and Texas); other states' costs may vary widely.

Information on the total amount soil or other media affected by a TC suspension is not readily available. The American Petroleum Institute (API) estimates in January 1992 that 23.5 million gallons of petroleum is spilled in 24 states annually. Of this 23.5 million gallons of petroleum spilled in 24 states, only a portion will contaminate soil or other media in states affected by the TC suspension (i.e. states with adequate programs to address petroleum contamination).

[Note: The Texas Railroad Commission estimates that 1 barrel of oil (42 gallons) contaminates 2.1 cubic yards of soil].

Of the contaminated soil in affected states, only a portion will actually fail the TC. Although these portions are unknown, the amount of TC petroleum-contaminated soil affected annually by the suspension appears to be on the order of hundreds of thousands of cubic yards. Depending on the actual unit cost savings, the total national cost savings due to the TC suspension for petroleum-contaminated media may be in the tens or hundreds of millions of dollars per year for the duration of the three year suspension.

IX. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order No. 12291

Executive Order No. 12291 requires that regulatory agencies determine whether a new regulation constitutes a major rulemaking and, if so, it requires that the agency conduct a Regulatory Impact Analysis (RIA). An RIA consists of the quantification of the potential benefits, costs, and economic impacts of a major rule. A major rule is defined in Executive Order No. 12291 as a regulation likely to result in:

- An annual effect to the economy of $100 million or more; or
- A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The Agency has estimated that today's proposed rule will result in significant cost savings to the economy (see VIII. Cost Savings Analysis, above). Also, the Agency does not believe the rule will significantly effect consumers, individuals, industries, Federal, State and local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, innovation, or international trade. Therefore, the Agency has determined that today's proposed rule is not a major rule.

Because today's proposed rule is not a major rule, the Agency has performed a Cost Savings Analysis (see section VIII above), rather than an RIA, focusing its analyses on the cost savings of the rule only. The Agency has not assessed the economic impacts and benefits attributable to today's proposed rule.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–12, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions).

This proposal will generally provide regulatory relief to business facing petroleum-related cleanups and businesses conducting the cleanups. For this reason, the Administrator has certified that this rule will not have a significant negative impact on small entities—in fact, it is likely to have a significant positive impact. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1623.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (PM–223Y), Washington, DC 20460 or by calling (202) 260–2740.

Public reporting burden for this collection of information is estimated to average 26 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 261

Harzardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 15, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6095, 6912(a), 6921, and 6922.

2. Section 261.4 is amended by revising paragraph (b)(11) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(11) Environmental media and debris contaminated solely by releases of petroleum product that fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only), and that are not subject to the corrective action regulations under part 280 of this chapter (*i.e.* RCRA Subtitle I-regulated underground storage tanks). This exclusion is applicable only as provided under paragraphs (b)(11)(i) through (vii) of this section, as follows:

(i) This exclusion shall be effective until [three years after date of publication of final rule in **Federal Register**].

(ii) For the purposes of this exclusion only, petroleum product is defined as:

(A) Crude petroleum oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and

(B) Petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, and lubricants.

(iii) Except as provided in § 261.4(b)(11)(vii), the exclusion shall apply only to petroleum product-contaminated media or debris that are being managed pursuant to a remedial action for which State oversight is being provided under a site-specific enforcement order, or other written approval from the State.

(iv) The exclusion shall apply only in a State that certifies in writing to the EPA Regional Administrator that the State:

(A) Has response authorities to:

(1) Require cleanup of media and debris contaminated by petroleum

product that is released from sources other than those subject to 40 CFR part 280, subpart F, to levels of protection defined as adequate by the State; and

(*2*) Control the transportation, treatment, storage, and disposal of petroleum product-contaminated media and debris generated from those response actions; and

(B) Has programs in place to effectively administer and enforce such authorities.

(v) The certification submitted by the State must be signed by the State waste management program director and the State Attorney General, and must contain:

(A) A description of the existing State laws and regulations which constitute the response authorities specified in paragraph (b)(11)(iv)(A) of this section; and

(B) A description of the State programs as specified in paragraph (b)(11)(iv)(B) of this section. Such description must include:

(*1*) A description of types and numbers of releases which are responded to by the State programs and authorities and the types and numbers of response actions conducted under the State program; and

(*2*) A description of the standards that are used by the State to establish cleanup goals for media and debris contaminated by petroleum product releases not subject to RCRA Subtitle I. If specific cleanup standards have not been adopted by the State, a description of the process used by the State to determine cleanup goals for such contaminated media and debris shall be provided.

(vi) The Regional Administrator shall review the certification to determine if it is complete within 90 days of receipt. When a certification is determined to be complete, EPA shall publish a notice in the **Federal Register** to suspend the TC in that State at sites meeting the conditions of paragraph (b)(11)(iii) of this section. The suspension shall be effective immediately upon publication of the **Federal Register** notice.

(vii) The exclusion shall also apply to petroleum product-contaminated media and debris that are managed pursuant to remedial actions under RCRA 7003, 3004(u), 3004(v), and 3008(h), and under the Oil Pollution Act.

* * * * *

[FR Doc. 92-31300 Filed 12-23-92; 8:45 am]

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Reader Aids

Federal Register

Vol. 57, No. 248

Thursday, December 24, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

56803-56962.....1
56963-57094.....2
57095-57320.....3
57321-57644.....4
57645-57874.....7
57875-58120.....8
58121-58398.....9
58399-58696.....10
58697-58960.....11
58961-59274.....14
59275-59800.....15
59801-59894.....16
59895-60072.....17
60073-60448.....18
60449-60714.....21
60715-60974.....22
60975-61248.....23
61249-61556.....24

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6512.....57643
6513.....58695
6514.....58697
Proclamations:
6282 (See Proc. 6515).....60053
6343 (See Proc. 6515).....60053
6445 (See Proc. 6515).....60053
6455 (See Proc. 6515).....60053
6515.....60053
6516.....61245
Executive Orders:
12543 (Continued by Notice of December 14, 1992).....59885
12544 (Continued by Notice of December 14, 1992).....59895
12674 (See OGE final rule of Dec. 10, 1992).....58399
12731 (See OGE final rule of Dec. 10, 1992).....58399
12757 (Amended by Executvie Order 12823).....57645
12823.....57645
12824.....58121
12825.....60971
Administrative Orders:
Memorandums:
July 25, 1961 (Rescinded by Memorandum of November 30, 1992).....57093
November 30, 1992.....57093
Notices:
December 14, 1992.....59895

5 CFR

317.....61249
430.....60715
432.....60715
530.....59275
532.....57875, 59277
540.....60715
550.....59277
551.....59277
591.....58123
1650.....57321, 60073
2638.....58399
Proposed Rules:
591.....58554
872.....58159
873.....58159

7 CFR

2.....57647, 58961
16.....58124
68.....58897
180.....60073
272.....60074
273.....60074
301.....57322
425.....56963
736.....57647
800.....58961, 58967
810.....58961, 58967
907.....56803, 58127, 59280, 58898
910.....56806, 58128, 59282
1924.....57095
1930.....59900
1942.....57876
1944.....58042, 59900
1951.....59900
1955.....60084
1956.....60084
1962.....60084
1965.....59900, 60084, 61489
Proposed Rules:
17.....59941
271.....60489
273.....60489
301.....57379
354.....56862
920.....56864
927.....57694
981.....56866
985.....57695
1040.....58418
1250.....60139

8 CFR

238.....59906
245.....56807
Proposed Rules:
3.....60740
235.....60741

9 CFR

51.....60086
54.....58130
75.....57335
94.....57337
145.....57338, 58552
147.....57338
162.....60086
Proposed Rules:
317.....57390
318.....57390
381.....57390

10 CFR

20.....57649, 57877
52.....60975

Proposed Rules:
Ch. I....58727
2....61013
20....58727
34....57392
52....61342
54....58730

11 CFR

201....58133
Proposed Rules:
100....56867
114....56867

12 CFR

5....58972
203....56963
206....60086
208....60718
215....60979
225....60718
303....59284
335....58136
506....61251
563....61251
614....58860
625....60108
1503....61251
1680....56968
702....60720
1102....60722
Ch. XIII....60112
Proposed Rules:
9....57971, 60742
202....57697
215....61016
226....58159
357....60140
621....58972
701....56868
705....56868
707....60141
932....58732
933....58732
1503....61342

13 CFR

101....61255
Proposed Rules:
121....59312

14 CFR

21....57656
25....57656
39....57096, 57280, 57658, 57879, 57908, 58973, 59312, 59801, 60113, 60277, 60980, 61255
61....60725
71....57660, 57664, 57909, 57910, 58137, 58138, 58421, 58699, 59286, 59287, 60449, 60728, 60730, 60981, 60982, 61257
73....58285
91....60725
95....56814
97....56822, 56823, 58700–58702
121....60725
149....60725
153....60725
154....60725
199....60725
228....60725
235....60725
270....60725
292....60725
310a....60725
320....60725
326....60725
384....60725
387....60725
Proposed Rules:
39....56873, 57392, 57395, 57702, 57705, 57706, 58162, 58164, 58751, 58752, 58998 58999, 59001, 60142, 60146, 60743, 60747
61....59548
63....59548
65....59548
71....56875, 57708, 57709, 57971–58116, 58165, 58167, 58754, 59312, 60748, 61343, 61344
121....59458, 59477, 59778
129....59473
135....59458
234....58755

15 CFR

771....61259
778....60122
779....60122
785....61259
786....61259
799....61259
801....59288
806....60731

16 CFR

305....58976
1211....60449
Proposed Rules:
1700....57397

17 CFR

1....58703
33....58976
140....61290
143....61291
230....56826
239....56826
240....56973
270....56826
274....56826
Proposed Rules:
4....58760
34....58422
35....58423
150....58760
156....57116
230....57397
240....57027, 57397, 57710
260....57713

18 CFR

2....58168, 59289
34....58168
35....58168, 59289
41....58168
50....59289
131....58168, 59289
141....59289
161....58978
250....58978
284....57911, 57952
292....58168, 59289
294....58168
300....59289
382....58168
385....58168, 59289
401....59907, 60470
1301....59802, 59908
Proposed Rules:
154....56876
284....57031

19 CFR

177....58706

20 CFR

404....57665, 59909, 59911
614....59798

21 CFR

16....58400
73....61292
146....57666
172....57960
184....60470
201....58356
310....58356, 60415, 60246, 60430
314....58942, 61489
341....58356
369....58356
601....58942, 61489
807....58400
814....58400
860....58400
861....58400
895....58400
1240....57343
1401....59803
Proposed Rules:
341....58378
812....60491
872....56876
1301....60148
1311....60148

22 CFR

51....59807

23 CFR

1....60725
12....60725
17....60725
140....60725
470....60725
490....60725
642....60725
650....60725
655....60725
661....60725
666....60725
770....60725
920....60725
922....60725
1204....56991

24 CFR

24....58326
25....58326
30....58326
92....58862, 60960
200....58326
202....58326
203....58326
204....58326
206....58326
207....58326
213....58326
220....58326
221....58326
222....58326
226....58326
227....58326
233....58326
234....58326
237....58326
240....58326
241....58326
242....58326
244....58326
248....57312
571....58139
700....58042
990....61226
3500....56856
Proposed Rules:
251....59314
252....59314
255....59314
905....59316

26 CFR

1....57280, 57531, 57668, 58706, 58983, 59915, 60126, 60473, 60474, 60568, 60733, 60983, 61293, 61313
301....58706, 58984, 60846, 61293
602....57279, 60473, 60474, 60983, 61293, 61313
Proposed Rules:
1....56877, 57399, 57531, 57971, 57979, 59003, 59319, 59324, 59327, 60029, 60495, 60749, 60846, 61017, 61019, 61345, 61353
20....57399
25....57399
26....61353, 61356
31....58423
301....58760, 61020, 61035, 61356, 61373
602....57399, 59003

27 CFR

Proposed Rules:
9....58763

28 CFR

2....59915
68....57669
Proposed Rules:
345....59866
545....59866

29 CFR

470....58285
578....57280
1601....60995
2601....61323
2616....59206
2617....59206
2619....59292, 59293
2621....59294
2626....59295
2640....59808, 59820
2642....59808
2646....59812
2649....59820
Proposed Rules:
1....57033, 57034
2606....59003
2612....59003
2615....59003
2616....59003
2622....59003

2623....59003

30 CFR

7....61182
18....61182, 61210
57....61210
75....61210
100....60690
400....59916
914....59916
917....58139, 59919
920....59922
Proposed Rules:
14....61254
18....61254
75....61254, 61538
401....59941
840....60408
842....60408
914....57039
917....58169
926....59020
944....58144

31 CFR

205....60676
257....57344
500....58986
Proposed Rules:
10....57400, 60149, 60278
209....57400

32 CFR

287....61234
367....58986
701....57961
706....59924, 59926
Proposed Rules:
199....58427

33 CFR

24....60725
100....58144, 60126, 60995
105....60725
117....57098, 57962, 57963, 58145, 58710
155....60402
157....60402
165....56991, 57099, 57100, 58146, 58988, 59927, 60127, 60996
334....58098
Proposed Rules:
117....57039, 58172, 59943, 59944

34 CFR

12....60934
206....60406
280....61508
600....57304
668....57304, 60032
674....60700
675....60700
676....60700
682....60278
Proposed Rules:
5b....59860
21....58100

36 CFR

7....58711
1258....60997
Proposed Rules:
7....60496
704....57979
1191....60612
1222....57042
1230....57042

37 CFR

201....60481
202....60481
304....60954
Proposed Rules:
304....58552

38 CFR

3....56992, 59296, 60734
21....57101, 57107, 60735
36....61235
Proposed Rules:
21....58435

39 CFR

601....60997
Proposed Rules:
111....58765
3001....57124

40 CFR

22....60128
52....57345, 58989, 58991, 58993, 59300, 59928, 60425
61....60998
62....56857
70....57347
81....59300
88....60038
122....60444
124....60128
131....60848
180....58147, 58149, 58384, 59822, 59824, 60999, 61002
185....59824
186....59824
261....57673, 61492
264....61492
265....61492
271....59825, 60129, 61003
300....61004, 61005
302....61492
Proposed Rules:
Ch. I....57402
52....57045, 57047, 57715, 59022, 59327, 60149, 61036
61....56877, 57403, 60778
63....57534
76....61489
80....57980
82....58644
180....59829
260....61376
261....61376
262....61376
264....61376
268....61376
281....61376
300....56882
414....56883
455....56883

41 CFR

101-2....56993
101-17....56994
101-34....59936
101-38....60132
201-38....60132

42 CFR

52a....61005
62....56994
400....56996
401....56996
405....56996, 57675
406....58716
410....57675
414....57109, 57675
Proposed Rules:
417....59024
421....57125
434....59024
435....57403
1003....59024

43 CFR

8360....61242
Public Land Order:
6954....61236

44 CFR

64....60486
65....59303, 59304
67....59305
Proposed Rules:
67....59329, 59946

45 CFR

1303....59260
1304....58084
1306....58084
Proposed Rules:
2500....60779
2501....60779
2502....60779
2503....60779
2504....60779
2505....60779
2506....60779

46 CFR

30....60402
32....60402
69....59937
70....6402
90....6402
154a....60725
170....58406
172....60402
237....60725
250....60725
262....60725
278....60725
279....60725
292....60725
294....60725
310....60725
316....60725
318....60725
319....60725
320....60725
321....60725
322....60725
323....60725
333....60725
334....60725
Proposed Rules:
16....59752, 59778
28....57129, 60158

47 CFR

2....60132
22....56859
61....60735
63....57964
69....56998
73....56860, 56999, 57347, 57438, 58717, 60737
76....61009
80....57000, 61011
90....60132
Proposed Rules:
Ch. I....58436, 60501, 60737
2....57049, 57408, 57717
18....59040
36....56888, 58767
61....56888, 58767
63....57717
64....56888, 58767
69....56888, 58767
73....56894, 57051, 57409, 57411, 58769, 59330, 60782, 60783, 61037
76....59331, 60501, 61038
80....57717
90....57717
97....59950

48 CFR

Ch. I....60570
Ch. 220....61152
4....60572, 60573
5....60573
7....60574
8....60576
9....60576
13....60577
15....60578, 60579, 60610
19....60580, 60581, 60610
22....60581
25....60582, 60583
31....60583, 60610
33....60584, 60610
37....60583
42....60587
45....60587, 60589
51....60590
52....60572, 60574, 60578, 60581, 60583, 60587, 60610
53....60590
517....59938
552....59938
803....58717
852....58717
913....57638
922....57638
952....57638
970....57638
1801....58718
1804....58718, 60737
1805....58718
1806....58718
1807....58718
1809....58718
1815....58718
1817....58718
1827....58718
1828....58718
1833....58718
1835....58718
1837....58718
1839....58718
1842....58718
1845....58718
1849....58718
1852....58718
1853....58718
1870....58718
2401....59786
2402....59786
2403....59786
2405....59786

2406....59786
2409....59786
2413....59786
2414....59786
2415....59786
2416....59786
2419....59786
2425....59786
2426....59786
2428....59786
2432....59786
2433....59786
2436....59786
2437....59786
2446....59786
2452....59786

Proposed Rules:

48....59274
219....56895, 60503
252....56895, 60503
6101....60783
9903....60503
9905....60503

49 CFR

81....60725
101....60725
171....59308, 60725
172....59308
174....59308
177....59308
527....60725
571....57000, 57020, 58150, 58406, 60725
590....60725
603....60725
623....60725
635....60725
670....60725
1180....57112

Proposed Rules:

23....58288
40....59409
61....59458
63....59458
65....59458
121....59458, 59473, 59477, 59778
129....59458
135....59473
199....59712, 59720, 59778
217....58436, 59608
219....59588, 59608, 59778
220....58436
Ch. III....60784
350....59516
382....59516, 59567, 59778
383....59616
391....59539
392....59516
395....59516
523....61377
525....61377
533....61377
537....61377
571....58437, 58444, 59041, 59043
572....58444
585....59043
653....59660, 59778
654....59646
826....60785
1152....59951
1201....59951

50 CFR

17....57348, 59236, 59244
217....60135
222....60135
227....57348, 57968, 60135
285....59310
625....57358, 58150
642....58151
663....57377
671....57112, 60029
672....61326
675....57377, 57692, 58157, 58726, 61326
672....56860

Proposed Rules:

17....58770, 58774, 58779, 59053, 59066, 59951, 59970, 60159, 60161
32....58108, 58930
222....60162
226....57051, 57981
611....57718, 57982
625....61389
641....57129
649....58781
651....58173
655....60786
658....58175
663....56897
669....58782
672....57130, 57726, 57982, 59072
675....57130, 57718, 57726, 59072, 60788
676....57130