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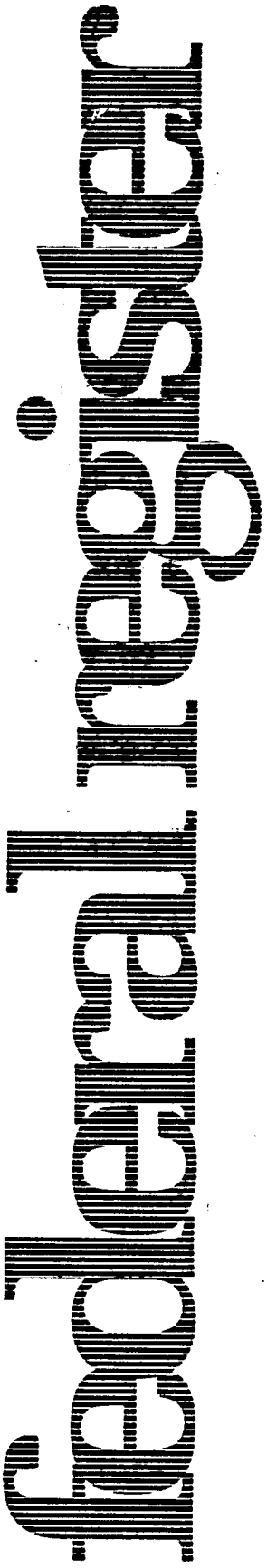

Thursday
August 12, 1993

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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.

POSTAL RATE COMMISSION

5 CFR Chapter XLVI

RIN 3209–AA04, 3209–AA15 and 3211–AA00

Supplemental Standards of Ethical Conduct for Employees of the Postal Rate Commission

AGENCY: Postal Rate Commission.

ACTION: Interim rule, with request for comments.

SUMMARY: The Postal Rate Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Postal Rate Commission (Commission) that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The interim rule is a necessary supplement because it addresses ethical issues specific to the Commission. The supplemental rule requires Commission employees to obtain prior approval to engage in outside employment, requires them to report certain employment contacts, and prohibits them from having financial interests in or being employed by persons with certain interests in postal matters.

DATES: Interim rule effective August 12, 1993. Comments are invited and must be received on or before September 27, 1993.

ADDRESSES: Send comments to the Postal Rate Commission, Washington, D.C. 20268–0001, Attn: David L. Ruderman.

FOR FURTHER INFORMATION CONTACT: David L. Ruderman, Postal Rate Commission, Telephone (202) 789–6835, FAX (202) 789–6861.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See FR 35006–35067, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 53583 (November 4, 1992). The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel. With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement an agency's ethics program. The Commission, with OGE's concurrence, has determined that the following supplemental rules are necessary to the success of its ethics program.

II. Analysis of the Regulations

The following regulations will appear in new 5 CFR chapter XLVI.

Section 5601.101 General

(a) *Purpose.* Section 5601.101(a) explains that the regulations contained in the interim rule apply to all Postal Rate Commission employees, including Commissioners, and are supplemental to the executive branch-wide Standards.

(b) *Definition of Affected Persons.* For purposes of interpreting the prohibitions on financial interests in § 5601.102 and the restrictions on outside employment in § 5601.104(a), § 5601.101(b) sets forth a definition of the phrase "a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the United States Postal Service." The definition reflects the Postal Rate Commission's long-standing interpretation of this phrase as used in the context of similar prohibitions and restrictions contained in its agency standards of conduct regulations in 39 CFR part 3000, which are being repealed and modified, in pertinent part, by the Commission in a separate rulemaking document in which a cross-reference to these new regulations is being included.

Section 5601.102 Prohibited Financial Interests

Under 5 CFR 2635.403(a) an agency may, by supplemental regulation, prohibit or restrict the holding by its employees of financial interests that the agency determines would cause a reasonable person to question the impartiality and objectivity with which its programs are administered. The Postal Rate Commission is a small agency with fewer than 100 employees whose principal functions relate to establishing postage rates and classifications. Every two to four years it conducts an omnibus rate proceeding that affects all persons significantly interested in rates and classification. In the intervening years it conducts a number of proceedings having an impact on many of these same persons In order to avoid the significant staffing problems that would be caused by disqualifying employees with affected financial interests and to ensure public confidence that rate and classification proceedings are being handled by an impartial Commission and staff, the Commission has determined that it is necessary to prohibit all of its employees from holding financial interest in companies or persons significantly affected by rates and classification, or the operations of the United States Postal Service (Postal Service). The prohibition is § 5601.102 continues in effect the prohibition that has been contained in its old agency standards of conduct regulations at 39 CFR 3000.735–302.

Section 5601.103 Notice of Disqualification While Seeking Employment

Under 5 CFR 2635.604, it is the employee's obligation to disqualify himself from participation in a particular matter that affects the financial interests of a prospective employer with whom he is seeking employment. Disqualification can be effected, in many cases, simply by not participating in the matter, although § 2635.604(c) provides that the disqualified employee should notify the person responsible for his assignment. The Commission's omnibus rate proceeding and many of its other proceedings have such a broad impact on those whose financial interests are affected by rate and classification matters that it would be difficult for any Commission employee to effectively disqualify himself from matters affecting a prospective employer without actually giving notice of his disqualification. When a Commission employee determines, in accordance with 5 CFR 2635.606, that he will not participate in a matter to which he has been assigned,

§ 5601.103 requires the employee to provide his supervisor with notice of the disqualification.

Section 5601.104 Outside Employment

(a) *Prohibited Outside Employment.* 5 CFR 2635.802 provides that an employee shall not engage in outside employment if it is prohibited by an agency supplemental regulation. To much the same effect, 5 CFR 2635.403 permits an agency, by supplemental regulation, to prohibit compensated outside employment on the same basis that it may prohibit employees from holding other financial interests. Under the Commission's previous standards of conduct regulations at 39 CFR 3000.735–307(c), Commission employees have been prohibited from engaging in outside employment, with or without compensation, with or for any person whose interests are significantly affected by postal rates, fees or classifications, or who is substantially dependent on providing property, a product, or service to the Postal Service. Section 5601.104(a) has the effect of continuing a substantially similar prohibition based on the Commission's determination that outside employment with persons in essentially those same categories would cause a reasonable person to question the impartiality with which the Commission's proceedings are conducted. As compared to old 39 CFR 3000.735–307(c), the new standard for prohibiting employment with Postal Service contractors has been reworded by virtue of the definition in § 5601.101(b) to eliminate small contractors and others whose Postal Service contracts account for a small portion of gross income.

(b) *Prior Approval for Outside Employment.* When it has determined that such a requirement is necessary or desirable for the purpose of administering its ethics program, 5 CFR 2635.803 provides that an agency may, by supplemental regulations, require its employees to obtain prior approval before engaging in outside employment. The Commission's old regulations at 39 CFR 3000.735–307(g) imposed a requirement for prior approval of outside employment. This requirement, which has been an integral part of the Commission's ethics program, is continued by the substantially identical requirement of § 5601.104(b).

(c) *Definition of Employment.* Section 5601.104(c) sets forth a definition of employment for purposes of applying the prohibitions on outside employment and the requirement for prior approval set forth respectively in paragraphs (a) and (b) of the section.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Commission has found good cause pursuant to 5 U.S.C. 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that it is important to the smooth transition from the Commission's prior ethics rules to the new executive branch-wide Standards that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to Postal Rate Commission organization, procedure, and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Postal Rate Commission will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small business entities because it affects only Federal employees.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

E.O. 12291, Federal Regulation

The Commission has determined that this is not a major rule as defined in section 1 (a) and (b) of Executive Order 12291.

List of Subjects in 5 CFR Part 5601

Conflict of interests, Government employees.

Dated: August 3, 1993.

By direction of the Commission.

Charles L. Clapp,

Secretary.

Approved: August 5, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Postal Rate Commission, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding at new chapter XLVI, consisting of part 5601, to read as follows:

CHAPTER XLVI—POSTAL RATE COMMISSION

PART 5601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE POSTAL RATE COMMISSION

Sec.

5601.101 General.
5601.102 Prohibited financial interests.
5601.103 Notice of disqualification when seeking employment.
5601.104 Outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 3603; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 5601.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees, including Commissioners, of the Postal Rate Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Definition of affected persons.* For purposes of this part, a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of the United States Postal Service (Postal Service):

(1) Includes a company or other person:

(i) Who is or, in the past 4 years, has been a party to a proceeding before the Postal Rate Commission;

(ii) Whose primary business involves entering publications as second-class mail;

(iii) Who is in the business of selling merchandise, and a substantial portion of whose orders are solicited, received, or delivered through the mails;

(iv) Who is primarily engaged in the business of advertising through the mails;

(v) Who is primarily engaged in the business of delivering merchandise or written communications, i.e., a person whose primary business is in competition with the Postal Service: or

(vi) Who provides services or products to the Postal Service that can be expected to produce income that exceeds $100,000 and equals or exceeds 5 percent of its gross income for the current fiscal year; and

(2) Does not include a company or other person whose use of the mails is merely an incidental or a minor factor in the general conduct of its business

§ 5601.102 Prohibited financial interests.

Any employee shall not, directly or indirectly, have any financial interest in a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service.

§ 5601.103 Notice of disqualification when seeking employment.

An employee who has been assigned to a particular matter which affects the financial interests of a prospective employer and who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in that matter shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide notice of disqualification to his supervisor upon determining that he will not participate in the matter.

§ 5601.104 Outside employment.

(a) *Prohibited outside employment.* An employee shall not engage in outside employment, either on a paid or unpaid basis, with or for a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service.

(b) *Prior approval for outside employment.* An employee who wishes to engage in outside employment, either on a paid or unpaid basis, shall obtain the prior written approval of the designated agency ethics official. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the designated agency ethics official to give approval based on a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including paragraph (a) of this section and 5 CFR part 2635.

(c) *Definition of employment.* For purposes of this section employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee. Employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organizations unless such activities involve the practice of a profession within the meaning of 5 CFR 2636.305(b)(1), including the giving of professional advice, or are for compensation other than reimbursement of expenses.

[FR Doc. 93-19331 Filed 8-11-93; 8:45 am]
BILLING CODE 7710-FW-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. 93-009F]

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Food Safety and Inspection Service, the authority to administer and conduct a research program on matters affecting food safety and the authority to enter into contracts, grants, and cooperative agreements to further agricultural research activities.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Ralph Stafko, Director, Policy Office, Food Safety and Inspection Service, USDA, room 3812, South Building, Washington, DC 20250, (202) 720-8168.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12778. Finally, this action is not a rule as defined by Pub. L. No. 96-354, the Regulatory Flexibility Act, and, thus, is exempt from its provisions.

List of Subjects in 7 CFR Part 2

Authority Delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding new paragraphs (g)(3) and (g)(4) to read as follows:

§ 2.17 Assistant Secretary for Marketing and Inspection Services.

* * * * *

(g) * * *

(3) Administer and conduct a food safety research program (7 U.S.C. 427).

(4) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.55 is amended by revising the section heading and paragraph (a)(5) and adding (a)(6) to read as follows:

§ 2.55 Administrator, Food Safety and Inspection Service.

(a) * * *

(5) Administer and conduct a food safety research program (7 U.S.C. 427).

(6) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

* * * * *

Done at Washington, DC, on: August 5, 1993.

For Subpart C:

Mike Espy,

Secretary of Agriculture.

For Subpart F: August 5, 1993.

Eugene Branstool,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 93-19271 Filed 8-11-93; 8:45 am]
BILLING CODE 3410-01-M

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560-AD29

Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations to: Revise the formula for determining liquidated damages when shipment of cotton on an original export contract or on a replacement contract is not completed, or when a replacement contract is not designated by the exporter within an established timeframe; revise the procedure for establishing the payment rate for U.S. upland cotton shipped under an optional origin contract; and further outline documentation requirements to support relief requests for export contract cancellations, contract amendments, or any failure to export deemed beyond the control of the exporter. These actions are authorized by section 103B of the Agricultural Act of 1949, as amended (1949 Act).

DATES: Effective August 12, 1993, comments must be received on or before September 13, 1993, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FRAD, ASCS, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "nonmajor." It has been determined that the provisions of this interim rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, State, or local governments or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of the interim rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

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

Paperwork Reduction Act

The information collection requirements contained in the current regulations at 7 CFR 1427.100 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 through July 31, 1995, and assigned OMB No. 0560–0136. The amendments to 7 CFR part 1427.100 set forth in this interim rule contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35. The information collection package has been submitted to OMB for review.

Background

When the user marketing certificate program was first established, safeguards were introduced to prevent the shifting of export sales from weeks with low payment rates to weeks with higher payment rates. It has come to the attention of CCC that, despite these safeguards, some high-rate contracts have been retained while lower-rate contracts have been canceled. Shortcomings in the current regulations have been identified with regard to liquidated damages for non-shipment, payment rates for cotton shipped under optional origin contracts, and documentation required to support relief requests for export contract cancellations, contract amendments, or any failure to export deemed beyond the exporter's control. In mid-April, an amendment to the agreement and amended instructions were sent to domestic users and exporters who currently participate in the user marketing certificate program. The amended agreements and instructions became effective on April 22 and reflect the changes contained in this interim rule.

Discussion of Changes

Sections 1427.107(d) and 1427.109(c) are amended to revise the formula used to determine liquidated damages if shipment of cotton is not completed or a replacement contract is not designated by the exporter by December 31. Under current rules, liquidated damages are determined by multiplying the quantity of cotton not shipped by the amount that the highest payment rate paid to the exporter between the date of the original contract and December 31 exceeds the original contract rate or, for replacement contracts, the payment rate in effect on the date of the replacement contract. This inadvertently results in zero liquidated damages for non-shipment of cotton under contracts made at the highest payment rate for the period.

The revised rules eliminate a situation whereby liquidated damages are zero. Liquidated damages will be determined by multiplying the quantity of cotton not shipped by the higher of: (1) The difference between the highest payment rate paid to, or earned by, the exporter—regardless of whether the highest payment rate is a current or forward-crop payment rate—between the date of the original contract and December 31 of the year in which the original contract shipment period ends and the original contract payment rate; or (2) 50 percent of the original contract payment rate. Similarly, liquidated damages for replacement contracts are based on the quantity of cotton not shipped multiplied by the higher of: (1) The difference between the highest payment rate paid to, or earned by, the exporter and the replacement contract payment rate; or (2) 50 percent of the original contract payment rate.

Section 1427.107(e) is added to change the determination of payment rates applicable for U.S. cotton shipped under optional origin contracts. Under current rules, exporters are eligible to receive payments on optional origin contracts if U.S. cotton is shipped. Payments are based on the payment rate

in effect on the date of the original optional origin contract. Although exporters who ship foreign cotton on an optional origin contract do not receive payments on that cotton, their obligation to ship under the user marketing certificate program is thereby fulfilled, and a replacement contract is not required.

This policy allows exporters to lock in a payment rate on an optional origin contract and, if a higher payment rate occurs later, to ship foreign cotton on the lower rate and U.S. cotton on the higher rate. Since only exporters who trade in both foreign and U.S. cotton make optional origin contracts, the current rules give them an advantage over exporters who ship only U.S. cotton. The revised rule would establish the payment rate for optional origin contracts at the lower of: (1) the payment rate in effect when the original optional origin contract was made; or (2) the payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped is of U.S. origin.

Revisions to penalty provisions for non-shipment of cotton will improve exporter accountability without compromising the objectives of the user marketing certificate program. Changing the way in which payment rates are determined for U.S. cotton shipped on an optional origin contract will eliminate any advantage to exporters who trade in both foreign and U.S. cotton vis-a-vis exporters who ship only U.S. cotton. These changes should result in a more accurate indication of the potential level of U.S. cotton exports and the competitiveness of U.S. upland cotton in world markets.

Section 1427.109(e) is amended to require that documentation be submitted to CCC as evidence that an export contract cancellation, amendment or failure to export is beyond the control of the exporter. Requests for relief from making a replacement contract will be examined by CCC on a case-by-case basis. Further clarification of documentation required to support relief requests will improve the efficiency of CCC operations.

Interested persons are invited to submit written comments on the interim rule changes. Comments must be received by September 13, 1993, in order to be assured of consideration.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.107 is amended by:

A. Revising paragraph (d)(3),

B. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g) respectively, and

C. Adding a new paragraph (e) to read as follows:

§ 1427.107 Payment rate.

* * * * *

(d) * * *

(3) If shipment is not completed by December 31 of such year, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the original contract payment rate or, if a replacement contract has been made, the replacement contract payment rate, or

(ii) 50 percent of the original contract payment rate.

(e) For U.S. cotton sold by the exporter under an optional origin contract, the payment rate shall not be established until the exporter notifies CCC in writing that the cotton shipped or to be shipped was or will be of United States origin. Upon receipt of such notification, CCC will establish the payment rate for cotton shipped under such contract at the lower of:

(1) The payment rate in effect when the optional origin contract was made, or

(2) The payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped, or to be shipped, under such contract was, or shall be, of United States origin.

* * * * *

3. Section 1427.109 is amended by:

A. Revising paragraph (c)(3), and

B. Revising paragraph (e) to read as follows:

§ 1427.109 Contract cancellations.

* * * * *

(c) * * *

(3) Not completed, or a replacement contract is not designated by the exporter by December 31, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the payment rate determined in accordance with paragraph (b) of this section, or

(ii) 50 percent of the original contract payment rate.

* * * * *

(e) The provisions of paragraphs (a) through (d) of this section will not apply if CCC determines, based upon written evidence provided by the exporter, that a contract cancellation, amendment, or failure to export is due to reasons beyond the control of the exporter. If, as determined by CCC, the cancellation is beyond the control of the exporter, replacement contracts are not required, and the assessment of liquidated damages by CCC is waived. Documentation to support that contract cancellations are beyond the control of the exporter must be submitted to CCC. Requests for relief from naming a replacement contract will be examined by CCC on a case-by-case basis to determine if relief is warranted.

Signed at Washington, DC, on July 1, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–19428 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 101, 103, 204, 205, and 245

[INS No. 1424–92]

RIN 1115–AC48

Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule implements section 153 of the Immigration Act of 1990 (IMMACT 90) by providing a procedure for classification of certain aliens as special immigrants who have been declared dependent on a juvenile court in the United States. This rule also implements section 302(d)(2) of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991 (Technical Amendments) by providing for the adjustment of status to that of lawful permanent resident for aliens classified as special immigrants who have been declared dependent on a juvenile court in the United States. In addition, the rule implements section 702 of IMMACT 90, which became effective November 29, 1990, by finalizing procedures for appeals of denials of adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e)(3) of the Immigration and Nationality Act (the Act), as amended. This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified aliens with the opportunity to apply for special immigrant classification and lawful permanent resident status, with possibility of becoming citizens of the United States in the future. It also ensures that persons whose applications for adjustment of status were denied because of failure to establish eligibility for the bona fide marriage exemption are able to exercise the appeal rights provided by law.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, Telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Although many dependent alien juveniles were eligible for the legalization provisions of the Immigration Reform and Control Act of 1986 (IRCA), those benefits were only available for a limited period of time to certain aliens who had been in the United States since before 1982. No method existed for most court-dependent juvenile aliens to regularize their immigration status and become lawful permanent residents of this country, even though a United States juvenile court had found them dependent upon the court and eligible for long-term foster care, and it had been determined that it was not in the children's best interests to be returned to their home countries or the home countries of their parents. Section 153 of IMMACT 90 provides that certain aliens who have been declared dependent on juvenile courts located in the United States may be eligible for special immigrant classification. Aliens who are classifiable as special immigrants may apply for immigrant visa issuance abroad or adjustment of status to that of a lawful permanent resident within the United States. After adjustment of status or admission with an immigrant visa, they may live and work in the United States indefinitely and may apply to become United States citizens in the future.

Section 153 of IMMACT 90, as originally enacted, did not relieve special immigrant juvenile court dependents from compliance with any of the statutory requirements for immigrant visa issuance abroad or adjustment of status within the United States, even though it exempted them from deportation under several provisions of section 241 of the Act. A significant number of aliens eligible for classification as special immigrant juvenile court dependents were ineligible to become lawful permanent residents because they could not meet the statutory requirements for immigrant visa issuance or for adjustment of status.

Persons seeking immigrant visa issuance abroad are normally required to show that they are not excludable from the United States under the exclusion grounds enumerated in section 212(a) of the Act. These grounds include prohibitions against the admission of aliens who are likely to become public charges in the United States or who seek to enter the United States for the purpose of performing labor without a certification issued by the Department of Labor showing that there are not sufficient United States workers in the alien's field at the intended job location. Many juvenile court dependents could not meet these requirements and were, therefore, unable to obtain an immigrant visa even though they were eligible for classification as special immigrant juveniles.

Persons applying for adjustment of status within the United States must also show that they are not excludable under section 212(a) of the Act. In addition, they must meet the adjustment of status requirements of section 245 of the Act. Section 245(a) of the Act requires that adjustment of status applicants show that they entered the United States only after having been inspected and admitted or paroled by an immigration officer. Many juvenile court dependents were unable to satisfy this requirement. Those who had been inspected and admitted or paroled were frequently ineligible for adjustment because they fell within the provisions of section 245(c) of the Act. This section prohibits the adjustment of status of preference immigrants who have been employed without authorization, are not in lawful nonimmigrant status at the time the application for adjustment is filed, or have failed to continuously maintain lawful nonimmigrant status in the past.

Although a person who cannot meet the special adjustment of status requirements of section 245 of the Act may still be eligible for immigrant visa issuance abroad, travel outside the United States presents unique problems for a large number of juvenile court dependents. Financial and documentary difficulties, and certain legal complications which may result from travel outside the area of the court's jurisdiction or outside the United States, combine to form and almost insurmountable barrier to travel abroad for many of these juveniles.

The Technical Amendments, enacted December 12, 1991, reduced or eliminated the obstacles facing most special immigrant juvenile court dependents wishing to become lawful permanent residents. Section 302(d)(2) of that law provides that special immigrant juveniles classifiable under section 101(a)(27)(J) of the Act are not subject to exclusion provisions restricting the admission of aliens who are likely to become public charges, aliens without labor certifications, and aliens who entered the United States without proper documents. It also allows waivers of most other exclusion provisions to be approved on an individual basis for humanitarian purposes, family unity, or when the approval of a waiver is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents will not be a factor in a discretionary waiver determination. The exclusion provision concerning simple possession of 30 grams or less of marijuana may be waived. However, other controlled substance violations, criminal exclusion grounds under sections 212(a)(2) (A), (B), and (C) of the Act, and certain exclusion provisions involving security and related issues under 212(a)(3) (A), (B), (C), and (E) of the Act may not be waived.

Section 302(d)(2) of the Technical Amendments also modifies section 245

of the Act by adding a new subsection 245(h). This new subsection permits most special immigrant juveniles to become lawful permanent residents regardless of the method of original entry into the United States, unauthorized employment, or failure to maintain lawful nonimmigrant status. It provides that all special immigrant juveniles classifiable under section 101(a)(27)(J) of the Act shall be deemed, for the purposes of section 245(a) of the Act, to have been paroled into the United States and exempts them from compliance with any of the requirements of section 245(c) of the Act.

Section 302(d)(2) of the Technical Amendments also seeks to minimize abuse of these generous benefits by restricting the admission of aliens arriving in the United States for the purpose of taking advantage of this means of gaining lawful permanent resident status. It provides that neither section 101(a)(27)(J) of the Act nor section 245(h) of the Act shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status under section 101(a)(27)(J) of the Act.

The Immigration Marriage Fraud Amendments of 1986 (IMFA), enacted November 10, 1986, made several changes to the Act which were designed to reduce the incentive for an alien to enter into a marriage with a United States citizen or lawful permanent resident for the sole purpose of obtaining immigration benefits. Section 5(a)(2) of IMFA provided that an adjustment of status application could not be approved when the adjustment was based upon a marriage that had been entered into on or after November 10, 1986, and while the alien was in deportation or exclusion proceedings, unless the alien had resided outside the United States for two or more years following the marriage. Section 702 of IMMACT 90 amends this requirement to provide that an applicant who can show, by clear and convincing evidence, that the marriage was bona fide may be exempted from compliance with this requirement. It also provides a single level of administrative appellate review for denials of requests for the exemption.

On May 21, 1991, at 56 FR 23207–23209, the Immigration and Naturalization Service (the Service) published an interim rule with request for comments in the **Federal Register**. The rule established a procedure for classification of certain juvenile court dependents as special immigrants under section 101(a)(27)(J) of the Act. The interim rule also described appeal rights in adjustment of status cases where the denial was based upon failure to qualify for the bona fide marriage exemption contained in section 245(e) of the Act. The interim rule became effective on May 21, 1991. Interested persons were invited to submit written comments on or before June 20, 1991. The Service received 38 comments relating to the rule.

Interim Rule

The interim rule implemented section 153 of IMMACT 90 by establishing a procedure for classification of certain aliens who have been declared dependent on a juvenile court in the United States as special immigrants. The rule also implemented section 702 of IMMACT 90 by providing a method through which the applicant could appeal the denial of an application for adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act.

Comments

The discussion that follows summarizes the issues which have been raised relating to the interim rule, provides the Service's position on the issues, and indicates the revisions adopted in the final rule. The discussion also summarizes technical changes mandated by section 302(d)(2) of the Technical Amendments, which statutorily exempt qualified special immigrant juveniles from meeting certain admissibility and adjustment of status requirements.

Redesignation of 8 CFR 101.6 as 8 CFR 204.11.

Section 162 of IMMACT 90 mandates the filing of petitions for all principal special immigrants. Regulations governing the filing of petitions for immediate relative, family sponsored, and employment-based immigrant classifications are found in 8 CFR part 204. The Service has determined that both the general public and Service employees will find the regulations easier to access if regulations concerning all types of petitions for immigrant classification are included in 8 CFR part 204. The Service has therefore determined that the regulations implementing the provisions of section 153 of IMMACT 90 should be removed from 8 CFR 101.6 and added to 8 CFR 204.11. This redesignation also mandates a technical modification to 8 CFR 103.1(f)(2)(xxxv), which provides for appellate review of denials of petitions for special immigrant juveniles. The technical change is necessary because petitions for special immigrant juveniles will now be approved under 8 CFR part 204 rather than 8 CFR part 101. The petitioner's right to appeal a denial of a petition for a special immigrant juvenile to the Associate Commissioner, Examinations has not been changed.

Appeals of Denials of Adjustment of Status Applications Based Upon Marriage Entered Into During Deportation or Exclusion Proceedings

Two commenters stated that they felt the appeal provision was unnecessary. These commenters further stated that they felt that the issue of whether a marriage was bona fide should not be reviewed during adjustment of status proceedings.

Adjustment of status applications based upon marriages subject to the two-year foreign residence requirement of section 245(e) of the Act require the filing of a visa petition. Before action is taken upon the visa petition, the Service officer adjudicating the case is required to determine whether clear and convincing evidence of a bona fide marriage has been provided. Therefore, this issue will normally be resolved in visa petition proceedings. However, the Service is not precluded from reviewing the issue of whether the marriage is bona fide during adjustment of status proceedings, despite the existence of an approved visa petition. Section 702 of IMMACT 90 provides that there shall be only one level of administrative appellate review for denials of adjustment of status applications pursuant to section 245(e) of the Act. Since no administrative review of denials of applications for adjustment of status previously existed (such denials were not appealable, although the applicant had the option of renewing the request in deportation proceedings before an immigration judge), the rule established this statutorily directed administrative review process. Accordingly, the rule has not been changed.

Definition of Long-term Foster Care

Twenty-five commenters urged the Service to amend the definition of long-term foster care to encompass situations in which adoption or guardianship is deemed to be in the juvenile's best interest. Twenty commenters recommended that the Service adopt the definition of long-term foster care contained in the Social Security Act. Some commenters also suggested that the Service modify the rule to recognize administrative determinations regarding eligibility for long-term foster care.

The final rule removes the regulatory definition of "long-term foster care" and substitutes a definition of "eligible for long-term foster care." The new definition adopts commenters' recommendations that eligibility for long-term foster care be established when a juvenile court determines that reunification with the natural parent(s) or the prior adoptive parent(s) is no longer a viable option for the child. The new definition also allows juveniles to qualify for special immigrant status when guardianship or adoption is deemed to be in the juvenile's best interest after the alien is found to be dependent upon the juvenile court. Section 153 of IMMACT 90 states that the decision regarding eligibility for long-term foster care must have been made in judicial proceedings. Therefore, this rule continues to recognize only judicial decisions concerning eligibility for long-term foster care.

Form I-360

Several commenters stated that they were pleased that the rule allows any person to file the petition on behalf of the juvenile.

Many also applauded the Service's decision to clearly state that the petitioner need not be a citizen or a lawful permanent resident of the United States. No commenters opposed these provisions. One commenter stated that he found the I-360 form somewhat confusing to use for a dependent juvenile, but that he understood the form was being revised. No commenters objected to the use of this form.

The Service has developed a revised Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The revised form is now available for use by the public and contains specific instructions for persons seeking to establish eligibility for special immigrant juvenile status. The revised form will be amended as soon as possible to reflect changes made by this rule. Questions concerning completion of the form may be directed to local immigration offices.

Fee Waivers

One commenter asked that fees be waived for certain applicants.

8 CFR 103.7(c) contains a fee waiver provision applicable to fees for applications, petitions, appeals, motions, or requests. Requests for fee waivers must be made and considered on a case-by-case basis.

Eligibility—Alien Required To Be Juvenile Under State Law

Twenty-six commenters recommended that the requirement that the beneficiary be a juvenile under state law be modified or eliminated. Several commenters pointed out that definitions of the terms "juvenile," "minor," and "child" vary from state to state. They also noted that different definitions may be used in various proceedings within one state and that some states have no legal definition of some or all of these terms, making compliance with the interim rule's eligibility requirements problematic. Some felt that the differences between the laws of various states would cause confusion. Some expressed concerns about the possibility that an alien in one state would be eligible for the benefit, while an alien in substantially identical circumstances living in another state would not be eligible. Others felt that the requirement was unnecessary, since the juvenile court would be required to determine eligibility for juvenile status prior to finding an individual dependent upon the court. Some also observed that section 153 of IMMACT 90 does not explicitly restrict special immigrant status to juveniles. Many also cited state laws allowing a juvenile court to retain jurisdiction over certain individuals, such as students, who have reached the age of majority but require continued court protection. These commenters suggested the regulation be amended to include these dependent young adults.

Despite commenters' concerns about confusion caused by differences between the laws of the various states, the Service believes that certain inequities caused by variations in state law are unavoidable in determining eligibility for the benefits of section 153 of IMMACT 90. Juvenile court issues are under the jurisdiction of the states and therefore dependent upon state statutes. However, in order to minimize confusion caused by dissimilar state laws, the Service has removed the requirement that the beneficiary be a juvenile under state law and replaced it with a requirement that the beneficiary be under twenty-one years of age. The new requirement establishes a consistent countrywide definition of the age at which an alien will no longer be eligible for special immigrant juvenile status. Although the language of the statute does not expressly restrict benefits to juveniles, the Service notes it does not specifically include aliens of any age who at some point in the past, regardless of how distant, had been declared dependent upon a juvenile court in the United States and found eligible for long-term foster care. The revised standard allows students and other young persons who continue to be dependent upon the juvenile court after reaching the age of eighteen to qualify for special immigrant juvenile status. This requirement also conforms with the definition of "child" contained in section 101(b)(1) of the Act. This rule does, however, allow exemptions to both the eligibility requirements and the automatic revocation provisions for those aliens who can establish that they met the eligibility criteria on November 29, 1990, and whose petitions for classification as special immigrant juveniles are filed before June 1, 1994.

Eligibility—Alien Required To Be Unmarried

Twenty-three commenters encouraged the Service to delete the requirement that the alien be unmarried. Most stated they felt this requirement should be eliminated because the beneficiary's marital status is not addressed by section 153 of IMMACT 90. Some commenters objected to this requirement because prospective beneficiaries had not received prior notice that marriage could make them ineligible for special immigrant juvenile status. Some also indicated that they felt the decision as to whether a married individual could be dependent upon the juvenile court should be made only by the juvenile court. One commenter pointed out that this requirement would disproportionately affect female juveniles, because they are more frequently coerced into marriages by unscrupulous adults or social pressures.

As indicated in the supplementary information to the interim rule, the Service believes that marriage alters the dependent relationship with the juvenile court. No commenters indicated that they believed that the marriage of a dependent juvenile would not affect the juvenile's dependency upon the court. Section 153 of IMMACT 90, in contrast to most other immigrant and special immigrant provisions, extends no benefits to spouses, indicating that Congress did not envision married persons as dependent juveniles. This requirement also conforms with the definition of child contained in section 101(b)(1) of the Act, which requires that children be unmarried. The term "unmarried" is defined in section 101(a)(39) of the Act. That section defines an unmarried person as a person who is not currently married, whether or not previously married. Therefore, a person who had been coerced or who had improvidently entered into a marriage would not be permanently ineligible for special immigrant juvenile status. After legal termination of a marriage by annulment, divorce, or through the death of the spouse, an individual is regarded by the

Service as "unmarried" and could be eligible to seek special immigrant juvenile status, provided he or she meets the other statutory and regulatory requirements for the classification. The rule has, however, been modified to allow an alien who can establish that he or she met the eligibility criteria on November 29, 1990, to apply for this benefit, provided that a petition for classification as a special immigrant juvenile is filed no later than June 1, 1994.

Best Interest of the Child

The Service received two written comments and several telephonic inquiries indicating that some confusion existed regarding the type of administrative proceeding in which this determination may be made. Two commenters expressed concern about the Service's ability to make this determination in deportation proceedings or other administrative immigration hearings. Another commenter urged the Service to reduce possible abuse of this benefit by narrowly defining the elements which could be considered in determining the best interest of the alien child. This commenter recommended that the Service rewrite the eligibility criteria to exclude children who were brought or sent to the United States to take advantage of the special immigrant juvenile provision. This commenter also recommended that juvenile courts be required to request and obtain a report from the Service prior to declaring an alien child dependent upon the court.

The final rule states that the decision concerning the best interest of the child may only be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court. Such administrative proceedings would most commonly be conducted by state or local social service agency officials. The Service does not intend to make determinations in the course of deportation proceedings regarding the "best interest" of a child for the purpose of establishing eligibility for special immigrant juvenile classification. The rule does not contain any restrictions on factors which may be considered in determining the best interest of the child. The Service believes that it would be both impractical and inappropriate for the Service to routinely readjudicate judicial or social service agency administrative determinations as to the juvenile's best interest. Abuse of this provision is of concern both to Congress, as shown by the statutory restriction on the grant of future immigration benefits for the juvenile's parent(s) based upon the relationship, and to the Service. However, the Service believes that a child in need of the care and protection of the juvenile court should not be precluded from obtaining special immigrant status because of the actions of an irresponsible parent or other adult. The Service also believes it would be impractical and inappropriate to impose consultation requirements upon the juvenile courts or the social service system, especially requirements which could possibly delay action urgently needed to ensure proper care for dependent children.

Eligibility—"Grandfather" Provision

Twenty-nine commenters urged the Service to establish a regulatory provision which would allow aliens who were eligible for special immigrant juvenile classification on November 29, 1990, the date of enactment of IMMACT 90, but who could not become lawful permanent residents at that time, to remain eligible for this classification until Congress took action to amend the adjustment of status provisions of the Act. One commenter cited the "grandfather" provision of section 702 of IMMACT 90 as an example the Service should follow in implementing section 153.

As originally enacted, IMMACT 90 did not exempt special immigrant juvenile aliens from the normal statutory requirements for adjustment of status. The Service did not, however, wish to unnecessarily preclude otherwise qualified special immigrant juvenile aliens from becoming lawful permanent residents. On November 29, 1990, the date of enactment of IMMACT 90, the Service directed its local offices to accept and hold in abeyance applications for adjustment of status filed by persons who appeared to meet the statutory requirements for the special immigrant juvenile classification of section 153 of IMMACT 90. Further guidance was issued on August 16, 1991, directing local offices to accept applications for adjustment of status filed by special immigrant juveniles despite statutory ineligibility for adjustment of status because of the provisions of sections 245 (a) or (c) of the Act. The local offices were again instructed not to take action to deny these adjustment of status applications solely because the special immigrant juvenile was statutorily ineligible for adjustment of status. On December 12, 1991, section 302(d)(2) of the Technical Amendments amended the adjustment of status provisions of the Act to exempt special immigrant juveniles from many of the statutory requirements for adjustment of status. In furtherance of Service policy of using administrative discretionary authority to ensure that special immigrant juveniles are not precluded from obtaining lawful permanent residence because of the passage of time while the Service was awaiting Congressional action to amend the adjustment of status provisions, this rule allows exemptions to both the eligibility requirements and the automatic revocation provisions for those aliens who can establish that they met the eligibility criteria on November 29, 1990, and whose petitions for classification as special immigrant juveniles are filed before June 1, 1994.

Documentary Requirements

Twenty-one commenters stated that they felt the documentary requirements were either confusing or excessive. Some stated that they felt it should not be necessary to submit a total of four documents to establish eligibility. Several stated that the juvenile court could declare an individual eligible for long-term foster care only after finding the person dependent upon the court and only after alternatives to a long-term placement were considered. These commenters stated that they felt that evidence of a declaration of eligibility for long-term foster care should satisfy not only that requirement, but also the evidentiary requirements relating to dependency and the determination regarding the "best interest" of the child.

The rule has been revised to clearly require documentary evidence of the beneficiary's age. The evidence may be in the form of a birth certificate, passport, or official foreign identity card such as a Cedula or Cartilla. This rule also provides that the director may, in his or her discretion, accept other documents which reasonably establish the beneficiary's age. The final rule has also been revised to state that, in addition to evidence of the beneficiary's age, one or more documents must be submitted showing dependency, eligibility for long-term foster care, and the "best interest" determination. The Service has left in place, however, the requirement that the document(s) must show that all three statutory criteria have been met. In view of diverse state laws governing juvenile court proceedings and the possibility that state laws could change in the future, the Service does not believe that any of the section 153 statutory requirements can be ignored. The Service also notes that consideration of alternatives to long-term foster care does not, in itself, show that a determination was made that it is in the juvenile's best interest not to be returned to his or her country of nationality or habitual residence of

his or her parents. The court's finding that long-term foster care is the best alternative available to the child within the United States does not necessarily establish that long-term foster care in another country would not be available or would not be in the child's best interest.

Revocation of Approval

Twenty-four commenters asked the Service to revise or eliminate provisions of the interim rule which automatically revoke the approval of a petition for a special immigrant juvenile under certain circumstances. Most commenters cited state laws which allow a juvenile court to retain jurisdiction over certain individuals, such as students, who have reached the age of majority but continue to require court protection. They suggested amending the rule to eliminate the automatic revocation of petitions for these young people. Many commenters also expressed concern that the rule would allow the automatic revocation of a petition when the juvenile is placed in a guardianship situation or has been adopted. Some stated they felt that approval should not be revoked simply because a beneficiary's circumstances change while the Service is reviewing an application for adjustment of status. One commenter felt that the rule should indicate that any subsequent decision regarding the best interest of the child should be made only by the juvenile court which made the initial ruling.

This rule removes the provision automatically revoking approval of a petition for special immigrant juvenile status when the alien ceases to be a juvenile under state law, and substitutes a provision establishing automatic revocation of an earlier approval when the beneficiary reaches the age of twenty-one. The rule has also been revised to state that changes in circumstances resulting from adoption or placement in a guardianship situation will not result in revocation of approval. In response to comments that the Service should not revoke approval of the petition simply because the beneficiary's circumstances change during the application process, the Service notes that other applicants for permanent residency are required to continue to maintain eligibility for their visa classification until admission with an immigrant visa or adjustment of status. The Service does not believe that there is good reason to exempt special immigrant juveniles from this requirement. The final rule also clearly states that the decision regarding the beneficiary's best interest must be made by a juvenile court of competent jurisdiction or in administrative proceedings recognized by the juvenile court having jurisdiction over the beneficiary. As indicated earlier, the Service believes that the decision regarding the best interest of the beneficiary should be made by the juvenile court or the social service agency officials recognized by the juvenile court, not by the immigration judge or other immigration officials. The final rule does not, however, require the decision to be made by the court which made the initial determination, since the Service believes this would be an unnecessary infringement upon the juvenile court system's ability to make determinations regarding its own jurisdictional issues.

Regulations governing the revocation of approval of petitions for immigrant classification are found in 8 CFR part 205. The Service has determined that both the public and Service employees will find the regulations easier to access if regulations concerning the revocation of all types of petitions for immigrant classification are included in 8 CFR part 205. The Service has, therefore, removed procedures relating to the automatic revocation of approval of petitions for classification as a special immigrant juvenile from 8 CFR 101.6(f) and placed them in 8 CFR 205.1.

This rule also changes several references to sections of the Act in 8 CFR part 205. The reference changes are necessary because IMMACT 90 redesignated many sections of the Act.

This rule also removes 8 CFR 205.1(a)(10). That paragraph provided that the approval of a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under deportation or exclusion proceedings would be automatically revoked unless the beneficiary had resided outside the United States for at least two years in accordance with former section 204(h) (currently 204(g)) of the Act. Section 702 of IMMACT provides an exemption from the two-year foreign residence requirement if the petitioner can establish, by clear and convincing evidence, that the marriage is bona fide. Therefore, the automatic revocation provision is no longer appropriate and is removed. The Service's authority to revoke the approval of any petition under section 204 of the Act after notice to the petitioner, which is contained in 8 CFR 205.2, has not been changed and continues to be applicable to spousal immigrant visa petitions.

This rule also removes 8 CFR 205.1(c)(4), which provided for automatic revocation of a sixth preference petition when the petitioner filed a written notice of withdrawal. The preceding paragraph, which formerly referred only to third preference petitions, has been revised to encompass all instances in which the petitioner in an employment-based case files a written notice of withdrawal with any officer of the Service who is authorized to grant or deny petitions. There is, therefore, no need to repeat the provision in the following paragraph.

In 8 CFR 205.2(a) the reference to "§ 204.1" is changed to "§ 205.1" to correct a typographical error.

Adjustment of Status

Twenty-eight commenters expressed concern about the method through which a special immigrant juvenile could become a lawful permanent resident. One commenter asked whether a special immigrant juvenile would automatically be granted permanent resident status or would be required to comply for adjustment of status. Several commenters indicated that, since Congressional intent was to allow special immigrant juveniles to become permanent residents, the Service should revise the rule to allow adjustment regardless of whether the applicants were ineligible for adjustment under existing statutes.

The Act generally requires a person intending to live permanently in the United States to enter the country with an immigrant visa, which may be issued only by a United States embassy or consulate abroad. Section 245 of the Act allows certain aliens in the United States to adjust status to that of a lawful permanent resident, without departing the United States or obtaining an immigrant visa from a consultate or embassy. Neither IMMACT 90 nor the Technical Amendments contain any indication that Congress envisioned a unique application process for special immigrant juveniles wishing to become lawful permanent residents of the United States. Therefore, special immigrant juveniles will continue to be required to apply for either immigrant visa issuance abroad or adjustment of status in the United States.

Although the Service is responsible for interpreting the Act and implementing provisions of the Act through regulation, the Service cannot implement rules which are contradictory to statutory requirements imposed by Congress. As indicated in the supplementary information to the interim rule, the original language of IMMACT 90 did not waive any of the adjustment of status eligibility requirements for special immigrant juveniles. The Service, therefore, initially lacked authority to accede to

commenters' requests to waive certain adjustment of status requirements. However, on December 12, 1991, the Technical Amendments became effective. Section 302(d)(2) of the Technical Amendments exempts special immigrant juveniles from compliance with several of the usual statutory requirements for adjustment of status.

Section 245(a) of the Act generally requires that applicants for adjustment of status establish that they have been inspected and admitted or paroled into the United States. Section 302(d)(2) of the Technical Amendments provides that, for the purpose of applying for adjustment of status as a special immigrant juvenille under section 101(a)(27)(J) of the Act only, these juveniles will be treated as if they had been paroled into the United States.

Section 245(c) of the Act generally prohibits the Service from adjusting the status of an alien who is not in lawful nonimmigrant status, who has failed to maintain lawful nonimmigrant status in the past, or who has been employed without authorization in the United States. Section 302(d)(2) of the Technical Amendments exempts special immigrant juveniles from compliance with these provisions of section 245(c) of the Act.

The final rule includes technical revisions to the regulations governing adjustment of status. These revisions ensure that the regulations reflect the statutory exemptions provided for special immigrant juveniles by section 302(d)(2) of the Technical Amendments.

Exclusion Grounds

Two commenters took exception to the statement contained in the supplementary information to the interim rule concerning the possibility that special immigrant juveniles who seek an immigrant visa or adjustment of status could have difficulty establishing that they are not likely to become public charges.

All applicants for immigrant visa issuance or adjustment of status under section 245 of the Act must establish that they are not excludable from the United States, unless the grounds of excludability have been waived. Persons seeking immigrant visa issuance abroad or adjustment of status in the United States are normally required to show that they are not excludable from the United States under the exclusion grounds enumerated in section 212(a) of the Act. These grounds include prohibitions against the admission of aliens who are likely to become public charges in the United States, who seek to enter the United States for the purpose of performing labor without a certification issued by the Department of Labor showing that there are not sufficient workers in the alien's field at the intended job location, or who entered the United States without proper documentation. Therefore, the Service initially lacked the authority to grant lawful permanent resident status to special immigrant juveniles who were likely to become public charges or were otherwise excludable from the United States.

Section 302(d)(2) of the Technical Amendments provides that the exclusion provisions under sections 212(a)(4), (5)(A), and (7)(A) of the Act will not apply to a qualified special immigrant under section 101(a)(27)(J) of the Act, thus automatically waiving excludability because of likelihood of becoming a public charge, failure to obtain a labor certification, and entry without proper documents. No application or fee is required for an automatic waiver.

Section 302(d)(2) also allows most other exclusion provisions to be waived for individual special immigrant juveniles for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination. A waiver application must be filed and the appropriate fee paid for an individual waiver. The only exclusion provisions which may not be waived are those involving certain criminal and related grounds, and certain security and related grounds. The grounds which may not be waived are set forth in sections 212(a)(2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E) of the Act.

The final rule includes technical revisions to the regulations governing adjustment of status to ensure that these regulations reflect the statutory exemptions provided by section 302(d)(2) of the Technical Amendments, including the automatic exemptions.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 101

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation (Government agencies), Fees, Forms.

8 CFR Part 204

Administrative practice and procedures, Aliens, Employment, Immigration, Petitions.

8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 101 and 103, which was published in the **Federal Register** at 56 FR 23207–23209 on May 21, 1991, is adopted as a final rule with the following changes:

PART 101—PRESUMPTION OF UNLAWFUL ADMISSION

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

Authority: 8 U.S.C. 1103, 8 CFR part 2.

§ 101.6 [Redesignated as § 204.11.]

2. Section 101.6 is redesignated as § 204.11.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

4. In § 103.1, paragraph (f)(2)(xxxv) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxv) Petitions for special immigrant juveniles under part 204 of this chapter;

* * * * *

PART 204—IMMIGRANT PETITIONS

5. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

6. Newly redesignated § 204.11 is revised to read as follows:

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) *Definitions.*

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) *Petition for special immigrant juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant.

(1) *Who may file.* The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence in the United States.

(c) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I–360 before June 1, 1994.

(d) *Initial documents which must be submitted in support of the petition.* (1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) *Decision.* The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

7. The authority citation for part 205 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

§ 205.1 [Amended]

8. In § 205.1, the introductory text is amended by adding the term "before October 1, 1991, or section 203(g) of the Act on or after October 1, 1991," immediately after the term "section 203(e) of the Act".

§ 205.1 [Amended]

9. In § 205.1, paragraphs (a)(5), (a)(6), (a)(7), (b)(5), and (b)(6) are amended by revising the reference to "section 203(a)(4)" to "section 203(a)(3)" whenever it appears in these paragraphs.

§ 205.1 [Amended]

10. In § 205.1, paragraph (a)(10) is removed.

§ 205.1 [Amended]

11. In § 205.1, paragraphs (b)(5) and (b)(6) are amended by revising the reference the "section 204(g)" to "section 204(f)" whenever it appears in these paragraphs.

§ 205.1 [Amended]

12. Section 205.1 is amended by:

a. Revising the reference in the heading in paragraph (c) to *"section 203(a)(3) or (6)."* to read *"section 203(b).";*

b. Revising the reference in paragraph (c)(3) to "third preference" to read "employment-based preference";

c. Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4); and

d. Revising the reference in the newly redesignated paragraph (c)(4) to "a sixth preference case." to read "an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.".

13. In § 205.1, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 205.1 Automatic revocation.

* * * * *

(d) *Special immigrant juvenile petitions.* Unless the beneficiary met all of the eligibility requirements as of November 29, 1990, and the petition requirements as of November 29, 1990,

and the petition for classification as a special immigrant juvenile was filed before June 1, 1994, or unless the change in circumstances resulted from the beneficiary's adoption or placement in a guardianship situation:

(1) Upon the beneficiary reaching the age of twenty-one;

(2) Upon the marriage of the beneficiary;

(3) Upon the termination of the beneficiary's dependency upon the juvenile court;

(4) Upon the termination of the beneficiary's eligibility for long-term foster care; or

(5) Upon the determination in administrative or judicial proceedings that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

* * * * *

§ 205.2 [Amended]

14. In § 205.2, paragraph (a) is amended by revising the reference to "§ 204.1" to "§ 205.1".

§ 205.2 [Amended]

15. In § 205.2, paragraph (b) is amended in the fourth sentence by revising the reference to "section 204(g)" to "section 204(f)". Paragraph (b) is further amended in the fourth sentence by revising the reference to "section 203(a)(1), (2), (4), or (5)" to "section 203(a)(1), (2), (3), or (4)".

§ 205.2 [Amended]

16. In § 205.2, paragraph (b) is amended in the fifth sentence by revising the reference to "section 203(a)(3) or (6)" to "section 203(b)".

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

17. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255, and 8 CFR part 2.

§ 245.1 [Amended]

18. In § 245.1, paragraph (a) is amended by adding at the end a new sentence to read as follows: "A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States."

§ 245.1 [Amended]

19. Section 245.1 is amended by:

a. Revising the reference in paragraph (b)(4)(ii) to "section 101(a)(27)(H)" to "section 101(a)(27)(H) or (J)";

b. Revising the reference in paragraph (b)(5) to "section 101(a)(27)(H) or (I)" to "section 101(a)(27)(H), (I), or (J)";

c. Revising the reference in paragraph (b)(6) to "section 101(a)(27)(H) or (I)" to "section 101(a)(27)(H), (I), or (J)";

§ 245.1 [Amended]

20. In § 245.1, a new paragraph (d)(3) is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(d) * * *

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) nor the exclusion provisions of sections 212(a)(4), (5)(A), or (7)(A) of the Act shall apply to a qualified special immigrant under section 101(a)(27)(J) of the Act. The exclusion provisions of sections 212(a)(2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), or (3)(E) of the Act may not be waived. Any other exclusion provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination.

* * * * *

Dated: June 22, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–19350 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR PART 140

RIN 3150–AE75

Adjustment of the Maximum Standard Deferred Premium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to increase the maximum standard deferred premium, presently established at $63 million per reactor per accident (but not to exceed $10 million in any one year), to $75.5 million per reactor per accident (but not to exceed $10 million in any one year), in accordance with the aggregate percentage change of 19.9 percent in the Consumer Price Index (CPI) from August 1988 through March 1993.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, telephone (301) 504–1289.

SUPPLEMENTARY INFORMATION: Section 15 of Public Law 100–408, the Price-Anderson Amendments Act of 1988 ("the Act") enacted on August 20, 1988, requires the Commission to adjust the maximum standard deferred premium (presently $63 million) for inflation. Section 15 added a new Section 170t. to the Atomic Energy Act of 1954, as amended ("AEAct"). Section 170t. provides as follows:

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b.(1) [Section 170b.(1) of the AEAct] not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1988 in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection. (2) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

The inflation adjustment required by Section 170t.(1)(A) of the AEAct must be in accordance with the aggregate percentage change (since August 1988) in the Consumer Price Index (CPI) for all urban consumers published by the Secretary of Labor. The aggregate percentage increase in the CPI from August 1988 through March 1993 is 19.9 percent. This number is derived by dividing the September 1988 CPI index by the March 1993 CPI index. The new maximum standard deferred premium, computed by multiplying $63 million by 0.199 and adding the product to $63 million, will be $75.5 million. Therefore, as of August 20, 1993, 10 CFR 140.11(a)(4) will require that large nuclear power plant licensees maintain, in addition to $200 million in primary financial protection, a new maximum standard deferred premium of $75.5 million per reactor per accident (but not to exceed $10 million in any one year).

The next inflation adjustment in the amount of the standard deferred premium will be made not later than August 20, 1998, and will be based on the incremental change in the CPI since March 1993.

Because this inflation adjustment by the Commission is essentially ministerial in nature (e.g., multiplying $63 million by the percentage increase in the CPI published by the Secretary of Labor and adding this amount to $63 million), the Commission finds that there is good cause for omitting notice and public procedure (in the form of a proposed rule) on this action as unnecessary. In view of the impending statutory deadline for implementing this change to its regulations, the Commission finds that there exists good cause for making the rule effective on August 20, 1993 (less than 30 days after publication of the final rule in the **Federal Register**).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0039.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect licensees of approximately 116 nuclear power reactors. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act (15 U.S.C. 632), the Small Business Size Standards of the Small Business Administration (13 CFR part 121), or the Commission's Size Standards (50 FR 50241; December 9, 1985).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1) because it is statutorily required. Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 140

Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954 (as amended), the Energy Reorganization Act of 1974 (as amended), and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 140:

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

2. Section 140.11(a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(4) In an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by § 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $75,500,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

Dated at Rockville, Maryland this 2nd day of August, 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Acting Executive Director for Operations.

[FR Doc. 93–19222 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Praziquantel Tablets and Injectable Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Miles, Inc., Agriculture Division, Animal Health Products. The supplements provide for the use of 34 milligram (mg) DRONCIT® (Praziquantel) Canine Cestocide Tablet and 5.68 percent Injectable Cestocide for dogs and cats for removal and control of *Echinococcus multilocularis* in dogs.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8614.

SUPPLEMENTARY INFORMATION: Miles, Inc., Agriculture Division, Animal Health Products, P.O. Box 390, Shawnee Mission, KS 66201, filed two supplemental NADA's. NADA 111–607 provides for veterinary prescription use of Droncit® (Praziquantel) 5.68 percent Injectable Cestocide for dogs and cats. NADA 111–798 provides for veterinary prescription use of 34 mg Droncit® (Praziquantel) Canine Cestocide Tablet. The supplements provide for the removal and control of *Echinococcus multilocularis* in addition to use for removal of *Dipylidium caninum*, *Taenia pisiformis*, and *Echinococcus granulosus* in dogs. The supplemental NADA's are approved as of July 16, 1993. The regulations are amended in §§ 520.1870(c)(1)(i) and 522.1870(c)(1)(ii) to reflect the approvals. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of

safety and effectiveness data and information submitted to support these approvals may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals qualify for 3 years of marketing exclusivity for removal and control of *E. multilocularis* in dogs beginning July 16, 1993, because the supplements contain reports of new clinical or field investigations (other than bioequivalence studies) essential to the approvals and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (see above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1870 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 520.1870 Praziquantel tablets.

* * * * *

(c) * * *

(1) * * *

(i) *Indications for use.* For removal of canine cestodes *Dipylidium caninum* and *Taenia pisiformis*. If labeled for use by or on the order of a licensed veterinarian, for removal of the canine cestode *Echinococcus granulosus*, and for removal and control of the canine cestode *Echinococcus multilocularis*.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. Section 522.1870 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 522.1870 Praziquantel injectable solution.

* * * * *

(c) * * *

(1) * * *

(ii) *Indications for use.* For removal of canine cestodes *Dipylidium caninum, Taenia pisiformis*, and *Echinococcus granulosus*, and removal and control of canine cestode *Echinococcus multilocularis*.

* * * * *

Dated: August 4, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–19300 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Terramycin® (Oxytetracycline Hydrochloride) Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Pfizer, Inc., that provide for the safe and effective use of oxytetracycline hydrochloride (OTC HCl) soluble powder in the drinking water of chickens, turkeys, swine, cattle, and sheep, and in food for honey bees for the control and treatment of specific diseases caused by bacteria susceptible to oxytetracycline. One supplement reflects compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group's evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation. The other supplement provides for the establishment of a tolerance for residues of OTC in edible sheep tissues.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to its approved NADA 8–622 which covers several Terramycin® Soluble Powder products to provide for use as follows: (1) 10 milligrams (mg) of OTC HCl per pound of body weight daily (up to 14 days) in swine, cattle, and sheep for the control and treatment of specific bacterial diseases; (2) various concentrations in the drinking water of chickens and turkeys depending on the particular bacterial disease; and (3) 200 mg per colony in food for honey bee for control and treatment of American and European foul brood caused by *Bacillus larvae* in accordance with 21 CFR 520.1660d as amended.

The application was originally approved September 17, 1952. The drug was the subject of an NAS/NRC Drug Efficacy Study Implementation (DESI) evaluation of effectiveness (DESI 8622V) and the findings were published in the **Federal Register** of May 5, 1970 (35 FR 7089). NAS/NRC evaluated the drug as effective for use in the treatment of hexamitiasis. It evaluated the drug as "probably effective" when used for the control and treatment of specific diseases of livestock and poultry and concluded that use may result in faster gains and improved feed efficiency under appropriate conditions.

NAS/NRC concluded that:

1. Labels and package inserts require extensive revision. There is inadequate documentation of claims, excessive claims are made, and bold conclusions are reached in the absence of sufficient controlled experimental evidence.

2. Claims for growth promotion or stimulation are not allowed and claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions."

3. Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)" and if the disease cannot be so qualified the claim must be dropped.

4. The label claims "for prevention of" or, "to prevent" should be replaced with "as an aid in the control of" or, "to aid in the control of."

5. The label claim pertaining to egg production and hatchability should be modified to read, "May aid in maintaining egg production and hatchability, under appropriate conditions, by controlling pathogenic organisms."

6. The labels should carry a warning that treated animals under the conditions that prevail must actually consume sufficient medicated water, or medicated feed, to constitute a therapeutic dose. As a precaution the labels should state what the desired oral dose is in terms of animal weight per day for each species to serve as a guide to effective use of the preparations in drinking water or feed.

7. The labels should declare the dosage for the treatment of individual animals in terms of the amount of drug which should be given per unit of animal weight.

FDA concurred with the NAS/NRC findings and in addition concluded:

1. The claims for hexamitiasis should be included under the susceptible host.

2. Appropriate claims regarding faster weight gains and improved feed efficiency should be stated as "For increased rate of weight gain and improved feed efficiency for (under appropriate conditions of use)."

3. The phrase "* * * cannot be so qualified * * *" in NAS/NRC's third conclusion is interpreted to mean "is not supported by adequate data."

FDA then proceeded to review all available data relating to the effectiveness of products subject to NADA 8–622 to determine which label claims were supported by the requisite proof of effectiveness. That review resulted in FDA issuing a letter dated February 19, 1982, to Pfizer in which the agency stated that it had concluded the data supported effectiveness for the control and treatment of one or more bacterial diseases susceptible to OTC HCl in poultry, cattle, swine, sheep, and honey bees.

Subsequently, Pfizer complied with the NAS/NRC/DESI evaluation and FDA's conclusions by submitting a supplemental application which revised its labeling as follows:

1. The appropriate oral dose of 10 mg per pound of body weight daily in each species (swine, cattle, and sheep) has been incorporated in the labeling.

2. Claims for growth promotion or feed efficiency are not included.

3. Each disease claim on the label has been properly qualified with the appropriate genus and species name susceptible to OTC HCl. Disease claims which were not so qualified have been deleted.

4. Claims made for prevention have been revised to read "Control of * * *" where appropriate.

5. Claims for egg production and hatchability are not included.

6. The manufacturer's label carries the warning statement that treated animals must have the medicated water adjusted to compensate for variation in age and the weight of the animal, the nature and severity of disease signs, and environmental temperature and humidity, each of which affects water consumption.

7. The labels carry the appropriate dosage for the treatment of individual animals in terms of the amount of drug which should be given per unit of animal weight.

The NAS/NRC evaluation of the drug was concerned only with effectiveness and safety of the drug for the treated animal and does not take into account the safety of food derived from drug-treated animals. FDA's approval of the supplemental application did not involve a reevaluation or reaffirmation of the human food safety data in the parent application.

Therefore, the regulations are amended in 21 CFR 520.1660d by adding new paragraphs (e)(1)(iii) through (e)(1)(v) and (e)(2) to reflect approval of the supplemental NADA. Section 520.1660d is also amended by revising paragraph (a) to state the concentration of OTC HCl in the drug product in terms of the weight of soluble powder that contains one gram of OTC HCl. Currently, two packets are listed so that the concentration of OTC HCl is stated based on the net contents, but Pfizer has packets with six net contents and their addition would make the list of products in paragraph (a) too long. The section is further amended by revising paragraph (b) to link the listed drug sponsors with their drug packets or pails containing various concentrations of OTC HCl. Finally, the regulations are amended in 21 CFR 556.500 to reflect approval of the supplemental NADA providing for establishment of a tolerance for residues of OTC in edible sheep tissues. The supplements are approved as of July 9, 1993.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for an exclusivity period because reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplements and conducted or sponsored by the applicant were not required.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1660d is amended by revising paragraphs (a) and (b) and by adding new paragraphs (e)(1)(iii) through (e)(1)(v) and (e)(2) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) *Specifications.* The drug is a soluble powder distributed in packets or pails having several concentrations of oxytetracycline hydrochloride (independent of the various net weights) as follows:

(1) Each 18.14 grams of powder contains 1 gram of oxytetracycline hydrochloride (OTC HCl) (packets: 4, 6.4, and 16 oz.);

(2) Each 4.43 grams of powder contains 1 gram of OTC HCl (packets: 4 and 16 oz.);

(3) Each 1.32 grams of powder contains 1 gram of OTC HCl (packets: 2.39, 4.78, and 9.55 oz.);

(4) Each 2.73 grams of powder contains 1 gram of OTC HCl (packets: 2.46 and 9.87 oz).

(b) *Sponsor.* See sponsor numbers in § 510.600(c) of this chapter as follows:

(1) No. 000069 for use of OTC HCl concentrations in paragraphs (a)(1), (a)(2), and (a)(3) of this section in

chickens, turkeys, swine, cattle, sheep, and honey bees.

(2) No. 017144 for use of OTC HCl concentration in paragraph (a)(4) of this section in chickens and turkeys.

(3) No. 054273 for use of OTC HCl in turkeys.

* * * * *

(e) * * *

(1) * * *

(iii) *Swine*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to oxytetracycline. For breeding swine: Control and treatment of leptospirosis (reducing the incidence of abortions and shedding of leptospira) caused by *Leptospira pomona* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more that 14 consecutive days. Use as a sole source of oxytetracycline. Withdraw 5 days prior to slaughter.

(iv) *Calves, beef cattle, and nonlactating dairy cattle*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more than 14 consecutive days. Use as sole source of oxytetracycline. Do not administer this product with milk or milk replacers. Administer 1 hour before or 2 hours after feeding milk or milk replacers. Withdraw 5 days prior to slaughter.

(v) *Sheep*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more than 14 consecutive days. Use as sole source of oxytetracycline. Withdraw 5 days prior to slaughter.

(2) It is used in the food of honey bees as follows:

(i) *Amount.* 200 milligrams per colony, administered via either a 1:1 sugar syrup (equal parts of sugar and water weight to weight) or dusting with a powdered sugar mixture.

(ii) *Indications for use.* Control and treatment of American and European foul brood caused by *Bacillus larvae* susceptible to oxytetracycline.

(iii) *Limitations.* The drug is administered in 3 applications of sugar syrup or 3 dustings at 4- to 5-day intervals. The drug should be fed early in the spring or fall and consumed by the bees before main honey flow begins to avoid contamination of production honey. Remove at least 6 weeks prior to main honey flow.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.500 is amended by adding new paragraph (e) to read as follows:

§ 556.500 Oxytetracycline.

* * * * *

(e) 0.1 part per million in uncooked edible tissues of sheep.

Dated: August 2, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93-19301 Filed 8-11-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 156

[DoD Directive 5200.2]

Department of Defense Personnel Security Program (DoDPSP)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part revises 32 CFR part 156 to update policies regarding standards for the conduct of personnel security investigations, adjudication criteria for access to classified information and minimum due process procedures when an unfavorable personnel security determination is proposed. These changes are the first to the Directive since 1979 and are an attempt to make the source document for the DoD personnel security program consistent with more recent policy development.

EFFECTIVE DATE: May 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Nelson, telephone (703) 697-3969 or DSN 227-3969.

SUPPLEMENTARY INFORMATION: The Department of Defense published the proposed rule of this part on June 10, 1991 (56 FR 26634). It has been certified that the rule is not subject to Executive Order 12291, "Federal; Regulation", because the rule does not:

(1) Have an annual effect of the economy of $100 million or more.

(2) Cause a major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

It has been certified that the rule is not subject to Public Law 96-354, "Regulatory Flexibility Act", because the rule promulgates standards for the conduct of personnel security investigations, adjudication criteria for access to classified information and minimum due process procedures when an unfavorable personnel security determination is proposed. These changes are the first to the part since 1979 and are an attempt to make the source document for the DoD personnel security program consistent with more recent policy development. It has been certified that the rule is not subject to Public Law 96-511, "Paperwork Reduction Act ", because the rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR Part 156

Government employees, security measures.

Accordingly, 32 CFR Part 156 is revised to read as follows:

PART 156—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM (DoDPSP)

Sec.

156.1 Purpose.
156.2 Applicability and scope.
156.3 Policy
156.4 Responsibilities.

Authority: 50 U.S.C. 781.

§ 156.1 Purpose.

This part:

(a) Updates the policy and responsibilities for the DoDPSP under Pub. L. 81-832; E.O. 10450, 18 FR 2489, 3 CFR, 1949-1953 Comp., p. 936; E.O. 10865, 25 FR 1583, 3 CFR, 1959-1963 Comp., p. 398; E.O. 12333, 46 FR 59941,

3 CFR, 1981 Comp., p.200; and E.O. 12356, 47 FR 14874 and 15557, 3 CFR 1982 Comp., p. 166.

(b) Continues to authorize the publication of DoD 5200.2–R[1] in accordance with DoD 5025.1–M.[2]

§ 156.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, and the Defense Agencies, except as provided for the National Security Agency (NSA) in paragraph (b) of this section (hereafter referred to collectively as "the DoD Components").

(b) The NSA is exempt from the provisions of this Directive. The personnel security program for the NSA is implemented pursuant to DoD Directive 5210.45,[3] and internal regulations of the NSA.

(c) DoD military and civilian personnel, consultants to the Department of Defense, contractors cleared under the Defense Industrial Security Program (DISP) Regulations DoD 5220.22[4] and others affiliated with the Department of Defense.

§ 156.3 Policy.

It is DoD policy that:

(a) No person shall be appointed as a civilian employee of the Department of Defense, accepted for entrance into the Armed Forces of the United States, authorized access to classified information, or assigned to duties that are subject to investigation under this part unless such appointment, acceptance, clearance, or assignment is clearly consistent with the interests of national security.

(b) A personnel security clearance shall be granted and assignment to sensitive duties shall be authorized only to U.S. citizens. As an exception, a non-U.S. citizen may, by an authorized official (as specified in 32 CFR part 154) be assigned to sensitive duties or granted a Limited Access Authorization for access to classified information if there is a need for access in support of a specific DoD program, project, or contract.

(c) The personnel security standard that shall be applied in determining a person's eligibility for a security clearance or assignment to sensitive duties is whether, based on all available information, the person's allegiance, trustworthiness, reliability, and judgment are such that the person can reasonably to expected to comply with Government policy and procedures for safeguarding classified information and performing sensitive duties.

(d) 32 CFR part 154 shall identify those positions and duties that require a personnel security investigation (PSI). A PSI is required for:

(1) Appointment to a sensitive civilian position.

(2) Entry into military service.

(3) The granting of a security clearance or approval for access to classified information.

(4) Assignment to other duties that require a personnel security or trustworthiness determination.

(5) Continuing eligibility for retention of a security clearance and approval for access to classified information or for assignment to other sensitive duties.

(e) 32 CFR part 154 shall contain personnel security criteria and adjudicative guidance to assist in determining whether an individual meets the clearance and sensitive position standards referred to in paragraphs (a) and (c) of this section.

(f) No unfavorable personnel security determination shall be made except in accordance with procedures set forth in 32 CFR part 154 or 32 CFR part 155 or as otherwise authorized by law.

§ 156.4 Responsibilities.

(a) The *Assistant Secretary of Defense for Command, Control, Communications, and Intelligence* shall:

(1) Be responsible for overall policy, guidance, and control of the DoDPSP.

(2) Develop and implement plans, policies, and procedures for the DoDPSP.

(3) Issue and maintain DoD 5200.2–R consistent with DoD 5025.1–M.

(4) Conduct an active oversight program to ensure compliance with DoDPSP requirements.

(5) Ensure that research is conducted to assess and improve the effectiveness of the DoDPSP (DoD Directive 5210.79[5]).

(6) Ensure that the Defense Investigative Service is operated pursuant to 32 CFR part 361.

(7) Ensure that the DoD Security Institute provides the education, training, and awareness support to the DoDPSP under DoD Directive 5200.32.[6]

(8) Be authorized to make exceptions to the requirements of this part on a case-by-case basis when it is determined that doing so furthers the mission of the Department of Defense and is consistent with the protection of classified information from unauthorized disclosure.

(b) The *General Counsel of the Department of Defense* shall:

(1) Be responsible for providing advice and guidance as to the legal sufficiency of procedures and standards implementing the DoDPSP and the DISP.

(2) Exercise oversight of PSP appeals procedures to verify that the rights of individuals are being protected consistent with the constitution, laws of the United States, Executive Orders, Directives, or Regulations that implement the DoDPSP and DISP, and with the interests of national security.

(c) The *Heads of the DoD Components* shall:

(1) Designate a senior official who shall be responsible for implementing the DoDPSP within their components.

(2) Ensure that the DoDPSP is properly administered under this Directive within their components.

(3) Ensure that information and recommendations are provided to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence on any aspect of the program.

Dated: August 8, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19304 Filed 8–11–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161.

[2] See footnote 1 to 156.1(b).

[3] See footnote 1 to 156.1(b).

[4] See footnote 1 to 156.1(b).

[5] See footnote 1 to 156.1(b).

[6] See footnote 1 to 156.1(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD09–93–031]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard hereby provides notice that the City of Chicago has been granted permission to temporarily deviate from regulations governing the opening of certain drawbridges over the Chicago River, from August 1 through September 29, 1993, for the purpose of further evaluating the reasonableness of possible changes to the permanent regulations. This deviation reduces the periods during which the City must

open the draws for recreational vessels, requires the vessels to give advance notice, and allows vessels transiting to and from the boatyards for necessary repairs and service to pass through the draws of the bridges during designated days and times and to pass without regard to a maximum or minimum number of vessels for each trip. The City has requested this deviation to reduce the frequency with which it must open its drawbridges. This deviation is experimental in nature and is intended to provide the Coast Guard with evaluation periods from which to test the reasonableness of the current regulatory structure.

EFFECTIVE DATE: The period of deviation begins on Sunday, August 1, 1993, and continues through Wednesday, September 29, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to Room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing bridges operated by the City of Chicago by submitting written data, views, or arguments to the address above. Persons submitting comments should include their name and address, this docket number (CGD09–93–031), the basis for each comment, and the specific provisions of the deviation to which each comment applies. If acknowledgement of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a Notice of Proposed Rulemaking which will again request comments. A public hearing might also be held.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert W. Bloom, Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Background and Purpose

The bridges owned and operated by the City of Chicago are presently governed in accordance with 33 CFR 117.39, which states that most bridges will open on signal, with the exception of certain bridges that need not open unless advance notice is given of a vessel's time of intended passage. Additionally, the current regulation authorizes the City to not open the draws during peak vehicle traffic periods, i.e. morning and afternoon rush hours.

There are two vessel traffic periods, breakout and return, when there are as many as five to twenty-five boats on given days, leaving boatyards through the Chicago River system in the spring and then returning in the fall. During the summer period, the boat traffic in the Chicago area consists only of recreational vessels, and vessels in need of repair which are returning to the yards on a temporary basis.

Thus, including the winter period, there appear to be four distinct periods in the Chicago River area, during which the need for bridge openings changes substantially. Therefore, it might be appropriate for the bridge regulations to vary by these four seasons.

The City requested that multiple boat transits be restricted to only Saturday and Sunday mornings, unless there were a special event on these days, during which time a bridge would not be required to open at all for vessel traffic to pass. In addition, the City submits that it is unduly burdensome to open the bridges for the passage of single recreational vessels within the Chicago River System.

A series of deviations has been granted to the City in order to evaluate the reasonableness of possible changes to the permanent regulations. The Coast Guard previously granted two temporary deviations to the regulations for bridges owned and operated by the City of Chicago.

On Wednesday, May 12, 1993, the Coast Guard published a temporary deviation in the **Federal Register**, FR 27933 and 27934, granting the City of Chicago permission to open their bridges from 6 a.m. on Saturdays through 7 p.m. on Sundays for the passage of vessels consisting of no less than five and not more than twenty-five boats; on Tuesdays and Thursdays the draws were required to open for the passage of vessels consisting of no less than five and not more than twenty-five boats, from 6:30 p.m. until all organized trips had safely completed passage.

On Wednesday, June 16, 1993, the Coast Guard published a second temporary deviation in the **Federal Register**, FR 33191 and FR 33192, which changed the starting times for scheduled trips on Tuesdays and Thursdays to start one half-hour earlier, from 6:30 p.m. to 6 p.m., and added a Wednesday trip to the regulated periods when vessels would be allowed to pass through the draws of the bridges. Thus, bridge openings for scheduled trips started at 6 p.m. on Tuesdays, Wednesdays, and Thursdays.

This is the third temporary period of deviation being granted to the City of Chicago. The Tuesday and Thursday starting time of 6 p.m. for passage of inbound and outbound vessels requiring the bridges to open has not been changed.

Comments received as a result of the first two temporary deviations published in the **Federal Register**, Docket Number (CGD9–93–08) and (CGD9–93–20), indicated concern with vessels navigating on Lake Michigan at night and the danger of large numbers of vessels navigating the rivers at the same time. Therefore, the starting time for the passage of vessels on Wednesdays has been changed. The Wednesday openings will begin at 11 a.m. instead of 6 p.m. The new starting time of 11 a.m. on Wednesdays will provide recreational vessels with more daylight hours to navigate the river.

The previous deviation required the accumulation of not less than five and no more than twenty-five vessels in order to begin trips up or down the river and in order for the bridges to open. Traditionally, the Coast Guard has avoided enacting regulations which specify the type and number of vessels entitled to demand an opening. Moreover, there are only a small number of vessels transiting to and from the boatyards during the summer navigation season. Therefore, the previous deviation requirement that a particular number of vessels accumulate before bridges will open is eliminated. Nor is there a minimum number of vessels which must accumulate before a Saturday or Sunday opening. The times for the Saturday and Sunday transits have not been changed.

This deviation is intended to best accommodate the City of Chicago while still providing for the reasonable needs of recreational vessels transiting the Chicago River System. A fourth deviation is anticipated for the return season. The entire series of deviations will provide the Coast Guard with evaluation periods from which to test the reasonableness of the city's cited needs and the current regulatory structure.

Deviation: Notice is hereby given that:

(1) The Coast Guard has granted the City of Chicago, Department of Transportation, a temporary deviation from the operating requirements at 33 CFR 117.391 governing certain bridges owned by the City of Chicago over the Chicago River, as follows:

Main Branch
Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
La Salle Street
Wells Street
Franklin-Orleans Street

South Branch
Lake Street
Randolph Street
Washington Street
Madison Avenue
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Rooselvelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch
Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, section 117.43, for the purpose of evaluating possible changes to the permanent regulations. This temporary deviation applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago need not open for the passage of recreational vessels unless the City of Chicago receives a twenty-four hour advance notice for passage, and need not open for recreational vessels except during the following periods, subject to the conditions indicated:

(a) From 6 a.m. on Saturdays through 7 p.m. on Sundays, the draws shall open for the passage of incoming and outgoing vessels with no restrictions to the minimum and maximum number of vessels to be passed.

(b) On Tuesdays and Thursdays the draws shall open on signal for the passage of incoming and outgoing vessels from 6 p.m. until all vessels have safely completed passage. There shall be no restrictions as to the minimum or maximum number of vessels to be passed.

(c) On Wednesdays, the draws shall open on signal for the passage of incoming and outgoing vessels from 11 a.m. until all vessels have safely completed passage. There shall be no restrictions as to the minimum or maximum number of vessels to be passed.

(3) Notwithstanding this deviation, the City of Chicago, after receiving a minimum of twenty-four hours advance notice of the intended passage of vessels through the draws of the bridges, shall ensure that:

(a) The necessary bridgetenders are provided for the safe and prompt opening of the draws;

(b) The operating machinery of each draw is maintained in good condition; and

(c) The draws are operated at sufficient intervals to assure their satisfactory operation.

(4) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(5) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, Government vessels of the United States, State and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(6) This period of deviation is effective from Sunday, August 1, 1993, and continues through Wednesday, September 29, 1993.

Dated: July 28, 1993.

W. R. Wilkins,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 93–19427 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD01–93–009]

Drawbridge Operation Regulations, Hutchinson River (Eastchester Creek), NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Westchester County Department of Public Works, the Coast Guard is changing the regulations governing the South Fulton Avenue Bridge over the Hutchinson River (Eastchester Creek), at mile 2.9, between the City of Mount Vernon and the Town of Pelham, Westchester County, New York. These regulations provide that the draw open on signal from three hours before to three hours after high tide. This change is being made because of the decrease in requests to open the draw before and after low tide. At all other times, at least four hour advance notice for an opening is required. This action will relieve the bridge owner of having a person constantly available to open the draw during periods of low tide while still providing for the needs of marine traffic.

EFFECTIVE DATE: This rule becomes effective on September 13, 1993.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Waverly W. Gregory, Jr., Project Manager, and Lieutenant Commander Jeffrey Stieb, Project Counsel, First Coast Guard District, Legal Office.

Regulatory History

On May 10, 1993, the Coast Guard published proposed rules (58 FR 27504), concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1–804 dated May 7, 1993. Interested persons were given until June 24, 1993 to submit comments. The Coast Guard received one letter commenting on the proposal. The Coast Guard determined there was no need for a public hearing and none was held.

Background and Purpose

The final rule permits Westchester County to limit its drawtenders normal presence to six hours twice a day, coinciding with the high tide. For these purposes, predicted high tide is based on four hours after predicted high water for New York (Battery), as given in the tide tables published by the National Oceanic and Atmospheric Administration. At all other times, Westchester County will provide openings if at least four hours advance notice is given. The four hours notice would not apply if a request for an opening within six hours after predicted high water is given to the bridge tender on station before he or she is scheduled to depart. As noted in the Notice of Proposed Rulemaking, the change includes provisions for clearance gauges on all bridges on this waterway to minimize openings and permit vessel operators to comply with § 117.11. The regulations would also define the maximum time delays for openings of railroad bridges as required by § 117.9. The regulations also update appendix A to part 117 to reflect the most current information regarding radiotelephone equipped bridges on this waterway, their call signs and frequency. These

changes are being made because of the decrease in requests for opening the draw around low tide. This action relieves the bridge owner of the having a person constantly available to open the draw during periods of low tide while still providing for the reasonable needs of navigation.

Discussion of Comments

One comment was received to Public Notice 1–804 from the Department of Planning City of New York concluding that the change in the regulations will have minimum impact on pedestrian and vehicular traffic.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 on Federal Regulation, and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that due to the shallow depth of the river, requests for openings of the bridge for commercial vessels are generally limited to periods around the high tide. Additionally, all the movable bridges on this waterway presently maintain clearance gauges, and the minor cost of providing and maintaining same would be offset by timely and reduced requests for openings and enhanced safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection and copying at Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, 33 CFR part 117 is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.793 is revised to read as follows:

§ 117.793 Hutchinson River (Eastchester Creek).

(a) The following requirements apply to all bridges across Hutchinson River (Eastchester Creek):

(1) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provision of § 118.160 of this chapter.

(2) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed ten minutes except as provided in § 117.31(b). However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(3) Except as provided in paragraphs (b) and (c) of this section each draw shall open on signal.

(b) The draws of the Hutchinson River Parkway Bridge, mile 0.9, and the New England Thruway (I–95) Bridge, mile 2.2, both at New York City, shall open on signal if at least six hours notice is given.

(c) The draw of the South Fulton Avenue Bridge, mile 2.9, shall open on signal from three hours before to three hours after the predicted high tide. For the purposes of this section, predicted high tide occurs four hours after predicted high water for New York (Battery), as given in the tide tables published by the National Oceanic and Atmospheric Administration (NOAA).

(1) At all other times, the bridge shall open on signal if at least four hours advance notice is given to the Westchester County Road Maintenance Division during normal work hours or to the County's Parkway Police at all other times.

(2) The bridge tender shall honor requests for opening within six hours after predicated high water if such request is given to the bridge tender while he or she is on station (three hours before to three hours after predicted high tide).

3. Appendix A to part 117 is amended to revise Hutchinson River entries under the State of New York to read as follows:

APPENDIX A TO PART 117.—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
*	*	*	*	*	*	*
New York:						
*	*	*	*	*	*	*
Hutchinson River.	0.4	New York City	Pelham Pkwy., New York City	KU 9758	13	13
	0.5	New York City	Pelham Bay, AMTRAK	KU 6095	13	13
	2.2	Eastchester	I–95, New England Thruway	KXS 298	13	13

APPENDIX A TO PART 117.—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES—Continued

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
	2.9	Eastchester	So. Fulton Ave, Westchester Co	KU 6089	13	13
*	*	*	*	*	*	*

Dated: July 29, 1993.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 93-19425 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 649

RIN 1840-AB67

Patricia Roberts Harris Fellowship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Patricia Roberts Harris Fellowship Program. These final regulations are needed to implement changes made by the Higher Education Amendments of 1992 (Pub. L. 102-325) enacted July 23, 1992. The regulations establish eligibility criteria, selection criteria, and other terms and conditions for awarding grants to institutions of higher education to assist in making available the benefits of master's level, professional, and doctoral education programs to women and individuals from minority groups who are underrepresented in these programs.

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: Charles Miller. Telephone: (202) 708-8935. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Patricia Roberts Harris Fellowship Program supports National Education Goal Five, which calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This program furthers Goal Five objectives by enabling institutions of higher education to make available the benefits of master's level, professional, and doctoral education to women and individuals from minority groups underrepresented in these programs.

On March 1, 1993, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (58 FR 11928). In addition, on March 24, 1993, the Secretary published a notice in the **Federal Register** (58 FR 15824) to correct an error in the NPRM by restoring language inadvertently omitted from the definition of "Minority" in § 649.6(b) of the proposed regulations. The major issues addressed by the NPRM are discussed in the preamble to the NPRM.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the NPRM, 86 parties submitted comments. An analysis of the comments and 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. Minor changes to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not always addressed.

Executive Order 12291

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

Intergovernmental Review

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

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

Assessment of Educational Impact

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

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

List of Subjects in 34 CFR Part 649

Colleges and universities, Education, Energy, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: August 6, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.094—Patricia Roberts Harris Fellowship Program.)

The Secretary amends title 34 of the Code of Federal Regulations by revising part 649 to read as follows:

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIP PROGRAM

Subpart A—General

Sec.

649.1 What is the Patricia Roberts Harris Fellowship Program?
649.2 Who is eligible for a grant?
649.3 What activities may the Secretary fund?
649.4 What funding reservations does the Secretary make for grants?
649.5 What regulations apply?
649.6 What definitions apply?

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

649.10 How does an institution of higher education apply for a grant?

Subpart C—How Does the Secretary Make a Grant for Master's Level and Professional Study Fellowships?

649.20 How does the Secretary evaluate an application?
649.21 What selection criteria does the Secretary use?
649.22 How does the Secretary establish priorities?

Subpart D—How Does the Secretary Make a Grant for Doctoral Study Fellowships?

649.30 How does the Secretary evaluate an application?
649.31 What selection criteria does the Secretary use?
649.32 How does the Secretary establish priorities?

Subpart E—How Are Fellows Selected?

649.40 How does an institution of higher education select fellows?
649.41 How does an individual apply for a fellowship?

Subpart F—What Are the Conditions and Components of a Fellowship?

649.50 What are the conditions and components of a fellowship for master's level or professional degree study?
649.51 What are the conditions and components of a fellowship for doctoral study?
649.52 What fellowship conditions apply?

Subpart G—What Are the Administrative Responsibilities of the Institution?

649.60 What is the amount of a stipend?
649.61 How does the Secretary make an institutional payment?
649.62 What are the Secretary's payment procedures?
649.63 How does the institution disburse and return funds?
649.64 What records and reports are required from the institution?
Appendix to Part 649—Academic Areas

Authority: 20 U.S.C. 1134, 1134d–1134g, unless otherwise noted.

Subpart A—General

§ 649.1 What is the Patricia Roberts Harris Fellowship Program?

(a) The Patricia Roberts Harris Fellowship Program provides, through institutions of higher education, grants to assist in making available the benefits of master's level, professional, and doctoral education programs to women and individuals from minority groups who are underrepresented.

(b) Each individual recipient of a fellowship under this program is to be known as a Patricia Roberts Harris Graduate Fellow.

(Authority: 20 U.S.C. 1134d)

§ 649.2 Who is eligible for a grant?

Institutions of higher education, offering a program of post-baccalaureate study leading to a master's level, professional, or doctoral degree, other than schools or departments of divinity, are eligible to receive grants under this program.

(Authority: 20 U.S.C. 1134, 1134e)

§ 649.3 What activities may the Secretary fund?

(a) The Secretary makes grants to institutions of higher education to enable the institutions to provide fellowships in master's level, professional, and doctoral education programs.

(b)(1) In awarding fellowships for master's level and professional study, the institution must give priority to one or more of the following groups—

(i) Women who are pursuing master's level or professional study in academic fields in which they are underrepresented;

(ii) Individuals from minority groups who are pursuing master's level or professional study in academic fields in which they are underrepresented;

(iii) Women who are pursuing master's level study leading to careers that serve the public interest; or

(iv) Individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.

(2) In awarding fellowships for doctoral study, the institution must give priority to one or more of the following groups—

(i) Women undertaking doctoral study; or

(ii) Individuals from traditionally underrepresented groups undertaking doctoral study.

(Authority: 20 U.S.C. 1134e)

§ 649.4 What funding reservations does the Secretary make for grants?

The Secretary reserves—

(a) Fifty percent of the funds appropriated for this program to make grants for projects that provide fellowships for master's level or professional study; and

(b) Fifty percent of the funds appropriated for this program to make grants for projects that provide fellowships for doctoral study.

(Authority: 20 U.S.C. 1134e)

§ 649.5 What regulations apply?

The following regulations apply to the Patricia Roberts Harris Fellowship Program:

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

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

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

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

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

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 649.

(Authority 20 U.S.C. 1134, 1134d–g)

§ 649.6 What definitions apply?

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

Applicant
Application
Award
EDGAR
Grant
Nonprofit
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Academic field means an area of study in a professional school, academic department, or similar organizational unit within an institution of higher education.

Academic year means the 12-month period beginning with the fall instructional term of the institution.

Careers that serve the public interest means careers in government or in nonprofit community service organizations at the local, State, national, or international level.

Department means any department, program, unit or any other administrative subdivision of an institution of higher education that—

(i) Directly administers or supervises postbaccalaureate instruction in a specific discipline; and

(ii) Has the authority to award academic course credit acceptable to meet degree requirements at an institution of higher education.

Doctoral study means a postbaccalaureate program of study leading to a degree in any academic field of graduate study that requires a dissertation.

Fellow means a recipient of a fellowship under this part.

Fellowship means an award made by an institution of higher education to an individual for master's level, professional, or doctoral study under this part.

Financial need means the fellow's financial need, as determined under

part F of title IV of the HEA, for the period of the fellow's enrollment.

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

Institution means an institution of higher education.

Institution of higher education means an institution of higher education, other than a school or department of divinity, as defined in section 1201(a) of the HEA.

Institutional payment means the amount paid by the Secretary to the institution of higher education in which the fellow is enrolled to be applied against the tuition and fees required of the fellow by the institution in support of the fellow's instructional program.

Inter-discipline means a course of study that involves academic fields in two or more disciplines.

Master's level study means a postbaccalaureate program of study leading to a master's degree in any academic field of graduate study.

Minority means Alaskan Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, Pacific Islander, or other ethnic group underrepresented in master's level, professional, or doctoral study as indicated in standard statistical references, or as documented on a case-by-case basis by national survey data submitted to and accepted by the Secretary.

Professional study means—

(i) A postbaccalaureate program of study leading to a degree required for admission to practice a profession; or

(ii) Any post-master's or doctoral degree that does not require a dissertation.

Project means the activities necessary to assist, whether from grant funds or institutional resources, the fellows in the successful completion of their designated educational programs.

Satisfactory progress means that the fellow meets or exceeds the institution's criteria and standards established for all graduate students' continued status as applicants for the graduate degree and in the academic field for which the fellowship was awarded.

School or department of divinity means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation, or to prepare them to teach theological subjects.

Stipend means the amount paid by the institution to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

Traditionally underrepresented groups means minorities and other groups that historically have been underrepresented in doctoral study.

Underrepresented means proportionate representation as measured by degree recipients, that is less than the proportionate representation in the general population—

(i) As indicated by—

(A) The most current edition of the Department's *Digest of Educational Statistics;*

(B) The National Research Council's *Doctorate Recipients from United States Universities;* or

(C) Other standard statistical references, as announced annually in the **Federal Register** notice inviting applications for new awards under this program; or

(ii) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

U.S. National means—

(i) A citizen of the United States; or

(ii) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 20 U.S.C. 1134, 1134d–g)

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

§ 649.10 How does an institution of higher education apply for a grant?

(a) To apply for a grant under this part, an institution of higher education must submit an application that responds to the appropriate selection criteria in §§ 649.21 and 649.31.

(b) An institution of higher education's application must describe how the institution will select eligible individuals to receive fellowships. This description must include procedures that ensure that—

(1) The selected individuals will have the capability to achieve the academic goals of the fellowship; and

(2) The institution will give priority to members of one or more of the groups to which priority must be given under § 649.3(b)(1).

(c) An institution of higher education may apply for a grant under this part for the following types of fellowships:

(1) Master's Level and Professional Study Fellowships.

(2) Doctoral Study Fellowships.

(d) An institution of higher education may submit no more than one application for new awards for Master's Level and Professional Study Fellowships and no more than one application for new awards for Doctoral Study Fellowships in a given application period.

(Approved by the Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134e)

Subpart C—How Does the Secretary Make a Grant for Master's Level and Professional Study Fellowships?

§ 649.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for master's level and professional study fellowships on the basis of the criteria in § 649.21.

(b) The Secretary awards up to 100 points for these criteria.

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

(Authority: 20 U.S.C. 1134e)

§ 649.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institution-wide criteria.*—(1) *Institutional commitment.* (15 points) The Secretary reviews each application to determine the overall strength of the applicant's commitment to meet the needs of the students who are members of the group or groups to which the institution proposes to give priority in accordance with § 649.3(b)(1), including consideration of—

(i) Evidence that the institution's social and academic environment is supportive of the academic success of students who are members of the priority group or groups;

(ii) The availability of other sources of financial aid and support for students who are members of the priority group or groups; and

(iii) The employment of women or individuals from minority groups or both, depending on the group or groups to which the institution proposes to give priority, among the administrators and faculty in the institution.

(2) *Recruitment plan.* (10 points)

(i) The Secretary reviews each application for information that describes the applicant's recruitment plan.

(ii) The Secretary looks for information that shows—

(A) The applicant's active and aggressive efforts, previous and current, to identify and attract students who are members of the group or groups to which the applicant proposes to give priority.

(B) The applicant's previous and current efforts in successfully preparing

students from the group or groups to which the applicant proposes to give priority for careers in which members of those groups are underrepresented; and

(C) The applicant's success in providing students with access to careers in which women and minority groups are underrepresented.

(3) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the general institutional resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(4) *Grant management.* (5 points) The Secretary reviews each application to determine the applicant's ability to provide overall administration of the grant award, including providing assistance to and oversight of the project director.

(5) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's evaluation methods—

(i) Relate to the specific goals and measurable objectives of the project;

(ii) Include both process and product evaluation measures that are objective and designed to produce data that are quantifiable; and

(iii) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis.

(b) *Academic field criteria.*—(1) *Meeting the purpose of the authorizing statute.* (8 points) The Secretary reviews each application to determine how well each academic field within the project will meet the purpose of the authorizing statute, including the extent to which—

(i) The applicant describes the general and specific objectives of the project with respect to each academic field that are realistic and measurable; and

(ii) The objectives of the project with respect to each academic field further the purposes of the authorizing statute by assisting in making available the benefits of master's level and professional education programs to one or more of the groups listed in § 649.3(b)(1) of this part.

(2) *Extent of need for the project within each academic field.* (10 points) The Secretary reviews each application to determine the extent to which the project, within each academic field, will meet the specific graduate preparation and career-access needs of the group or groups to which the applicant proposes to give priority, including consideration of—

(i) The needs of the applicant within each academic field that are addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project within each academic field; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (10 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, with respect to each academic field, including—

(i) The quality of the design of the project with respect to each academic field;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project within each academic field;

(iii) How well the objectives of the project within each academic field relate to the purpose of the program;

(iv) How well the project activities of each academic field within the project are described and the potential of those activities to achieve project objectives in a cost-effective manner;

(v) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(vi) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except as necessary to implement the priority or priorities established in accordance with the requirements of § 649.3(b)(1).

(4) *Quality of the academic program.* (15 points) The Secretary reviews each application to determine the quality of the current academic program for each academic field within the project, including—

(i) The course offerings and academic requirements for the academic program; and

(ii) The focus on, and capability for, research or teaching.

(5) *Quality of key personnel.* (12 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (2 points);

(B) The qualifications of the key faculty to be used for the project in each academic field (6 points);

(C) The time that each person referred to in paragraphs (b)(5)(i) (A) and (B) of this section will commit to the project (2 points); and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan (2 points).

(ii) To determine personnel qualifications under paragraphs (b)(5)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in areas related to the objectives of the project or the relevant academic field within the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, with respect to each academic field, including facilities, equipment, and supplies.

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(Authority: 20 U.S.C. 1134e)

§ 649.22 How does the Secretary establish priorities?

(a)(1) The Secretary gives an absolute preference to applicants proposing to provide fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level or professional study and are underrepresented in the academic field for which the grant award is made.

(2) The Secretary announces the absolute preference annually in the **Federal Register** notice inviting applications for new awards under this program.

(b)(1) The Secretary gives a competitive preference of one point to applicants proposing to provide fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level study leading to careers that serve the public interest.

(2) This point is in addition to any points the applicant earns under the selection criteria for the program.

(c)(1) The Secretary gives an absolute preference to applicants proposing to provide fellowships in academic career fields of high national priority as established by the Secretary from among one or more of the academic areas listed in the appendix to this part or the resulting subdisciplinary or interdisciplinary academic areas.

(2) The Secretary announces the absolute preference annually in the **Federal Register** notice inviting applications for new awards under this program.

(Authority: 20 U.S.C. 1134d, 1134e)

Subpart D—How Does the Secretary Make a Grant for Doctoral Study Fellowships?

§ 649.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for doctoral study fellowships on the basis of the criteria in § 649.31.

(b) The Secretary awards up to 100 points for these criteria.

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

(Authority: 20 U.S.C. 1134e)

§ 649.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institution-wide criteria.*—(1) *Institutional commitment.* (15 points) The Secretary reviews each application to determine the overall strength of the applicant's commitment to meet the needs of the students who are members of the group or groups to which the institution proposes to give priority in accordance with the requirements of § 649.3(b)(2), including consideration of—

(i) Evidence that the institution's social and academic environment is supportive of the academic success of students who are members of the priority group or groups;

(ii) The availability of other sources of financial aid and support for students who are members of the priority group or groups; and

(iii) The employment of women or individuals who are from minority groups or both, depending on the group or groups to which the institution proposes to give priority, among the administrators and faculty in the institution.

(2) *Recruitment plan.* (10 points)

(i) The Secretary reviews each application for information that describes the applicant's recruitment plan.

(ii) The Secretary looks for information that shows—

(A) The applicant's active and aggressive efforts, previous and current, to identify and attract qualified students who are members of the group or groups to which the applicant proposes to give priority;

(B) The applicant's previous and current efforts in successfully preparing students who are members of the group or groups to which the applicant proposes to give priority for careers in which members of the group or groups are underrepresented; and

(C) The applicant's success in providing students with access to careers in which women and minority groups are underrepresented.

(3) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the general institutional resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(4) *Grant management.* (5 points) The Secretary reviews each application to determine the applicant's ability to provide overall administration of the grant, including providing assistance to and oversight of the project director.

(5) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the applicant's evaluation methods—

(i) Relate to the specific goals and measurable objectives of the project;

(ii) Include both process and product evaluation measures that are objective and designed to produce data that are quantifiable; and

(iii) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis.

(b) *Academic field criteria.* —(1) *Meeting the purpose of the authorizing statute.* (8 points) The Secretary reviews each application to determine how well the project will meet the purpose of the authorizing statute, with respect to each academic field, including the extent to which—

(i) The applicant describes the general and specific objectives of the project with respect to each academic field that are realistic and measurable; and

(ii) The objectives of the project, with respect to each academic field, further the purposes of the authorizing statute by assisting in making available the benefits of doctoral education programs to member of the group or groups to which the applicant proposes to give priority.

(2) *Extent of need for the project within each academic field.* (5 points) The Secretary reviews each application to determine the extent to which the project, within each academic field, will meet the specific graduate preparation and career-access needs of the group or groups to which the applicant proposes to give priority, including consideration of—

(i) The needs of the applicant addressed by the project within each academic field;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project within each academic field; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (5 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, with respect to each academic field, including—

(i) The quality of the design of the project, with respect to each academic field;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project within each academic field;

(iii) How well the objectives of the project within each academic field relate to the purpose of the program;

(iv) How well the project activities within each academic field are described and the potential of those activities to achieve project objectives in a cost-effective manner;

(v) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(vi) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except as necessary to implement the priority or priorities established in accordance with the requirements of § 649.3(b)(2).

(4) *Quality of the academic program.* (15 points) The Secretary reviews each application to determine the quality of the current academic program for each academic field within the project, including—

(i) The course offerings and academic requirements for the academic program; and

(ii) The focus on, and capacity for, research or teaching.

(5) *Quality of key personnel.* (12 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (2 points);

(B) The qualifications of each of the key faculty to be used on the project in each academic field (6 points);

(C) The time that each person referred to in paragraphs (b)(5)(i) (A) and (B) of this section will commit to the project (2 points); and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan (2 points).

(ii) To determine personnel qualifications under paragraphs (b)(5)(i)

(A) and (B) of this section, the Secretary considers—

(A) Experience and training in areas related to the objectives of the project or the relevant academic field within the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Institutional support.* (10 points)

(i) The Secretary reviews each application to determine the adequacy of the applicant's plans to provide two years of support for each fellow, immediately following the second year of fellowship support, including at least one year of supervised teaching.

(ii) In reviewing the applicant's plan of support for the fellows, the Secretary considers—

(A) The applicant's financial support for each fellow; and

(B) The applicant's plan for the supervision of each fellow's teaching assignment.

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, with respect to each academic field, including facilities, equipment, and supplies.

(Approved by Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134e, 1134f)

§ 649.32 How does the Secretary establish priorities?

(a) The Secretary gives an absolute preference to applicants proposing to provide fellowships in the award of which priority is given to members of one or more of the groups identified in § 649.3(b)(2).

(b) The Secretary gives an absolute preference to applicants proposing to provide fellowships in academic career fields of high national priority as established by the Secretary from among one or more of the academic areas listed in the appendix to this part or the resulting subdisciplinary or interdisciplinary academic areas.

(c) The Secretary announces the absolute preferences annually in the **Federal Register** notice inviting applications for new awards under this program.

(Authority: 20 U.S.C. 1134d, 1134e)

Subpart E—How Are Fellows Selected?

§ 649.40 How does an institution of higher education select fellows?

(a) In selecting individuals to receive master's level and professional study fellowships, the institution of higher education shall—

(1) Give priority to members of one or more of the groups identified for priority in § 649.3(b)(1); and

(2) Select only individuals who—

(i) Have been accepted for or are enrolled in a program of study leading to a master's level or professional degree in the academic field for which the institution received a grant;

(ii) Plan to pursue an academic or professional career in the academic field of study for which the institution received the grant;

(iii)(A) Are nationals of the United States;

(B) Are in the United States for other than a temporary purpose and intend to become permanent residents; or

(C) Are permanent residents of the Trust Territory of the Pacific Islands; and

(iv) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337).

(b) In selecting individuals to receive doctoral study fellowships, the institution of higher education shall—

(1) Give priority to members of one or more of the groups identified for priority in § 649.3(b)(2); and

(2) For doctoral study fellowships other than doctoral study leading to an academic career, select only individuals who—

(i) Have been accepted for or are enrolled in a program of study leading to a doctoral degree in the academic field for which the institution received a grant;

(ii) Plan to pursue a professional career in the academic field of study for which the institution received the grant;

(iii)(A) Are nationals of the United States;

(B) Are in the United States for other than a temporary purpose and intend to become permanent residents; or

(C) Are permanent residents of the Trust Territory of the Pacific Islands; and

(iv) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337); and

(3) For fellowships for doctoral study leading to an academic career, select only individuals who—

(i) Have been accepted for or are enrolled in a program of study leading to a doctoral degree in the academic field for which the institution received a grant;

(ii) Plan to pursue an academic career in the academic field of study for which the institution received the grant;

(iii) Are citizens of the United States; and

(iv) Are not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337).

(Authority: 20 U.S.C. 1134, 1134e, 1134f)

§ 649.41 How does an individual apply for a fellowship?

An individual must apply directly to an institution of higher education that has received a grant.

(Authority: 20 U.S.C. 1134e)

Subpart F—What Are the Conditions and Components of a Fellowship?

§ 649.50 What are the conditions and components of a fellowship for master's level or professional degree study?

(a) An award for a fellowship for a master's level or professional degree program of study is for the normal period of time for completing the program or a total of three years, whichever is less.

(b) A fellow may apply to the Secretary for an additional period of fellowship support of up to 12 months. The fellow's application must include—

(1) The specific facts detailing the reasons why the additional period of support is necessary;

(2) A certification by the institution that it is aware of the fellow's application and that the fellow has attained satisfactory progress in the fellow's academic studies; and

(3) A recommendation from the institution that the additional period of fellowship support of up to 12 months is necessary.

(c) The institution shall request approval for the additional support in its third-year noncompeting continuation application, as required under 34 CFR 75.253 for multiyear project periods.

(Approved by the Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134f)

§ 649.51 What are the conditions and components of a fellowship for doctoral study?

(a) An award for a fellowship for doctoral study is for a total of three years, consisting of not more than two years of fellowship support for study or research, and not more than one year of support for dissertation work, provided that the fellow has attained satisfactory progress prior to the dissertation stage.

(b) Following the two years of fellowship support for study or research, the institution of higher education shall provide—

(1) Financial support in the amount of the fellow's financial need, as defined in § 649.6(b), or in an amount equal to the stipend awarded in the last year of fellowship support, whichever is less, for two years;

(2) A waiver of tuition and fees or an allowance on behalf of the fellow as full

payment of tuition and fees required of the fellow by the institution as part of the fellow's instructional program for two years; and

(3)(i) Teaching requirements for the fellow that equal those required of other graduate teaching assistants at that institution; and

(ii) Supervision of the fellow's teaching for one year.

(c) Following two years of institutional support, the institution must include in its application for the third year of fellowship support for the fellow's dissertation work a certification that—

(1) The institution has provided two years of institutional support;

(2) The fellow satisfactorily completed one year of supervised teaching; and

(3) The fellow satisfactorily completed all pre-dissertation requirements.

(Approved by the Office of Management and Budget under control number 1840–0509)

(Authority: 20 U.S.C. 1134f)

§ 649.52 What fellowship conditions apply?

To continue to receive payments under a fellowship, a fellow must—

(a) Maintain satisfactory progress;

(b) Devote essentially full time to study or research (including acting as a teaching or research assistant, as required as a condition for award of the degree) in the academic field for which the fellowship was awarded; and

(c) Not engage in gainful employment during the period of the fellowship, except on a part-time basis in teaching, research, or similar types of activities approved by the Secretary.

(Authority: 20 U.S.C. 1134f)

Subpart G—What Are the Administrative Responsibilities of the Institution?

§ 649.60 What is the amount of a stipend?

(a) The institution shall calculate the amount of a fellow's financial need annually, in accordance with Part F of Title IV of the HEA.

(b) For a fellowship initially awarded for an academic year prior to the academic year 1993–1994, the institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded for the academic year 1993–1994 or any succeeding academic year, the institution shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships, except that this amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need.

(Authority: 20 U.S.C. 1134f)

§ 649.61 How does the Secretary make an institutional payment?

(a) With respect to awards made for the academic year 1993–1994, the Secretary makes a payment of $9,000 to the institution of higher education for each individual awarded a fellowship at the institution. The Secretary adjusts the institutional payment annually thereafter in accordance with inflation as determined by the U.S. Department of Labor's Consumer Price Index for the previous calendar year.

(b) An institution shall treat the institutional payment made by the Secretary on behalf of a fellow as full payment of tuition and fees required of the fellow by the institution as part of the fellow's instructional program.

(Authority: 20 U.S.C. 1134e)

§ 649.62 What are the Secretary's payment procedures?

(a) The Secretary pays to the institution of higher education the fellowship stipend and institutional payment for each individual enrolled in that institution that is awarded a fellowship under this program.

(b) If an institution of higher education is unable to use all of the amounts available under this program, the Secretary—on such dates each fiscal year as the Secretary determines—reallots the amounts not used to other institutions of higher education that can use the grants authorized under this program in the academic year following the reallotment.

(c) The Secretary does not award a fellowship under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1134, 1134e)

§ 649.63 How does the institution disburse and return funds?

(a) If a fellow withdraws from an institution before completion of an academic term, the institution shall refund to the Secretary a pro-rated portion of the institutional payment that it received for that fellow. The institution shall return the funds to the Secretary at a time and in a manner as the Secretary requires.

(b) An institution shall disburse a stipend to a fellow in accordance with its regular payment schedule for graduate assistants, but shall not make less than one payment per academic term. If the fellowship is vacated or discontinued, the institution shall return unexpended funds to the Secretary at a time and in a manner as the Secretary requires.

(c) A fellow who withdraws from an institution before completion of an academic term for which he or she received a stipend installment shall return a pro-rated portion of the stipend installment to the institution at a time and in a manner as the Secretary requires.

(d) If a fellow first enrolls at an institution in the spring term, the institution shall disburse a pro-rated stipend to the fellow and use a pro-rated portion of the institutional payment for that fellow and shall carry over for disbursement the following academic year the remaining portion of the stipend and the institutional payment for that fellow.

(Authority: 20 U.S.C. 1134e, 1134f)

§ 649.64 What records and reports are required from the institution?

(a) An institution of higher education that receives a grant shall provide to the Secretary, prior to receipt of funds for disbursement to a fellow after the fellow's first academic term, a certification that the fellow is enrolled in, is making satisfactory progress in, and is devoting essentially full time to study in the academic field for which the grant was made.

(b) An institution of higher education that receives a grant shall keep records as are necessary to establish the time and amount of all stipend disbursements.

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(Authority: 20 U.S.C. 1134e, 1134f)

Appendix to Part 649—Academic Areas

The Secretary may give an absolute preference to applicants proposing to provide fellowships in academic areas listed below, or the resulting subdisciplinary or interdisciplinary academic areas.

The list was derived from the *Classification of Instructional Programs* (CIP) developed by the Office of Educational Research and Improvement of the U.S. Department of Education. The code number to the left of each discipline and subdiscipline is the Department's identification code for that particular type of instructional program.

01. Agricultural Business and Production
- 01.01 Agricultural Business and Management
- 01.02 Agricultural Mechanization
- 01.03 Agricultural Production Workers and Managers
- 01.04 Agricultural and Food Products Processing
- 01.05 Agricultural Supplies and Related Services
- 01.06 Horticultural Services Operations and Management
- 01.07 International Agriculture

02. Agricultural Sciences

02.01 Agriculture/Agricultural Sciences
02.02 Animal Sciences
02.03 Food Sciences and Technology
02.04 Plant Sciences
02.05 Soil Sciences
03. Conservation and Renewable Natural Resources
03.01 Natural Resources Conservation
03.02 Natural Resources Management and Protective Services
03.03 Fishing and Fisheries Sciences and Management
03.04 Forest Production and Processing
03.05 Forestry and Related Sciences
03.06 Wildlife and Wildlands Management
04. Architecture and Related Programs
04.02 Architecture
04.03 City/Urban, Community, and Regional Planning
04.04 Architectural Environmental Design
04.05 Interior Architecture
04.06 Landscape Architecture
04.07 Architectural Urban Design and Planning
05. Area, Ethnic, and Cultural Studies
05.01 Area Studies
05.02 Ethnic and Cultural Studies
08. Marketing Operations/Marketing and Distribution
08.01 Apparel and Accessories Marketing Operations
08.02 Business and Personal Services Marketing Operations
08.03 Entrepreneurship
08.04 Financial Services Marketing Operation
08.05 Floristry Marketing Operations
08.06 Food Products Retailing and Wholesaling Operations
08.07 General Retailing and Wholesaling Operations and Skills
08.08 Home and Office Products Marketing Operations
08.09 Hospitality and Recreation Marketing Operations
08.10 Insurance Marketing Operations
08.11 Tourism and Travel Services Marketing Operations
08.12 Vehicle and Petroleum Products Marketing Operations
08.13 Health Products and Services Marketing Operations
09. Communications
09.01 Communications, General
09.04 Journalism and Mass Communications
09.05 Public Relations and Organizational Communications
09.07 Radio and Television Broadcasting
11. Computer and Information Sciences
11.01 Computer and Information Sciences, General
11.02 Computer Programming
11.04 Information Sciences and Systems
11.05 Computer Systems Analysis
11.07 Computer Science
13. Education
13.01 Education, General
13.02 Bilingual/Bicultural Education
13.03 Curriculum and Instruction
13.04 Education Administration and Supervision
13.05 Educational/Instructional Media Design
13.06 Educational Evaluation, Research, and Statistics
13.07 International and Comparative Education
13.08 Educational Psychology
13.09 Social and Philosophical Foundations of Education
13.10 Special Education
13.11 Student Counseling and Personnel Services
13.12 General Teacher Education
13.13 Teacher Education, Specific Academic, and Vocational Programs
13.14 Teaching English as a Second Language/Foreign Language
13.15 Teacher Assistant/Aide
14. Engineering
14.01 Engineering, General
14.02 Aerospace, Aeronautical, and Astronautical Engineering
14.03 Agricultural Engineering
14.04 Architectural Engineering
14.05 Bioengineering and Biomedical Engineering
14.06 Ceramic Sciences and Engineering
14.07 Chemical Engineering
14.08 Civil Engineering
14.09 Computer Engineering
14.10 Electrical, Electronic, and Communications Engineering
14.11 Engineering Mechanics
14.12 Engineering Physics
14.13 Engineering Science
14.14 Environmental/Environmental Health Engineering
14.15 Geological Engineering
14.16 Geophysical Engineering
14.17 Industrial/Manufacturing Engineering
14.18 Materials Engineering
14.19 Mechanical Engineering
14.20 Metallurgical Engineering
14.21 Mining and Mineral Engineering
14.22 Naval Architecture and Marine Engineering
14.23 Nuclear Engineering
14.24 Ocean Engineering
14.25 Petroleum Engineering
14.27 Systems Engineering
14.28 Textile Sciences and Engineering
14.29 Engineering Design
14.30 Engineering/Industrial Management
14.31 Materials Science
14.32 Polymer/Plastics Engineering
16. Foreign Languages
16.01 Foreign Languages and Literatures
16.03 East and Southeast Asian Languages and Literatures
16.04 East European Languages and Literatures
16.05 Germanic Languages and Literatures
16.06 Greek Languages and Literatures
16.07 South Asian Languages and Literatures
16.09 Romance Languages and Literatures
16.11 Middle Eastern Languages and Literatures
16.12 Classical and Ancient Near Eastern Languages and Literatures
19. Home Economics
19.01 Home Economics, General
19.02 Home Economics Business Services
19.03 Family and Community Studies
19.04 Family/Consumer Resource Management
19.05 Foods and Nutrition Studies
19.06 Housing Studies
19.07 Individual and Family Development Studies
19.09 Clothing/Apparel and Textile Studies
20. Vocational Home Economics
20.02 Child Care and Guidance Workers and Managers
20.03 Clothing, Apparel, and Textile Workers and Managers
20.04 Institutional Food Workers and Administrators
20.05 Home Furnishings and Equipment Installers and Consultants
20.06 Custodial, Housekeeping, and Home Services Workers and Managers
22. Law and Legal Studies
22.01 Law and Legal Studies
23. English Language and Literature/Letters
23.01 English Language and Literature, General
23.03 Comparative Literature
23.04 English Composition
23.05 English Creative Writing
23.07 American Literature (United States)
23.08 English Literature (British and Commonwealth)
23.10 Speech and Rhetorical Studies
23.11 English Technical and Business Writing
24. Liberal Arts and Sciences, General Studies and Humanities
24.01 Liberal Arts and Sciences, General Studies and Humanities
25. Library Science
25.01 Library Science/Librarianship
25.03 Library Assistant
26. Biological Sciences/Life Sciences
26.01 Biology, General
26.02 Biochemistry and Biophysics
26.03 Botany
26.04 Cell and Molecular Biology
26.05 Microbiology/Bacteriology
26.06 Miscellaneous Biological Specializations
26.07 Zoology
27. Mathematics
27.01 Mathematics
27.03 Applied Mathematics
27.05 Mathematic Statistics
31. Parks, Recreation, Leisure and Fitness Studies
31.01 Parks, Recreation, and Leisure Studies
31.03 Parks, Recreation, and Leisure Facilities Management
31.05 Health and Physical Education/Fitness
38. Philosophy and Religion
38.01 Philosophy
38.02 Religion/Religious Studies
39. Theological Studies
39.01 Biblical and Other Theological Languages and Literatures
39.02 Bible/Biblical Studies
39.03 Missions/Missionary Studies and Misology
39.04 Religious Education
39.05 Religious/Sacred Music
40. Physical Sciences
40.01 Physical Sciences, General
40.02 Astronomy
40.03 Astrophysics
40.04 Atmospheric Sciences and Meteorology

40.05 Chemistry
40.06 Geological and Related Sciences
40.07 Miscellaneous Physical Sciences
40.08 Physics
42. Psychology
42.01 Psychology
42.02 Clinical Psychology
42.03 Cognitive Psychology and Psycholinguistics
42.04 Community Psychology
42.06 Counseling Psychology
42.07 Developmental and Child Psychology
42.08 Experimental Psychology
42.09 Industrial and Organizational Psychology
42.11 Physiological Psychology/Psychobiology
42.16 Social Psychology
42.17 School Psychology
43. Protective Services
43.01 Criminal Justice and Corrections
43.02 Fire Protection
44. Public Administration and Services
44.02 Community Organizations, Resources, and Services
44.04 Public Administration
44.05 Public Policy Analysis
44.07 Social Work
45. Social Sciences and History
45.01 Social Sciences, General
45.02 Anthropology
45.03 Archeology
45.04 Criminology
45.05 Demography/Population Studies
45.06 Economics
45.07 Geography
45.08 History
45.09 International Relations and Affairs
45.10 Political Science and Government
45.11 Sociology
45.12 Urban Affairs/Studies
50. Visual and Performing Arts
50.01 Visual and Performing Arts
50.02 Crafts, Folk Art, and Artisanry
50.03 Dance
50.04 Design and Applied Arts
50.05 Dramatic/Theater Arts and Stagecraft
50.06 Film/Video and Photographic Arts
50.07 Fine Arts and Art Studies
50.09 Music
51. Health Professions and Related Sciences
51.01 Chiropractic (D.C., D.C.M.)
51.02 Communication Disorders Sciences and Services
51.03 Community Health Services
51.04 Dentistry (D.D.S., D.M.D.)
51.05 Dental Clinical Sciences/Graduate Dentistry (M.S., Ph.D.)
51.06 Dental Services
51.07 Health and Medical Administrative Services
51.08 Health and Medical Assistants
51.09 Health and Medical Diagnostic and Treatment Services
51.10 Health and Medical Laboratory Technologies/Technicians
51.11 Health and Medical Preparatory Programs
51.12 Medicine (M.D.)
51.13 Medical Basic Science
51.14 Medical Clinical Services (M.S., Ph.D)
51.15 Mental Health Services
51.16 Nursing
51.17 Optometry (O.D.)
51.18 Ophthalmic/Optometric Services
51.19 Osteopathic Medicine (D.O.)
51.20 Pharmacy
51.21 Podiatry (D.P.M., D.P., Pod.D.)
51.22 Public Health
51.23 Rehabilitation/Therapeutic Services
51.24 Veterinary Medicine (D.V.M.)
51.25 Veterinary Clinical Services
51.26 Miscellaneous Health Aides
51.27 Miscellaneous Health Professions
52. Business Management and Administrative Services
52.01 Business
52.02 Business Administration and Management
52.03 Accounting
52.04 Administrative and Secretarial Services
52.05 Business Communications
52.06 Business/Managerial Economics
52.07 Enterprise Management and Operations
52.08 Financial Management and Services
52.09 Hospitality Services Management
52.10 Human Resources Management
52.11 International Business
52.12 Business Information and Data Processing Services
52.13 Business Quantitative Methods and Management Science
52.14 Marketing Management and Research
52.15 Real Estate
52.16 Taxation

Appendix to Part 649

Analysis of Comments and Changes

Note: This appendix will not be codified in the Code of Federal Regulations.

Eligibility and Priority

Comment: Two commenters objected to the extension of eligibility for fellowships under the program to women because they believe it will dilute the original intention of the program to increase the representation of ethnic minorities in higher education. One commenter questioned whether in order to receive a grant under the program an institution would be required to demonstrate shortages of both women and individuals who are minorities.

Discussion: Women have always been eligible for fellowships under this program and continue to be eligible under the statute and regulations. An institution is not required to demonstrate underrepresentation of both women and minorities to be eligible for a grant under this program. An institution must give priority to members of one or more of the groups targeted by the program and must demonstrate underrepresentation of the group or groups to which it proposes to give priority if underrepresentation is a characteristic of the priority group or groups.

The Secretary recognizes that the proposed regulations were confusing regarding the groups of students to which an institution may give priority under each type of fellowship program. The regulations have been revised to clarify that an institution may apply for and will be given priority for a grant for a fellowship program that is designed to serve one or more of the groups targeted by the statute and to clarify that applicants generally are required to provide information in their application related only to the groups they are proposing to serve.

Changes: Sections 649.3(b), 649.10, and 649.40 have been revised to clarify that in selecting fellows under the master's level and professional study program, an institution must give priority to one or more of the following groups:

(1) Women who are pursuing master's level or professional study in an academic field in which they are underrepresented.

(2) Individuals from minority groups who are pursuing master's level or professional study in an academic field in which they are underrepresented.

(3) Women who are pursuing master's level study leading to careers that serve the public interest.

(4) Individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.

These sections have further been revised to clarify that in selecting fellows under the doctoral study program, an institution must give priority to one or more of the following groups:

(1) Women who are undertaking doctoral study.

(2) Individuals from traditionally underrepresented groups undertaking doctoral study.

Sections 649.22(a) and 649.22(b) have been revised to clarify that the Secretary will give priority to projects that give priority to women "or" individuals from minority groups, and § 649.32(a) has been revised to clarify that the Secretary will give priority to projects that propose to give priority to women "or" individuals from traditionally underrepresented groups.

The selection criteria in paragraphs (a)(1) and (a)(2) of §§ 649.21 and 649.31 have been revised to clarify that applicants are generally required to provide institutional commitment and recruitment plan information that is related only to the group or groups to which the applicant is proposing to give priority. Similarly, paragraphs (b)(1) and (b)(2) of § 649.21 have been revised to clarify that applicants are generally required to provide information for these requirements that is related only to the group or groups to which the applicant is proposing to give priority. However, paragraph (a)(2)(ii)(C) of §§ 649.21 and 649.31, which requires applicants to provide information to show their success in providing students with access to careers in which women and minority groups are underrepresented, has been retained because the Secretary is required by statute to consider this information.

Funding Reservations (§ 649.4)

Comment: Several commenters expressed concern about splitting the funds under this program fifty-fifty between the master's level and professional study program and the doctoral program. Commenters requested that institutions be given flexibility to recruit fellows for either program or that the funds be divided differently. One commenter expressed support for the fifty-fifty split.

Discussion: Section 922(a) of the Higher Education Act of 1965, as amended (HEA),

requires the Secretary to reserve fifty percent of the funds to award grants under the master's level and professional study program and fifty percent of the funds to award grants under the doctoral study program (20 U.S.C. 1134(a)(2)). The Secretary is not authorized to change these funding reservations. However, the funding reservations do not require individual institutions to award fifty percent doctoral fellowships and fifty percent master's level and professional study fellowships. They are overall criteria that the Secretary considers in awarding grants. An institution may apply for any number of master's level and professional study fellowships and for any number of doctoral study fellowships in two separate applications for the two levels. Institutions must award fellowships in accordance with the terms of their approved grant(s).

Changes: None.

Academic Year (§§ 649.6 and 649.63)

Comment: Several commenters requested clarification regarding the definition of "academic year". In particular, one commenter asked how the definition would affect a fellow who first enrolled for the spring term.

Discussion: The Secretary does not intend the definition of "academic year" to restrict flexibility regarding the starting dates of fellows. The Secretary intends to allow an institution to use a pro-rated portion of the institutional allowance for the tuition and expenses of a fellow who starts in the spring and pay that fellow a pro-rated stipend and carry over the remaining funds to the following academic year. In the end, a fellow who starts in the spring should receive the same total fellowship funds as a fellow who started in the same program in the fall.

Changes: Sections 649.31(b)(6), 649.50, and 649.51 have been revised to replace the terms "academic year" and "academic years" with the words "year" and "years." Paragraph (b) of § 649.61 has been removed. Section 649.63 has been revised to add a new paragraph (d) that provides that if a fellow starts in the spring, an institution shall disburse only a pro-rated stipend and use only a pro-rated portion of the institutional payment and shall carry over the remainder of the stipend and institutional payment for the next academic year.

Careers That Serve the Public Interest (§§ 649.6, 649.10(c)(1)(ii), 649.22(b)(1))

Comment: A number of commenters requested a more precise definition of this term. Some commenters requested a list of programs that fall under the priority. One commenter asked whether a career at a public institution of higher education that is a department of the State government would be a career serving the public interest. Some commenters stated that all careers serve the public interest. Some commenters suggested that the priority be deleted.

Many commenters commented on the three-to-five point competitive preference proposed to implement the statutory priority for women and students from minority groups pursuing master's level study leading to careers that serve the public interest. A number of the commenters were concerned that three-to-five points would result in all awards for the master's level program going to this category of fellowships since the point spread among applicants is generally less than three. Commenters suggested reducing the number of points awarded under the competitive preference, making the priority a tie-breaker, or reserving a portion of the master's level and professional study funds for projects that implement the priority.

One commenter asked whether a fellow would have to repay the funds received under this program if he or she did not pursue a career in the public interest.

Discussion: The Secretary believes that it is unnecessary to modify or elaborate on the definition of this term. The Secretary expects institutions to explain in their grant applications how the academic areas they are proposing for this fellowship program will lead to careers that meet the definition of careers that serve the public interest. For example, the Secretary believes a career teaching at a nonprofit public or private institution of higher education meets the definition because it would promote National Education Goal 5, which calls for every adult American to possess the knowledge and skills necessary to compete in the global economy and exercise the rights and responsibilities of citizenship.

Section 922(e) of the HEA requires the Secretary to assure that priority is given to women and individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest (20 U.S.C. 1134e(e)). The Secretary does not have the authority to remove the priority from the program. However, the Secretary agrees with the commenters that the number of points proposed for the competitive preference should be reduced because the point spread among applicants that fall in the funding range is generally less than three.

A student who receives a fellowship under this competition but does not pursue a career in the public interest would not be required to repay the fellowship funds.

Changes: Paragraph (b)(1) of § 649.22 has been revised to replace the three-to-five point competitive preference with a one-point competitive preference for applications that give priority to women or individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.

Doctoral Study (§ 649.6)

Comment: Some commenters expressed concern that including the teaching requirement in the definition of "doctoral study" is inconsistent with existing doctoral programs at many institutions and therefore would preclude some doctoral programs from participating. Commenters also pointed out that since the teaching requirement had been incorporated into the regulations as a condition of a doctoral fellowship, including the requirement in the definition of doctoral study is redundant and unnecessary. Commenters recommended that the teaching requirement be removed from the definition.

Discussion: The Secretary does not intend to exclude certain doctoral programs from eligibility and agrees with the commenters that it is unnecessary to include the teaching requirement in the definition since it is a condition of a doctoral fellowship.

Changes: The definition of "doctoral study" in § 649.6 has been revised to remove the requirement for one year of supervised teaching experience. A corresponding change has been made to remove the reference to "supervised teaching" in the definition of "Professional study."

Project (§§ 649.6, 649.21, 649.31)

Comment: Several commenters requested clarification regarding the definition and use of the term "project." In particular, a few commenters were confused about the use of the term in both the institution-wide and the academic field selection criteria, and its implications regarding the respective project responsibilities of an institution and an academic department. One commenter recommended using the term "program" rather than "project" when referring to the specific academic area in which students will be enrolled. One commenter recommended that if the term "project" is intended to initiate minority access and support programs, it should be done in a low key way, and suggested that using the term to refer to project participants may stigmatize them by advertising to their peers that they are in a special program of supportive services for women and minorities.

Discussion: The Secretary agrees with the commenters that the use of the term "project" in the academic field criteria in the NPRM is confusing because a project is institution-wide and may include more than one academic area. The regulations have been revised to clarify that the academic field criteria must be addressed with respect to each academic field within a project.

As set forth in the preamble of the NPRM, the term "project" was used and defined broadly to reflect an expectation that support services for fellows will be provided with grant and institutional resources. The Secretary does not intend the use of the term "project" to stigmatize fellows. On the contrary, the Secretary emphasizes that fellows under this program are selected based on merit, as well as need, and therefore should be accorded a distinguished status. Section 921(b) of the statute specifically gives students who participate in this program the title "PRH graduate fellows." 20 U.S.C. 1134d(b). The regulations continue to refer to fellowship recipients as "fellows." The Secretary expects and encourages institutions to continue to refer to students who receive awards under this program as "fellows" and to accord those fellows a distinguished status.

Changes: Paragraphs (b)(1), (b)(2), (b)(3), (b)(4) and (b)(5)(i)(B) of §§ 649.21 and 649.31 have been revised to clarify that those criteria must be addressed with respect to each academic field within a project.

Traditionally Underrepresented (§§ 649.6, 649.10(c)(2))

Comment: Some commenters requested clarification of the meaning of the term "traditionally underrepresented groups" and asked whether a non-minority male could

qualify for this priority. Some commenters requested clarification of the difference between traditionally underrepresented groups and minority groups. Some commenters wondered why fellowships are available for traditionally underrepresented groups under the doctoral program, but not under the master's level and professional study program.

Discussion: The priority for traditionally underrepresented groups in doctoral study is taken from section 922(e) of the statute. 20 U.S.C. 1134e(e). The proposed regulations did not propose a priority for traditionally underrepresented groups for the master's level and professional study program because there is no statutory basis for such a priority.

The definition of "Traditionally underrepresented groups" in the regulations is different than the definition of "Minority" because it is not limited to specifically identified minority groups or "other ethnic groups" that are underrepresented. The term "traditionally underrepresented groups" includes any group for which there is evidence of historical underrepresentation.

Changes: None.

Grant Applications (§ 649.10(d))

Comment: One commenter objected to conducting two separate competitions for the master's level and professional study program and the doctoral study program, and another commenter was in favor of having separate competitions. One commenter objected to the limit of one application per institution for each competition, stating that it would adversely impact small departments at large institutions because they would have to compete internally with other departments to be included on the application. In contrast, another commenter suggested further restricting applications from a single institution by capping the number of academic departments that could be included in an institution's application. That commenter believed this restriction would help to prevent the fellowships from being concentrated at a few elite institutions and would provide an extra quality assurance by forcing institutions to select among their own programs.

One commenter asked for clarification regarding the definition of "institution." In particular, the commenter wondered whether separate campuses of a large institution would be considered part of one institution and thus be required to submit a single application.

Discussion: The Secretary believes that requiring each institution to submit a single application for each competition will help to ensure that the academic fields included in the project are those that the institution supports. There is no restriction on the number of academic fields that may be included in a single application.

The Secretary believes that a geographically separate campus with an independent administration and its own accreditation is a separate institution for the purposes of this regulation.

Changes: None.

Institutional Commitment (§§ 649.21(a) and 649.31(a))

Comment: One commenter objected to the institutional commitment criterion that evaluates social environment on the grounds that an institution may not have control over its social environment. Other commenters requested clarification of the criterion regarding other sources of aid for female and minority students, noting that it is unclear whether an institution that demonstrates the existence of other aid for these students would be penalized on that basis, would receive points because it demonstrates commitment to the students, or would receive points because it is evidence of the ability to provide support during those periods when no Federal funds will be provided. One commenter noted that the points allocated to the "Institutional commitment" criterion seemed high relevant to other selection criteria.

Discussion: The Secretary believes that an institution's social environment is related to student retention, and therefore an institution's efforts to ensure that the social environment is receptive to members of the group or groups to which an institution proposes to give priority is an appropriate and important measure of institutional commitment to these groups. Similarly, the Secretary believes that the existence of other sources of aid is a useful criterion and an appropriate basis for awarding points to an institution because it demonstrates prior commitment to students who are members of the group or groups to which the institution proposes to give priority. The Secretary agrees that the proposed 20 points allocated to the "Institutional commitment" criterion was too high.

Changes: Paragraph (a) of §§ 649.21 and 649.31 has been revised to reduce the points allocated to the "Institutional commitment" criterion from 20 to 15 points. The extra 5 points have been added to the points allocated to the "Quality of academic program" criterion.

Recruitment Plan: Access to Careers (§§ 649.21(a)(2)(ii)(C) and 649.31(a)(2)(ii)(C))

Comment: A few commenters requested clarification concerning how the criterion regarding access to careers in which minorities and women are underrepresented would be measured. Several commenters indicated that the use of placement data would be an inappropriate and unfair measure because it would reflect not only the academic preparation provided by the institution, but also graduate selection and employer hiring practices.

Discussion: Placement data has been used in previous years to evaluate an institution's success at providing students with immediate career opportunities, and the Secretary believes such data is relevant to evaluating access to careers under these regulations. However, the Secretary does not believe that placement data is the only relevant data for evaluating this criterion. The Secretary believes that a broad range of data and information regarding an institution's placement program would be relevant, such as the number of on-campus interviews scheduled, the provision of seminars regarding interview skills, and the existence of partnerships with businesses.

Changes: None.

Faculty Criterion (§§ 649.21(b); 649.31(b))

Comment: Several commenters requested that the quality of key faculty be emphasized more strongly in the selection criteria. Specifically, commenters suggested that faculty be expressly mentioned under the "Quality of the academic program" criterion, that the quality of departmental faculty be mentioned under the "Quality of key personnel" criterion, and that more points be given to the faculty criteria.

Discussion: The Secretary agrees that the quality of key faculty should be considered under the "Quality of key personnel" criterion for both the master's level and professional study program and the doctoral study program. However, the Secretary believes that the "Quality of the academic program" is a distinct criterion and declines to incorporate faculty into that criterion.

Changes: Paragraph (b)(5)(i)(B) of sections 649.21 and 649.31 has been revised to evaluate the qualifications of "key faculty" rather than "other key personnel." In addition, the points allocated the "Quality of key personnel" criterion have been increased from 10 to 12 points, with 6 of those points assigned to the quality of other key faculty in subsection (B) of paragraph (b)(5)(i) and 2 points each assigned to subsections (A), (C), and (D) of the paragraph.

Discrimination Prohibition (§§ 649.21(b)(3)(vi), 649.31(b)(3)(vi))

Comment: Several commenters suggested that this provision, which requires applicants to ensure that otherwise eligible participants are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, seems inconsistent with the purposes of the program. One commenter asked whether this provision would prohibit awarding a fellowship to one of two equally eligible students based on the fact that one student was a member of a group that was more underrepresented than the group of which the other student was a member.

Discussion: The Secretary agrees with the commenters that this provision is confusing because it could be interpreted to be in conflict with the priority requirements under the program. Institutions will need to consider race and gender in selecting among otherwise eligible applicants in order to implement the priorities that are established under this program. Moreover, the Secretary believes that an institution could consider the degree of underrepresentation in selecting among eligible applicants, to the extent that underrepresentation was a criterion under the priority or priorities established by that institution. For example, an institution operating a fellowship program that gives priority to minority students who are underrepresented in a particular academic field could select an eligible student who was a member of a minority group that was more underrepresented in that field over an eligible student who was a member of a minority group that was less underrepresented in that field.

Changes: Paragraph (b)(3)(vi) of §§ 649.21 and 649.31 has been revised to clarify that

applicants may not consider the prohibited factors, except as necessary to implement the priority or priorities established in accordance with the requirements of this program.

Evaluation Plan (§§ 649.21(b)(7) and 649.31(b)(8))

Comment: Several commenters objected to the evaluation plan requirements, calling them excessive, cumbersome, and unnecessary. Some commenters suggested that evaluations should be conducted centrally, rather than at the academic department level. Commenters recommended that the evaluation plan be included as an institution-wide criterion, instead of an academic field criterion. One commenter noted that the type of information requested should be, and in some cases is, included in annual reports. One commenter suggested that the evaluation should monitor only the number of degrees awarded and the number of fellows successfully launched into careers in which they are underrepresented.

Discussion: The Secretary agrees with the commenters that the evaluation plan requirements are unnecessarily burdensome for a graduate fellowship program. The Secretary also agrees that evaluations should be conducted centrally. The Secretary anticipates that the project director would oversee an institution-wide evaluation that addresses each academic field.

Changes: The evaluation plan requirements have been simplified by removing the requirements in paragraphs (b)(7) (iii), (iv), and (vi) of § 649.21 and the corresponding requirements in paragraphs (b)(8) (iii), (iv), and (vi) of § 649.31. In addition, paragraph (b)(7)(ii) of § 649.21 and paragraph (b)(8)(ii) of § 649.31 have been revised to provide that the Secretary reviews each application to determine the extent to which the applicant's evaluation methods include both process and product evaluation measures that are objective and designed to produce data that are quantifiable. The revised evaluation plan requirements have been removed from the academic field criteria in §§ 649.21(b)(7) and 649.31(b)(8) and added to the institution-wide criteria in new §§ 649.21(a)(5) and 649.31(a)(5). The number of points allocated to the new "Evaluation plan" criterion has been reduced from 10 to 5. Two of the extra 5 points have been added to the "Quality of key personnel" criterion, as discussed above. The other 3 points have been added to the "Quality of academic program" criterion to increase its weight to a total of 15 points.

Priority Fields (§ 649.22(c)(1)/Appendix)

Comment: Several commenters objected to the broad array of academic areas listed in the appendix as academic area priorities. One commenter urged prioritization of the academic areas in the appendix, suggesting that not all of the areas in the appendix could be considered of equal priority. Some commenters noted that the list of academic areas in the appendix includes areas that do not require graduate study. Other commenters favored guidelines, rather than a restrictive list so that emerging areas might be given priority in the future.

Discussion: Some of the comments reflect a misunderstanding of the process the Secretary uses for giving an absolute preference. The academic areas listed in the appendix have not been given preferences as fields of high national priority. The Secretary establishes the academic career fields of high national priority that will be given a preference each year by selecting fields from among the academic areas listed in the appendix and announcing the absolute preference for the selected fields in the **Federal Register** notice inviting applications for new awards. For this reason, the Secretary does not believe the list of academic areas is too broad. Similarly, the Secretary does not believe it is problematic to include on the list academic areas for which graduate study is not currently required in order to pursue a career in the field. Nor does the Secretary believe the list is too restrictive because the Secretary also may give an absolute preference to an academic field that is a resulting subdisciplinary or interdisciplinary academic area. However, the Secretary does believe that the title of the appendix and the language in § 649.22(c)(1) of the proposed regulations were confusing in this regard, and they have been revised to clarify that not all of the areas listed in the appendix are areas of high national priority.

Changes: The title of the appendix has been changed from "Academic Area Priorities" to "Academic Areas." Paragraph (c)(1) of § 649.22 has been revised to provide that the fields of high national priority are established by the Secretary from among one or more of the "academic areas listed in the appendix to this part or the resulting subdisciplinary or interdisciplinary academic areas."

National and Citizenship Requirements (§§ 649.40 (b)(3), (c)(3), and (d)(3))

Comment: A number of commenters requested clarification regarding why the citizenship requirement applies only to doctoral fellows pursuing academic careers and not to any other fellows. A few commenters requested flexibility to provide doctoral fellowships to students seeking permanent residency or pursuing citizenship. Commenters also requested a definition of the term "national".

Discussion: The citizenship requirement for doctoral fellows pursuing academic careers is taken from the HEA, which as a result of the 1992 Amendments states expressly that one of the purposes of the title IX graduate programs is to "provide incentives and support for *United States citizens* to complete doctoral degree programs leading to academic careers" (20 U.S.C. 1134(a)(2) (emphasis added). The Secretary believes that limiting eligibility for doctoral programs leading to academic careers to U.S. citizens reflects legislative intent. Since the statute did not specifically target U.S. citizens for any of the other types of fellowships, the Secretary did not restrict eligibility for any of the other fellowships. The Secretary agrees with the commenters that a definition of the term "U.S. national" would help to clarify the eligibility provisions. A definition has been added to the regulations that is drawn from the Immigration and Nationality Act definition and is consistent with the definition of "U.S. citizen or national" that is used in other higher education grant program regulations.

Changes: A definition of the term "U.S. National" has been added to § 649.6 that provides that a U.S. national means a citizen of the United States or a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

Award Period for Master's Level or Professional Study (§ 649.50(a))

Comment: A few commenters requested clarification regarding the award period for master's level and professional study fellowship awards. One commenter suggested adding language that the Secretary regards the normal length of study for a master's degree program to be two years and that applicants would be required to demonstrate any exception that would result in a three-year grant. Commenters objected to the fact that a twelve-month extension period is provided for master's level and professional study fellows, but is not available to doctoral fellows pursuing academic careers.

Discussion: The Secretary does not regard the normal length of study for a fellow under the master's level and professional study program to be two years because some professional degrees normally take three years. The Secretary believes that the twelve-month extension is available in addition to the normal length of the program, whether that is two or three years. Thus, the extension would extend a master's level and professional study fellowship to three years if the normal length of the fellow's program is two years or to four years if the normal length of the fellow's program is three years. The Secretary believes that § 649.50(a)(1) of the regulations is clear on this point.

Section 923(b)(1) of the HEA specifically authorizes the Secretary to provide a twelve-month extension for master's level and professional study fellowships (20 U.S.C. 1134f(b)(1)). In contrast, section 923(b)(2) of the HEA specifically limits the period of federal support for doctoral fellows to *not more than two years* for study or research and *not more than one year* for dissertation work (20 U.S.C. 1134f(b)(2)). Accordingly, the Secretary is not authorized to provide an extension to doctoral fellows.

Changes: None.

Doctoral Fellowship Funding Sequence (§ 649.51)

Comment: Many commenters objected to the sequence for funding doctoral fellows. Commenters noted that the "five-year" sequence is inconsistent with the actual timing of many doctoral programs and doctoral students. Some commenters were concerned that delaying the provision of dissertation funding until the fifth year would remove any incentive for earlier completion of a doctoral program. Some commenters suggested that institutions may choose to compete only for the master's level and professional study program because it provides up to four continuous years of fellowship funding and does not require institutional support. One commenter

suggested that the funding sequence may encourage some institutions to design two-year doctoral programs to avoid having to provide institutional support. Another commenter recommended that the sequence be replaced by a flexible five-year funding plan that requires institutions to guarantee a match of two years of institutional funding to three years of Federal funding, with the institution having the discretion to fund any two years in the five-year cycle.

In particular, many commenters objected to the discontinuance of third-year fellowship support for current doctoral fellows. Commenters pointed out that the current fellows were recruited for a fellowship program that provided three continuous years of funding and were encouraged to complete their degrees in those three years. Some commenters emphasized that it will be very difficult for institutions to find alternative support for these students on such short notice. Accordingly, commenters requested that a grandfather clause be added to the law or that the regulations be changed to provide third-year funding for existing fellows or both.

Discussion: Preliminarily, the Secretary notes that the references of some commenters to a "five-year" funding sequence suggest a misunderstanding of the sequence provisions. The doctoral fellowship funding sequence is taken from section 923(b) of the HEA, which requires institutions to provide two years of support following the two years of Federal pre-dissertation support and authorizes a third year of Federal funds for dissertation support following the two years of institutional support (20 U.S.C. 1134f(b)(2)). The Secretary interprets the statute to mean that one year of Federal dissertation funding may be provided at any time following the two years of support provided by an institution, which could be the fifth year or thereafter.

Although the fellowships awarded to current fellows under this program were three-year fellowships, technically the second and third years are each continuation awards that are subject to the law in effect at the time the continuation award is made. Therefore the provisions in the new statute apply to the continuation awards for current fellows unless a specific exception is written into the law. As many commenters noted, the statute does not include a grandfather clause that would except current fellows from the new funding sequence to award a third year of continuous fellowship funding. Accordingly, the Secretary does not have the authority to provide for the third year of funding in the regulations.

Changes: None.

Doctoral Fellowship Teaching Requirement (§ 649.51(b)(3))

Comment: Many commenters requested flexibility regarding the timing of the teaching requirement. One commenter noted that students at that institution are not permitted to teach their own class until they have passed their preliminary exams and are at the dissertation writing stage. Another commenter wondered whether it would be permissible to fulfill the teaching requirement during the first or second year of study. Several commenters expressed concern with the teaching requirement in light of collective bargaining agreements that severely restrict teaching by graduate students.

Some commenters requested clarification regarding the provision that requires the teaching requirement for the fellow to be equal to that of a half-time teaching assistant since that may vary among institutions. One commenter requested that the half-time teaching assistant provision be removed because it focuses on the quantity, rather than the quality of the teaching requirement.

Discussion: Section 923 of the HEA requires at least one year of supervised teaching following the two years of Federal pre-dissertation support (20 U.S.C. 1134f(b)(2)). The Secretary does not have the authority to change the provisions in the regulations regarding the timing of the teaching requirement. However, the Secretary agrees that the half-time requirement in the proposed regulations was confusing. The Secretary intends the teaching requirements for fellows under this program to be the same as for other graduate teaching assistants, and the regulations have been changed to clarify this point.

Changes: Paragraph (b)(3)(ii) of § 649.51 has been revised to require the teaching requirements for fellows under this program to equal those required of other graduate teaching assistants at that institution.

Institutional Support (§ 649.51(b))

Comment: Many commenters objected to the regulatory provisions that require institutions to pay stipends of up to $14,000, based on financial need. A number of commenters were concerned about the possibility of a $14,000 stipend because it is much higher than the current graduate stipend levels in most departments. Many commenters were concerned about the potential issues of inequity both among fellows under this program and between PRH fellows and other graduate fellows. Commenters noted that since most graduate stipends are tied to graduate teaching positions, varying the level of the stipend based on demonstrated financial need in accordance with title IV–F would conflict with the institution's policies of providing equal pay for equal work. Some commenters noted that the regulatory requirements relating to institutional support go beyond the statutory requirements and recommended that the provisions relating to the level of support provided by institutions be removed altogether or replaced by a provision that takes into account the level of support provided to other students in the academic department receiving graduate stipends.

Discussion: Although the statute does not require any particular level of institutional support, the Secretary believes that the regulatory requirements are appropriate to ensure that the fellows continue to receive the support they need during the years when no federal funds are provided. The Secretary does not anticipate that institutions would pay fellows under this program for graduate teaching positions at a higher rate than other graduate teaching assistants. However, fellows under this program are entitled to a stipend up to their level of need. Therefore, if the rate paid to a graduate teaching assistant is lower than the fellow's need, the institution must provide additional stipend funds to make up the difference.

Changes: None.

Financial Need (§ 649.60(a))

Comment: Many commenters objected to the use of the test in part F of title IV of the HEA for determining the amount of financial need, and some commenters objected to basing stipends on demonstrated financial need altogether. Some commenters stated that merit is more important than need at the graduate level and should be the primary criterion for selecting fellows. Other commenters stated that the IV–F test is not required by the statute and is too stringent. Some commenters do not believe the IV–F test is appropriate for graduate students. In particular, several commenters were concerned that the needs test will hurt recruitment and retention of minority students, either because those students may have needs that are not adequately addressed by the IV–F test or because those students are extremely sought after and will choose a program for which they are not required to demonstrate need at all. Some commenters recommended that financial need be determined by each institution according to procedures established by the institution and approved by the Secretary.

Discussion: Section 923(a) of the HEA requires that a stipend awarded under this program not exceed a fellow's demonstrated financial need (20 U.S.C. 1134f(a)). The Secretary does not have the authority to remove this requirement from the regulations. However, the Secretary notes that neither the statute nor the proposed regulations require that fellows under this program be selected on the basis of financial need, rather than on the basis of merit. Financial need is not required to receive the tuition support provided under the fellowship.

The Secretary has determined that it is appropriate to determine a fellow's financial need for a stipend under this program based on title IV–F of the HEA because it contains separate provisions for graduate students that reflect Congress' assessment of factors relevant to the financial need of those students. Moreover, the Secretary believes it is reasonable to require graduate students who apply for fellowships under this program to demonstrate need based on the same standards as graduate students for all other programs funded by the Department.

The Secretary does not believe the title IV–F needs test will hurt the recruitment or retention of individuals who are minorities. Rather, the Secretary expects the needs test to improve the recruitment and retention of individuals who are minorities who have the greatest financial need by ensuring that those fellows receive the largest stipends.

Changes: None.

Stipends for Current Fellows (§ 649.60 (b) and (c))

Comment: A number of commenters stated that the ineligibility of current fellows for the increased stipend levels available to new

fellows is discriminatory and objected to the inequity of the dual stipend levels.

Discussion: Section 923(a) of the HEA only provides the increased stipend level for individuals receiving their first stipend in 1993–94 or thereafter (20 U.S.C. 1134f(a)). The statute does not provide for an increase in the stipend level of current fellows. The Secretary notes that the inequity about which commenters are concerned may be minimized by the fact that only those new fellows who demonstrate sufficient financial need will actually receive a stipend of $14,000.

Changes: None.

Institutional Payment (§§ 649.61, 649.63)

Comment: Commenters supported the increase in the institutional payment, but were concerned that it may result in a reduction in the number of awards under the graduate fellowship programs. One commenter recommended that institutions be allowed to carry over unexpended funds, and suggested that those funds may help institutions to pay stipends to students during the institutional support years. One commenter requested clarification regarding the flexibility an institution has in using any excess from the institutional payment beyond a fellow's tuition and fees. Several commenters suggested that the regulations provide procedures for institutions to select new alternate fellows when fellowships become vacant. Several commenters objected to the pro-ration of the institutional payment based on the period of a fellow's enrollment, noting that most of the costs covered by the institutional payment are up-front expenses that are not recoverable by the institution if a fellow is unable to complete an academic year.

Discussion: The increase in the institutional payment is provided by section 922(f) of the HEA (20 U.S.C. 1134e(f)). The Secretary does not have the authority to change the amount of the institutional payment.

Section 922(b)(2) of the HEA requires the Secretary each year to reallot any funds that an institution cannot use (20 U.S.C. 1134e(b)(2)). Therefore, to the extent the institutional payment received by the institution is not used to cover tuition, fees, or other activities necessary to assist fellows in the successful completion of their programs, the Secretary considers the unused portion to be excess and will reallot those funds. Excess institutional funds may not be carried over to pay stipends in a subsequent year. The option of substituting an alternate fellow during the first year has been removed from the regulations in order to permit better oversight of Federal funds. Finally, the Secretary does not believe the pro-ration requirements are too burdensome for institutions because the program has previously required grantees to return institutional payments on a pro-rated basis whenever a fellow did not complete an academic year (the option of substituting an alternate fellow was not available after the first year).

The Secretary believes that the definition of "project" clarifies that any excess funds from the institutional payment may be used for activities necessary to assist fellows in the successful completion of their educational programs.

Changes: None.

Disbursement Requirements (§ 649.64(a))

Comment: One commenter noted that institutions will not be able to satisfy the requirement that institutions certify that fellows are making satisfactory academic progress prior to the fellow's receipt of the stipend.

Discussion: The Secretary agrees with the commenter that no certification would be possible prior to a fellow's initial receipt of a stipend, and the regulations have been revised to clarify this point.

Changes: Paragraph (a) of this section has been revised to clarify that the certification requirement does not apply until after the fellow's first academic term.

Geographical Distribution

Comment: One commenter noted that the regulations do not incorporate the statutory requirement that the Secretary take into account the geographic distribution of grants under this program.

Discussion: The Secretary intends to consider the geographic distribution of grants as a tie-breaker in selecting grantees, but does not believe it is necessary to include this provision in the regulations.

Changes: None.

[FR Doc. 93–19332 Filed 8–11–93; 8:45 am]
BILLING CODE 4000–01–P

POSTAL RATE COMMISSION

39 CFR Part 3000

[Docket No. RM93–4, Order No. 986]

Standards of Conduct

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: Effective February 3, 1993, 5 CFR part 2635 as promulgated by the Office of Government Ethics superseded substantially all of the Postal Rate Commission's Standards of Conduct at 39 CFR part 3000. The Postal Rate Commission's rules relating to financial disclosure are also superseded by amendments to 5 CFR part 2634. The revised standards of conduct adopted herein retain those portions of the current standards of conduct not superseded by the Office of Government Ethics' amendments to 5 CFR and incorporate provisions of the Supplemental Standards of Ethical Conduct for Employees of the Postal Rate Commission issued in 5 CFR part 5601 with the concurrence of the Office of Government Ethics. The latter prohibit financial interests in entities significantly affected by postal rates, require written approval before engaging in outside employment and provide that a Commission employee who negotiates for employment with an entity substantially affected by postal rates shall provide notice of disqualification to his supervisor.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: David Ruderman, Attorney, Postal Rate Commission, suite 300, 1333 H Street NW., Washington, DC 20268–0001; telephone (202) 789–6835.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the Office of Government Ethics promulgated Standards of Ethical Conduct for Employees of the Executive Branch, which became effective on February 3, 1993. (57 FR 35006, August 7, 1992.) Unless otherwise preserved by supplemental regulation, the Office of Government Ethics' standards of ethical conduct supersede the standards of conduct presently applicable to employees of the Postal Rate Commission (Commission). On April 7, 1992, the Office of Government Ethics promulgated an interim rule which supersedes the Commission's rules relating to financial disclosure. The interim rule concerning financial disclosure suggests that agencies review their existing regulations relating to financial disclosure to determine whether revocation or modification is required.

The Commission has reviewed its standards of conduct and has found that most of the existing rules contained in 39 CFR part 3000 have been superseded. There are a few provisions in former Part 3000, that the Commission has decided to retain.

The Commission is including in subpart A, general provisions, a statement acknowledging that the uniform standards of ethical conduct promulgated by the Office of Government Ethics apply to the Commission. Also Subpart A notes that the Designated Agency Ethics Official (DAEO) is appointed by the Chairman. The DAEO is responsible for the Commission's ethics program.

Subpart B retains the existing rules relating to employee responsibilities concerning ex parte communications. Other than redesignating the provisions concerning ex parte communications as subpart B, there are no changes in the ex parte rules.

Rules supplementing the uniform standards of conduct promulgated by the Office of Government Ethics (OGE) are set forth in 5 CFR Chapter XLVI and restated, in part, herein for ease of reference. The Commission is republishing in § 3000.735–103(a), the supplemental provision at 5 CFR 5601.102 prohibiting financial interests

in entities significantly affected by postage rates or classifications or by the operations of the Postal Service. Notwithstanding minor differences in wording this provision is intended to be consistent with 5 CFR 5601.103, and with 5 CFR 5601.101 which contains a definition of a person whose interests are significantly affected by rates for postage, fees for postal services, the classification of mail or the operation of the Postal Service.

The Commission's rules of conduct had a provision that allows the Chairman of the Commission to determine a maximum amount of financial interest an employee may have in any one entity. This provision was originally placed in the Commission's standards of conduct because many companies suitable for investment are impacted by postal rates and classifications. This provision is retained at § 3000.735–103(b) pursuant to the saving provision in 5 CFR 2635.402(d)(1).

The Commission is republishing in § 3000.735.104 the supplemental provisions at 5 CFR 5601.104 which prohibit employees from engaging in employment with certain persons and require advance approval for outside employment from the designated agency official. In § 3000.735.104(c) the Commission is also republishing the supplemental provision at 5 CFR 5601.103 which requires an employee who negotiates for future employment with an entity substantially affected by postage rates to give notice to his supervisor that he or she will not participate in assignments affecting the prospective employer. Notwithstanding any minor variations in wording § 3000.735.104 is intended to be consistent with the underlying provisions in 5 CFR 5601.103 and 5601.104.

As the amendments herein involve matters of agency organization and procedure, the notice requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply. These rule changes apply only to the Commission's Standards of Conduct. Thus, they do not constitute a "major rule" under Executive Order 12291. For the same reason, the rule changes will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

List of Subjects in 39 CFR Part 3000

Standards of conduct.

Therefore, pursuant to 39 U.S.C. 3603, the Postal Rate Commission is amending title 39, chapter III, subchapter A of the code of Federal Regulations part 3000 as follows:

PART 3000—STANDARDS OF CONDUCT

1. The authority citation for part 3000 of title 39 is revised to read as follows:

Authority: 39 U.S.C. 3603; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR parts 2634 and 2635.

2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

3000.735–101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.
3000.735–102 Counseling and advisory services.
3000.735–103 Financial interests.
3000.735–104 Outside employment.

Subpart A—General Provisions

§ 3000.735–101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Postal Rate Commission (Commission) are subject and should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Commission regulation at 5 CFR part 5601 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

§ 3000.735–102 Counseling and advisory services.

(a) The Chairman of the Commission shall appoint the Designated Agency Ethics Official (DAEO) for the Commission. The DAEO may appoint deputy ethics officials to assist in carrying out the responsibilities of the designated agency ethics official. The DAEO shall advise employees as to the applicability and interpretation of laws and regulations involving the standards of conduct for employees of the Commission. The DAEO shall furnish advice to employees for the purpose of aiding employees in avoiding conflicts of interest, situations, actions or conduct that may reflect adversely on the Commission.

(b) The DAEO shall develop and execute an ethics agency training plan providing for an initial orientation for new employees and annual ethics training.

§ 3000.735–103 Financial interests.

(a) An employee shall not, either directly or indirectly, have any financial interest (whether by ownership of any stock, bond, security, or otherwise) in any entity or person whose interests may be significantly affected by rates of postage, fees for postal services, the classification of mail, or the operation of the Postal Service. This paragraph does not proscribe interests in an entity or person whose use of the mail is merely an incidental or a minor factor in the general conduct of its business.

(b) The Chairman from time to time determines the appropriate maximum limit for an interest in stocks, bonds or other forms of securities in any one entity or person. If an employee has an interest above the maximum limit, the DAEO will so advise the Chairman. If the Chairman finds the interest so substantial as to be deemed likely to affect the integrity of the service which the Government may expect of him or her, the Chairman may direct, in writing, the employee to divest a portion of the financial interest to bring the investment below the maximum limit.

§ 3000.735–104 Outside employment.

(a) An employee shall not engage in outside employment or professional practice, either on a paid or unpaid basis, with or for a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of Postal Service.

(b) An employee who wishes to engage in outside employment either on a paid or unpaid basis shall obtain the prior written approval of the DAEO. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the DAEO to make an informed determination that the outside employment is not prohibited by law or regulation, including 5 CFR part 2635 or 5 CFR part 5601.

(c) An employee who has been assigned to a particular matter which affects the financial interests of a prospective employer and who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in that matter shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide notice of disqualification to his supervisor upon determining that he will not participate in the matter.

3. Subparts B, C and D removed and subpart E is redesignated as subpart B.

Issued by the Commission on August 6, 1993.

Charles L. Clapp,

Secretary.

[FR Doc. 93–19330 Filed 8–11–93; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF JUSTICE

Justice Management Division; Seismic Safety Program

41 CFR Part 128–1

AGENCY: Justice Management Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule establishes the Department of Justice (DOJ or Department) Seismic Safety Program and brings the Department into compliance with the provisions of Executive Order (E.O.) 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction," which implements the building safety provisions of the Earthquake Hazards Reduction Act of 1977, as amended. The Executive Order requires each affected Federal agency to develop and implement its own mission-appropriate and cost-effective regulations governing seismic safety for new buildings that the agency constructs or leases, and for buildings constructed with assistance from the agency, or constructed under regulations provided by the agency. The Order and this rule have as their purposes, the reduction of risks to the lives of building occupants and others who would be affected by the failure of Federal buildings in an earthquake, the improvement of the capabilities of essential buildings to function during or after an earthquake, and the reduction of earthquake losses of public buildings and investments.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin F. Burrell, Director, Facilities and Administrative Services Staff, United States Department of Justice, Ariel Rios Federal Building, room 3204, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: To coordinate earthquake research and to improve earthquake preparedness, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Act) (Pub. L. 95–124, 42 U.S.C. 7701 *et seq.*) as amended (Pub. L. 101–614), which directed the establishment and maintenance of an effective earthquake hazard reduction program. In the Act, actions, to improve the safety of building structures focused on the development of design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model buildings codes. The Act applied to both the private and public sectors.

Federal agencies joined forces via the Interagency Committee on Seismic Safety in Construction (ICSSC) to develop earthquake hazards reduction measures for the large number of Federal buildings: the Federal government owns or leases more than 400,000 buildings. For more than 10 years, the ICSSC has been developing seismic design guidelines for new and existing Federal buildings and facilities. In 1987, the ICSSC published "Seismic Design Guidelines for Federal Buildings" (ICSSC RP–1) which were intended primarily for new buildings. In March 1989, it issued "Guidelines for Identification and Mitigation of Seismically Hazardous Existing Federal Buildings" (ICSSC RP–3).

On January 5, 1990, President Bush signed Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, which requires all Federal agencies to ensure that any new building which is Federally owned, leased, assisted or regulated is designed and constructed in accordance with appropriate seismic design and construction standards. Appropriate and cost-effective seismic design and construction standards and practices were identified by the ICSSC, pursuant to the authority granted to the ICSSC in the Executive Order. Specifically, the ICSSC found that several model building codes provide the levels of seismic safety required by the Executive Order.

This rule implements Executive Order 12699 in the Department of Justice by creating a seismic safety program that applies to buildings designed and constructed under the responsibility of the Department.

On April 9, 1993, the Department published a notice of proposed rulemaking on seismic safety, 58 FR 18360, which included a request that comments be submitted by May 10, 1993. The Department received two sets of comments, one from a component within the Department and one from a private business that specializes in building technology. A summary of the comments and the responses follow:

In § 128–1.8006(c) the rule directs that documentation verifying compliance with the appropriate building code seismic standards be retained by the Department contracting officer responsible for the design or construction services contract. With this section, the Department intended to create one repository within each Department component for all construction related authorizations. A Department commenter pointed out that the Department, on occasion, builds some projects itself without contracting out for design or construction services and, therefore, without the involvement of a contracting officer. The Department amended this section of the rule to provide that seismic compliance documentation be retained by either the contracting officer or, when the Department has not contracted for either design or construction services, by an individual designated by the Component Head.

Section 128–1.8005(b), as proposed, required that the seismic design and construction of a building conform to the model building code applicable in the locality having jurisdiction over the building. A commenter observed that state and local governments do not exercise jurisdiction over federal buildings. The Department intended, and still intends, to construct its buildings in the manner and pursuant to the standards effective in the geographic area where the building will be located, and the Department has amended the text of this section to achieve that end. The same commenter interpreted the proposal as requiring compliance with model building codes at the planning stage only, and not in the construction stage of a building project. In fact, § 128–1.8005(b) requires that the seismic "design and construction of a covered building shall conform to the [appropriate] model code." The Department expects that, and will ensure that, buildings it constructs will meet the appropriate seismic safety standards. Therefore, no change in the proposed text was necessary.

These regulations have been coordinated with the Office of Management and Budget.

Executive Order 12291

This rule conforms with Executive Order 12291, which, in pertinent part, requires the preparation of a Regulatory Impact Analysis for "major" rules. The Department of Justice finds that this rule is not "major" within the meaning of that term in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials.

Executive Order 12612

The Department analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation, and determined that this proposed rule has minimal federalism implications, if any at all. Therefore, preparation of a Federalism Assessment is not warranted.

Executive Order 12778

The Department reviewed the rule pursuant to Executive Order 12778, Civil Justice Reform. This rule will not: (1) preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) have any retroactive effect; and (3) require administrative proceedings before parties may file suit challenging the provisions of this rule.

Collection of Information and Recordkeeping Requirements

This rule contains no collection of information requirements pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Department must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632). Because the Department expects that this rule will have no impact on small businesses, the Department certifies, under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 41 CFR Part 128–1

Acquisition of real property, Seismic Safety, Seized personal property, Utilization, donation, or disposal of abandoned and forfeited personal property.

For the reasons set out in the preamble, title 41, Chapter 128 of the Code of Federal Regulations is amended by adding subpart 128–1.8 to read as follows:

Subpart 128–1.8—Seismic Safety Program

Sec.

128.8000 Scope
128.8001 Background
128.8002 Definitions of Terms
128.8003 Objective
128.8004 Seismic Safety Coordinators
128.8005 Seismic Safety Standards
128.8006 Seismic Safety Program Requirements
128.8007 Reporting
128.8008 Exemptions
128.8009 Review of Seismic Safety Program
128.8010 Judicial Review

Authority: 42 U.S.C. 7701 *et seq.*, E.O. 12699 (3 CFR, 1990 Comp., p. 269).

§ 128–1.8000 Scope.

This subpart establishes a Seismic Safety Program for the Department of Justice and sets forth the policies and procedures for obtaining compliance with Executive Order 12699 (Executive Order), "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction."

§ 128–1.8001 Background.

The Earthquake Hazards Reduction Act of 1977 (Act), 42 U.S.C. 7701, *et seq.*, as amended, directs the Federal government to establish and maintain an effective earthquake hazards reduction program to reduce the risks to life and property from future earthquakes. Executive Order 12699 implements certain provisions of the Act by requiring Federal agencies responsible for the design and construction of new buildings to develop and implement a seismic safety program. The regulations in this subpart implement the Executive Order, and apply to buildings designed and constructed under the responsibility of the Department of Justice. These regulations do not apply to buildings used by the Department and obtained, through purchase or lease, by the General Services Administration or other Federal agencies.

§ 128–1.8002 Definitions of terms.

(a) *Construction documents*—Detailed plans and specifications for the construction of a building.

(b) *Building*—Any structure, fully or partially enclosed, used or intended for sheltering persons or property.

(c) *New building*—A building, or an addition to an existing building, for which development of construction documents was initiated after January 5, 1990.

(d) *Leased building*—A new building constructed expressly for lease by the Department of Justice, and for which the Department contracted with the lessor or owner to develop construction documents to meet the specifications of the Department.

(e) *Purchased building*—A new building constructed expressly for purchase by the Department, and for which the Department contracted with the owner/developer to develop construction documents meeting the specifications of the Department.

(f) *Assisted or regulated building*—A new building designed and constructed with funding assistance from the Department through Federal grants or loans, or guarantees of financing, through loan or mortgage insurance programs.

(g) *Covered building*—a new building owned, leased, purchased, or assisted or regulated by the Department of Justice.

§ 128–1.8003 Objective.

The Department shall comply with Executive Order 12699 for the purpose of reducing the risks to lives of occupants of new buildings owned by the Department, leased for Department uses, or purchased and constructed with assistance from the Department, and to other persons who would be affected by the failure of such buildings in earthquakes; improving the capability of essential new Department buildings to function during or after an earthquake; and protecting public investments in all covered buildings; all in a cost-effective manner.

§ 128–1.8004 Seismic Safety Coordinators.

(a) The Justice Management Division shall designate an individual with technical training, engineering experience and a seismic background as the Department of Justice Seismic Safety Coordinator who shall provide overall guidance for the implementation of the Seismic Safety Program for the Department. The Department Seismic Safety Coordinator shall, at a minimum:

(1) Monitor the execution and results of the efforts of the Department to upgrade the seismic safety of the Department's new construction activities;

(2) Implement seismic safety program changes, as required;

(3) Act as a point-of-contact for the Department in maintaining necessary records, and consolidate data pertaining to the seismic safety activities in the Department;

(4) Monitor and record the cost, construction and other consequences attributable to compliance with the Executive Order;

(5) Notify each Component Seismic Coordinator about what information he must maintain under the Seismic Safety Program and what reports he must prepare;

(6) Prepare and forward for submission all reports, as required by law and regulation;

(7) Manage the Seismic Safety Program for all components of the Department, with the exception of the

components listed in paragraph (b) of this section.

(b) The Component Head for the Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service, shall designate a Component Seismic Safety Coordinator for his/her respective component. Each of these Component Seismic Safety Coordinators shall manage and implement the seismic safety policies and activities within the component. The Component Seismic Safety Coordinators shall, at a minimum:

(1) Provide guidance to component employees who undertake building activity;

(2) Maintain and provide data about the Seismic Safety Program, as requested by the Department Seismic Safety Coordinator;

(3) Monitor and record the cost, construction and other consequences attributable to compliance with the Executive Order; and

(4) Submit an annual Seismic Safety Program status report as directed by the Department Seismic Safety Coordinator.

§ 128–1.8005 Seismic Safety standards.

(a) To meet the building and construction requirements of this subpart, the Department, except as noted, adopts as its seismic safety standards the seismic safety levels set forth in the model building codes that the Interagency Committee on Seismic Safety in Construction (ICSSC) recognizes and recommends as appropriate for implementing the Executive Order. The ICSSC, as of the date of this rule, recognizes and recommends:

(1) The 1991 International Conference of Building Officials (ICBO) Uniform Building Code (UBC);

(2) The 1992 Supplement to the Building Officials and Code Administrators International (BOCA) National Building Code (NBC); and

(3) The 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code (SBC).

(b) The seismic design and construction of a covered building shall conform to the model code applicable in the locality where the building is constructed, unless:

(1) The building code for the locality provides a higher level of seismic safety than provided by the appropriate model code, in which case the local code shall be utilized as the standard; or

(2) The locality does not have seismic safety building requirements, in which case the ICSSC model building code appropriate for that geographic area shall be utilized as the standard.

§ 128–1.8006 Seismic Safety Program requirements.

The Department Seismic Safety Coordinator and each Component Seismic Safety Coordinator shall ensure that an individual familiar with seismic design provisions of the Seismic Safety Standards (appropriate standards), or a professional, licensed engineer shall conduct the reviews required under this section, as appropriate.

(a) *New building projects*— Construction documents initiated after August 12, 1993, and which apply to new construction projects, shall comply with the appropriate standards and shall be reviewed for compliance. Once the reviewer determines that the documents comply, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the appropriate standards.

(b) *Existing building projects.*—For new buildings with construction documents that were initiated prior to August 12, 1993, the documents shall be reviewed to determine whether they comply with the appropriate standards. If the reviewer determines that the documents comply with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the appropriate standards. If the reviewer determines that seismic deficiencies exist, the appropriate Component Head shall ensure completion of one of the following:

(1) For a new building project for which a contract for construction has not been awarded, the construction documents shall be revised to incorporate the appropriate standards. The revised construction documents shall then be reviewed for compliance. Once the reviewer determines that the documents comply with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the Department standards.

(2) For a new building under construction, or for which construction has been completed, a corrective action plan shall be devised to bring the building into compliance with the appropriate standards. The plan shall then be reviewed for compliance. Once the reviewer determines that the plan complies with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the Department standards. The Component Head shall ensure implementation of the approved plan.

(3) For an addition to an existing building, the review shall account for, in addition to the requirements provided in paragraphs (b) (1) or (2) of this section, as appropriate, any effect the addition will have on the seismic resistance of the existing portion of the structure. If the reviewer determines that the addition will decrease the level of seismic resistance of the existing building, the appropriate Component Head shall develop a plan of corrective action to restore the seismic integrity of the existing structure. Once the plan of corrective action has been accomplished, the reviewer shall verify that the current level of seismic resistance of the existing building at least equals the seismic resistance level of the building before the addition.

(c) The Department Seismic Safety Coordinator and each Component Seismic Safety Coordinator shall ensure that statements verifying compliance made under this subpart have been completed and retained by the appropriate contracting officer when the Department contracted for design or design review services, or by an individual designated by the Component Head where the Department has not contracted for either design or design review.

§ 128–1.8007 Reporting.

The Department shall file reports on the execution of the Executive Order as required under the Order, and as required by the Federal Emergency Management Agency.

§ 128–1.8008 Exemptions.

The Executive Order exempts from the regulations in this subpart only those categories of buildings exempted by the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings." The Department Seismic Safety Coordinator shall maintain the latest version of this document.

§ 128–1.8009 Review of Seismic Safety Program

The Department shall review and, as necessary, revise the Seismic Safety Program once every three years from August 12, 1993.

§ 128–1.8010 Judicial review

Nothing in this subpart is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department of Justice,

its Seismic Safety Coordinators, its officers, or any employee of the Department.

Dated: August 3, 1993.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 93-19435 Filed 8-11-93; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

(MM Docket No. 93-134; RM-8226)

Television Broadcasting Services; Ishpeming, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots VHF Television Channel 10- to Ishpeming, Michigan, as that community's first local television transmission service in response to a petition filed by Thomas Scanlan. See 58 FR 31184, June 1, 1993. The coordinates for Channel 10- are 46-31-23 and 88-00-52. There is a site restriction 27.3 kilometers (16.9 miles) west of the community and a minus offset. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 20, 1993.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93-134, adopted July 26, 1993, and released August 6, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, D.C. 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73.

Television broadcasting.

Part 73—[Amended]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Michigan, is amended by adding Ishpeming, Channel 10

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93-19310 Filed 8-11-93; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1819

RIN 2800-A175

Final Changes to NASA FAR Supplement Subcontracting With Small Business and Small Disadvantaged Business Concerns

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has amended the NASA FAR Supplement to include historically black colleges and universities and minority educational institutions to the list of organizations which are eligible for total set-aside subcontracts as identified in a NASA prime contractor's subcontracting plan. NASA contracting officers may accept as an element of a subcontracting plan the prime contractor's intention to use total set-asides in awarding subcontracts so long as such set-asides are competitive and awards are made at reasonable prices.

DATES: This final rule is effective August 12, 1993.

ADDRESSES: Comments should be addressed to Ms. Deborah O'Neill, NASA Headquarters, Office of Procurement Policy (HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, telephone (202) 358-0428.

SUPPLEMENTARY INFORMATION:

Background

Public Law 101-144, with clarifying language in Public Law 101-507, states that the NASA Administrator shall ensure that at least eight percent of NASA funding for prime and subcontracts be made available to business concerns or other organizations owned or operated by socially and economically disadvantaged individuals. These concerns or individuals include small businesses, small disadvantaged businesses, women-owned businesses, historically black colleges and universities, and minority educational institutions. The NASA FAR Supplement previously had not included historically black colleges and universities and minority educational institutions in the list of organizations which are eligible for total set-aside subcontracts as identified in a NASA prime contractor's subcontracting plan. To be consistent with Public Laws 101-144 and 101-507, the NASA FAR Supplement is amended to include historically black colleges and universities and minority educational institutions to the list of organizations which are eligible for total set-aside subcontracts as identified in a NASA prime contractor's subcontracting plan.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this final rule will not have 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.).

Paperwork Reduction Act

This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1819

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR part 1819 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

§ 1819-705-4 [Amended]

2. In section 1819.705-4, paragraph (b) is revised to read as follows:

§ 1819.705-4 Reviewing the subcontracting plan.

* * * * *

(b) NASA contracting officers may accept as an element of a subcontracting plan the prime contractor's intention to use total small business, small disadvantaged business, women-owned business, historically black college and university, or minority educational institution set-asides in awarding subcontracts so long as such set-asides are competitive and awards are made at reasonable prices. Use of this procedure will be viewed as a good indication of an aggressive subcontracting plan. Set-asides may be encouraged but may not be required when negotiating subcontracting plans.

[FR Doc. 93-19373 Filed 8-11-93; 8:45 am]
BILLING CODE 7501-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AA71

Refuge-Specific Hunting and Fishing Regulations; Sabine National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule will rescind a final rule signed by the Secretary of the Interior which closed certain inholdings to the hunting of migratory game birds within the external boundaries of the Sabine National Wildlife Refuge. The closed area includes a 3,120-acre inholding owned by the J.G. Gray Estate and 4,193.7 acres of other lands adjacent to the J.G. Gray Estate. The area was initially closed on September 18, 1962, by agreement with the tenants because no migratory game bird hunting was then allowed on the Sabine National Wildlife Refuge. The refuge has now opened to hunting of migratory game birds and there is no longer any reason to have a hunting restriction on the private inholding at issue.

EFFECTIVE DATE: The effective date of this rule is September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358-1786.

SUPPLEMENTARY INFORMATION: The Sabine National Wildlife Refuge (NWR) was acquired in 1937. There were eight inholdings, three of which were owned by the Gray family. The Gray family entered into leases with the refuge for wildlife protection only. The agreements read in part "* * * and for the right to administer and protect the area as part of the Sabine National Wildlife Refuge * * *" The Gray family reserved the right "* * * to use these lands for grazing purposes; to construct roads, to construct and maintain any fences considered necessary; to improve the range in any manner desired; for the production of agricultural crops; the exclusive right to trap fur-bearing animals; and to prospect for, mine, produce and remove oil, gas, and minerals * * *" These agreements continued until 1962 at which time the lease expired. During the interim period between the execution of new lease agreements, the Secretary signed a final rule closing lands owned by the Gray family and other lands adjacent to such lands, upon appropriate notification and public comment, as he felt that waterfowl and other migratory species using the area needed to be protected from hunting—especially the Canada geese. Subsequently, new lease agreements were entered into in 1963 and the area has been used for grazing a small herd of cattle and several horses. No new lease agreements have been entered into since 1983 nor have any lease agreements been initiated by the heirs to the Gray estate. Currently, portions of Sabine NWR are open for waterfowl hunting, and Canada geese have increased to the point that an experimental Canada goose season has been opened in this part of Louisiana since 1989.

The heirs of the Gray estate have requested that the U.S. Fish and Wildlife Service review and rescind the final rule which originally closed their lands and allow waterfowl hunting on all these lands which would provide the heirs and landowners, respectively, with additional surface income from hunting leases. The heirs and landowners have indicated that some of the generated income would be used for habitat enhancement.

Accordingly, after consideration of all relevant facts, a rulemaking proposing that the original rule closing 3,120 acres of the J.G. Gray Estate lands and 1,493.7 acres of other adjacent lands, be rescinded and deleted from the areas closed to hunting found in 50 CFR 32.8, was published in the **Federal Register** on December 30, 1992 at 57 FR 62289. The proposed rule received no comments and, therefore, it is the decision of the Director, under authority from the Secretary, to rescind said original closure by final rule.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effect on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The rescinding of the final rule originally closing inholdings on the Sabine NWR will have little or no effect on the economy and would, therefore, generate less than $100 million in revenues.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. Aside from the immediate economic benefit to the heirs and landowners in their efforts to open their lands to hunting leases, the opening of the area will provide recreational opportunities and generate economic benefits to the local community, albeit small, through hunting-related sales. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes of which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions,

gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this final opening of an inholding within refuge boundaries. Based upon the Environmental Assessment and an independent Section 7 consultation, the Service issued a Finding of No Significant Impact with respect to the opening.

Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, Washington, DC, is the primary author of this final rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting and fishing, Report and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of title 50 of the CFR is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.8 is amended in the table by removing the entry dated "September 26, 1962", under the State of Louisiana.

Dated: May 12, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19286 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640–1140; I.D. 070193A]

Atlantic Swordfish Fishery; Correction

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

ACTION: Swordfish Drift Gillnet Closure; correction.

SUMMARY: This document corrects the second semi-annual swordfish drift gillnet quota closure published Monday, July 12, 1993, (58 FR 37443). The notice intended to establish that during the closure, the swordfish bycatch allowance for gillnetters is no more than 2 fish per vessel. The ambiguous wording of the notice could lead to an erroneous interpretation that more than 2 fish per vessel are allowed as a bycatch by drift gillnet boats after the closure of the season. This correction clarifies that closure notice.

EFFECTIVE DATE: This correction is effective 1200 hours local time July 16, 1993, through 2359 hours local time December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Rodney Dalton, 813–893–3721 or Richard B. Stone/Aaron King, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

On page 37443, in the third column, the first full paragraph is revised to read as follows:

"During a closure of the drift gillnet fishery, aboard a vessel using or having aboard a drift gillnet—(1) A person may not fish for swordfish from the North Atlantic swordfish stock; and (2) no more than two swordfish per trip may be possessed onboard such a vessel in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, or landed by such a vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state."

Authority: 16 U.S.C. 971 and 1801 *et seq.*

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: August 6, 1993.

David S. Crestin,

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

[FR Doc. 93–19383 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[DA-93-19]

Milk in the Middle Atlantic Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Middle Atlantic Federal milk marketing order for the months of September 1993 through February 1994. For those months, the proposal would relax the limit on the amount of milk that may be diverted to nonpool plants by handlers other than cooperative associations from 40 percent to 50 percent of the milk for which the proprietary plant operator is the handler. The suspension was requested by a large proprietary handler who receives milk from a substantial number of producers who are not cooperative members. Proponents contend that the action is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order without incurring unnecessary and uneconomic movements of milk for the purpose of maintaining pool status.

DATES: Comments are due no later than August 27, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7311.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), suspension of the following provisions of the order regulating the handling of milk in the Middle Atlantic marketing area is being considered for the months of September 1993 through February 1994:

1. In § 1004.12(d)(2), the words "or (ii)".

2. In § 1004.12(d)(2)(i), the words "of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk", and the words "of all members of such cooperative association or federation".

3. § 1004.12(d)(2)(ii).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 15th day after publication of this notice in the Federal Register. The filing period is limited to fifteen days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend certain portions of the producer milk diversion provisions of the Middle Atlantic order (Order 4) for the period September 1, 1993, through February 28, 1994. The suspension would relax the limit on the percentage of a proprietary handler's supply of milk from producers who are not members of a cooperative association that may be diverted to nonpool plants from 40 percent to 50 percent.

The action was requested by Johanna Dairies, Inc. (Johanna), and its affiliates. Johanna and its affiliates receive milk from a substantial number of independent producers who are not cooperative members. Johanna states that its reasons for requesting a suspension of the order's producer milk diversion limits are the same as those given by Pennmarva, a federation of cooperative associations representing about 90 percent of the market's producer milk, in requesting a suspension of the requirement that pool

distributing plants dispose of at least 40 percent of their receipts as Class I use.

According to the earlier Pennmarva request, a decrease in the percentage of the Middle Atlantic market's producer milk used in Class I has made it difficult to maintain the pool status of the milk of producers who historically have been associated with the market. For example, in February 1990, 52 percent of producer milk was used in Class I compared with only 45 percent for the same month in 1993.

In addition, according to the Pennmarva request, two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated recently became regulated under the New York-New Jersey order. Apparently Johanna and its affiliates are experiencing the same difficulty as Pennmarva in associating all of their diverted producer milk with the remaining distributing plants now regulated under the Middle Atlantic order without affecting the pool status of the milk.

Johanna states that suspension of the requested diversion limit provisions would have the effect of reducing uneconomic movements of milk solely for the purpose of meeting pooling qualifications, and would reflect current utilization circumstances without causing the milk of producers long associated with the market to become depooled.

Thus, it may be appropriate to suspend the 40 percent diversion limit on the volume of a proprietary handler's producer milk supply to the higher level applicable to the milk of cooperative association members under the Middle Atlantic order for the months of September 1993 through February 1994.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 3, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–19333 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1446

RIN: 0560–AC89

Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: A proposed rule was published in the **Federal Register** on January 11, 1993 (58 FR 3514), which proposed to exclude any peanut poundage quota transferred to a farm under the "fall transfer" provision from the poundage quota available to that farm to effect a transfer under the "disaster transfer" provision. After considering the comments received in response to the proposal, CCC has determined that the proposal will not be implemented. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Deputy Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–0156.

SUPPLEMENTARY INFORMATION: The proposed rule provided a 30-day comment period which ended on February 10, 1993. Comments received through March 1 were considered in making this determination. A total of 153 comments were received, representing: 146 producers, 2 grower organizations, 1 farm entity, 1 chamber of commerce, 2 congressmen, and 1 handler. Two respondents supported the proposed rule and the remaining 151 were opposed.

Signed at Washington, DC, on August 6, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–19402 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC-licensed Facilities; Generic Environmental Impact Statement (GEIS) for Rulemaking, Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Generic Environmental Impact Statement: Extension of comment period.

SUMMARY: On June 18, 1993 (58 FR 33570), the NRC published a notice of intent to prepare a generic environmental impact statement (GEIS) to conduct a scoping process for the GEIS, and to conduct scoping meetings. In that Notice the Commission solicited written public comments on developing the scope of the GEIS. The comment period for these written comments was to have expired on August 15, 1993. The Commission received several requests for an extension of the comment period. After considering the requests, the Commission has decided to extend the comment period on the scoping process for the GEIS for approximately thirty days. The comment period now expires on September 20, 1993.

DATES: Comments must be received on or before September 20, 1993.

ADDRESSES: Mail written comments on the GEIS scoping process to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Robert Meck, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3737, or Frank Cardile, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3774.

Dated at Rockville, Maryland the 6th day of August 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–19292 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, and 240

[Release No. 33–7009; 34–32723; File No. S7–23–93]

RIN 3235–AF92

Executive Compensation Disclosure; Securityholder List and Mailing Requests

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: Based on an extensive review by the Division of Corporation Finance ("Division") of filings during the initial proxy season after the adoption of new executive officer and director compensation rules, the Securities and Exchange Commission ("Commission") is issuing this release to report on the first year's experience with the new

executive compensation rules and the newly amended shareholder list rule, in order to improve overall compliance with those requirements. The Commission has concluded that several refinements should be made to the executive compensation disclosure requirements and is publishing for comment proposed amendments to the rules. The principal amendments proposed would broaden the persons covered by the executive compensation rules to include chief executive officers ("CEOs") and top paid executive officers who left the company during the latest completed fiscal year; require disclosure in all cases of year-end restricted stock holdings of the named executive officers ("NEOs"); require registrants to set forth material assumptions and adjustments used in any grant-date valuation of options; and change the point in time at which the market capitalization of a peer group index or market capitalization index is calculated from the end of the period for which a return is indicated to the beginning of such period. The Commission is also proposing certain technical amendments to the executive compensation disclosure rules.

DATES: Comments should be received on or before October 15, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–23–93. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gregg W. Corso, Paula Dubberly, Brian L. Henry or Thomas D. Twedt, (202) 272–3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is reporting on the first year's experience with the disclosures newly required by Item 402 of Regulations S–K [1] and S–B [2] relating to executive officer and director compensation and the issuer's obligations with respect to shareholder lists and mailing of shareholder soliciting material under recently revised Rule 14a–7.[3] As a result of its experience, the Commission is proposing amendments to Item 402 of Regulation S–K relating to the executive officer and director compensation disclosure requirements applicable to proxy and information statements, registration statements and periodic reports under the Securities Exchange Act of 1934 ("Exchange Act"),[4] and to registration statements under the Securities Act of 1933 ("Securities Act").[5] The Commission is also proposing technical amendments to Item 402 of Regulation S–K and to Schedule 14A [6] under the Exchange Act.

I. Background

In October 1992, the Commission adopted extensive revisions to its rules governing disclosure of executive compensation in proxy and information statements as well as other Commission filings.[7] These revisions were designed to furnish shareholders with a more understandable presentation of the nature and extent of executive compensation by consolidating the requisite disclosure in a series of tables setting forth each compensatory element for a particular fiscal year, requiring a report by the compensation committee of the board of directors articulating the bases for their compensation decisions including the relationship to corporate performance, and requiring a line graph comparing total shareholder returns of the company against those of a broad market index and a peer group.

Through May, more than 5,000 registrants filed their annual meeting proxy statements containing the new compensation disclosure. The improved pay disclosure was generally well received by shareholders, registrants and the marketplace.[8] They generally praised the increased clarity of the disclosure and the added insights provided by the compensation committee report and related performance graph.

During this period, approximately 1,000 proxy statements were reviewed.[9] Both preliminary and definitive proxy material were examined, with most registrants permitted to address staff comments pertaining to the compensation committee report in next year's filings. Overall, the registrants' disclosures under the new rules were quite good. However, the quality of the compensation committee reports varied considerably.

A significant number of the comments issued by the staff were concentrated in a few areas. This release identifies common mistakes made by registrants in complying with the rules, discusses several more general questions of application that arose, and discusses shortcomings and strengths in compensation committee reports reviewed. As a result of the Commission's experience under the newly adopted compensation rules, it is proposing several refinements of and technical amendments to the rules.

In the event the Commission determines to adopt any or all of the proposed rule changes, it would plan to make such changes effective for all filings made on or after January 1, 1994 except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1993, would be required to comply with the rules whenever filed.

II. Observations From the Prior Proxy Season [10]

A. Persons Covered

Seventy-nine registrants reported fewer than five NEOs. Of those, 32 provided disclosure for four NEOs, 25 for three NEOs, 10 for two NEOs, and 12 reported only as to the CEO.

B. Summary Compensation Table

Two hundred and twelve registrants described no other annual compensation in the form of perquisites or other personal benefits.

Registrants did not report any restricted stock awards for the last completed fiscal year in 757 cases, and 615 registrants reported no awards for any of the years covered by the Summary Compensation Table. Of the 369 registrants reporting restricted stock

[1] 17 CFR 229.402.

[2] 17 CFR 228.402. Throughout this release, whenever the current or proposed requirements of Regulation S–K are addressed, the discussion also is applicable to any analogous item of Regulation S–B.

[3] 17 CFR 240.14a–7.

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 77a *et seq.*

[6] 17 CFR 240.14a–101.

[7] Release No. 33–6962 (October 16, 1992) [57 FR 48126], *as corrected* in, Release No. 33–6966 (November 9, 1992) [57 FR 53985] (collectively "Adopting Release").

[8] See, e.g., Serwer, "Pay Day! Pay Day!," Fortune (June 14, 1993) at 102; Bryne & Hawkins, "Executive Pay: The Party Ain't Over Yet," Business Week (April 26, 1993) at 56; Jones, "SEC Rules Demystify Proxy Reports, USA Today (March 2, 1993) at B1; New Disclosure Rules Could Effect Widespread Company Policy Changes, 20 Pension Rptr. (BNA) 504 (March 1993); Gottschlaln, "Revolutionary Proxies: Read Them and Reap," Wall St. J. (Jan. 29, 1993) at C1; Johnson, "Q&A: Cary Hayden," L.A. Times (Jan. 4, 1993) at D4, col. 1; Balkcom, "Coming Clean on Compensation," N.Y. Times (Nov. 1, 1992) at sec. 3, p. 11, col. 2; Hilzenrath, "Shareholder Rights Expand," Wash. Post (Oct. 16, 1992) at A1.

[9] During the course of the project, the Division reviewed the executive compensation disclosure in proxy statements of 984 registrants (634 were reviewed in definitive form and 350 were reviewed in preliminary form).

[10] All data is based on the approximately 1,000 proxy statements reviewed.

awards in one or more of the years covered, 162 disclosed awards vesting less than three years after the date of grant.

In 38 proxy statements, registrants added columns to the Summary Compensation Table. One of the more frequently added columns was "Total Annual Compensation." Another registrant added columns to include detail required in the footnotes in the table.

C. Option Grants

Of the 710 proxy statements that included disclosure of option grants, 32 reported options with an exercise or base price discounted from the market price of the underlying security on the date of grant, while 19 registrants reported option grants having an exercise price exceeding the market price at grant. In the required footnote disclosure of material terms of reported grants, 18 featured an adjustable exercise price, 39 disclosed a reload feature, and 21 described performance-based conditions to exercise. Repriced options were reported in 8 cases.

Of those registrants reporting option grants, 480 (68%) disclosed the potential value of those options assuming 5% and 10% annualized rates of appreciation in the underlying stock, 230 (32%) valued the options using an option pricing model, and 6 presented both potential values and grant-date present values. One registrant disclosed a grant-date present value using a valuation methodology other than the Black-Scholes model in addition to the 5% and 10% annualized rates. Of the registrants using Black-Scholes, 10 disclosed underlying assumptions and adjustments to the model.

Registrants added columns to the Option Grants Table in 245 cases, including: 110 reflecting 0% appreciation in the underlying stock where the exercise price was equal to or greater than market price at grant; two showing the historic rate of appreciation of the registrant's stock over a period equivalent to the term of the options; and two to show the effect of the premium exercise price. In 153 filings, a row was added to reflect total appreciation to all shareholders if the assumed 5% and 10% annual rates of stock price appreciation are realized, and several other registrants added a row to show option gain as a percentage of total shareholder gain.

D. Compensation Committee Interlocks and Insider Participation

Many proxy statements included required disclosure of relationships or transactions involving compensation committee members or of insider participation in compensation decisions. Of these, 113 reported one or more officers or employees serving as members of the compensation committee, and 123 had a former officer on the committee. Fifteen of those registrants reported both a current officer or employee and a former officer on the committee. Of the registrants describing interlock relationships: 17 reported an executive officer serving as a member of the compensation committee of another entity, one of whose executive officers served on the registrant's compensation committee, while four additional registrants reported employee directors serving as employee director members of the compensation committee of affiliated entities; 39 had an executive officer serving on the board of directors of another entity, one of whose executive officers served on the registrant's compensation committee; and 23 reported an executive officer serving on the compensation committee of another entity, one of whose executive officers served as a director of the registrant.

E. Performance Graph

In the graph comparing the total return on an investment in the registrant's stock to the same investment in stock of companies in a broad-based index and in an index composed of peer companies or companies with similar market capitalization, 295 registrants (30%) used a self-constructed peer group, and 7 (1%) used an index of issuers with similar market capitalizations. Thirteen registrants chose to graph a period longer than the five year measurement period in the required performance graph. Registrants used plot points showing more frequent than annual cumulative values of the respective investments in 75 cases (nine semi-annual; 43 quarterly; 23 monthly). Registrants in 48 proxy statements also presented additional performance charts: Showing performance based on shareholder returns using a base measurement point earlier than that mandated in 21 cases; shareholder returns using a later than mandated base measurement point in 15 cases; returns on equity in three cases; returns on assets in two cases; earnings comparisons in three cases; one comparing total returns for the period in which a new management team had been in place; one comparing total returns for the tenure of the CEO; and two comparing total return to that of the peer index without weighting for market capitalization.

III. Common Mistakes

A. Non-Compliance With Mandated Format

To promote inter-company comparability and comprehensible disclosure, the rules require, with few exceptions, strict adherence to the specified tabular formats. In numerous cases registrants impermissibly altered column captions, omitted columns, or presented disaggregated compensation in lieu of required aggregate amounts. Other registrants combined tables. These variations to the prescribed format hinder comparative analysis and tend to obfuscate the data presented, and are not permitted by the rules.

B. Exclusion of Third Party Compensatory Options

Another recurring issue concerned the proper reporting of options or other rights to purchase securities of the parent or a subsidiary of the registrant.[11] A number of registrants improperly omitted those grants from the appropriate columns of the Summary Compensation, Option Grants and Option Exercises and Value Tables. Such options should be reported in the same manner as compensatory options to purchase registrant securities.

C. Non-reporting of Consulting Contracts Under Director Compensation

In the past, disclosure regarding consulting contracts and other compensatory arrangements with directors has often appeared in the section providing the directors' business experience [12] or in the section disclosing related party transactions and payments.[13] The Commission revised the rules specifically to require that the description of any consulting agreements or other arrangements with a director be part of the disclosure regarding director compensation.[14] Many registrants failed to comply with the revised requirement.

D. Incomplete Restricted Stock Holdings Disclosure

In a number of filings, required footnote disclosure of restricted stock holdings information was omitted or improperly presented on an aggregated basis for the NEOs as a group. The footnote should separately quantify the number and the value of restricted

[11] See Items 402 (a)(2) and (a)(5) of Regulation S-K [17 CFR 229.402 (a)(2) and (a)(5)].

[12] See Item 401(e) of Regulation S-K [17 CFR 229.401(e)].

[13] See Item 404 of Regulation S-K [17 CFR 229.404].

[14] See Instruction to Item 402(g)(2) of Regulation S-K [17 CFR 229.402(g)(2)].

shares held by each NEO at year end.[15] In addition, performance-based restricted stock treated as Long Term Incentive Plan ("LTIP") compensation should be included in the aggregate restricted stock holdings for each NEO.

E. Failure to Identify Components of all Other Compensation

Numerous filings failed to identify and quantify each item reported as All Other Compensation in the Summary Compensation Table.[16] Such information is required to be provided in a footnote for each NEO with respect to amounts reported for the last completed fiscal year.

F. Omission of Year-End Option/SAR Holdings

A number of registrants whose NEOs did not exercise options during the last completed fiscal year improperly omitted the entire Option Exercises and Value Table, including the columns relating to year-end option/SAR holdings.[17] If any of the NEOs hold unexercised options, then the total number of options held at year end and the value of those in-the-money must be provided in the prescribed tabular format.[18]

G. Incomplete Reporting of Supplemental Executive Retirement Plan Benefits

Estimated post-retirement benefits under pension and other defined benefit or actuarial plans in which one or more NEOs participate are reported separately from the Summary Compensation Table.[19] In many of the filings reviewed, registrants provided general information about excess benefit, supplemental executive retirement plans (or SERPs) or other plans providing post-retirement benefits in addition to those generally available to all employees, but failed to disclose the benefits payable to named executives under such plans.

All prospective benefits to each of the NEOs under all defined benefit plans, including those applicable only to one, or a small class, of the registrant's executives,[20] are required either to be (i) included in the Pension Plan Table for the principal retirement plan, or in a separate table for the supplemental and excess benefit plans (if benefits are determined by final compensation and years of service), or (ii) described in narrative format (if benefits are determined by some other method). The disclosure should be presented in a manner so that all benefits to which the NEOs will be entitled upon retirement under actuarial and defined benefit plans (funded and unfunded) can be determined.

H. Failure to Disclose Related Transactions Under the Caption "Compensation Committee Interlocks and Insider Participation"

To address shareholder concerns about the independence of compensation decision making by the board, the rules require disclosure of certain relationships of members of the registrant's board who participate in executive compensation deliberations in one place under a mandated caption.[21] A number of registrants identifying compensation committee members having reportable relationships or transactions dispersed disclosure of such relationships throughout the proxy statement, in some cases with a cross-reference under the mandated caption to the description of those relationships or transactions elsewhere in the proxy or registration statement. Such an approach is not permitted by the rule. The disclosure is required to appear in full under the caption "Compensation Committee Interlocks and Insider Participation." The caption may not be modified.

I. Buried Performance Graphs

The performance graph was adopted by the Commission "to complement the discussion by the compensation committee * * * of the relationship of executive compensation to corporate performance in a given fiscal year * * *" [22] That purpose is defeated where the performance graph is "buried" in the proxy statement. In some cases, registrants' performance graphs appeared in a section of the proxy statement unrelated to the executive compensation disclosure. In one filing, the graph was even presented as an appendix to the proxy statement.

J. Under-reporting of Compensation in Summary Table

Registrants are required to include all compensation to an NEO for *any* services to the company or its subsidiaries, whether paid by the registrant, its affiliates or a third party.[23] In reviewing proxy statements, the staff found items such as director fees and payments from subsidiaries that were not included in the Summary Compensation Table.

K. Reload and Repriced Options Not Reported as New Grants.

Several registrants narratively described lowering the exercise price on outstanding options and the issuance of "reload" options, but failed to report these options as new grants. Each repriced or reload option issued constitutes a new grant that should be reported as such in both the Summary Compensation Table and the Option Grants Table.[24]

IV. Questions of General Application

Most of the questions raised with the staff under the new rules during the past proxy season involved application of the rules to specific compensation arrangements. A few, however, were questions of more general application.

A. Long-Term Incentive Plan Compensation

Questions arose about whether compensation earned under a particular plan should be considered annual or long-term compensation. An LTIP, as defined for purposes of Item 402, provides compensation "intended to serve as incentive for performance to occur over a period longer than one fiscal year." [25] Awards under plans in which the requisite performance is to occur in less than one year are not properly reported as LTIP compensation, even if the maturation or payout of the award is contingent upon lapse of time or continued service with the registrant of more than one year. For example, awards based on one year's financial performance should be reported as annual, rather than LTIP, compensation even if they are not earned and payable until the end of two years.

Under some plans, awards are determined annually over a performance period but are properly treated as LTIP compensation because awards credited in one year are offset by negative accruals in other periods. In one such plan, for example, annual accruals were determined by the difference between the registrant's value

[15] See Instruction 2.a of Item 402(b)(2)(iv) of Regulation S–K [17 CFR 229.402(b)(2)(iv)].

[16] Item 402(b)(2)(v) of Regulation S-K [17 CFR 229.402(b)(2)(v)].

[17] Item 402(d)(1) of Regulation S-K [17 CFR 229.402(d)(1)].

[18] See id. at columns (d) and (e).

[19] See Instruction 2 to Item 402(b)(2)(v) of Regulation S-K [17 CFR 229.402(b)(2)(v)].

[20] See Items 402(f)(1)(i) and 402(a)(7)(ii) of Regulation S-K [17 CFR 229.402(f)(1)(i) and 17 CFR 229.402(a)(7)(ii)].

[21] See Item 402(j) of Regulation S-K [17 CFR 229.402(j)].

[22] Release No. 33–6940 (June 23, 1992) [57 FR 29582] ("Proposing Release") at II.A.6.

[23] Item 402(a)(2) of Regulation S-K [17 CFR 229.402(a)(2)].

[24] See Instruction 3 to Item 402(b)(2)(iv) of Regulation S-K [17 CFR 229.402(b)(2)(iv)] and letter re American Society of Corporate Secretaries (January 6, 1993).

[25] Item 402(a)(7)(iii) of Regulation S–K [17 CFR 229.402(a)(7)(iii)].

(based on a yearly appraisal) and a pre-set target value. At the end of a multi-year performance cycle, those annual accruals (positive and negative) were offset to determine the payout. Since the positive annual accruals were subject to reduction by the amount of negative annual accruals, and thus remained entirely at risk during the multi-year period based on corporate performance, LTIP treatment was proper.

Some plans reviewed were hybrids, having elements both of LTIP and of annual compensation. The conditions to maturation or payout of awards under an LTIP must be based upon achievement of specified long-term performance factors or criteria.[26] Where plans provide for awards in tranches with different vesting or payout criteria, only the portions of the awards tied to achievement of performance objectives measured over a period longer than one year are properly reported as LTIP compensation. For example, one plan had a three-year performance cycle with specified awards for target and above target performance, coupled with a guaranteed payment at the end of the cycle that was subject only to continued employment. The amount of the guaranteed award should be reported as annual bonus for the year of the initial award.

Where payment is certain but the timing of the payout is conditioned upon performance, the plan should not be treated as an LTIP. Therefore, performance accelerated restricted stock, where vesting will eventually occur regardless of performance, does not qualify for LTIP treatment. Similarly, compensation contingent only upon continued employment does not qualify for LTIP treatment.

Finally, the form of the payout has no impact on the award's status as LTIP compensation. For example, an award payable upon achieving specified goals over a three-year period is LTIP compensation regardless of the form of the payout.

B. Performance Graph

1. Changes in Peer Group

When the registrant changes a self constructed index from that used in the prior year's proxy statement, the reasons for the change must be explained and the registrant's total return must be compared with that of both the newly constructed index and the prior year's index.[27] While this requirement was not at issue this first proxy season under the new rules, the staff received a number of questions concerning its prospective application.

Any change in the entities comprising a self-constructed index constitutes a change in the index used that requires presentation of both the old and new indices and a description of the basis for the change. Presentation on the old basis will not be required if an entity in a peer index is omitted solely because it is no longer in the line of business or industry for which it was initially included.[28] However a specific description of, and the basis for, the change must be disclosed, including the names of the companies deleted from the index.

Where the registrant determines component entities on the basis of objective criteria (such as the top 15 public bank holding companies determined by net assets at year end), changes in the composition of the peer group resulting from application of the criteria would not require presentation of the old index. As above, a specific description of, and the basis for, the change must be disclosed, including the names of the companies deleted from the new index.

2. Published Industry or Line-of-Business Index

Questions have arisen concerning the use in the performance graph of comparative indices prepared by affiliates and of composite indices prepared by registrants engaged in multiple lines of business. If a registrant chooses not to use "a published industry or line-of-business index,"[29] the registrant must identify the component issuers represented in the index and weight the returns of the component issuers according to their market capitalizations.[30]

An index prepared by a trade group is considered an index prepared by an affiliate of the registrant. Under the rule, an index prepared by an affiliate of the registrant may be treated as a published index only if it is "widely recognized and used," even if the index is made "accessible to the registrant's security holders." In most cases reviewed by the staff, trade group indices did not satisfy this requirement and, accordingly, constituent companies were required to be identified.

Registrants in more than one industry or line of business may construct a composite index composed of more than one published index. If all of the component indices are within the definition of "published industry or line-of-business index," the registrant need not treat the index as a self-constructed peer index. In such a case, however, the indices used and the method used to weigh the indices should be described.

C. Options Granted Prior to Establishment of Trading Market

For options granted by a registrant prior to the establishment of a trading market in the underlying security, questions arose as to the appropriate method to report those options. In the Option Grants Table, the security underlying an option must be valued as of the date of each individual grant to determine either the potential realizable value or the grant date present value. Also, additional disclosure is required for any grants with an exercise price less than the grant date fair market value of the underlying security.

Registrants may use the initial offering price in lieu of the fair market value at grant date in making the calculations for such disclosure if there was no public trading market at the relevant date. Similarly, in determining values realized upon any option exercises and the value of in-the-money unexercised options in the Option Exercises and Value Table, the initial public offering price may be used in lieu of fair market value as of the dates of any exercises of options and at the last day of the previous year if there was no public trading market at the relevant dates. In all cases, where the value assigned is not based on trading of the security in an established public market,[31] the method used to value the security should be disclosed in a footnote.

In the case of options granted prior to the initial public offering, the fair market value used for option grant disclosure purposes (if determined other than by the initial public offering price) should be the same as the value used by the registrant for accounting purposes to determine if any compensation expense related to option grants is reportable.[32]

D. Subsidiary Executive Officers as NEOs of the Parent

Registrants are reminded that in determining who their executive officers

[26] See Instruction 2 to Item 402(e) of Regulation S-K [17 CFR 229.402(e)].

[27] See Item 402(l)(4) of Regulation S-K.

[28] See letter re American Society of Corporate Secretaries (January 6, 1993).

[29] Item 402(*l*)(3) of Regulation S-K [17 CFR 229.402(*l*)(3)].

[30] See Items 402(*l*)(1)(ii) (A) and (B), 402(*l*)(3) and Instruction 5 to Item 402(*l*).

[31] See Item 201(a)(1)(i) of Regulation S-K (definition of "established public trading market") [17 CFR 229.201(a)(1)(i)].

[32] Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees. See also Staff Accounting Bulletin No. 83 (July 1989), applying this requirement to stock issued to employees prior to an initial public offering at a price significantly below the offering price.

are, they need to consider those executive officers of subsidiaries who perform a policy making function for the registrant.[33]

E. Loans to Executive Officers

Interest free loans made to executives or loans with a below market interest rate are considered compensatory to the extent of the difference between the market rate and the actual interest rate. Likewise, any loan amounts forgiven are compensation. Information about the terms of the loan, the transaction in which it was incurred and certain other information also are required to be disclosed,[34] including any noncompliance with the loan terms.

V. Compensation Committee Report

Central to the Commission's overhaul of the executive compensation disclosure rules is the new requirement that registrants include in their annual meeting proxy statements a report by the Compensation Committee of the Board of Directors (or another committee, or the entire board of directors, if it performs equivalent functions).[35] The report is to set out the Committee's policies governing last year's compensation to executive officers, including those in the Summary Compensation Table, and the specific relationship of corporate performance to that compensation. In addition, the report must discuss specifically the Compensation Committee's bases for the compensation reported for the CEO in the past year. The discussion of CEO compensation must include the criteria upon which the CEO's compensation was based, as well as a specific discussion of the relationship of the registrant's performance to the CEO's compensation, with a description of each measure of the registrant's performance, qualitative or quantitative, on which the CEO's compensation is based.[36]

The simplicity of the provisions requiring the report is intended to allow each Compensation Committee to tell its particular story in its own way. The generality of the requirement is intended to accommodate the variety of compensation policies and practices and measures of company performance used by reporting companies.

Overall, the Compensation Committee reports provided in this first proxy season were a good first time effort. There were some Committees that met the letter and spirit of the requirement, and took advantage of the report to explain fully to shareholders their policies and to provide a clear, concise discussion of how these policies related to recent corporate performance and resulted in the executive compensation reported for the prior year. There were also, on the other hand, reports that could only be characterized as perfunctory. Most reports were somewhere in between those two poles.

Many registrants received staff comments aimed at achieving greater specificity in the discussion of policies, particularly identification of the performance criteria or other bases for compensation used, as well as more precision in the discussion of how the size of various components of the compensation package were determined. Clearly, if the compensation policies and practices of the Compensation Committee are general and subjective, in toto, or with respect to certain elements of the compensation package, the report cannot include specificity and objectiveness that is not in fact practiced by the Committee. In such case, the report should state clearly that the policy or practice in question is subjective, not subject to specific criteria. In many instances, it was not possible to assess whether the generality of the report accurately reflected a Compensation Committee's subjective policies and practices, or simply a failure of the disclosure to provide the requisite degree of specificity. The quality of the disclosure linking pay and performance varied, with some registrants providing merely a statement that pay should be or was performance-linked.

The following discusses some of the recurring areas of comment on the reports. Examples cited come from actual reports.[37] Use of a specific passage drawn from a report does not reflect on the entire report. It was not uncommon for a report to vary in quality with respect to the items of compensation or recipient being discussed.

A. Format

The form and presentation of the Committee Report is left to the discretion of the Committee subject to two basic requirements. First, the report must be separately captioned to identify it clearly as a report on executive compensation.

Second, the report must be published over the names of the Committee. This requires individual listing of the names of each member of the Committee following the text of the report. Typically, companies complied by presenting the names in a blocked format immediately following the text of the report. However, a number of registrants failed to comply with this requirement and simply provided the information within or in text introducing or following the report.

Questions arose as to the appropriate presentation where different components of the compensation package were determined by different board committees. In such cases, companies may present a joint report indicating the separate committee responsibilities over the names of the members of each committee responsible, separately listed by committee. Alternatively, separate reports may be presented for each committee. Registrants used both presentations; the joint report mechanism appeared more common.

None of the compensation committee reports reviewed were subject to a dissent of a Committee member. In the event of such a dissent, a report need not be made over the name of the dissenting member. However, the report should disclose the dissent, identifying the dissenting director and summarizing the reasons, if any, provided to the Committee for the dissent.

While some reports reviewed were Board rather than Committee reports, Board preparation reflected either the absence of a compensation or comparable committee, or the initial setting of certain executive compensation by the Board of Directors. None of the proxy statements reviewed indicated Board modification or rejection of a Compensation Committee Report.

B. Specificity

As expected, the reports reflected a wide spectrum of compensation practices, ranging from the very subjective to the highly formalized, formula based process. For example:

Company A

The Corporation's program regarding compensation of its executive officers is different from most public corporations' programs. The CEO informs the Board of Directors as to the amount of his proposed remuneration and that of the Corporation's other executive officers * * *. Factors

[33] See Instruction 2 to Item 402(a)(3) of Regulation S-K [17 CFR 229.402(a)(3)]. The definition of executive officer in Rule 3b-7 under the Exchange Act governs [17 CFR 240.3b-7].

[34] Item 404(c) of Regulation S-K [17 CFR 229.404(c)].

[35] See Item 402(k) of Regulation S-K [17 CFR 229.402(k)].

[36] See Item 402(k)(2) of Regulation S-K [17 CFR 229.402(k)(2)].

[37] The examples are provided for purposes of illustration only. Of course, the appropriateness or adequacy of particular compensation committee disclosure depends upon the facts and circumstances of the registrant's specific compensation policies and practices.

considered by the CEO are typically subjective, such as his perception of the individual's performance and any planned change in functional responsibility. Neither the profitability of the Corporation nor the market value of its stock are considered in setting executive officer base compensation.

Company B

The Committee uses the long-term stock incentive plan to compensate executives based on the Corporation's long-term growth in earnings per share and earnings * * * Awards are based on attainment by the Corporation of goals in growth in earnings per share and earnings over a five-year award cycle. For the award cycles ending prior to 1993 the targeted earning-per-share growth rate at which a participant receives 100% of his or her target incentive award has been set at 125% of the greater of 5% or the average compound annual growth rate in earnings per share over the award cycle of the companies comprising the Standard & Poor's 400 Index. For the award cycles ending in 1993 and thereafter the targeted earnings growth rate at which a participant receives 100% of his or her target incentive award is equal to twice the rate of change over the award cycle of United States gross domestic product plus the rate of change of inflation (as measured by the United States gross domestic product deflator) * * *. For those included in the table * * *, targeted performance results in an award equal to 50% of average base salary, with a maximum award of 100% of average base salary if targeted performance is doubled, and no award if performance is less than 50% of target * * *. Awards * * * paid in 1992 * * * were 64% of the target incentive award based on the Corporation's earnings per share growth equalling 4.4% (* * * exceed[ing] the 2.7% earnings per share growth of the Standard & Poor's 400 Index over the same period).

There was a wide variety of approaches to the report. Some committees chose to include general philosophy and a detailed description of procedures followed in addition to discussing the specific policies applicable to, performance related to, and bases for compensation reported. Others were quite succinct, and focused on specific policies, identifying specific factors and criteria, their relation to corporate performance, and actual performance in the prior year and its effect on compensation decisions. Reports varied in length from one paragraph to five pages. The length of the report was not a measure of its informativeness.

As noted above, the principal recurring problem was a lack of specificity. For example:

Mr. John Doe, President of the Corporation * * * has had the same salary since February 1989. Currently, there is no formal incentive plan for Mr. Doe. On January 14, 1993, the Board of Directors of the Corporation approved a bonus equivalent to 25% of salary for Mr. Doe, after having considered its evaluation of the Corporation's performance for 1992 and improved financial results.

Many committees did provide shareholders with a more informative discussion. Their reports reflected a range of operational, financial and strategic factors considered by the Committee. Examples include:

Company A

The Company uses the Plan to compensate executives based on the Corporation's return on shareholders' equity. The Plan provides for annual incentive awards to selected key executives (150 in 1992) * * *. [T]hese awards are based on the return on average shareholders' equity with the target performance of 15%, maximum award when return is 18%, and with no incentive payment if the return is less than 10%. Mr. Smith would receive an incentive payment of 80% of base salary at target performance and an incentive payment of 120% of base if the Corporation's return [reached the maximum]. For 1992, the Corporation's return on average shareholders' equity equaled 13%.

Company B

Under the employment agreement, Mr. Brown is eligible for an annual bonus in an amount to be determined by the Compensation Committee based upon such factors as the Compensation Committee deems appropriate. In 1992, the Company successfully implemented its turnaround strategy, including a return to profitability, a significant increase in cash flow from operations and a substantial decrease in total debt. This was accomplished during a period of difficult industry and global economic conditions and led to a substantial increase in stockholder value. Based on these results, the Compensation Committee awarded Mr. Brown a bonus in the amount of $1,080,000 for 1992.

Company C

The Company's 1992 performance consistently exceeded aggressive targets. Despite the sluggish economy, the Company beat 1991's operating and financial results before the 1991 special charge. In addition, the Company out-performed both the S&P 500 and its peer group index (defined with the performance graph) in dividend and shareholder value growth. The Company earned $728 million in 1992, compared to $64 million in 1991 * * *. Earnings at all operating subsidiaries were up even without the special charge, with earnings per share * * * up 13% over 1991. The Company had a return on equity of 16.5% in 1992, compared to 14.2% last year * * *. During 1992 the Company's stock price grew 13% while the average stock price of its peers rose 10% and the S&P stock index increased 4.5%.

The 1992 performance continues a series of strong years. Since 1989, the Company's earnings per share have grown from $2.81 to $3.57, an average annualized increase of 8%, while the S&P 500's earnings * * * declined 5% per year. The Company lowered its debt-to-capitalization ratio from 40.3% to 36.9% * * *. Over the same time period, the company's stock price has grown an average of 16% per year, while the S&P and peer group stock indices increased only 12%. The Company has also increased its dividends at a rate comparable to that of its earnings growth over the past five years.

In addition to leading the Company to outstanding financial achievements, Mr. Roe has established a strong record in the areas of customer service, technology use and innovation, quality, governmental relations and management efficiency, and has built a strong management team and aggressively pursued new areas for growth.

The lack of specificity was a particular problem with respect to CEO compensation for which more individualized disclosure is required by the rule. A number of reports did not address the CEO's compensation at all, perhaps in some cases due to reliance on the transition provisions allowing companies to forego the more detailed discussion of CEO compensation fixed before the effective date of the amended requirements.

C. Size of Pay Packages

In discussing the level of compensation paid or awarded, either for the total compensation package or with respect to individual components of the pay package, many Committees reported that the amount of compensation was based on assessments of competitive rates. In such cases, the report should clearly indicate, for each item said to be based on competitive rates, both the nature of the group with which the Committee is comparing itself and at what level in the group the company places itself. Examples of such disclosure included:

Base salary is targeted at the competitive median for competitors in diversified financial services. For the purpose of establishing these levels, the Company compares itself to a self-selected group of diversified financial companies that compete in the Company's primary lines of business, *i.e.*, annuities, insurance, asset management, and retail brokerage services. There are currently 21 companies in this comparison group, which is subject to occasional change as the Company or its competitors change their focus, merge or are acquired, or as new competitors emerge.

Where different competitive standards are used for different components of the pay package, that should be made clear. For example,

Fixed compensation is to fall at or near the 50th percentile of a comparative group, * * * while opportunities for variable "at risk" compensation should be at or near the 70th percentile of such group. Actual incentive compensation will reach this goal only in years in which the Company is successful in meeting its performance targets, which are set above the average return on equity for the comparative * * * group.

Likewise, the report should make clear whether the competitive group includes the companies used by the registrant in any self-constructed peer group performance index. For example:

The Compensation Committee believes that the Company's most direct competitors for executive talent are not necessarily all of the companies that would be included in a peer group established to compare shareholder returns. Thus, the compensation Peer Group is not the same as the peer group index in the Comparison of Five Year Cumulative Total Return graph included in this Proxy Statement.

In discussing long-term incentive compensation, a number of reports focused on the philosophy of the incentive plan and the eligibility criteria, but failed to address how the size of the award was determined. For example, some reports, in describing options or restricted stock awarded in the prior year, said no more than:

Stock options are the principal vehicle for payment of long-term compensation. This component of compensation is intended to retain and motivate executives to improve stock market performance. Stock options are granted from time to time to members of management based primarily on the individual's potential contribution. They are granted at the prevailing markets value and will have value only if the Corporation's stock price increases. The Committee's policy is that the exercise price of stock options should not be amended after grant.

Other reports were more specific and showed a variety of approaches to determining size and recipients of awards.

Company A

The Committee has established stock option target awards for each participating level of responsibility within the Company based on a survey * * * of about 30 large industrial companies with the objective of providing competitive long-term compensation opportunity when compared with other major industrial companies.

Stock options are typically granted annually. Individual grants may range from one-half to one-and-one-half of the target for each level of job responsibility to reflect individual performance and potential.

Company B

Options are granted annually, usually in respect of approximately the same number of shares. In selecting recipients and the size of grants in 1992, while various factors such as the potential of the recipient and prior grants and Company performance are considered, the Committee believes option grants should be made annually on a generally consistent basis.

Company C

The number of shares for each executive officer is determined by taking a percentage of salary and dividing that amount by the fair market value per share on the date of grant. The percentage, which falls within a pre-set range, is set annually by the Committee for the CEO, and by the CEO (subject to the approval of the Committee) for the other executive officers, depending in each case on a subjective evaluation of the performance of the officer under consideration.

There were reports that suggested that the Committee viewed options less as compensation and more as a different incentive mechanism. For example,

The corporation has provided forms of equity participation as a key part of its total program for motivating and rewarding executives and managers for many years. Grants of stock options and restricted stock have provided an important part of the equity link to shareholders. Through these vehicles, the corporation has encouraged its executives to obtain and hold the corporation's stock.

In such cases, registrants were asked to disclose whether in determining whether and how many options or shares should be granted or awarded, the Committee considered the amount and terms of options and restricted stock already held by the executive officer,

D. Criteria for Awards

In explaining compensation awards based on performance or other non-competitive factors, the Committee report must clearly identify the factors upon which the award was based. In some cases, particularly in the case of performance-based formula plans, these criteria can be quite objective. For example:

[T]he annual incentive compensation plan is funded from a pre-set portion of the Company's net income which exceeds a threshold return on equity. The percentage and threshold are established at the beginning of the fiscal year. Individual awards for senior management are based upon pre-determined percentages of the total pool based on the individual's position and the Committee's assessment of such individual's contribution in such position. In 1992 the threshold return on equity was increased from 11% to 12% while the total management incentive pool was held at 8.5% of net income earned in excess of the level required to meet the threshold return on equity * * *. At the same time, because of increased earnings and a higher return on equity, the total award to the CEO increased 40%. In 1993, the Company has again increased the return on equity threshold * * * to 13% * * *.

In other cases, compensation awards reflect progress on strategic or other non-numerical goals. For example:

In evaluating the performance and setting the incentive compensation of the Chief Executive Officer and the Corporation's other senior management, the committee has taken particular note of management's success in restructuring the corporation's businesses to adjust for the decline in its existing business and in effectively directing the corporation's operations under the difficult economic conditions in the Corporation's served markets over the last two fiscal years * * *. [I]n the past five years the Corporation has divested businesses that contributed nearly $2 billion of sales over that period as part of management's continuing effort to focus on those businesses that have leadership positions in served markets and meet the Corporation's criteria for potential sustained leadership and growth. The Committee has taken into account management's performance in increasing or maintaining market shares of its ongoing U.S. commercial [and] international * * * businesses, which accounted for 69% of sales in 1992 as compared to 45% in 1986.

A problem in many reports was the failure to identify the specific criteria or factors used. The rules allow registrants, in discussing specific quantitative or qualitative performance related factors, to omit specific target levels and any factor or criteria involving confidential commercial or business information disclosure of which would adversely affect the registrant.[38] Reports varied as to the disclosure of target levels; a number of reports indicated the actual performance level and simply stated that it met or exceeded the target. Some identified the target. Others did not report either target levels or actual performance.

The instruction that permits reports to omit identifying those factors or criteria involving confidential commercial or business information does not excuse general non-disclosure of the factors or criteria on which compensation was based, citing only unspecified performance or strategic goals. Such reports were uninformative. In the future, where a report fails to disclose the criteria and factors (as distinguished from target levels) used, registrants will be asked to justify the non-disclosure, and to include in the report disclosure that the Committee believes identifying the factors or criteria would adversely affect the company. Where an award is made under a performance-based plan notwithstanding failure to meet the relevant performance criteria, the report should disclose the waiver or adjustment of the relevant performance targets and the bases for the determination nonetheless to award such compensation.

Several reports have attempted to satisfy the requirement to disclose the bases for compensation and its relation to corporate performance with a long laundry list of items considered by the Committee without any discussion of the specific factors. If the laundry list

[38] See Instruction 2 to Item 402(k) of Regulation S-K [17 CFR 229.402(k)].

simply represents a practice of subjective, informal compensation policies and practices, the report should clearly so state. The report should discuss the relative importance of each of the factors, and how the individual factors relate to the compensation decisions ultimately made. For example:

> Annual incentive awards for the named executives are determined in accordance with the Company's Executive Incentive Compensation Plan. The goal areas and measures under the Plan for 1992 were: Financial Success (earnings per share (EPS))—35%; Customer Service (customer surveys, plant availability, system reliability, employee safety results and rate performance)—30%; and Individual Performance (PM&R)—35% * * *. The Plan has a minimum threshold, target and maximum financial (EPS) levels. The Company EPS for 1992 was below the minimum threshold which resulted in no incentive award payout.

Registrants are free to include in their proxy statements performance comparisons in addition to that required for the five year shareholder returns. Where the registrant elects to do so, the Compensation Committee report must include a discussion that addresses the link between that performance measure and the executive compensation reported for the latest fiscal year.[39] One example included:

> The key performance measure the Committee used in determining Mr. Smith's 1992 compensation was its assessment of his ability and dedication to enhance the long-term value of the company by continuing to provide the leadership and vision that he has provided throughout his tenure as CEO, during which the market value of the Company has increased by approximately $50 billion. This performance is further highlighted on the Eleven Year Performance Graph * * *, which covers Mr. Smith's tenure as CEO and compares the company's stock performance with the stock performance of other companies as measured by broad indices.

E. Effect on Report of Proposed Changes to Persons Included in the Summary Compensation Table

Policies and bases for compensation, including severance compensation, reported for those executive officers that may be added to the named executive officers pursuant to the proposed revisions of Item 402,[40] must be addressed in the Compensation Committee Report. The discussion with respect to the compensation of a former CEO required to be included in the disclosure because of service as CEO during the latest completed fiscal year would be subject to the same requirements as for the current CEO.

VI. Proposed Rule Changes

Based on its experience in the first proxy season under the new rules, the Commission is proposing four refinements to the rules and certain technical changes.

A. Persons Covered

The rule currently requires that disclosure be provided for the CEO and each of the four most highly paid executive officers (whose compensation exceeds $100,000) employed at fiscal year end. There were instances this past proxy season where, as a result of the departure of an executive officer prior to fiscal year end, the required disclosure presented an incomplete picture of the registrant's compensation practice. Therefore, the Commission proposes to amend the rules to include as NEOs persons who would have been included in the Summary Compensation Table except for their departure before year end. Specifically, as proposed, the rules would require disclosure with respect to any person who served as CEO any time during the registrant's preceding fiscal year,[41] and any other executive officers who departed during the last fiscal year but whose salary and bonus compensation during the fiscal year would have placed them among the four most highly compensated.[42] The rule as proposed, however, would limit the number of departed executive officers (other than former CEOs) for whom disclosure would be required to two.

Comment is invited on the necessity or appropriateness of requiring compensation information on departed CEOs and other executive officers. Commenters are also requested to discuss whether more or fewer additional executives are appropriate and specifically whether the additional disclosure should apply only to former CEOs.

B. Restricted Stock Portfolio Information

Under the current rule, registrants are only required to provide disclosure of NEOs' year-end restricted stock holdings when they disclose the award of restricted stock in the Summary Compensation Table for any NEO.[43] Based on disclosures made, restricted stock holdings appear important in assessing overall compensation practices, whether or not recent grants have been made. Therefore, the rule is proposed to be revised to require disclosure of year-end restricted stock holdings in all cases.[44]

C. Grant-Date Present Value

The rules require that registrants choosing to value option grants with a grant-date methodology, other than a variation of the Black-Scholes model, must include a footnote to the Option Grants Table describing the valuation method used and any material assumptions.[45] Registrants using Black-Scholes or binomial pricing model are permitted to limit their disclosure to a simple declaration of the use of that pricing model. Some registrants using a Black-Scholes model voluntarily chose to disclose material assumptions used in calculating such values.

Based on the utility of such disclosure and the ability of registrants to provide such disclosure in a clear, concise fashion, the rules are proposed to be revised to require disclosure of certain assumptions and adjustments. Such disclosure would enable shareholders and the market better to assess the values reported, particularly given that slight changes in assumptions or the use of conservative adjustments can cause a significant variation in the value reported. Under the proposed revisions, registrants would be required to describe the assumptions regarding the expected volatility, risk-free rate of return, dividend yield and time to exercise. In addition, any adjustments for non-transferability or risk of forfeiture also would have to be disclosed.[46]

Commenters are asked to address the appropriateness or necessity of this

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[39] See Instruction 4 to Item 402(*l*) of Regulation S–K [17 CFR 229.402(*l*)].

[40] See Section VI.A., *infra*.

[41] See proposed revision to Item 402(a)(3)(i) of Regulation S–K.

[42] See proposed revision to Item 402(a)(3)(iii) of Regulation S–K.

[43] Instruction 2 to Item 402(b)(2)(iv) of Regulation S–K [17 CFR 229.402(b)(2)(iv)] and Item 402(a)(6) of Regulation S–K [17 CFR 229.402(a)(6)].

[44] See proposed revision to Instruction 2 to Item 402(b)(2)(iv) of Regulation S–K.

[45] Instruction 9 to Item 402(c) of Regulation S–K [17 CFR 229.402(c)].

[46] See proposed revision to Instruction 9 to Item 402(c) of Regulation S–K. An example of such disclosure, provided by one registrant, follows:

> The model assumes:
>
> (a) An option term of 8.18 years, which represents the weighted average (by number of options) over the past ten years of the length of time between grant date of options under the Company's plans and their exercise date for the named executive officers;
>
> (b) An interest rate that represents the interest rate on a U.S. Treasury Bond with a maturity date corresponding to that of the adjusted options term;
>
> (c) Volatility calculated using weekly stock prices for the five years (260 weeks) prior to the grant date; and
>
> (d) Dividends at the rate of $1.75 per share, the total amount of dividends paid with respect to a share of stock in 1992.
>
> Another company disclosed the following adjustment: The Company also deducted 10% to reflect the probability of forfeiture prior to vesting, based on the Company's actual experience over the prior 5 years.

requirement. Comment is also requested as to the need to mandate disclosure of any other specific assumptions or adjustments, or the appropriateness of deleting one or more of the specified items. Should the rule simply require disclosure of all material assumptions or adjustments?

D. Performance Graph: Weighting of Self-Constructed Indices

When registrants use a self-constructed peer group index or a market capitalization index in the performance graph, the returns of each component company must be weighted according to their respective stock market capitalization.[47] In calculating the value of a given index, the returns of the component entities are weighted according to their market capitalization as of the end of each period for which a return is indicated.[48]

Throughout the review period, some commenters expressed a preference for either an equal weighted or median percentile approach rather than market capitalization weighting. Others urged a change in timing from the end to the beginning of the period.

Market weighting is consistent with the approach used in published indices. Since greater weight is given to larger capitalized companies, weighting each company's return by market capitalization is consistent with the objective that the graph provide an accurate comparison of companies in a given industry. Comparing the registrant with the average dollar invested in the industry as a whole requires giving greater weight to larger capitalized companies since they receive a proportionately greater share of the capital invested. In contrast, use of an equal-weighted or median percentile approach in constructing the performance graph would produce a bias towards small companies that represent a relatively small fraction of the total investment in the industry.

However, the Commission is persuaded that it may be appropriate to change the timing of the weighting, from the end to the beginning of each period for which a return is indicated.[49] Such a change would appear to more accurately reflect the performance over the period by eliminating the appreciation during the period from the calculation of market weight.

Comments are invited on the appropriateness of the proposed changes. Are the benefits of the change sufficient to outweigh the costs of its implementation?

E. Technical Amendments

The Commission is also proposing technical amendments to clarify the application of Item 402 and to correct certain inconsistencies in the rules. Comment is requested on whether these amendments are appropriate.

1. Item 402(b)(2)(iv)—Summary Compensation Table/Restricted Stock Portfolio

Revision of the rules would clarify that the calculation of aggregate value of a NEO's restricted stock holdings uses the stock value at year end.

2. Item 402(c)—Option Grants Table

The caption to column (b) of the Option Grants Table is proposed to be revised to read "Number of Securities Underlying Options/SARs Granted," in order to clarify that the amount reported represents the total number of securities subject to the award.

3. Item 402(e)—LTIPs

Item 402(e) of Regulation S–K,[50] pertaining to LTIPs, would be revised to make it clear that estimated future payment disclosure for non-stock price-based plans may be made either in dollars or in shares.

4. Item 402(f)—Defined Benefit Plans

Item 402(f) of Regulation S–K,[51] the disclosure relating to defined benefit plans, was intended to require disclosure of the relationship of the covered compensation to the compensation in the Summary Compensation Table. However, since option grants are not disclosed in dollars, such a comparison is not always possible. The proposed amendment rectifies that situation by clarifying that the relationship disclosure should be limited to annual compensation (*i.e.*, salary, bonus and other annual compensation). [52]

5. Item 402(l)—Performance Graph

Current instruction 2 to Item 402(l) would be revised to clarify that registrants are to assume a fixed investment, stated in dollars (*e.g.*, $100) in the stocks and indices plotted when constructing the lines of the performance graph. The promulgating release contains an illustration of the application of this requirement.[53]

6. Item 10 of Schedule 14A—Compensation Plans

Instruction 3 to Item 10 of Schedule 14A,[54] concerning the time of filing plan documents, would be revised to correct the reference to Rule 14a–6 paragraphs (a) (preliminary material) or (b) (definitive material) for the appropriate time to file.

VII. Shareholder Lists and Mailings

As part of the October 1992 proxy rule changes, the Commission adopted amendments to the shareholder lists and mailing rule, Rule 14a–7.[55] The rule is triggered "regardless of whether the request references [the] section," [56] but does require the requesting shareholder to provide certain information regarding its ownership of the issuer's securities and to provide a certification that the shareholder will not use a securityholder list for improper purposes. Questions have arisen regarding the issuer's obligations under Rule 14a–7 where the requestor appears to be relying upon a state law right for access to the list and where the request does not provide all the information called for by the rule.

Rule 14a–7 was revised to provide shareholders a meaningful means to exercise their rights to communicate with other shareholders through access to a list of shareholders or through a mailing by the issuer. This right is not intended to be conditioned on the requesting shareholder being aware of the distinctions between federal and state access rights or the particular requirements of Rule 14a–7. The rule creates obligations on the part of the issuer to respond within five business days of the receipt of a comprehensible request for a list of shareholders or for a mailing, regardless of the request's format or content—and in particular, even if the request specifically references state law and does not mention the federal proxy rules.[57] Unless the request expressly disclaims reliance on Rule 14a–7, any request for a list or mailing triggers the issuer's obligations under the rule.

The staff has become aware of a number of instances where the issuer has summarily denied a list request as not in conformity with Rule 14a–7, without further elaboration. In defense, the issuer frequently pointed to the

[47] See Instruction 5 to Item 402(*l*) of Regulation S–K [17 CFR 229.402(*l*)].

[48] See Letter re American Society of Corporate Secretaries (January 6, 1993).

[49] See proposed revision to Instruction 5 to Item 402(*l*) of Regulation S–K [17 CFR 229.402(*l*)].

[50] 17 CFR 229.402(e).

[51] 17 CFR 229.402(f).

[52] Items 402(b)(1) (columns (c), (d) and (e)) and 402(b)(2)(iii) [17 CFR 229.402(b)(1) and 17 CFR 229.402(b)(2)(iii)].

[53] See Section II.I. of the Adopting Release.

[54] 17 CFR 240.14a–101 (Schedule 14A, Item 10).

[55] 17 CFR 240.14a–7. See Exchange Act Release No. 31326 (October 22, 1992) [57 FR 48276].

[56] Rule 14a–7(a).

[57] See id.

requestor's failure to provide information concerning beneficial ownership or the certifications regarding proper use of the list that was not required by the rule. For example, the information relating to the requestor's beneficial ownership is called for only if the requestor is not a recordholder. A shareholder is not required to provide the attestation regarding proper use of the securityholder list, where the issuer intends to exercise its right to mail instead of providing the requested list. Since the rule does not provide an exception from the issuer's obligation based upon a deficient request by the shareholders, a failure to meet the requirement for a timely response to a Rule 14a–7 request is excusable only if the issuer informs the holder within the five business day period of any deficiencies in the request and what additional information is required to perfect a request.

Questions have also arisen regarding the threshold requirement of Rule 14a-7, which makes the rights provided by the rule available to a shareholder only if the registrant intends to engage in a proxy solicitation. Registrants have resisted compliance with the rule on the ground that the request was made too far in advance of the meeting to determine whether the registrant will solicit in opposition or before it was clear that the proposal that is the subject of the request would be presented at the meeting. A registrant may not deny a request on these grounds if it wishes to preserve the right to solicit in opposition to the subject matter of the request. The issuer will be able to determine whether it intends to solicit at the time of the request, since Rule 14a-7(c) requires the requesting securityholder to identify the subject matter of the planned solicitation or communication. The timing of that request with respect to the next meeting of shareholders is not relevant to the application of the rule.

With respect to shareholder proposals, questions have arisen whether the issuer must respond to a list demand prior to the time the staff has responded to an issuer request to omit from the proxy statement the proposal that is the subject of the list demand. Since the shareholder often will solicit proxies independently and raise the matter at the meeting regardless of the resolution of the Rule 14a-8 issue, the staff's response to a shareholder proposal no-action request should not be determinative of the issuer's obligations under Rule 14a-7. The issuer may not deny the list request relating to the proposal if the issuer intends to vote any proxies with respect to the matter. The solicitation of proxies in connection with a meeting that confers discretionary authority to vote against a matter excluded from the issuer's proxy materials under the shareholder proposal rule would constitute a solicitation by the issuer that would trigger the provisions of Rule 14a-7.

VIII. General Request for Comment

Any interested persons wishing to submit written comments on the proposed amendments to Item 402 of Regulation S-K and related rules and regulations, including any of the technical amendments, as well as on other matters that might have an impact on the proposals set out in this release, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–23–93. Comment is requested as to the potential impact of the proposals on such matters as tax planning and regulatory burdens from the viewpoint of the public, as well as the entities or person making filings with the Commission. These comments will be considered by the Commission in complying with its responsibilities under section 19(a) of the Securities Act.[58] The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[59] All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

IX. Cost Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views of and other supporting information from the public. It appears to the Commission that the benefit to be gained by amending the executive compensation disclosure rules to require registrants to provide the enhanced information to shareholders as well as to clarify the disclosure requirements outweighs the costs associated with implementing these proposals.

[58] 15 U.S.C. 77s(a).

[59] 15 U.S.C. 78w(a).

X. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance 5 U.S.C. 603 regarding the proposed revisions. A copy of the Analysis may be obtained from Thomas D. Twedt, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Reference is made to the Summary and Background sections of the foregoing release for a discussion of the reasons for and objectives of the proposed action.

As discussed more fully in the Analysis, the proposed changes would affect small business issuers, as defined in the Commission's rules. It is expected, however, that the recordkeeping and compliance burdens that would result from the changes will be minimal.

Written comments are encouraged with respect to any aspect of the Analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted.

XI. Statutory Basis

The amendments contained herein are being proposed pursuant to sections 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act and sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 229 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations, is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.402 by revising paragraph (a)(2); Instruction 2 to Instructions to Item 402(b)(2)(iv); the table following paragraph (c)(1); paragraph (c)(2)(ii) and paragraph (e)(2)(iv) to read as follows:

§ 228.402 (Item 402) Executive compensation.

(a) * * *

(2) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year ("CEO"), regardless of compensation level;

(ii) The registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(2)(ii) of this item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

* * * * *

Instructions to Item 402(b)(2)(iv)

1. * * *

2. The registrant shall, in a footnote to the Summary Compensation Table (appended to column (f), if included), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. The value shall be calculated in the manner specified in paragraph (b)(2)(iv)(A) of this item using the value of the registrant's shares at the end of the last completed fiscal year;

b. For any restricted stock award reported in the Summary Compensation Table that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in column (f).

* * * * *

(c) * * *

(1) * * *

OPTION/SAR GRANTS IN LAST FISCAL YEAR

	Individual grants			
(a) Name	(b) Number of securities underlying options/SARs granted (#)	(c) % of Total options/ SARs granted to employees in fiscal year	(d) Exercise or base price ($/Sh)	(e) Expiration date
CEO				
A				
B				
C				
D				

(2) * * *

(ii) number of securities underlying option/SARs granted.

* * * * *

(e) * * *

(2) * * *

(iv) For plans not based on stock price, the dollar value of the estimated payout, the number of shares to be awarded as the payout or a range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (d) through (f)).

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

4. By amending § 229.402 by revising paragraph (a)(3); Instruction 2 to Instructions to Item 402(b)(2)(iv); the table following paragraph (c)(1) and paragraph (c)(2)(ii); Instruction 9 to Instructions to Item 402(c); paragraph (e)(2)(iv); paragraph (f)(1)(ii)(A); and Instruction 2 and Instruction 5 to Instructions to Item 402(l) to read as follows:

§ 229.402 (Item 402) Executive compensation.

(a) * * *

(3) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year ("CEO"), regardless of compensation level;

(ii) The registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(ii) of this item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

* * * * *

Instructions to Item 402(b)(2)(iv)

1. * * *

2. The registrant shall, in a footnote to the Summary Compensation Table (appended to column (f), if included), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. The value shall be calculated in the manner specified in paragraph (b)(2)(iv)(A) of this item using the value of the registrant's shares at the end of the last completed fiscal year;

b. For any restricted stock award reported in the Summary Compensation Table that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in column (f).

* * * * *

(c) * * *

(1) * * *

OPTION/SAR GRANTS IN LAST FISCAL YEAR

Individual grants					Potential realizable value at assumed annual rates of stock price appreciation for option term		Alternative to (f) and (g): grant date value
(a) Name	(b) Number of securities underlying options/ SARs granted (#)	(c) % of total options/SARs granted to employees in fiscal year	(d) Exercise or base price ($/Sh)	(e) Expiration date	(f) 5% ($)	(g) 10% ($)	(f) Grant date present value $
CEO							
A							
B							
C							
D							

(2) * * *

(ii) number of securities underlying option/SARs granted.

* * * * *

Instructions to Item 402(c)

* * * * *

9. Where the registrant chooses to use the grant-date valuation alternative specified in paragraph (c)(2)(vi)(B) of this item, the valuation shall be footnoted to describe the valuation method used. Where the registrant has used a variation of the Black-Scholes option pricing model, the description shall identify the use of such pricing model and describe the assumptions used relating to the expected volatility, risk-free rate of return, dividend yield and time of exercise. Any adjustments for non-transferability or risk of forfeiture also should be disclosed. In the event another valuation method is used, the registrant is required to describe the methodology as well as any material assumptions.

* * * * *

(e) * * *

(2) * * *

(iv) For plans not based on stock price, the dollar value of the estimated payout, the number of shares to be awarded as the payout or a range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (d) through (f)).

* * * * *

(f) *Defined Benefit or Actuarial Plan Disclosure*

(1) * * *

(ii) * * *

(A) The compensation covered by the plan(s), including the relationship of such covered compensation to the annual compensation reported in the Summary Compensation Table required by paragraph (b)(2)(iii) of this item, and state the current compensation covered by the plan for any named executive officer whose covered compensation differs substantially (by more than 10%) from that set forth in the annual compensation columns of the Summary Compensation Table;

* * * * *

(l) * * *

Instructions to Item 402(l)

* * * * *

2. In constructing the graph:

(a) The closing price at the measurement point must be converted into a fixed investment, stated in dollars, in the registrant's stock (or in the stocks represented by a given index), with cumulative returns for each subsequent fiscal year measured as a change from that investment; and

(b) Each fiscal year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of shares held at that point multiplied by the then-prevailing share price.

* * * * *

5.If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization at the beginning of each period for which a return is indicated.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5.The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise note.

* * * * *

6. By amending § 240.14a.101 by revising Instruction 3 to Item 10 of Schedule 14A to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 10. Compensation Plans.

* * * * *

Instructions

* * * * *

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time copies of the proxy statement and form of proxy are first filed pursuant to paragraph (a) or (b) of § 240.14a-6.

* * * * *

Dated: August 6, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19328 Filed 8–11–93; 8:45 am]

BILLING CODE 8010–01–R

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1313

Information for Exports of Precursor and Essential Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations implementing the Chemical Diversion and Trafficking Act to require regulated persons to submit information on customers for specific chemicals shipped to certain countries along with the DEA Form 486 (O.M.B. Approval Number 1117–0023). This additional information is being required because of the extremely high risk of diversion of such chemicals within those countries where large quantities of illicit drugs are processed or manufactured.

DATES: Comments and objections must be submitted by September 13, 1993.

ADDRESSES: Comments and objections should be submitted in quintuplicate to Director, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 Attention: **Federal Register** Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion

Control, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act (CDTA) of 1988 and the implementing regulations establish a system of recordkeeping and reporting requirements that provide DEA with a mechanism to track domestic and international movement of listed chemicals and tableting and encapsulating machines. Section 1018(a) of the CDTA (21 U.S.C. 971) provides that each regulated person who imports or exports a listed chemical shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place. An exception is allowed by this Section when the transaction is between a "regulated person" and a "regular customer." The CDTA is structured to provide DEA and foreign officers the opportunity to determine that the customer is legitimate and that the chemical will not be diverted to the illicit manufacture of drugs.

Exporters are required to view every order with vigilance and sound judgment. In cases where shipments are being made to an established customer, the quantity and the intended use must be consistent with previously established experience with that customer. If no previous exports of listed chemicals have been made, the U.S. exporter must make an effort to determine if the quantity and intended use is consistent with the nature and size of the customer's business.

The controls of the CDTA permit normal commercial activity to continue unimpeded following initial review of the legitimacy of the trading partners. Companies have not been required to disclose any additional information about their customers beyond the basic identifying characteristics. Because of this, an exporter may follow the minimum requirements of the CDTA, yet, for credit or sales projection type purposes, possess additional information which would help law enforcement determine the legitimacy of the customer. That situation underscores a basic premise of the CDTA—that members of the chemical industry must "know their customers." This proposal seeks to require that such information be provided to DEA for certain chemicals and countries.

This proposed change also recognizes that DEA has certain limited capabilities to conduct an investigation of foreign customers of U.S. chemical firms. DEA is present in foreign countries at the invitation of the host government. DEA must respect the laws of a host nation and work through designated officials of the host government. Any request for a review of the legitimacy of a chemical customer of a U.S. firm is subject to the priorities of the officials of the foreign host government. Thus, reviews of foreign customers have been hampered, delayed, or in some instances not completed. Because of this situation, some U.S. exports have been delivered to foreign importers which have subsequently been determined to be of questionable legitimacy.

In addition, DEA has determined that the quantities of certain chemicals being imported from U.S. and European sources by drug producing countries greatly exceed their legitimate need for those chemicals and that drug traffickers continue to be able to obtain the chemicals which they need to process illegal drugs such as cocaine and heroin. DEA is taking this additional step to insure that U.S. exports are being imported solely for legitimate purposes and are not being diverted. The information required is of a type that can readily be supplied by a legitimate customer. On the other hand, the absence of such information, or unwillingness on the part of a customer to supply it, raises a serious suspicion of diversion in those countries where a large volume of controlled chemicals are diverted into the illicit drug traffic.

There are also two corrections being made to the first sentence of § 1313.21(a). The first is to correct a typographical error, the word "of" is changed to "or". The second will provide consistency within the paragraph, the word "Administrator" is changed to "Administration".

The Director, Office of Diversion Control certifies that this action will have no significant impact upon small businesses or other entities whose interest must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action which requires regulated persons to obtain information on customers and submit it with the DEA Form 486 (O.M.B. Approval Number 1117–0023) is limited to specific chemicals and foreign countries. Most exports of this nature are handled by major chemical manufacturers who are not small entities as defined in 5 U.S.C. 601(6).

The Director, Office of Diversion Control has determined that this is not a major rule, as that term is used in Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been submitted for review to the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1313

Importation, Exportation, Transshipment and in-transit shipment of precursors and essential chemicals.

For reasons set out above, 21 CFR part 1313 is proposed to be amended as follows:

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.21 is proposed to be amended by revising paragraphs (a) through (c) and adding new paragraphs (e) and (f) as follows:

§ 1313.21 Requirement of authorization to export.

(a) No person shall export or cause to be exported from the United States any chemical listed in § 1310.02 of this chapter, which meets or exceeds the threshold quantities identified in § 1310.04(f) of this chapter until such time as the Administration has been notified. Notification must be made not later than 15 days before the transaction is to take place. In order to facilitate the export of listed chemicals and implement the purpose of the Act, regulated persons may wish to provide notification to the Administration as far in advance of the 15 days as possible.

(b) A completed DEA Form 486 (O.M.B. Approval Number 1117–0023) must be received at the following address not later than 15 days prior to the exportation:

Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038. A copy of the completed DEA Form 486 (O.M.B. Approval Number 1117–0023) may be transmitted directly to the Drug Enforcement Administration, Chemical Operations Section, through electronic facsimile media not later than 15 days prior to the exportation.

(c) Except as provided in paragraph (e) of this section, the 15 day advance notification requirement for listed chemical exports may be waived for any regulated person who has satisfied the requirements of § 1313.24 for reporting to the Administration an established business relationship with a foreign

customer as defined in § 1313.02(j). A DEA Form 486 (O.M.B. Approval Number 1117–0023) Import/Export Declaration must be received by the Drug Enforcement Administration, Chemical Operations Section, on or before the date of exportation through use of the mailing address listed in § 1313.21(b) or transmitted directly through use of electronic facsimile media.

(d) * * *

(e) (1) No person shall export or cause to be exported a listed chemical to any country which has been identified in paragraph (f) of this section as presenting a potential threat that the chemical may be diverted to illicit commerce until the requirements set forth in paragraph (e)(2) of this section are satisfied. The 15 day advance notification requirement will not be waived for exports of specific chemicals to the listed countries as specified in paragraph (e)(2) of this section.

(2) For exports of chemicals to countries identified pursuant to paragraph (f) of this section, the regulated person shall submit information with the DEA Form 486 (O.M.B. Approval Number 1117–0023) in addition to the requirements set forth in § 1310.07 to establish proof of identity as follows:

(i) The specific purpose for which the chemicals will be used by the party receiving the listed chemical, or

(ii) In circumstances in which the customers may redistribute the chemicals other than in retail quantities, rather than consume them in production, a list of the third party customers and their intended use of the chemicals will be required.

(iii) Such facts and representations which have been or will be used to substantiate the legitimacy of the customer, or if a distributor, of its' customers.

(3) Regulated persons shall provide the information specified in § 1313.21(e)(2) for the first export after a chemical is listed in paragraph (f) of this section. The information shall be updated on an annual basis or, upon receipt of information which could change the customer status.

(f) the chemicals and countries subject to the requirements set forth in paragraph (e) of this section are as follows:

Name of chemical	Country
Acetone	Colombia, Peru, Venezuela, Ecuador.
Methyl ethyl ketone.	Colombia, Peru, Venezuela, Ecuador.
Potassium Permanganate.	Colombia, Peru, Venezuela, Ecuador.
Ephedrine	Mexico.
Hydriodic Acid	Mexico.

Dated: June 4, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–19384 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–09–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 200]

Educational, Scientific and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Agency proposes new regulations governing its implementation of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (Beirut Agreement of 1948). A recent decision by the United States Court of Appeals (9th Circuit) and Congressional enactment of legislation effecting the Agency's implementation of the Beirut Agreement indicate that new regulations be advanced.

DATES: Public comments will be accepted on or before September 13, 1993.

ADDRESSES: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: Since its establishment in 1946, the United Nations Educational, Cultural, and Scientific Organization (UNESCO) has endeavored to promote the free flow and exchange of scientific and educational material between nations through the elimination of important and customs duties on such material. The Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character (Third General Session of UNESCO; Beirut, Lebanon; 1948; 17 U.S.T. 1578) hereinafter, the "Agreement," is the first fruit borne of this international collaborative effort. The Agreement provides an exemption from all customs duties and quantitative restrictions for certain types of audio-visual material.

Adopted by UNESCO in 1948, the Agreement entered into force and effect August 12, 1954. Although an original signatory to the Agreement, United States ratification was delayed until May 26, 1960. Formal U.S. implementation of the Agreement was, in turn, delayed until passage of Public Law 89–634 on October 8, 1966. Pursuant to E.O. 11311, responsibility for implementation of the Agreement was delegated to the Agency. Twenty-nine nations are signatory to the Agreement and an additional twenty-eight countries participate under the terms of the Agreement on an informal basis.

The Agency implements and administers the Agreement in the case of exports through the issuance of a Certificate of International Educational Character. Material for which this Certificate has been issued is ordinarily afforded duty-free entry into countries participating in the Agreement. The Agency facilitates the duty-free entry of qualified audio-visual material into the United States through the authentication of a Certificate issued by a participating foreign government.

Simply put, the Agreement covers educational, scientific, and cultural audio-visual material which is generally used for educational or instructional purposes. Pursuant to Article I of the Agreement, visual and auditory material shall be deemed to be of an educational, scientific, and cultural character:

(a) When their primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(b) When the materials are representative, authentic, and accurate; and

(c) When the technical quality is such that it does not interfere with the use made of the material.

Under the Agreement, favorable import treatment has not been extended to material which has as its primary purpose or effect to amuse or entertain, to inform concerning timely current events, *i.e.* spot news, to stimulate the

use of a special process or product, advertise, or to raise funds.

The Agreement specifically provides for the favorable import treatment of (i) films, filmstrips and microfilm in either negative form, exposed and developed, or positive form, printed and developed; (ii) sound recordings of all types and forms; (iii) glass slides; models, static and moving; wall charts, maps, and posters. These materials are afforded favorable import treatment only upon a determination that they are educational, scientific, and cultural in character.

A Judicial Challenge

On December 5, 1985, a group of independent filmmakers, producers, distributors, and a membership association filed suit against the Agency in United States District Court for the Central district of California. Plaintiffs alleged that the Agency-promulgated regulations governing administration of the Agreement violated their Constitutional right of free speech. The district court agreed with Plaintiffs and found that the regulations were unconstitutional on their face. See *Bullfrog Films, Inc.* v. *Wick*, 646 F. Supp. 492 (C.D. Cal. 1986). The district court was upheld on appeal. See *Bullfrog Films, Inc.* v. *Wick*, 847 F.2d 502 (9th Cir. 1988).

The Courts determined that the regulations, as promulgated, were unconstitutionally vague and permitted the Agency to engage in impermissible content analysis. In response to the district court decision, Bullfrog I, the Agency published revised regulations on November 16, 1987. See 52 FR 43,753 (1987). Plaintiffs immediately sought district court review and were again successful when the court found, pursuant to unpublished decision filed May 13, 1988, that the revised regulations were facially unconstitutional. On September 9, 1988, the district court ordered the Agency to promulgate new regulations consistent with the Constitution.

The Agency sought appellate review and was granted a stay of the district court's order. During the pendency of this second appeal the Agency continued to administer the Agreement pursuant to the revised regulations published on November 16, 1987. A second appellate decision, Bullfrog II, was rendered March 12, 1992. See *Bullfrog Films, Inc.* v. *Wick*, 959 F.2d 782 (9th Cir. 1992).

In the Bullfrog II decision the circuit court found three of the four grounds upon which the Agency had sought appellate review to be moot due to newly enacted Congressional legislation. This legislation, discussed more fully *infra*, directs the Agency to refrain from the content analysis that the courts had found objectionable. The circuit court remanded a fourth ground of appeal on the basis that the court below had not ruled on the matter. In its opinion, the Bullfrog II court determined that the Agency should be afforded an opportunity to administer the Agreement in light of the new legislation and promulgate revised regulations consistent with both the decisions of the courts and the legislative directives.

A Legislative Initiative

While the issues surrounding Agency administration of the Agreement continued to wend their way through the courts, Congressional interest in this matter was piqued. Pursuant to Section 207 of the Foreign Relations authorization Act, Fiscal Years 1992 and 1993, Public Law 101–138, 105 Stat. 647 (1991), Congress enacted legislation which addresses Agency administration of the Agreement. In administering the Agreement, the Agency may not consider visual or auditory material to fail to qualify as being of international educational character;

(1) Because it advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) Because it might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) Because it is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) Because it does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge; or

(5) Because in the opinion of the agency the material is propaganda.

This legislation is intended to cure the Constitutional infirmities under which the previously promulgated regulations allegedly labored. The legislation is intended to also eliminate the vagueness surrounding what material the Agency will certify or authenticate and to limit the permissible scope of content analysis which the Agency may undertake in its determination of whether to certify or authenticate submitted material. The House Conference Report illustrates the legislative intent underlying the passage of this provision. The Conferees state adoption of section 207 is necessary:

> * * * to ensure that the United States implements the Beirut Agreement in conformity with its purpose and with the First Amendment to the Constitution of the United States. The provision is intended to ensure that government regulations do not frustrate the purpose of the Agreement by empowering U.S. government officials to make subjective judgments about the political content or message of documentary films, and thereby impede their circulation abroad by denial of educational certification. Adoption of the provision is also designed to ensure that determinations by the U.S. Government of the educational character of documentary films are viewpoint neutral.

H.R. Conf. Rep. No. 238, 102d Cong., 1st Sess. 126 (1991), *reprinted in* 1991 U.S.C.C.A.N. 384, 468.

Pursuant to this Rulemaking the Agency seeks to reconcile the terms of the Agreement with the language of section 207 and the decisions rendered in Bullfrog I and Bullfrog II.

Executive Response

Section 207 directs continued Agency implementation and administration of the Agreement. The terms of the Agreement require that the Agency ascertain that material submitted for certification or authentication is of an international educational, scientific, and cultural character. Some degree of content analysis is required and the courts have recognized this fact. The Agency henceforth will exercise only that level of analysis necessary to determine whether the material meets the threshold requirement of educational, scientific, and cultural character.

Integral to this minimal content analysis is the requirement that submitted material instruct or inform. This requirement is met, pursuant to the proposed definition set forth at § 502.2, through the submission of material which is intended to teach, train or impart knowledge through a reasoned development of a subject which aids the viewer or listener in a learning process. Submitted material must be free of widespread and gross misstatements of fact.

The criteria which the Agency proposes to utilize in its certification and authentication review process are set forth at § 502.3. In adopting this criteria the Agency has examined the opinions rendered in *Big Mama Rag, Inc.* v. *United States*, 631 F.2d 1030 (D.C. Cir. 1980), and *National Alliance* v. *United States*, 710 F.2d 868 (D.C. Cir. 1983). The Agency is of the opinion that the proposed regulations will,

consistent with the opinion rendered in *National Alliance,* focus the required analysis upon the method of presentation rather than the content of expression. Material which instructs or informs (an Agreement requirement) and is free of widespread and gross misstatements of fact (a Section 207 directive) will be certificated or authenticated regardless of viewpoint.

Public Comment

The Agency is soliciting public comment on these proposed regulations notwithstanding that it is under no legal requirement to do so. Agency administration and implementation of the Beirut Agreement, an international treaty, is a foreign affairs function of the United States. The Administrative Procedure Act, 5 U.S.C. 553 (a)(1)(1989), specifically exempts from application of the Act foreign affairs functions of the United States. A thirty day period for comment is hereby extended. This action may not be deemed a waiver of the foreign affairs exemption extended the Agency under the terms of the Administrative Procedure Act.

In accordance with 5 U.S.C. 605(5), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The reporting and regulatory requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 502

Education, Imports, Exports, Trade Agreements, Audiovisual material.

Accordingly, the Agency proposes to revise 22 CFR part 502 as follows:

PART 502—WORLD-WIDE FLOW OF AUDIO-VISUAL MATERIALS

502.1—Purpose.
502.2—Definitions.
502.3—Certification and Authentication Criteria.
502.4—Certification Procedures—Exports.
502.5—Authentication Procedures—Imports.
502.6—Consultation with Subject Matter Specialists.
502.7—Review and Appeals Procedures.
502.8—Coordination with U.S. Customs Service.
502.9—General Information.

Authority: 5 U.S.C. 301; 19 U.S.C. 2051, 2052; 22 U.S.C. 1431 *et seq.;* Pub. L. 101–138; E.O. 11311, 3 C.F.R. 1966–1900 comp., page 593.

§ 502.1

Purpose.

The United States Information Agency administers the "Beirut Agreement of 1948", a multinational treaty formally known as the *Agreement for Facilitating the International Circulation of Visual and Auditory Material of an Educational, Scientific and Cultural Character.* This Agreement facilitates the free flow of educational, scientific and cultural audio-visual materials between nations by providing favorable import treatment through the elimination or reduction of import duties, licenses, taxes or restrictions. The United States and other participating governments facilitate this favorable import treatment through the issuance or authentication of a certificate that the audio-visual material for which favorable treatment is sought conforms with criteria set forth in the Agreement.

§ 502.2 Definitions.

Agency—means the United States Information Agency.

Applicant—means (1) The United States holder of the "basic rights" in the material submitted for export certification; or (2) The holder of a foreign certificate seeking import authentication.

Application Form—means the Application for Certificate of International Educational Character (Form IAP–17) which is required for requesting Agency certification of United States produced audio-visual materials under the provisions of the Beirut Agreement.

Attestation Officer—means the Chief Attestation Officer of the United States and any member of his or her staff with authority to issue Certificates or Importation Documents.

Audio-visual materials—means: (1) Films, filmstrips and microfilm in exposed and developed negative form, or in positive form, *viz.,* masters or prints, teletranscriptions, kinescopes, videotape, or prints therefrom;

(2) Electronic sound recordings and sound/picture recordings of all types and forms or pressings and transfers therefrom;

(3) Slides, photographs, and transparencies;

(4) Moving and static models, charts, globes, maps and posters.

Authentication—means the process through which an applicant obtains a United States Importation Document for Audio-visual Materials (Form IA–862).

Basic Rights—means the world-wide non-restrictive ownership rights in audio-visual materials from which the assignment of subsidiary rights (such as language versions, television, limited distribution, reproduction, etc.) are derived.

Beirut Agreement—means the "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character."

Certificate—means a document attesting that the named material complies with the standards set forth in Article I of the Beirut Agreement issued by (1) The appropriate government agency of the State wherein the material to which the certificate relates originated, or (2) by the United Nations Educational, Scientific and Cultural Organization.

Certification—means the process of obtaining a certificate attesting that audio-visual materials of United States origin being exported from the United States comply with the standards set forth in Article I of the Beirut Agreement.

Collateral Instructional Material—means a teacher's manual, study guide, or similar instructional material prepared or reviewed by a bona fide subject matter specialist. Such material must delineate the information or instructional objectives of the audio-visual material and illustrate or explain how to utilize such material to attain the stated objectives.

Committee on Attestation—means the committee which advises the Attestation Officer on matters of policy and the evaluation of specific materials.

Director—means the Director of the United States Information Agency.

Exports—means educational, scientific, and cultural audio-visual material of United States origin, being sent from the United States.

Importation Document—means the United States Importation Document for Audio-visual Materials (Form IA–862) issued by the Chief Attestation officer of the United States which attests that materials of foreign origin entering the United States comply with the standards set forth in Article I of the Beirut Agreement and is therefore entitled to duty-free entry into the United States pursuant to the provisions of United States Customs Bureau Harmonized Tariff system Item No. 9817.00.4000.

Imports—means educational, scientific, and cultural audio-visual material of foreign origin being brought into the United States.

Instruct or inform—means to teach, train or impart knowledge through a

reasoned development of a subject or aspect of a subject to aid the viewer or listener in a learning process. The instructional or informational character or audio-visual material may be evidenced by the presence of collateral instructional material.

Knowledge—means a body of facts and principles acquired by instruction, study, research, or experience.

Review Board—means the panel appointed by the Director to review appeals filed by applicants from decisions rendered by an Attestation Officer.

Subject Matter Specialist—means an individual who has acquired special skill in or knowledge of a particular subject through professional training or practical experience.

§ 502.3 Certification and authentication criteria.

(a) The Agency shall certify or authenticate audio-visual materials submitted for review as educational, scientific and cultural in character and in compliance with the standards set forth in Article I of the Beirut Agreement when:

(1) Their primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(2) The materials are representative, authentic, and accurate; and

(3) The technical quality is such that it does not interfere with the use made of the material.

(b) The Agency will not certify or authenticate any audio-visual material submitted for review which:

(1) Does not primarily instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge.

(2) Contains widespread and gross misstatements of fact.

(3) Is not technically sound.

(4) Has as its primary purpose or effect to amuse or entertain.

(5) Has as its primary purpose or effect to inform concerning timely current events (newsreels, newscasts, or other forms of "spot" news).

(6) Stimulates the use of a special process or product, advertises a particular organization or individual, raises funds, or makes unsubstantiated claims or exclusivity.

(c) In its administration of the criteria set forth in paragraphs (a) and (b) of this section, the Agency shall not fail to qualify audio-visual material because:

(1) It advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) It might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) It is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) It does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or an aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge; or

(5) In the opinion of the agency the material is propaganda.

§ 502.4 Certification procedures—Exports.

(a) Applicants seeking certification of U.S. produced audio-visual materials shall submit to the Agency a completed Application Form for each subject or series for which certification is sought. Collateral instructional material, if any, and a copy or example of the material must accompany the Application Form.

(b) Upon an affirmative determination by the Agency that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, a Certificate shall be issued. A copy of such Certificate must accompany each export shipment of the certified material.

§ 502.5 Authentication procedures—Imports.

(a) Applicants seeking Agency authentication of foreign produced audio-visual materials shall submit to the Agency a *bona fide* foreign certificate, a copy or example of the material for which authentication is sought, and related collateral instructional material, if any.

(b) Upon an affirmative determination by the Agency that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, an Importation Document shall be issued. A copy of such Importation Document must be presented to United States Customs at the port of entry.

§ 502.6 Consultation with subject matter specialists.

(a) The Agency may, in its discretion, solicit the opinion of subject matter specialists for the purpose of assisting the Agency in its determination of whether materials for which export certification or import authentication is sought contain widespread and gross misstatements of fact.

(b) As necessary, the Agency may determine eligibility of material for certification or authentication based in part on the opinions obtained from subject matter specialists and the Committee on Attestation.

§ 502.7 Review and appeal procedures.

(a) An applicant may request a formal review of any adverse ruling rendered by the Attestation Officer. Such request for review must be made in writing and received no more than 30 days from the date of the Attestation Officer's decision.

(b) The request for review must set forth all arguments which the applicant wishes to advance in support of his or her position and any data upon which such argument is based. A copy of the material for which certification or authentication has been denied must accompany the request for review. The request for review should be addressed as follows: Attestation Program Review Board, U.S. Information Agency, Room 5118, Patrick Henry Building, 601 D Street, NW., Washington, DC 20547.

(c) The Review Board shall render the applicant a written decision, reversing or affirming the ruling of the Attestation Officer, within 30 days from receipt of the request for review. Such decision shall constitute final administrative action.

§ 502.8 Coordination with United States Customs Service.

(a) Nothing in the regulations in this part shall preclude examination of imported materials pursuant to the Customs laws and regulations of the United States as codified at 19 U.S.C. 1305 and 19 CFR 10.121, or the application of the laws and regulations governing the importation or prohibition against importation of certain materials including seditious or salacious materials as set forth at 19 U.S.C. 1305.

(b) Agency authentications of a foreign certificate for entry under HTS Item No. 9817.00.4000 will be reflected by the issuance of an Importation Document. A copy of each Importation Document issued by the Agency will be simultaneously furnished the United States Customs Service.

(c) *Customs User Fee:* Articles delivered by mail, which are eligible for duty-free entry under the regulations in this part are, additionally, not subjected to the standard Customs User Fee normally imposed by the United States Customs Service, provided there has

been a timely filing with the appropriate United States Customs Service office of the documentation required by the regulations in this part.

§ 502.9 General information.

(a) General information and application forms may be obtained by writing to the Attestation Office as follows: Chief Attestation Officer of the United States, United States Information Agency, room 5118, Patrick Henry Building, 601 D Street, NW., Washington, DC 20547; or calling (202) 501–7775/7203.

(b) Completed applications should be sent to the address in paragraph (a) of this section. Direct Mail Deliveries (UPS, Express Mail, etc.) should be sent to: Chief Attestation Officer of the United States, United States Information Agency, room 5118, Patrick Henry Building, 601 D Street NW., Washington, DC 20547.

Dated: August 4, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–19095 Filed 8–11–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions for Oklahoma's proposed amendment pertain to the liability period for revegetation success; management of reference areas; bond release requirements for topsoil and subsoil replacement, impoundments, bare areas, vegetative cover for previously mined areas, revegetation success standards, and vegetation sampling techniques; the definitions for "erosion control" and "augmentation"; and approval of the repair of rills and gullies as a normal husbandry practice. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal standards and to improve operational efficiency.

This document sets forth the times and locations that the Oklahoma program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t. August 27, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, Oklahoma 74135–6548, telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 North Lincoln, suite 107, Oklahoma City, Oklahoma 73105, telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Submission of Proposed Amendment

On February 6, 1992, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. OK–937). Oklahoma submitted the proposed amendment in part in response to required program amendments at 30 CFR 936.16(d) and in part at its own initiative. Oklahoma proposed to amend its program by adding (1) the revegetation success standards and statistically valid sampling techniques referenced at §§ 816.116(a) and 817.116(a)(1) of the Oklahoma rules and (2) guidelines for phase I, II, and III bond release. Oklahoma intended that the bond release guidelines be in accordance with parts 800, 816, 817, and 823 of the Oklahoma rules.

OSM published a notice in the April 13, 1992, **Federal Register** (57 FR 12784) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. OK–947). The public comment period ended May 13, 1992.

During its review of the amendment, OSM identified concerns relating to the start of the liability period for revegetation success; management of reference areas; bond release requirements for topsoil replacement, impoundments, bare areas, vegetative cover for previously mined areas, revegetation success standards and vegetation sampling techniques; the definitions for "erosion control" and "augmentation"; and approval of the repair of rills and gullies as a normal husbandry practice. OSM notified Oklahoma of the concerns by letter dated June 2, 1992 (Administrative Record No. OK–942), and by supplemental letters dated June 24, 1992 (Administrative Record No. OK–948), and March 24 and April 28, 1993 (Administrative Record Nos. OK–950 and OK–949).

Oklahoma responded in a letter dated July 8, 1993, by submitting additional explanatory information and a revised amendment to address the concerns identified above (Administrative Record No. OK–944).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 372.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–19352 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

Texas Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions to Texas' proposed regulations pertain to identification of interests and compliance information, review of permit applications, review of outstanding permits, and cessation orders. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., c.d.t. August 27, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, Oklahoma 74135–6548, telephone: (918) 581–6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711, telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning Texas' program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated February 8, 1993 (administrative record No. TX–542), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment with the intent of satisfying required program amendments at 30 CFR 943.16 (b), (c), (d) (1), (2), and (3), (e), (f), (g), (h) (1) and (2), (i) (1) and (2), and (j) (1), (2), and (3), (57 FR 21600; May 21, 1992). The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 that Texas proposed to amend

were TCMR 778.116 (l) and (m), identification of interests and compliance information; TCMR 786.215 (e) (1) and (2), (f), and (g), review of permit applications; and TCMR 788.225 (f), (f)(1)(A), (g) and (g)(3), Texas Railroad Commission (Commission) review of outstanding permits.

OSM published a notice in the March 30, 1993, **Federal Register** (58 FR 16634) announcing receipt of the amendment and inviting public comment on its adequacy (administrative record No. TX–550). The public comment period ended April 29, 1993.

During its review of the amendment, OSM identified concerns relating to the provisions of TCMR 778.116(m), identification of interests and compliance information: violation information; TCMR 786.215(e)(1), review of permit applications: review of violations; TCMR 786.215(f), review of permit applications: Pattern of willful violations; TCMR 786.215(g), review of permit applications: final compliance review; TCMR 788.225(e), Commission review of outstanding permits: improvidently issued permits; TCMR 788.225(f), Commission review of outstanding permits: review criteria; and TCMR 788.225(g), Commission review of outstanding permits: remedial measures. OSM also noted that the proposed amendment did not contain revisions to the Texas program adopting procedural requirements no less effective than the Federal regulation at 30 CFR 843.11(g), which requires that, within 60 days of the issuance of a cessation order, the regulatory authority must notify all owners and controllers identified as owning or controlling the permittee.

OSM notified Texas of these concerns by letter dated June 8, 1993 (administrative record No. TX–565). Texas responded in a letter dated July 7, 1993, by submitting additional explanatory information and a revised amendment (administrative record No. TX–562). The TCMR provisions that Texas proposed to amend are discussed below.

1. Identification of Interests and Compliance Information: Violation Information

At TCMR 778.116(m), Texas proposes to require that an application for a permit to conduct surface coal mining and reclamation operations include information on (1) violations received pursuant to the Act or Federal Act and (2) air or water environmental protection violations received pursuant to any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule, or regulation. Texas also provides rationale for why proposed TCMR 778.116(m) in conjunction with section 21(c) of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) is no less effective than the corresponding Federal requirements.

2. Review of Permit Applications

(a) *Review of violations.* At TCMR 786.215(e)(1), Texas proposes to (1) correct a referenced citation and (2) require the Commission to deny a permit if the applicant or anyone who owns or controls the applicant is determined to have incurred, in connection with any surface coal mining operation, any of the violations, bond forfeitures, or delinquent penalties or fees listed in subparagraph (e)(1) that remain unabated. Texas also explains that the term "State," when capitalized, refers to Texas and when not capitalized refers to all states with the United States of America.

(b) *Pattern of willful violations.* At TCMR 786.215(f), Texas proposes that no permit shall be issued before a final determination that no pattern of willful violations exists. Language has been proposed to clarify that the Commission also considers violations of Federal and State laws as used in 30 CFR 773.15(b) in determining if a willful pattern of violations exists.

(c) *Final compliance review.* At TCMR 786.215(g), Texas proposes to correct a referenced citation and to require the Commission to deny a permit if, after an application is approved but before the permit is issued, (1) the applicant fails or refuses to respond as required by the Commission to provide new compliance information pursuant to sections 778.116 (i) and (n) or (2) the new compliance information shows that a violation exists.

3. Commission Review of Outstanding Permits

(a) *Improvidently issued permits.* Texas proposes to delete TCMR 788.225(e) and recodify the remainder of the section accordingly.

(b) *Review criteria.* At TCMR 788.225(f) (paragraph (e) as recodified), Texas proposes to require the Commission to review a permit under authority of section 22(c) of TSCMRA when it has reason to believe a permit was improvidently issued, and after notice and opportunity for a hearing find that the permit was improvidently issued if certain conditions are met. Texas also provides rationale for including the phrase "under the authority of Section 22(c) of the Act." In addition, Texas proposed at TCMR 788.225(f)(1)(A) to delete language that exempts from consideration certain unabated violations or delinquent penalties or fees.

(c) *Remedial measures.* At TCMR 788.225 (g) and (g)(3) (paragraphs (f) and (f)(3) as recodified), Texas proposes to base implementation of specified remedial measures on a finding that a permit was improvidently issued and to provide decisions on suspensions and rescissions of improvidently issued permits within specified time periods. Texas also provides explanations for (1) why Texas believes that provisions of the Administrative Procedures and Texas Register Act (APTRA) and TSCMRA prevent Texas from utilizing a process of automatic rescission of improvidently issued permits like that provided for in the Federal regulations, and (2) why proposed TCMR 788.225 (g) and (g)(3) in conjunction with APTRA and TSCMRA are no less effective than the corresponding Federal regulations.

4. Cessation Orders

At TCMR 843.680(c), Texas proposes to require that within 60 days of the issuance of a cessation order, the Commission must notify all owners and controllers of the permittee that a cessation order has been issued and that the person has been identified as an owner or controller.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted

OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 6, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–19353 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 948

West Virginia Permanent Regulatory Program, Statutory and Regulatory Modifications

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments contain revisions to the West Virginia Surface Coal Mining and Reclamation Act and the West Virginia Surface Mining Reclamation Regulations (Administrative Record Nos. WV 888, WV 889 and WV 893). The amendments are intended to make the West Virginia program consistent with SMCRA and the corresponding Federal regulations.

This document sets forth the times and locations that the West Virginia program and the proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 13, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on September 6, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 27, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the proposed amendments, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the OSM Charleston Field Office and the office of the State regulatory authority listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requester may receive one free copy of the proposed amendments by contacting the OSM Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, telephone: (304) 347–7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, telephone: (304) 759–0515.

In addition, copies of the proposed amendments are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, telephone: (304) 291–4004.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, suite 3, Beckley, West Virginia 25801, telephone: (304) 255–5265.

Office of Surface Mining Reclamation and Enforcement, Logan Area Office, 313 Hudgins Street, 2nd Floor, P.O. Box 506, Logan, West Virginia 25601, telephone: (304) 752–2851.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of the approval of the West Virginia

program can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated June 28, 1993, the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. The amendment contains revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA § 22A–3–1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*).

An informal review of the amendment by OSM identified additional changes to the State's approved regulations that were not identified in the amendment by strike throughs or underscoring. On July 30, 1993, the WVDEP submitted additional modifications to its proposed regulations (Administrative Record No. WV 893). Most of these revisions reflect changes by the State that are intended to satisfy various required amendments at 30 CFR 948.16 and were included but not identified in the initial submission.

The last time the State statute was significantly revised was on May 20, 1985. The Director of OSM partially approved the revisions in the July 11, 1985, **Federal Register** (50 FR 28316–28345). As set forth in 30 CFR 948.12 and 948.13, the Director disapproved and set aside certain provisions of the WVSCMRA. In addition, as set forth in 30 CFR 948.16(c), the Director required the State to make certain revisions to its statute. The amendment being announced today contains statutory revisions that are intended to resolve these deficiencies and make the WVSCMRA consistent with SMCRA.

The West Virginia Division of Energy (WVDOE) was abolished on October 16, 1991, with the creation of the WVDEP. Enrolled Committee Substitute for House Bill 217 created the WVDEP. At the request of the Governor of West Virginia, on December 3, 1991, OSM found that it was not necessary to amend the State program to effect the redesignation of the regulatory authority from the WVDOE to the WVDEP (Administrative Record No. WV 884).

Statutory Modifications

The following describes the substantive statutory revisions that the WVDEP submitted to OSM for approval on June 28, 1993 (Administrative Record WV 888). In addition, the State made other minor modifications concerning punctuation, numbering, etc. that are not discussed.

1. WVSCMRA Section 22A–3–3—Definitions

The State proposes to redefine "commissioner", "operator" and "surface mining operation" at paragraphs (i), (q) and (w), respectively, to be consistent with SMCRA and to reflect reorganizational changes. The State has revised its definition of "surface mining operation" to satisfy the requirements of 30 CFR 948.12(c), 948.13(a) and 948.16(c)(2).

2. WVSCMRA Section 22A–3–5—Surface Mining Inspectors and Supervisors

West Virginia proposes to change the probationary status for surface mining supervisors and inspectors from one year to six months.

3. WVSCMRA Section 22A–3–7—Notice of Intent To Prospect

The State proposes to revise paragraph (f) to allow for the promulgation of regulations, the development of application forms and to require an application fee of $2,000 for prospecting operations intending to remove more than 250 tons of coal.

4. WVSCMRA Section 22A–3–8—Surface Mining Reclamation Permit

The State proposes to revise paragraph (c) of this section to allow for the continued operation of a mine by the transferee pending approval of the transfer application. West Virginia proposes to increase the surface mining permit fee from $500 to $1,000 at paragraph (f). Also, as provided in paragraph (h), the State proposes to make compliance with the Workers' Compensation Program a requirement of permit approval.

5. WVSCMRA Section 22A–3–9—Permit Application Requirements

West Virginia proposes to revise the eligibility requirements for its Small Operator Assistance Program at paragraph (b) of this section by increasing the total annual production rate from 100,000 to 300,000 tons of coal.

6. WVSCMRA Section 22A–3–9a—Permit To Mine Two Acres or Less

The State proposes to delete this section. It contained special regulatory provisions governing surface mining operations of two acres or smaller in size. This revision is intended to comply with the requirements at 30 CFR 948.12(d), § 948.13(b) and § 948.16(c)(3), (4), (5) and (6).

7. WVSCMRA Section 22A–3–11—Performance Bonds

The State proposes to revise the provisions of its alternative bonding system (Special Reclamation Fund) in this section to allow for the development of a long-range planning process for the selection and prioritization of sites to be reclaimed under the system, limit the amount of money that can be used for water treatment systems to 25 percent of the annual amount of fees collected, limit administrative expenses to 10 percent of the total annual assets of the fund, require that moneys in the fund be used solely for bond forfeiture reclamation, increase the special reclamation tax from one cent to three cents and require the tax to be collected whenever liabilities exceed assets of the fund, and require that moneys in the fund be placed by the Treasurer in an interest bearing account with interest being returned on an annual basis.

8. WVSCMRA Section 22A–3–11a—Site Specific Bonding

West Virginia proposes to develop and implement a site specific bonding system pursuant to this section. Under the system, the amount of the performance bond can not be less than $1,000 nor more than $5,000, and the bond must reflect the potential cost of reclamation associated with the activities to be permitted. Factors to consider include types of mining, mining techniques, mining methods, equipment, support facilities, topography, geology, effect on water quality, type of application, environmental enhancement, mining experience of applicant and compliance history of applicant.

9. WVSCMRA Section 22A–3–12—Performance Standards

The State proposes to amend subparagraph (10) of paragraph (b) to require that operators avoid acid or toxic-mine drainage by preventing or removing water from contact with toxic producing deposits, treating drainage, and casing, sealing or managing boreholes, shafts and wells to keep acid drainage from entering ground and surface waters. West Virginia proposes to revise subparagraph (15) to require the mailing of the proposed blasting schedule to every resident within one-half mile of the blasting site, and to provide any resident or owner of a dwelling within one-half mile of any portion of the permit area the right to a preblast survey. The State proposes to

revise subparagraph (16) of paragraph (b) to provide that variances for underground mining permits shall terminate if operations have not commenced within three years of the date of permit issuance. The State also proposes to revise subparagraph (22) of paragraph (b) to require that rock to be used in durable rock fills not slake in water and not degrade to soil material. Finally, West Virginia proposes to revise paragraph (e) to allow the Director to promulgate rules that permit variances from approximate original contour.

10. WVSCMRA Section 22A-3-15—Inspections

West Virginia proposes to revise paragraph (b) to require that monitoring equipment be installed, maintained and used consistent with section nine. The State also proposes to delete the provision in paragraph (g) which provides that permittees, employees and inspectors are not to be held civilly liable for any injury sustained by a person accompanying an inspector on an inspection. In addition, any such person is responsible for supplying their own safety equipment. This revision is intended to satisfy the requirements of 30 CFR 948.12(a) and 948.13(e).

11. WVSCMRA Section 22A-3-17—Notice of Violation

West Virginia proposes to revise paragraph (a) of this section to require the issuance of a notice of violation whenever any provision of WVSCMRA, the regulations promulgated pursuant thereto or a permit condition has not been complied with. In addition, the time set for initial abatement of a notice of violation has been changed from 15 to 30 days. The State also proposes to delete the provision that exempts cessation orders that are released or expire within 24 hours after issuance from mandatory civil penalty assessment. The State proposes to revise paragraph (b) to allow for the suspension of a permit and the promulgation of regulations for permit revocation and bond forfeiture. Finally, West Virginia proposes to revise paragraphs (e) and (f) to provide for formal appeal and temporary relief procedures. These revisions are intended to satisfy the requirements at 30 CFR 948.16(c) (8) and (9).

12. WVSCMRA Section 22A-3-18—Permit Approval

The State proposes to revise paragraph (a) of this section to require the submission of a complete permit application before a decision is rendered. The applicant has the burden of establishing that the application is in compliance with the program requirements. West Virginia also proposes to revise paragraph (c) to require that permit applications contain violation information on any surface mining operation owned or controlled by the applicant. This revision is intended to satisfy the requirements of 30 CFR 948.12(g) and 948.13(f). Also, the State proposes to allow an operator to be reinstated if the violations which resulted in the revocation or forfeiture have not caused irreparable damage to the environment.

13. WVSCMRA Section 22A-3-19—Permit Renewal and Revision Requirements

The State proposes to revise paragraph (a) of this section to require that (1) if a renewal application proposes to extend the operation beyond the original boundaries, that portion of the renewal application involving the new area is subject to the full permitting requirements, (2) a permit renewal application include a filing fee of $2,000, and (3) if a permittee intends to add new area to a permit, the original permit may be amended to include the new area, provided it is subject to all the permitting requirements.

14. WVSCMRA Section 22A-3-22—Designation of Areas Unsuitable for Mining

West Virginia proposes to revise paragraph (b) of this section by deleting the word commissioner. The revised provision gives any person having an interest which is or may be adversely affected the right to petition the Director to have the area designated as unsuitable for mining or to have such designation terminated.

15. WVSCMRA Section 22A-3-26—Surface Mining Operations Not Subject to the Act

The State proposes to delete paragraph (b) of this section which provided an exemption for the extraction of coal by a landowner engaged in construction. The exemption for government financed construction at paragraph (c) is being revised to provide that coal extraction incidental to federal, state, county, municipal, or other local government financed highway or other construction is exempt from the requirements of the Act. The State also proposes to delete paragraph (d) which provided an exemption for the extraction of coal which affects two acres or less. In addition, the State is deleting the reference to its incidental coal mining requirements at section 22A-3-9a. This revision is intended to satisfy the requirement at 30 CFR 948.16(c)(7).

16. WVSCMRA Section 22A-3-28—Special Permits for Abandoned Coal Waste Piles

West Virginia proposes to revise paragraph (d) of this section by deleting the word "reprocessing" and adding the word "removal". The special permit is solely for removal of abandoned coal waste piles and does not include the reprocessing of such piles.

17. WVSCMRA Section 22A-3-40—National Pollutant Discharge Elimination System

The State proposes to revise this section to require that the filing fee for an NPDES permit application be $500 and the filing fee for a renewal application be $1,000.

Regulatory Modifications

Pursuant to § 732.17(d), on March 6, 1990, OSM notified the State that certain areas of its program were determined to be less effective than the Federal requirements as a result of revisions made to the Federal regulations between June 8, 1988, and August 30, 1989 (Administrative Record No. WV 834). This letter is commonly referred to as the Regulatory Reform III part 732 notification. Some of the proposed regulatory revisions submitted by the State today are in response to that letter, particularly Part E—Haulroads and Support Facilities.

West Virginia's Surface Mining Reclamation Regulations were partially approved by the Secretary of the Interior on May 23, 1990 (55 FR 21304–21340). As discussed in 30 CFR 948.15(k) and § 948.16, the decision resulted in the disapproval of 11 regulatory requirements and 36 provisions were found to be less effective than the Federal regulations. The State was required to amend these provisions by June 29, 1990, or April 30, 1991.

As discussed in Findings 5.3 and 14.14(c) of the May 23, 1990, **Federal Register** notice, concerns were raised regarding the State's design requirements for sediment control structures and the construction of valley fills with rock core chimney drains. As a result, the Secretary directed OSM to conduct studies to determine if changes were needed in the State program. The studies were to evaluate the State's design standard of 0.125 acre-feet of storage per disturbed acre for sediment control structures, the use of rock core chimney drains in valley fills that exceed 250,000 cubic yards and the construction of rock core chimney drains without filter systems. On March

16, 1992, OSM's Eastern Support Center completed its study on the nine sediment control structures in the State (Administrative Record WV 890). The results of that study will be discussed in more detail in the final rule. Copies of the study are available for public review and comment. Interested persons should contact the OSM Charleston Field Office listed above under "ADDRESSES" for a copy of the study. OSM has not completed its valley fill study at this time. The results of that study may also be discussed later in the final rule.

On October 4 and November 19, 1991, OSM approved with certain exceptions additional revisions to the State's regulations (56 FR 50256–50270 and 58306–58311). The revisions related to definitions, sediment control structures, reclamation plans, multiple-seam mining, excess spoil fills, underdrains, coal refuse disposal and civil penalty assessments. These approvals resulted in the removal of certain required amendments and the addition of other exceptions and required amendments at 30 CFR 948.15 (l) and (m) and § 948.16.

The amendments submitted on June 28, 1993, and July 30, 1993, contain revisions to West Virginia's Surface Mining Reclamation Regulations (Administrative Record Nos. WV 889 and WV 893). The regulatory revisions are intended to satisfy the disapprovals at 30 CFR 948.15 (k), (l)(2) and (m)(2) and the remaining required amendments set forth at § 948.16 (f) through (iii). The substantive changes to the regulations are discussed below. The State also made other minor changes in wording, numbering, punctuation, etc. that are not discussed herein.

1. CSR Section 38–2–1.2—Applicability

West Virginia proposes to delete former paragraph (b) of this subsection which provides that for applications for new operations which received an SMA number prior to June 1, 1990, the applicant shall acknowledge the applicability of the regulations to his proposed operation, in writing, to the Commissioner prior to issuance of the permit. Such acknowledgement shall be deemed sufficient to make the application complete for any new permit requirements contained in the regulations and shall become part of the permit. This revision is intended to satisfy the requirement at 30 CFR 948.12(h).

West Virginia proposes to revise paragraphs (c) and (d) by providing for the termination and reassertion of jurisdiction over a completed surface mining and reclamation operation. This revision is intended to comply with OSM's Regulatory Reform III letter and satisfy the requirements of 30 CFR 700.11(d).

2. CSR Section 38–2–2—Definitions

The State proposes to revise its definition of "impoundment", "operator", "prospecting" and "sediment control structure" at subsections 2.65, 2.80, 2.94 and 2.107. These revisions are intended to satisfy the requirements at 30 CFR 948.15(l)(2) and § 948.16 (f), (n) and (nn).

3. CSR Section 38–2–3.4—Maps

The State proposes to revise paragraph (d), subparagraphs (18), (22), (23), and (24) to require that the permit application identify each topsoil and noncoal waste storage area, each explosive storage and handling facility and the area of land to be affected within the proposed permit area according to the sequence of mining and reclamation. This revision is intended to satisfy the requirements of 30 CFR 948.16(t).

4. CSR Section 38–2–3.6—Operation Plan

West Virginia proposes to revise paragraph (k) of this subsection to require the submission of a fugitive dust control plan. This revision is intended to satisfy the requirements of 30 CFR 948.16(s).

5. CSR Section 38–2–3.7—Excess Spoil

The State proposes to delete the provision in paragraph (a) which gives the Director authority to approve alternative design requirements for excess spoil fills. This revision is intended to satisfy the requirements at 30 CFR 948.15(k)(3) and § 948.16(i).

6. CSR Section 38–2–3.12—Subsidence Control Plan

The State proposes to revise paragraph (a), subparagraph (5) to require that measures be taken to mitigate or remedy material damage to structures due to subsidence. The State also proposes to delete the phrase in paragraph (d), subparagraph (2) which does not require an identification of measures to be taken to protect structures when the applicant demonstrates the right to subside without liability. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(11).

7. CSR Section 38–2–3.14—Removal of Abandoned Coal Waste Piles

The State proposes to revise paragraph (a) of this subsection to only allow the removal of material that meets the definition of coal as set forth in ASTM standard D 388–77. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(4).

8. CSR Section 38–2–3.15—Approved Person

West Virginia proposes to revise its approved person requirements in this subsection. The State is proposing to allow approved persons to certify associated facilities. It also proposes to require the submission of a registration or license in addition to a resume.

9. CSR Section 38–2–3.16—Fish and Wildlife Resources

The State proposes to revise paragraph (a) of this subsection by deleting the word "approval". Under the revised provision, the Director will only have to review permit applications pursuant to the Fish and Wildlife Coordination Act.

10. CSR Section 38–2–3.23—Geology

The State proposes to revise paragraph (f) of this subsection to clarify that the waiver requirements for test borings or core samples are set forth in paragraph (f).

11. CSR Section 38–2–3.25—Transfer, Assignment or Sale of Permit Rights

The State proposes to revise paragraph (a), subparagraph (4) of this subsection to provide that the approval of a transfer application may be granted in advance of the close of the public comment period, provided that the Director can immediately withdraw approval if information is made available as a result of public comment that would preclude approval.

The State also proposes to revise this subsection by adding paragraphs (c), (d) and (e). These requirements provide that permit assignments (operator reassignments) be advertised, contain the ownership and control information required by subsection 3.1 and subcontractors be subject to the eligibility requirements of subsection 3.32. This revision is intended to satisfy the requirements of 30 CFR 948.16(v).

12. CSR Section 38–2–3.27—Permit Revisions

The State proposes to revise paragraph (b) in this subsection to require that each application for a permit revision be reviewed by the Director to determine if an updated probable hydrologic consequences determination (PHC) or cumulative hydrologic impact assessment is needed. This revision is intended to satisfy the requirements of 30 CFR 948.16(w).

The State also proposes to revise paragraph (c) to give the Director the

authority to require reasonable revision of a permit at any time and to delete the provision which only required a revision to assure adequate protection of the environment or public health and safety. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(5) and § 948.16 (j) and (w).

13. CSR Section 38–2–3.28—Incidental Boundary Revisions

West Virginia proposes to revise its incidental boundary revision (IBR) requirements in this subsection. The revisions in paragraph (a) provide that IBRs will be limited to minor shifts or extensions into non-coal areas or areas where coal extraction is incidental to or of only secondary consideration of the intended purpose of the IBR. IBRs will not be granted to abate a violation for encroachment beyond the original permit boundaries, unless an equal amount of area is deleted from the permitted area. Paragraph (b) is revised to allow IBRs for underground mines to be larger than 50 acres when an applicant demonstrates the need for a larger IBR. Also, applications for an IBR must be accompanied by an adequate bond, a map showing the IBR area and a reclamation plan for the area of the IBR. The State proposes to delete subparagraph (6) which provides that all provisions of the IBR which differ from the original permit meet the requirements of the Act and regulations, except as provided in this subsection. Finally, the State proposes to add paragraph (e) which gives the Director the authority to require the publication of an advertisement that provides for a ten-day public comment period for an IBR application.

14. CSR Section 38–2–29—Variances

The State proposes to revise its variance requirements at paragraphs (b), (c), (d) and (e) of this subsection. These paragraphs set forth requirements for granting variances from contemporaneous reclamation. These revisions are intended to satisfy the requirements at 30 CFR 948.16(x).

15. CSR Section 38–2–3.31—Permit Findings

The State proposes to delete the provision in this subsection which requires the WVDEP to use and update ownership and control information from surrounding States in the issuance of permits.

16. CSR Section 38–2–3.33—Improvidently Issued Permits

West Virginia proposes to amend paragraph (f) of this subsection to change the cross reference from subsection (f) to subsection (e), section 17 of WVSCMRA.

17. CSR Section 38–2–4—Haulageways or Access Roads

West Virginia proposes to revise all of its haulroad regulations at section 4. The new haulroad and access road requirements provide for a road classification system, plans and specifications, stream crossings, standards for infrequently used roads, construction standards, drainage design standards, performance standards, maintenance standards, reclamation standards, primary road standards and certification. In addition, section 4 contains design, construction, maintenance and abandonment requirements for other transportation facilities. These revisions were made in response to the OSM Regulatory Reform III letter discussed above.

18. CSR Section 38–2–5.2—Intermittent or Perennial Streams.

The State proposes to revise this subsection to provide that before the Director can approve any mining within 100 feet of an intermittent or perennial stream, he must find that such activities will not cause or contribute to the violation of applicable State or Federal water quality standards. This revision is intended to satisfy the requirements of 40 CFR 948.16(aa).

19. CSR Section 38–2–5.4—Sediment Control

West Virginia proposes to revive paragraph (a) of this subsection to make its sediment control requirements applicable to other water retention structures, and it is deleting all references to on-bench sediment control systems. The State has also deleted the reference to the design, construction and maintenance criteria in the Technical Handbook. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(6) and 30 CFR 948.16(n).

The State proposes to revise paragraph (b) to make its design and construction requirements applicable to sediment control or other water retention structures used in association with the mining operation. The State has deleted references to on-bench sediment control structures. West Virginia proposes to revise subparagraph (12) of paragraph (b) to require that foundation investigations and any necessary laboratory testing be performed to determine foundation stability design for impoundments meeting the size or other criteria of 30 CFR 77.216(a). This revision is intended to satisfy the requirement at 30 CFR 948.16(pp). The State also proposes to revise subparagraph (13) of paragraph (b) to require that all sediment control and other water retention structures be certified in accordance with the design requirements of the Act and regulations and other design criteria established by the Director.

West Virginia proposes to revise paragraph (c) to make the requirements of that paragraph applicable to all embankment type sediment control or other water retention structures. This revision is intended to satisfy the requirement at 30 CFR 948.16(qq). The State proposes to revise subparagraph (3) of paragraph (c) to require the installation of cutoff trenches during embankment construction to ensure stability, This revision is intended to satisfy the requirement at 30 CFR 948.16(rr). West Virginia proposes to revise subparagraph (4) of paragraph (c) to require prompt notification of the State if any examination or inspection of an impoundment discloses that a hazard exists. This revision is intended to satisfy the requirement at 30 CFR 948.16(ss). The State also proposes to revise paragraph (6) of paragraph (c) to require that the design plan for an impoundment which meets the size criteria of 30 CFR 77.216(a) include a stability analysis which includes but is not limited to strength parameters, pore pressures, and long-term seepage conditions. This revision is intended to satisfy a portion of the requirements at 30 CFR 948.16(ccc).

West Virginia proposes to revise paragraph (d) to require that where sediment control or other water retention structures are constructed in sequence with the advance of the mining to allow for on-bench construction, such systems shall be constructed and certified in sections of 1,000 linear feet or less as measured from the active pit. This revision is intended to satisfy in part the requirement at 30 CFR 948.16(tt).

The State proposes to revise paragraph (e) to require the inspection of sediment control or other water retention structures. The State also proposes to require that the professional engineer, licensed land surveyor, or other specialist involved in the inspection of impoundments be experienced in the construction of impoundments. This revision is intended to satisfy the requirement at 30 CFR 948.16(uu).

West Virginia proposes to revise paragraph (h) to make its abandonment requirements applicable to sediment control and other water retention structures.

20. CSR Section 38-2-5.5—Permanent Impoundments

The State proposes to revise this subsection to make these requirements applicable to sediment control or other water retention structures. The State also proposes to require that a request to leave a permanent impoundment be submitted as a permit revision. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(l)(2) and 948.16(vv).

21. CSR Section 38-2-6—Blasting

West Virginia proposes to revise paragraph (b) of subsection 6.3 to require that all local governments and residents or owners of dwellings or structures located within one-half mile of the blast site be notified of surface blasting activities incident to an underground mine. The State also proposes to require that the blasting notification be announced weekly, but in no case less than 24 hours before the blasting will occur.

The State proposes to revise subsection 6.6 to require that all non-protected structures in the vicinity of the blasting area be protected from damage by the establishment of a maximum allowable limit on ground vibration specified by the operator in the blasting plan and approved by the Director. This revision is intended to satisfy the requirement at 30 CFR 948.16(cc).

The State also proposes to delete the provision at paragraph (a) of subsection 6.8 which excludes certain portions of the permit area when determining the applicability of preblast survey notification requirements. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(7) and 948.16(l).

22. CSR Section 38-2-8—Fish and Wildlife

West Virginia proposes to add an exception to paragraph (e) of subsection 8.1 to require the use of the best technology currently available to protect raptors and large mammals, except where the Director determines that such requirements are unnecessary.

23. CSR Section 38-2-9—Revegetation

The State proposes to revise paragraphs (g) and (h) of subsection 9.3 to require that, in determining success on areas to be developed for forestland and wildlife resources or commercial woodlands, the trees and shrubs counted be healthy and in place for not less than two growing seasons. This revision is intended to satisfy OSM's Regulatory Reform III letter of March 6, 1990.

24. CSR Section 38-2-11.1—Insurance

The State proposes to revise paragraph (a) of this subsection to clarify that liability insurance must be maintained throughout the life of the permit or any renewal thereof. The State also proposes to revise this paragraph to provide that there are no exclusions for blasting from the property damage coverage.

25. CSR Section 38-2-11.2—Performance Bonds

West Virginia proposes to delete paragraph (c) of this subsection which requires the Director to notify a permittee who is without bond coverage and require the cessation of mining until bond replacement.

The State proposes to revise paragraph (d) to require the Director to issue a notice of violation against any operator who is without bond coverage. The notice of violation must provide that bond coverage be replaced within 15 days. Mining can not resume until an acceptable form of bond has been posted. The State also proposes to add paragraph (e) to require a showing that the bond is sufficient or the assignee has the capability or financial resources to assume the liability for bonds and permits which are transferred, assigned or sold and which have significant long-term environmental liability.

26. CSR Section 38-2-11.3—Bond Instruments

The State proposes to revise and reinstate its surety bonding, collateral bonding, escrow bonding, self-bonding, and combined surety/escrow bonding requirements in this subsection.

27. CSR Section 38-2-11.4—Incremental Bonding

West Virginia proposes to revise its incremental bonding provisions in this subsection to require that a performance bond in the appropriate amount be filed for the initial increment and each succeeding increment of land to be mined within the permit area prior to any land disturbance. Once an operator has chosen to bond either the entire permit area or in increments, the manner of bonding must continue during the term of the permit with the minimum amount of bond being $10,000. The State proposes to delete the provision in subparagraph (3) that requires the amount, duration, form, conditions and terms of the performance bond conform with subsections 11.2 through 11.7.

28. CSR Section 38-2-11.5—Open-Acre Limit Bonding

West Virginia proposes to add new requirements in this subsection allowing for open-acre limit bonding. Under these requirements, an operator must post a general bond in the amount of $750 per acre for the entire permit area. This bond is to ensure successful revegetation. In addition, the operator must post an open-acre limit bond in accordance with the site-specific bonding requirements of subsection 11.6, and an ancillary facility bond for haulroads, sediment control systems and other ancillary facilities at a rate of $1,000 per acre for the total proposed disturbed acreage of such facilities. The general and ancillary facility bonds are to remain in place throughout the life of the operation, but the open-acre limit bond can be reapplied to an undisturbed portion of the permit area after the initial open-acre is reclaimed. This subsection also contains permit application requirements for open-acre limit bonding, and transfer and final release requirements for an open-acre limit bond.

29. CSR Section 38-2-11.6—Site Specific Bonding

West Virginia proposes to add new requirements in this subsection providing for site specific bonding. The four major categories of mining permits subject to these provisions are surface mines, underground mines, coal refuse disposal sites and coal preparation plants. Under these requirements, the bonds can not be less than $1,000 nor more than $5,000 per acre or fraction thereof and they are to reflect the potential cost of reclamation. The factors to be considered in establishing the bond amounts for surface mines include: the number and types of excess spoil fills, the type of operation, the number of seams to be mined, augering, overburden analysis, steepness of slopes, overburden type, mining and reclamation sequence, permit acreage, type of equipment, operator performance and environmental enhancement, which includes remining unreclaimed sites, past reclamation awards and wetland development. The factors to be considered in establishing bond amounts for underground mines include: availability of backfill material, overburden analysis, steepness of slopes, type of overburden, permit acreage, life of mine, ancillary facilities, including coal preparation plant and coal refuse disposal site, operator performance and environmental enhancement. The criteria to be considered in setting bonds for coal

preparation plants include: capacity of plant, silo capacity, stockpile acreage, size end type of refuse disposal site, permit acreage, plant life, operator performance and environmental enhancement. Finally, the factors to be considered in establishing bonding amounts for coal refuse disposal sites include: size and type of coal refuse disposal site, steepness of slopes, availability of topsoil for reclamation, projected life of operation, operator performance and environmental enhancement.

30. CSR Section 38–2–11.7—Environmental Security Account

The State proposes to add subsection 11.7. This subsection requires the WVDEP to study the feasibility of developing an environmental security account for water quality. The study is to include a screening process for determining which sites have the potential for producing acid mine drainage, a process for predicting the rate and duration of acid mine drainage, a method for estimating water treatment costs, a system to ensure that sufficient monies will be placed in an escrow account that will provide sufficient financial assurance that treatment will be accomplished, and procedures that will ensure the expenditure of funds from the escrow account in the event of default to provide water treatment. Nothing in this subsection can authorize the issuance of a permit that will violate applicable effluent limitations or water quality standards without treatment.

31. CSR Section 38–2–12.2—Bond Release

West Virginia proposes to review paragraph (c) of this subsection to provide for the release of all or part of the bond for the permit area or increment thereof. The State also proposes to revise this paragraph to require that the terms and conditions of the NPDES permit be met to delete the provision relating to chemical treatment of water at Phase II bond release. The amount of the remaining bond must be sufficient to reestablish vegetation and maintain drainage control structures.

The State proposes to add paragraph (d) to prohibit the release of any portion of the open-acre limit bond until all coal extraction operations are completed and the entire disturbed area has been completely backfilled and regraded.

The State to add paragraph (e) in this subsection to provide that no bond release or reduction be granted if, at the time water discharged from or affected by the operation requires chemical treatment in order to comply with applicable effluent limitations or water quality standards.

32. CSR Section 38–2–12.3—Bond Adjustments

West Virginia proposes to revise this subsection to provide for bond adjustments. The proposed rules provide that where a permittee demonstrates on the basis of a sworn statement and a progress map that portion of the permit area will remain undisturbed or has been overbonded, the Director may adjust the amount of the bond corresponding to the number of undisturbed or overbonded acres, provided that 2 minimum $10,000 bond remains for the disturbed portion of the permit. Within 30 days, the Director must make a decision on the request. If the request is denied, the Director must provide the permittee with an opportunity for an informal conference on the decision.

33. CSR Section 38–2–12.4—Bond Forfeiture

The State proposes to revise paragraph (a) in this subsection to provide that, when required, the Director must forfeit all of the bond. The State proposes to delete the provision in this paragraph which requires that the amount of the bond to be forfeited be based on the estimated total cost of achieving the reclamation plan requirements. The State also proposes to revise this paragraph to provide that when a surety completes the reclamation, no liability will be released until successful completion of all reclamation under the terms of the permit and in accordance with the Act and these regulations to include the revegetation liability period. West Virginia proposes to revise paragraph (b) to require that in the event of forfeiture, the Director shall proceed and collect the bond in accordance with Section 22A–3–17(b) of the WVSCMRA. The proceeds must be used to accomplish completion of reclamation in accordance with Section 22A–3–23 of the WVSCMRA, this subsection and subsection 12.5 governing water quality. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(1)(2).

The State proposes to revise subsection (c) of this subsection to provide that, after the notice of forfeiture has been served, the Director shall in a timely manner, but not later than 180 days after such notice, initiate reclamation operations to reclaim the site, including action to remediate any acid mine drainage from the site. The Director must also take the most effective actions possible to remediate acid mine drainage, including chemical treatment where appropriate with the resources available.

The State proposes to revise paragraph (d) to provide that where the proceeds of bond forfeiture are less than the actual cost of reclamation, the Director "shall" (emphasis added) make expenditure from the Special Reclamation Fund to complete reclamation, including chemical treatment where appropriate. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(8) and § 948.16(ww).

The State also proposes to revise paragraph (e) of this subsection to provide that the operator, permittee, or other responsible party be liable for all costs in excess of the amount forfeited. The Director may commence civil, criminal or other appropriate action to collect such costs.

34. CSR Section 38–2–12.5—Water Quality Enhancement

West Virginia proposes to add a subsection to its rules regarding water quality enhancement. Paragraph (a) requires the Director to establish an inventory of all sites where bonds have been forfeited. The inventory is to include data relating to the quality and quantity of water being discharged from the forfeited sites.

Paragraph (b) requires the Director to establish a priority listing of such sites based upon the severity of the discharges, the quality of the receiving stream, effects on downstream water users, and other factors determined to affect the priority ranking.

Paragraph (c) provides that until the Legislature supplements or adjusts the Special Reclamation Fund, the Director can selectively choose sites from the inventory to receive water quality enhancement projects.

Paragraph (d) of this subsection provides that, in selecting sites for water improvement projects, the Director must consider relative benefits and costs of the projects. Expenditures from the Special Reclamation Fund for such projects can not exceed 25 percent of the Fund's gross annual revenue.

Paragraph (e) requires the Director to provide the Legislature by December 31, 1993, a detailed report and inventory of acid mine drainage bond forfeiture sites in the State. The report and inventory must contain cost estimates of the long-term chemical treatment of drainage from each site to meet various standards, including effluent limitations and applicable water quality standards. The report and inventory must contain proposals for supplementing and adjusting the Special Reclamation Fund

to assure that the Fund is adequate to pay for the long-term treatment of acid mine drainage from all acid mine drainage bond forfeiture sites so that the discharges from these sites meet the effluent limitations set forth in 40 CFR part 434 and the applicable water quality standards. The report must contain a recommendation from the Director on which proposal he believes will best ensure that the acid mine drainage from bond forfeiture sites is effectively addressed.

35. CSR Section 38-2-13—Notice of Intent to Prospect

West Virginia proposes to add subsection 13.1 to this section. Under this subsection, where prospecting operations are proposed without surface disturbance and without appreciable impacts on land, air, water, or other environmental resources, the Director may waive the requirements of this section and the bonding requirements of section 22A-3-7 of the WVSCMRA. To qualify, at least 15 days prior to commencement of any prospecting activities, the operator must file with the Director a written notice of intent to prospect. The notice must include a description of the activities to be conducted and a USGS topographic map showing the area to be prospected. The Director may approve the notice of intent subject to the findings required by paragraph (b) of subsection 13.4. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(l)(2).

The State also proposes to revise subsection 13.10 to provide that, notwithstanding any other provision of this section, any person who proposes to conduct prospecting operations on lands which have been designated as unsuitable for surface mining pursuant to section 22A-3-22 of the WVSCMRA shall file a notice of intent in accordance with subsection 13.3. Approval of the notice of intent shall be in accordance with subsection 13.4.

36. CSR Section 38-2-14.5—Hydrologic Balance

West Virginia proposes to revise paragraph (b) of this subsection to require that monitoring frequency and effluent limitations be governed by the standards set forth in an NPDES permit issued pursuant to section 20-5A-1 *et seq.* of the West Virginia Code, the Federal Water Pollution Control Act as amended, 33 U.S.C. 1251 *et seq.* and the rules and regulations promulgated thereunder.

The State proposes to revise paragraph (c) to require that any water discharged from a permit area and treated complies with the requirements of paragraph (b) of this subsection.

The State also proposes to revise paragraph (h) to provide that a waiver of water supply replacement rights granted by a landowner can apply only to underground mining, provided that it does not exempt any operator from the responsibility of maintaining water quality. This revision is intended to satisfy the requirements of 30 CFR 948.15(k)(9) and § 948.16(q).

37. CSR Section 38-2-14.8—Steep Slope Mining

The State proposes to revise subparagraph (1) of paragraph (a) of this subsection to provide that casting of spoil from a higher seam to a lower seam in multiple seam operations may only occur where the highwall of the lower seam intersects the outcrop of the upper seam; the lowest seam is mined first or in advance of the upper seams; and minimum bench widths based on slopes are established on the lower bench sufficient to accommodate both spoil placement from the upper seam and bench drainage structures. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(l)(2). It is also intended to satisfy the requirements at 30 CFR 948.16 (xx), (yy) and (zz).

The State also proposes to revise subparagraph (4) of paragraph (a) to prohibit placement of woody materials in the backfill unless the Director first determines that the method of placement of woody material will not deteriorate the future stability of the backfilled area. This revision is intended to satisfy the requirement at 30 CFR 948.16(hh).

38. CSR Section 38-2-14.11—Inactive Status

West Virginia proposes to revise paragraph (b) of this subsection to provide that the Director may grant inactive status for a period not to exceed one-half the permit term if it is determined that the application contains sufficient information to meet all requirements of paragraph (a): *Provided,* That where the applicant documents in the application that the operations will become inactive for more than 30 days, but will be reactivated on an intermittent and/or irregular basis during the approval period, such operations are not required to reapply for inactive status except at the termination date of the initial term of approval: *Provided, however,* That the Director may review the approval of inactive status during its term and require updated information pursuant to paragraph (a) and, based upon this or other information, may modify or rescind the approval prior to its initial termination date.

39. CSR Section 38-2-14.12—Variance From Approximate Original Contour

West Virginia proposes to revise paragraph (a) to provide that the Director may grant a variance from the requirements for restoring the mined land in steep slope areas to approximate original contour if the watershed of the permit and adjacent area will be improved by reducing pollutants, environmental impacts, or flood hazards; provided that, the watershed will be deemed improved only if changes in seasonal flow volumes from the proposed permit area will not adversely affect surface water ecology or any existing or planned use of the surface or ground water. This change is intended to satisfy the requirement at 30 CFR 948.16(ii).

40. CSR Section 38-2-14.14—Excess Spoil Disposal

West Virginia proposes to revise paragraph (b) of this subsection to require that certification forms for durable rock fills be accompanied by a statement attesting that the fill contains no more than 20 percent non-durable material; a statement attesting that foundation preparation is proceeding in accordance with the design plans; a statement that prohibited materials are not being placed, deposited, or disposed of into the fill area; and a statement that sediment control measures are constructed and being maintained in accordance with the approved design plans and the terms and conditions of the permit.

The State proposes to revise paragraph (e) of this subsection to require that the fill, not just the foundation, be designed to assure a long-term static safety factor of 1.5 or greater. This revision is intended to satisfy the requirement at 30 CFR 948.16(jj). The State also proposes to revise this paragraph to require that during and after construction, grading may drain surface water away from the outslope of the fill and toward the rock core.

West Virginia proposes to revise paragraph (g) to define soil material to mean material of which at least 50 percent is finer than 0.074 mm, which exhibits plasticity, and which meets the criteria for group symbol ML, CL, OL, MH, CH, or OH, as determined by the Unified Soil Classification System (ASTM D-2487). The State proposes to require that runoff from areas above and adjacent to a durable rock fill be diverted into stabilized diversion

channels, designed and constructed to safely pass the peak runoff from a 100-year, 24-hour precipitation event around and through the fill. The State also proposes to require additional storage capacity or sediment control measures if sediment removal performance of the structures are found to be deficient during the operation and construction of the durable rock fill. Finally, the State has revised this paragraph to prohibit the placement of certain materials in durable rock fills.

41. CSR Section 38-2-14.15—Contemporaneous Reclamation Standards

West Virginia has completely revised this subsection to require that the mining and reclamation plan for each operation describe how the mining and reclamation operations will be coordinated to minimize total land disturbance and to keep reclamation operations as contemporaneous as possible with the advance of mining operations. The revised provisions specify time, distance and acreage limits for single seam contour mining, single seam contour mining and augering operations, area mining, augering, multiple seam mining, and mountaintop removal operations. The proposed rules set deadlines for existing and new operations to comply with these requirements, and they allow the Director to grant variances to specific standards with proper justification.

42. CSR Section 38-2-14.17—Control of Fugitive Dust

West Virginia proposes to revise this subsection to require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion. This revision is intended to satisfy the requirement at 30 CFR 948.16(s).

43. CSR Section 38-2-15.2—Backfill and Regrading Underground Mines

The State proposes to revise paragraph (b) of this subsection to require that reclamation activities of an underground mine be initiated within 30 days and final backfilling and regrading be initiated within 180 days of completion of underground operations.

44. CSR Section 38-2-16—Subsidence Control

West Virginia proposes to revise paragraph (c) of this subsection by deleting the phrase, "To the extent required under applicable provisions of State law." This revision is intended to satisfy the requirement at 30 CFR 948.15(k)(11).

45. CSR Section 38-2-17—Small Operator Assistance Program

The State proposes to amend its small operator assistance requirements to require that all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management be attributed to the applicant. This revision is intended to satisfy the requirement at 30 CFR 948.16(kk).

46. CSR Section 38-2-18—Citizen Actions

West Virginia proposes to revise paragraph (b) of subsection 18.3 to provide that any person who is or may be adversely affected by the decision of the Director may appeal such decision to the Reclamation Board of Review pursuant to section 22-4-2 of the Code of West Virginia.

47. CSR Section 38-2-20.1—Inspection Frequencies

The State proposes to revise paragraph (a) of this subsection to provide that prospecting operations be inspected "as necessary" to assure compliance with the Act and these regulations. The approved regulations provide that inspections be conducted on a quarterly basis.

48. CSR Section 38-2-20.2—Notices of Violations

The State proposes to revise paragraph (a) of this subsection to provide that when the Director determines that a surface mining and reclamation operation or prospecting operation is in violation of any of the requirements of the Act, these regulations or the terms and conditions of the permit or prospecting approval, a notice of violation shall be issued. Such notice of violation shall comply with all the requirements and provisions of this subsection. In the past, pursuant to its Code of Violations, the State issued enforcement actions for certain violations. This proposal will only allow the issuance of a notice of violation.

49. CSR Section 38-2-20.4—Show Cause Orders

West Virginia proposes to revise paragraph (b) of this subsection by adding the phrase, "where violations were cited." The proposal provides that the Director may determine a pattern of violations exists or has existed where violations were cited on two or more inspections of the permit area within any 12-month period.

50. CSR Section 38-2-20.5—Civil Penalty Determinations

The State proposes to revise paragraph (b) to provide that the Director shall, for "any" cessation order, assess a civil penalty in accordance with section 22A-3-17(a) of the WVSCMRA for each day of continuing violation, except that such penalty shall not be assessed for more than 30 days. This revision is intended to satisfy the requirement at 30 CFR 948.16(fff).

In addition, the State proposes to revise this paragraph by deleting the provision that each imminent harm cessation order have an initial assessment in accordance with subsection 20.7. This revision is intended to satisfy in part the requirements of 30 CFR 948.15(m)(2). It is also intended to satisfy the requirement at 30 CFR 948.16(ddd).

The State also proposes to revise this paragraph to provide that if the cessation order has not been abated or modified within the 30-day period, the Director shall initiate action pursuant to section 22A-3-17 (b), (g), (h) and (j) of the WVSCMRA as appropriate. This revision is intended to satisfy the requirement at 30 CFR 948.16(eee).

51. CSR Section 38-2-20.6—Procedures for Assessing Civil Penalties

The State proposes to revise paragraph (d) of this subsection to remove the restrictions on public participation at assessment conferences. The proposed rule provides that any person may submit in writing at the time of the assessment conference a request to present evidence concerning the violation(s) being conferenced. Such request must be granted by the assessment officer. These changes are intended to satisfy the requirements of 30 CFR 948.15(m)(2) and § 948.16(ggg).

52. CSR Section 38-2-20.7—Assessment Rates

West Virginia proposes to revise paragraphs (a), (b) and (c) of this subsection to clarify that the monetary denomination used in the assessment of civil penalties is dollars. This revision is intended to satisfy the requirement at 30 CFR 948.16(hhh).

The State also proposes to revise paragraph (d) of this subsection to ensure that an operator is awarded good faith only where abatement is achieved before the time set for abatement. These revisions are intended to satisfy the requirements of 30 CFR 948.15(m)(2) and § 948.16(iii).

53. CSR Section 38-2-22—Coal Refuse

The State proposes to revise subsection 22.2 to require that coal

refuse disposal facilities be designed to attain a minimum long-term static safety factor of 1.5 and a seismic factor of safety of 1.2. The State also proposes to revise paragraph (a) of subsection 22.5 to require that all coal refuse sites be constructed and maintained to attain a minimum long-term safety factor of 1.5 and impounding structures also attain a seismic safety factor of 1.2. These revisions are intended to satisfy the requirement of 30 CFR 948.16(aaa).

The State proposes to revise paragraph (p) of subsection 22.3 by deleting the provision that allows coal refuse piles to be constructed with slopes exceeding two (2) horizontal to one (1) vertical. This revision is intended to satisfy the requirements of 30 CFR 948.15(m) and § 948.16(bbb).

The State proposes to revise paragraph (f) of subsection 22.4 to provide that Class A coal refuse impoundments to designed for a minimum P 100+0.12 (PMP−P 100) inches of rainfall in 6 hours and Class B coal refuse impoundments be designed for a minimum P 100+0.40 (PMP−P 100) inches of rainfall in 6 hours. These revisions are intended to satisfy in part OSM's Regulatory Reform III notification.

West Virginia proposes to revise paragraphs (g) and (h) of subsection 22.4 to allow the use of single open channel or open channel spillways if they are on non-erodible materials and designed to carry sustained flows or earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected. These revisions are intended to satisfy the requirement at 30 CFR 948.16(mm).

The State also proposes to revise paragraphs (a), (c) and (d) of subsection 22.7 to require that inspections of impounding refuse piles be made regularly, but not less than quarterly during construction; non-MSHA size impoundments be examined at least quarterly; and a copy of each inspection or examination report be retained at or near the mine site.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSM is seeking comments on the revisions to the State's statute that were submitted on June 28, 1993 (Administrative Record No. WV 888) and the modifications to the State's regulations that were initially submitted on June 28, 1993, and revised on July 30, 1993 (Administrative Record Nos. WV 889 and WV 893). Comments should address whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on August 27, 1993. If no one requests an opportunity to testify at the public hearing by that date, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate remarks and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held, and the results of the meeting included in the Administrative Record.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM Charleston Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**".

All such hearings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and § 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities

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

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 4, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93-19351 Filed 8-11-93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 93-024]

RIN 2115-AE50

Alternating One Way Traffic Zone Restrictions in the Blue Water Bridge Area of St. Clair River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The Coast Guard is proposing to amend the rule affecting the class of vessels to which navigation restrictions are applicable in the Blue Water Bridge area of the St. Clair River. The amendment would lift these navigation restrictions from power driven vessels less than 55 meters in length, without a tow. Further, the amendment would impose these navigation restrictions on all vessels engaged in towing another vessel astern, alongside, or by pushing ahead, regardless of the size of the towing vessel. These changes will decrease transit time through this area while generally improving vessel navigation safety.

DATES: Comments must be received on or before September 27, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 93-024), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Irene Hoffman, Project Manager, Vessel Traffic Services Division. The telephone number is 202-267-6277.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93-024) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. It not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES". The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Irene Hoffman, Project Manager, Vessel Traffic Services Division and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose

All entities involved consider the present one way traffic zone regulations in the Blue Water Bridge area to be too restrictive on vessel traffic. This proposed regulation incorporates suggestions expressed by the Lake Carrier's Association, the Canadian Shipowner's Association, the Canadian Coast Guard's Central Region Marine Advisory Council; the Ninth U.S. Coast Guard District, and the Detroit St. Clair River Working Group.

The Canadian Coast Guard operates a Vessel Traffic Service (VTS) at Sarnia, Ontario, Canada (call sign "Sarnia Traffic"). Due to this VTS, the proximity of the subject area with Canada and shared waterways, this regulatory project amounts to a cooperative international effort. The Canadian Government is amending its corresponding regulation and expects it to be effective for the 1994 navigation season.

Discussion of Proposed Amendments

The Coast Guard intends to amend the regulations to alleviate transit delays and improve safety in this area by changing the class of vessels to which these traffic restrictions apply. At present, 33 CFR 162.134(c)(2) imposes an alternating one way traffic zone in the Blue Water Bridge area of the St. Clair River. Under this restriction, vessels of 20 meters or more in length and vessels 8 meters or more in length engaged in towing (33 CFR 162.130(b)(3)) may not overtake, come about, or meet within this traffic zone. This proposal would lift these restrictions from power driven vessels less than 55 meters in length, without a tow. These regulations would still apply to dredges, floating plants, sailing vessels of 20 meters or more in length, and power driven vessels of 55 meters or more in length.

The Coast Guard has determined that allowing power driven vessels less than 55 meters in length, without a tow, to navigate freely in this area would facilitate shipping schedules that have historically been delayed because of these navigation restrictions. It would not increase the risk of collision.

This proposal also would impose these navigation restrictions on all vessels engaged in towing another vessel astern, alongside, or pushing ahead, rather than only commercial vessels greater than 8 meters engaged in towing. This change is proposed because the act of towing is the more important navigational safety issue, not the length of the towing vessel. Towing reduces the maneuverability of vessels and increases the risk of collision. This provision would also be more closely aligned with the corresponding Canadian regulations.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary. The proposed change reduces the overall number of individuals or entities affected. The expected cost to comply with the proposed requirements should not be significantly greater than the cost of complying with the existing regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the economic impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a further Federalism Assessment. This proposal establishes certain navigation rules for a waterway along an international border. The authority to regulate concerning the navigable waterways of the United States is committed to the Coast Guard by statute. If this rule becomes final, the Coast Guard intends it to preempt state action addressing the same matter, although no such action is expected.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2(1) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as a procedural regulation which clearly does not have any environmental impacts. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES".

List of Subjects in 33 CFR Part 162

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. In § 162.130 the introductory text of paragraph (b)(3) is revised and paragraph (b)(4) is added to read as follows:

§ 162.130 Connecting waters from Lake Huron to Lake Erie; general rules.

(a) * * *

(b) * * *

(3) The communication rules in § 162.132, the traffic rules in § 162.134, except for § 162.134(c)(2), and the anchorage rules in § 162.136 apply to the following vessels:

* * * * *

(4) The traffic rules contained in § 162.134(c)(2) apply to the following vessels:

(i) Sailing vessels of 20 meters or more in length;

(ii) Power driven vessels or 55 meters or more in length;

(iii) Vessels engaged in towing another vessel astern, alongside or by pushing ahead; and

(iv) Each dredge and floating plant.

* * * * *

Dated: August 6, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93-19426 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 27-1-5947; A-1-FRL-4691-8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania—Reasonably Available Control Technology Requirements for Knoll Group, a Wood Furniture Surface Coater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the Knoll Group (Knoll) located in Montgomery County, Pennsylvania which is part of the Philadelphia ozone nonattainment area. The intended effect of this action is to propose approval of reasonably available control technology (RACT) requirements for this wood furniture surface coater which is a major emitting source of volatile organic compound (VOC) emissions. This source-specific RACT determination would allow Knoll to meet certain coating emission standards by averaging its emissions across twenty-six wood furniture coating lines on a production-weighted daily basis. This action is being taken in accordance with the Clean Air Act.

DATES: Comments must be received on or before September 13, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597-9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On March 29, 1993, Pennsylvania Department of

Environmental Resources (PA DER) submitted a proposed revision to its State Implementation Plan (SIP) for Knoll. The proposed revision consists of a plan approval (46–326–0001A) and operating permit for Knoll (46–326–0001A) which specifies the coating standards and operating conditions for Knoll's twenty-six (26) wood furniture surface coating lines. Under this plan approval and operating permit, Knoll would be allowed to perform a production-weighted daily average of its emissions at all 26 coating lines to meet the wood furniture coating standards which are also contained in the plan approval and operating permit.

Under Part D of the Clean Air Act, Pennsylvania is required to submit RACT regulations for all major sources of VOC in the Pennsylvania portion of the Philadelphia ozone nonattainment area which consists of Philadelphia, Delaware, Chester, Montgomery and Bucks Counties in Pennsylvania. A major VOC source is defined as a source which emits or has the potential to emit 100 tons of VOC or more per year. Wood furniture surface coating was a category identified by Pennsylvania in accordance with its 1982 ozone SIP as containing major sources for which there needed to be RACT requirements (50 FR 7777). EPA issued guidance documents called Control Technique Guidelines (CTGs) which covers many source categories. Non-CTG sources are those where EPA has not issued a CTG. EPA has not issued a CTG for wood furniture surface coating. On May 26, 1988, EPA made a SIP call to Pennsylvania notifying the Commonwealth that its SIP was inadequate to assure attainment and maintenance of the primary National Ambient Air Quality Standard (NAAQS) for ozone. See 53 FR 34500 (September 7, 1988). A SIP call is a finding made by EPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) in which EPA identifies a SIP to be inadequate to attain and maintain the NAAQS. In a June 14, 1988 follow-up letter, EPA notified Pennsylvania of deficiencies in its VOC regulations as well as identified required regulations which were still missing. A non-CTG RACT regulation for wood furniture surface coaters was listed as missing.

Pennsylvania determined that the only major source for wood furniture surface coating in the Pennsylvania portion of the Philadelphia nonattainment area was Knoll, located in Montgomery County. The plan approval and operating permit submitted by Pennsylvania represents Pennsylvania's response to the 1988 SIP call pertaining to the missing wood furniture non-CTG RACT regulation.

Background

The current Pennsylvania regulations require all surface coating sources to comply with the applicable coating standards on a coating-by-coating basis. While the wood furniture coating standards contained in the Pennsylvania regulations are state enforceable, they have not been approved by EPA. This proposed rulemaking does not address those wood furniture regulations. This proposed rulemaking only addresses the plan approval and operating permit for Knoll submitted by DER on March 29, 1993.

The plan approval and operating permit, both dated March 24, 1993, requires Knoll to meet the following coating standards, on a production-weighted daily average with an additional 20% emission reduction.

Description of coating	Lbs. VOC/gallon of coating less water	Lbs. VOC/gal. solids applied[1]
Clear topcoat	5.9	29.74
Wash coat	6.5	55.63
Final repair coat	6.0	32.47
Semitransparent wiping and glazing stains	6.4	49.07
Semitransparent spray stains and toners	6.8	89.37
Opaque ground coats and enamels	5.5	21.76
All other coatings	7.0	143.11
Clear sealers	6.2	39.34

[1] lbs VOC/gallon solids applied calculated using 7.36 lb/gal as the standard solvent density.

The calculation of actual daily emissions for each coating at each coating line must be performed using the actual solvent density of the coating in use and actual usage of that coating for the day in question. Allowable daily emissions are calculated using 7.36 pounds per gallon (lbs/gal) as the standard solvent density and the actual usage of the coating for the day in question. Once the allowable daily emissions for each coating is calculated, these values are summed for all the coatings used on the 26 wood coating lines. From this sum, calculated on a solids basis for the 26 wood coating lines for a particular day, an additional 20% reduction is subtracted to obtain Knoll's final allowable emissions for a particular day.

In addition to meeting the level of daily allowable emissions as described above, Knoll is required to minimize air emissions by avoiding the use of air atomized spray equipment unless the volume of the coating being applied with the air atomized equipment is used less than 5% by volume of the total coating at the facility or to apply final repair coatings. The permission to use air atomized equipment does not permit Knoll to exceed its 80% daily allowable emissions calculated on a production weighted basis. Knoll is required to randomly sample and test 10% of all the coatings it uses each year and to report those results to PA DER on a quarterly basis. Other reporting and recordkeeping requirements include coating composition and characteristics data, daily usage data, and the usage and density of any diluents used. Records are required to be kept for a period of two years and available to PA DER on request. There is also a contingency provision such that if, at any time, PA DER determines that Knoll is not meeting its required emissions limitations, Knoll is required to take immediate steps to reduce its emissions to below permitted levels which could mean the installation of add-on control devices. Details on the calculation method, formulas, and other conditions of this proposed RACT determination for this source can be found in the accompanying technical support document.

EPA's review of this material indicates that the coating standards and operating conditions as described in the plan approval (46–326–001A) and operating permit (46–326–001A) for Knoll represent RACT for this source. EPA is proposing to approve the Pennsylvania SIP revision for Knoll Group, which was submitted on March 29, 1993. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve the wood furniture coating standards together with the conditions, as described above, as RACT for Knoll Group, located in the Philadelphia ozone nonattainment area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic.

and environmental factors and in relation to relevant statutory and regulatory requirements.

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

SIP approvals under Section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action pertaining to the proposed approval of RACT for Knoll Group, a wood furniture surface coater, has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401—7671q.

Dated: August 2, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–19387 Filed 8–11–93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 300

[FRL–4689–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Aidex Corporation Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Aidex Corporation Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. This action is being taken because EPA and the Iowa Department of Natural Resources (IDNR) have determined that no further remedial action is appropriate at this site, and that actions taken to date are protective of public health, welfare and the environment.

DATES: Comments concerning this site may be submitted on or before September 13, 1993.

ADDRESSES: Comments may be mailed to: Steve Sanders, Waste Management Division/Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Additional Information. Comprehensive information on this site is available for public review at the EPA Region VII Waste Management Division Records Center located at the above address and at the Glenwood, Iowa, City Hall, City of Glenwood, 107 S. Locust Street, Glenwood, Iowa 51534.

To obtain copies of documents in the public docket contact: Barry Thierer, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7515.

FOR FURTHER INFORMATION CONTACT: Steve Sanders, Waste Management Division/Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7578.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region VII, announces its intent to delete the Aidex Corporation Site, Mills County, Iowa, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, as amended, and requests comments on this proposed deletion. Pursuant to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA) and the NCP, the EPA collects data and evaluates releases of hazardous substances, pollutants or contaminants to identify sites that present a threat to public health, welfare or the environment. The NPL is a list of priority releases for long-term remedial evaluation and response. Sites included on the NPL may be the subject of remedial actions financed by the Hazardous Substances Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on the proposed deletion of the Aidex site from the NPL for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deletingsites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Aidex Corporation Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP sets forth the criteria that EPA uses to delete sites from the NPL. Sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required: or

(ii) All appropriate Fund-financed response under CERCLA has been implemented and no further response

action by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment; and, therefore, taking of remedial measures is not appropriate.

For all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow unlimited use and unrestricted access, section 121(c) of CERCLA requires EPA to review the remedial action at least every five years to ensure that the remedy remains protective of human health and the environment. Since the contaminant atrazine still remains in the groundwater, EPA recently completed the five-year review process in June 1993. On May 27, 1992, an inspection of the site was done by EPA and the IDNR. The inspection was done concurrently with the annual groundwater monitoring activities conducted by IDNR. The goal of the inspection was to assure continued protectiveness of the remedy. The results of the inspection and the five-year review indicate that the remedy is still protective of human health and the environment.

III. Deletion Procedures

The EPA Region VII will accept and evaluate public comments on its proposal to delete the site from the NPL before making a final decision. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are often the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region VII has recommended deletion and has prepared the relevant documents.

2. The State of Iowa has concurred with the proposed deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in a major local newspaper of general circulation at or near the site and has been distributed to appropriate Federal, state and local officials and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts August 4, 1993 and will conclude on September 3, 1993.

4. The Region has made all information supporting the proposed deletion available for public inspection and copying in the EPA Regional Office and a local site information repository (Glenwood, Iowa, City Hall).

5. EPA will respond to each significant comment and any significant new data submitted during the comment period and will include this response document (Responsiveness Summary) in the final deletion package.

6. A deletion occurs after the EPA Regional Administrator places a final notice of deletion in the **Federal Register**. Thefinal deletion package will be placed in the local information repository once the notice of final deletion has been published in the **Federal Register**. The NPL will reflect any deletions in the next final update.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Aidex Corporation site, Mills County, Iowa, from the NPL.

The Aidex Corporation site, which covers approximately 20 acres, is located in a rural area of Mills County, Iowa, about 7 miles south-southeast of Council Bluffs, Iowa, and lies near the Missouri River floodplain. Land use adjacent to the site is mostly agricultural with a few individual residences.

The plant formulated various organochlorine, organophosphate, and triazine pesticide compounds from 1974 to 1981. Spills of technical grade pesticides during transfer of the material from tank cars to formulation equipment and the procedures used by Aidex for handling, storage and disposal of process wastes resulted in the release of at least sixteen pesticide compounds into the environment. Liquid process wastes were stored in a leaking underground storage tank. Dry solid pesticide wastes were stored onsite in stacks of open and/or badly deteriorated drums and were buried in two unlined trenches onsite. Technical grade pesticides stored in the liquid formulation building at the site and pesticide wastes were spread by the water used to extinguish a fire in the liquid formulation building in 1976. Following owner bankruptcy in 1981, pesticide wastes were also dumped or spilled on the facility grounds during salvage operations.

The site was placed on the Interim National Priorities List on October 23, 1981. During December of 1981, the site was fenced off using removal authority. The site was then placed on the proposed National Priorities List (NPL) on December 30, 1982 (47 FR 58481). On September 8, 1983, the NPL designation became final (48 FR 40670). The principal threats posed by the site were direct contact (ingestion, inhalation and dermal) with pesticide contaminated soil and wastes located at the site by humans and wildlife. The pesticide contaminated solids, liquids, and sludges were also a source for continued groundwater contamination.

A Remedial Investigation/Feasibility Study (RI/FS) was performed by EPA between 1982 and 1984. During the RI/FS an initial remedial measure (IRM) was conducted to remove some immediate hazards associated with the pesticide contamination. The IRM consisted of on-site collection, bulking, and temporary staging of pesticide contaminated solids, liquids, and sludges; construction of an interceptor drainage ditch around a portion of the site; decontamination of the basement remains of a formulation building destroyed by fire and an underground tank; and off-site transport and disposal of bulk liquid wastes and staged waste materials. The IRM was completed in 1983.

In a Record of Decision signed September 30, 1984, the EPA approved the selection of a remedial alternative for final cleanup of the Aidex site. The remedial action was initiated in 1986 and consisted of excavation and offsite disposal of contaminated soils exceeding 10 parts per million (ppm) total pesticides and backfilling with clean fill, cleanup of the four onsite buildings and a batching pit, construction of three groundwater monitoring wells, and groundwater monitoring. The remedial action was completed in May 1987. Over 20,000 cubic yards of contaminated soil were excavated and disposed at a RCRA permitted offsite landfill. The buildings and a batching pit were cleaned and three additional groundwater monitoring wells were installed. The excavated areas were backfilled with clean fill, graded, and seeded.

Based on sampling of the onsite building interiors in 1987 and 1988, an engineering evaluation/cost analysis (EE/CA) was proposed in November 1990 to assess alternatives for additional cleanup of the building interiors. Air sampling of the building interiors was performed in August 1991 in order to determine if residual contamination in the buildings posed significant risks to human health and the environment. The results of the air sampling demonstrated that there were no significant risks posed by the residual contamination in the buildings. Therefore, no further response actions were needed on the buildings at the Aidex site.

In May 1990, the IDNR prepared a report on the assessment of the groundwater at the Aidex site. The report suggested modifications to the groundwater monitoring plan. EPA reviewed and approved the report and the modified groundwater monitoring

plan proposed by the IDNR was approved. Twelve (12) groundwater monitoring wells are being sampled on an annual basis with two additional wells being sampled every three years. IDNR is conducting the annual sampling.

In September 1991, an Explanation of Significant Differences (ESD) was prepared by EPA explaining the decision to take no further action with respect to the groundwater contamination at the Aidex site. The ESD explained that the levels of contamination in the groundwater do not currently pose any significant risks. Only one contaminant (atrazine) is being detected in the groundwater and only in onsite wells. No contamination is being detected offsite, in any downgradient monitoring wells. Since the concentration of atrazine detected in the groundwater is above the current Maximum Contaminant Level (MCL) of 3 parts per billion, monitoring of the groundwater will continue until the atrazine concentrations fall below the MCL.

Operation and maintenance (O&M) of the remedy for the Aidex site will be performed by the IDNR. The O&M activities will include continued monitoring of the groundwater until the MCL for atrazine is no longer exceeded. EPA and IDNR will review the groundwater monitoring as part of each five-year review. IDNR will maintain the good condition of the groundwater monitoring wells at the site.

Community relations activities have included the periodic issuance of fact sheets and public meetings at various phases of the project in order to keep the public informed of ongoing activities. A public availability session was held in July 1991 to discuss the ESD regarding the no action alternative selected for the groundwater.

The EPA, with concurrence of the State of Iowa, has determined that the Aidex Corporation site poses no significant threat to public health and the environment and, therefore, taking of further remedial measures is not appropriate.

Dated: July 27, 1993.

Martha R. Steincamp,

Acting, Regional Administrator, USEPA Region VII.

[FR Doc. 93-19131 Filed 8-11-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

RIN: 1090-AA41

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is in response to section 319 of Pub. L. 102-381. This provision requires that no funds appropriated or transferred pursuant to the Act can be expended by an entity unless the entity agrees that in expending the assistance they will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act"). This provision does not apply to the Bureau of Reclamation.

DATES: Comments must be in writing and must be received by September 13, 1993.

ADDRESSES: Comments should be mailed to Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 1849 C St., NW., Mail Stop 5512, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb (Chief, Acquisition and Assistance Division), (202) 208-6431.

SUPPLEMENTARY INFORMATION: On October 5, 1992, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 ("the Act") was signed into law. Section 319 of the Act was entitled "Buy American Requirements." The section applied to funds appropriated or transferred pursuant to the Act for the purchase of any equipment or product that may be authorized to be purchased with financial assistance. The provision expressed the "sense of the Congress" that entities receiving the assistance, purchase only American-made equipment and products.

Section 319(b)(2) required that in providing the financial assistance under the Act, the Secretary shall provide to each recipient of the assistance a notice describing the requirement. No other specific guidance was given regarding the implementation of this requirement.

The Department is revising 43 CFR part 12, by adding subpart E to implement these requirements. No specific guidance was provided by Congress, so the Department has decided to base its implementation upon similar rules in the Federal Acquisition Regulation (FAR).

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in this preamble.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities since it is anticipated that no additional costs will be imposed on a substantial number of small entities as a result of the rule. This proposed rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this proposed rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

It is proposed that title 43 of the Code of Federal Regulations be amended as set forth below.

Dated: June 8, 1993.

B.R. Cohen,

Assistant Secretary-Policy, Management and Budget.

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: Sec. 5151-560 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98-502; and sec. 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Pub. L. 102-381).

2. Part 12 is amended by adding subpart E to read as set forth below.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

Sec.
12.700 Scope.
12.705 Definitions.
12.710 Policy.
12.715 Evaluating offers.
12.720 Excepted articles, materials, and supplies.
12.725 Solicitation provisions and contract clause.
12.730 Buy American Act—Supplies.

Buy American Act—Construction Materials

12.800 Scope.
12.805 Definitions.
12.810 Policy.
12.815 Evaluating offers.
12.820 Violations.
12.825 Solicitation provision and contract clause.
12.830 Buy American Act—Construction materials.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

§ 12.700 Scope.

(a) This subpart implements section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Pub. L. 102–381). This section requires that no funds appropriated or transferred pursuant to the Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933, (41 U.S.C. 10a–10c, popularly known as the "Buy American Act"). It applies to procurement contracts under grants and cooperative agreements which provide for the purchase of equipment and products. It does not apply to awards made by the Bureau of Reclamation.

§ 12.705 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this subpart, means (a) an unmanufactured end product mined or produced in the United States; or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.710(c) (3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above $25,000 in value, components of Canadian origin are treated as domestic.

Domestic offer, as used in this subpart, means an offered price for a domestic end product, including transportation to destination.

End product, as used in this subpart, means those articles, materials, and supplies to be acquired for public use under the grant, cooperative agreement, or procurement contract awarded under the grant or cooperative agreement.

Foreign end product, as used in this subpart, means an end product other than a domestic end product.

Foreign offer, as used in this subpart, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

Instrumentality, as used in this subpart, does not include an agency or division of the government of a country.

United States, as used in this subpart, means the United States, its possessions, Puerto Rico, and any other places subject to its jurisdiction.

§ 12.110 Policy.

(a) In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under Pub. L. 102–381, it is the sense of Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) In awarding financial assistance under Pub. L. 102–381, bureaus and offices shall provide to each recipient of the assistance a notice providing the statement in the following format:

Notice

Pursuant to sec. 319 of the Department of the Interior and Related Agencies Appropriations Act, 1993, Pub. L. 102–381, please be advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance under this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(c) The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

(1) For use outside the United States;

(2) For which the cost would be unreasonable, as determined in accordance with § 12.715;

(3) For which the agency head determines that domestic preference would be inconsistent with the public interest; or

(4) That are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality (see § 12.720).

(d) If the procurement contract awarded under the grant or cooperative agreement is estimated to exceed $1 million, the agency head, or a designee at a level no lower than the head of the awarding office, must approve determinations made under paragraph (a)(4) of this section. Officials making these determinations shall consider the feasibility of foregoing the purchase or of purchasing a domestic substitute.

§ 12.715 Evaluating offers.

(a) Unless the agency head determines otherwise, the offer price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see § 12.705), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or

(2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.

(b) The evaluation in paragraph (a) of this section shall be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation.

(c) If an award of more than $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the agency head shall decide whether award to the domestic concern would involve unreasonable cost.

§ 12.720 Excepted articles, materials, and supplies.

(a) As indicated in the FAR, one or more agencies have determined that the articles, materials, and supplies listed in paragraph (b) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. This list in paragraph (b) of this section is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the agency concerned has made a

determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

(b)(1) The excepted articles, materials, and supplies are as follows:

Acetylene, black.
Agar, bulk.
Anise.
Antimony, as metal or oxide.
Asbestos, amosite, chrysotile, and crocidolite.
Bananas.
Bauxite.
Beef, corned, canned.
Beef extract.
Bephenium hydroxynapthoate.
Bismuth.
Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanimide.
Capers.
Cashew nuts.
Castor beans and castor oil.
Chalk, English.
Chestnuts.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
Cocoa beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Colchicine alkaloid, raw.
Copra.
Cork, wood or bark and waste.
Cover glass, microscope slide.
Cryolite, natural.
Dammar gum.
Diamonds, industrial, stones and abrasives.
Emitine, bulk.
Ergot, crude.
Erythrityl tetranitrate.
Fair linen altar.
Fibers of the following types: Abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
Goat and kidskins.
Graphite, natural, crystalline, crucible grade.
Handsewing needles.
Hemp yarn.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Iodine, crude.
Kaurigum.
Lac.
Leather, sheepskin, hair type.
Lavender oil.
Manganese.
Menthol, natural bulk.
Mica.
Microprocessor chips (brought onto a Government or recipient construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Nux vomica, crude.
Oiticica oil.
Olive oil.
Olives (green) pitted or unpitted, or stuffed, in bulk.
Opium, crude.
Oranges, mandarin, canned.
Petroleum, crude oil, unfinished oils, and finished products (see definitions of petroleum terms in paragraph (b)(2) of this section.
Pine needle oil.
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Quinidine.
Quinine.
Rabbit fur felt.
Radium salts, source and special nuclear materials.
Rosettes.
Rubber, crude and latex.
Rutile.
Santonin, crude.
Secretin.
Shellac.
Silk, raw and unmanufactured.
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
Spices and herbs, in bulk.
Sugars, raw.
Swords and scabbards.
Talc, block, steatite.
Tantalum.
Tapioca flour and cassava.
Tartar, crude; tartaric acid and cream of tartar in bulk.
Tea in bulk.
Thread, metallic (gold).
Thyme oil.
Tin in bars, blocks, and pigs.
Triprolidine hydrochloride.
Tungsten.
Vanilla beans.
Venom, cobra.
Wax, carnauba.
Woods: logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Yarn, 50 Denier rayon.

(2) As used in paragraph (b)(1) of this section, petroleum terms are defined as follows:

(i) *Crude Oil*—means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that are not natural gas products.

(ii) *Finished products*—means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

(A) *Asphalt*—a solid or semi-solid cementitious material that (*1*) gradually liquefies when heated, (*2*) has bitumens as its predominating constituents, and (*3*) is obtained in refining crude oil.

(B) *Fuel oil*—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

(C) *Gasoline*—a refined petroleum distillate that, by its composition, is suitable for use as a carburant in internal combustion engines.

(D) *Jet fuel*—a refined petroleum distillate used to fuel jet propulsion engines.

(E) *Liquefied gases*—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

(F) *Lubricating oil*—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.

(G) *Naphtha*—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes.

(H) *Natural gas products*—liquids (under atmospheric conditions), including natural gasoline that—

(*1*) Are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of these processes, from mixtures or hydrocarbons that existed in a vaporous phase in a reservoir, and

(*2*) When recovered and without processing in a refinery, definitions or products contained in paragraph (b)(2)(ii) (B), (C), (D), and (G) of this section.

(I) *Residual fuel oil*—a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil–F–859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

(iii) *Unfinished oils* means one or more of the petroleum oils listed in paragraph (b)(2)(ii) of this section, of a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

§ 12.725 Solicitation provisions and contract clause.

(a) When quotations are obtained orally, vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see § 12.720), shall be acceptable, unless the price for an

offered domestic end product is unreasonable (see § 12.715).

(b) The awarding officer shall insert the clause at § 12.730, Buy American Act—Supplies, solicitations for procurement contracts awarded under the grant or cooperative agreement for the purchase of supplies, or for services involving the furnishing of supplies, for use within the United States.

§ 12.730 Buy American Act—Supplies

As prescribed in § 12.725, insert the following clause:

Buy American Act—Supplies

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b) (2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On purchases above $25,000 in value, components of Canadian origin are treated as domestic.

End products, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see § 12.715).

(End of clause)

Buy American Act—Construction Materials

§ 12.800 Scope.

(a) This subpart implements the Buy American Act (41 U.S.C. 10). It applies to procurement contracts awarded under a grant or cooperative agreement for the construction, alteration, or repair of any public building or public work in the United States.

§ 12.805 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into construction materials.

Construction, as used in this subpart, means construction, alteration, or repair of any public building or public work in the United States.

Construction materials, as used in this subpart, means articles, materials, and supplies brought to the construction site for incorporation into the building or work.

Domestic construction material, as used in this section, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.810(a)(3) are treated as domestic.

Foreign construction material, as used in this section, means a construction material other than a domestic construction material.

United States (see § 12.705).

§ 12.810 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with § 12.815;

(2) The agency head determines that use of a particular domestic construction material would be impracticable; or

(3) The head of the contracting activity or designee determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see § 12.120).

(b) When it is determined for any reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the agreement. Findings justifying the exception shall be available for public inspection.

§ 12.815 Evaluating offers.

(a) The restrictions of the Buy American Act do not apply when the head of the concerned agency determines that using a particular domestic construction material would unreasonably increase the cost or would be impracticable.

(b) When proposed awards are submitted to the agency head for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials.

§ 12.820 Violations.

(a) If the agency head finds that in the performance of a procurement construction contract under a grant or cooperative agreement there has been a failure to comply with the clause at § 12.830, Buy American Act—Construction Materials, those findings (including the name of the recipient obligated under the agreement) shall be made public. No other grant, cooperative agreement, or procurement contract under the grant or cooperative agreement shall be awarded to that recipient, its subrecipients, or suppliers with which that recipient is associated or affiliated, within a period of 3 years after the findings are made public. (For debarment procedures, see subpart D of this part).

§ 12.825 Solicitation provision and contract clause.

The awarding official shall insert the clause at 12.830, Buy American Act—Construction Materials, in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States.

§ 12.830 Buy American Act—Construction materials.

As prescribed in § 12.825, insert the following clause in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States:

Buy American Act—Construction Materials

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

Construction material, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete

systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to § 12.810(a)(3) of 43 CFR part 12, subpart E shall be treated as domestic.

(b) The contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this agreement, except for foreign construction materials, if any, listed in this agreement.

(End of clause)

[FR Doc. 93–19190 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–RF–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 93–157, FCC 93–291]

Reports of Communications Common Carriers and Certain Affiliates; Filing Requirements for International Circuit Status Reports

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to: Codify in the Commission's Rules, requirements for the filing of international circuit status reports; reduce the frequency of filing such reports from monthly to annually; require all facilities-based international common carriers to file such reports; provide for a filing manual with reporting instructions; specify a format for the filing of those reports; and require the filing of such reports on computer diskettes. This action is necessary to reduce the filing frequency for international circuit status reports from monthly to annually, to require all facilities-based international common carriers to file such reports and to enable the information in the reports to be easily collated by computer. The purpose of this action is to reduce the burden on those facilities-based international common carriers now filing circuit status reports and to assure that the Commission has industry-wide international circuit use data available to it.

DATES: Comments must be submitted on or before September 1, 1993. Reply comments must be submitted on or before October 1, 1993.

ADDRESSES: All comments and reply comments concerning these proposals should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Gosse, Attorney, Common Carrier Bureau, (202) 632–7834.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making adopted on June 2, 1993 and released July 2, 1993. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington DC. The complete text of this Notice also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Paperwork Reduction Act

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. Persons wishing to comment on this collection of information should direct their comments to Jonas Neihardt, (202) 395–4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 632–7513.

Title: Rules For the Filing of International Circuit Status Reports.
OMB Number: None
Action: Proposed New Collection.
Respondents: Facilities-based international common carriers.
Frequency of Response: Once per year.
Estimated Annual Burden: 50 responses; 20 hours per response; 1000 hours total.
Needs and Uses: The Notice of Proposed Rule Making solicits public comment on whether to: (1) Codify in the Commission's Rules, requirements for the filing of international circuit status reports; (2) reduce the frequency of filing such reports from monthly to annually; (3) require all facilities-based international common carriers to file such reports; (4) provide for a filing manual with reporting instructions; (5) specify a format for the filing of those reports; and (6) require the filing of such reports on computer diskettes. The information filed will be used to determine use of existing international submarine cable and satellite transmission facilities as a part of the assessment of the need for new cable and satellite facilities when considering applications for such facilities. The circuit status reports will also be used to determine whether an international common carrier is providing direct or indirect service to countries and to assess industry trends in the use of international transmission facilities.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, the FCC's initial analysis is as follows:

Need and purpose of this Notice: This rule making proceeding is initiated to obtain comments regarding codifying the requirements for the filing of international circuit status reports, reducing the frequency of those reports from monthly to annually, requiring all facilities-based international common carriers to file those reports, specifying a format for the filing of those reports and requiring the filing of those reports on computer diskettes. The Commission seeks to evaluate the filing of circuit status reports by facilities-based international common carriers in light of the reductions and streamlining of regulatory requirements which have occurred since such reports were instituted.

Legal Basis: The proposed action is authorized under section 4, 214, 219, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 214, 219, 303(r) and 403.

Reporting, Recordkeeping and Other Compliance Requirements: The actions proposed in this Notice of Proposed Rule Making will affect both large and small international facilities-based

common carriers. The burden will be significantly reduced for carriers presently filing circuit status reports because of the reduction of the frequency of those reports from monthly to annually. However, some entities not now filing circuits status reports would be required to file such reports by the proposed action. Approximately 50 additional facilities-based international common carriers would be required to file annual circuit status reports. It is not estimated that the filing of annual circuit status reports will be a significant economic burden on facilities-based international common carriers.

Federal Rules That Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: The proposals discussed in this Notice of Proposed Rule Making primarily will reduce regulatory requirements on facilities-based international common carriers by reducing the frequency of filing circuit status reports from twelve per year to one per year. Some facilities-based international carriers not now filing circuit status reports will be required to file such reports.

Any Significant Alternatives Minimizing the Impact of Small Entities Consistent With the Stated Objectives

The Notice of Proposed Rule Making solicits comments on a variety of alternatives to achieve Commission objectives.

Summary of Notice of Proposed Rule Making

The Notice of Proposed Rule Making proposes to: (1) Codify in the Commission's Rules, requirements for the filing of international circuit status reports; (2) reduce the frequency of filing such reports from monthly to annually; (3) require all facilities-based international common carriers to file such reports; (4) provide for a filing manual with reporting instructions; (5) specify a format for the filing of those reports; and (6) require the filing of such reports on computer diskettes. This Notice was adopted on the Commission's own motion.

Monthly circuit status reports have been filed by certain United States international facilities-based common carriers since the early 1970's. When the reports were first filed, all United States international facilities-based carriers filed them. However, over the years, new entities which became United States international facilities-based carriers were not requested to file such reports. Consequently, at present, only some of the United States international facilities-based common carriers file monthly circuit status reports. The reports are filed in a variety of formats and are filed on paper only.

The Commission has significantly reduced regulation of international common carrier facilities and services since the early 1970's when the monthly circuit status reports were first filed. Consequently, while the Commission still finds the information provided by the reports useful in discharging its obligation to authorize the construction and use of international common carrier transmission facilities, it finds that it no longer requires that this information be filed monthly. Therefore, it proposes to require the filing of circuit status reports on an annual rather than a monthly basis. The Commission proposes that the circuit status reports be filed on or before March 31 of each year and provide circuit status information as of December 31 of the previous year.

The Commission also proposes to require all international facilities-based common carriers to file circuit status reports. The Commission believes that the information provided by those reports will be more useful if those reports provide industry-wide data on international facilities use.

The Commission further proposes to specify a format for the international circuit status reports and to require those reports to be filed on computer diskettes. It believes that these changes will permit the information provided by the reports to be used more efficiently.

The Commission leaves to the Chief, Common Carrier Bureau the task of specifying the format for the circuit status reports and the specifics of the information to be provided. The Commission indicates that it anticipates that the circuit status reports will continue to provide, at a minimum, information, on a country-by-country basis, indicating the number of circuits in each transmission facility an international facilities-based carrier has activated and the number of idle circuits. The Commission requests comments on all of these proposals as well as alternative proposals.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-19312 Filed 8-11-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-229, RM-8296]

Radio Broadcasting Services; Panacea, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by EME Communications seeking the allotment of Channel 263A to Panacea, Florida, as that community's first local aural transmission service. Channel 263A can be allotted to Panacea in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.6 kilometers (9.1 miles) southeast, in order to avoid short-spacings to the licensed site of Station WHKX (FM), Channel 260C2, Lafayette, Florida, to a construction permit for Station WTPS (FM), Channel 264A, Quincy, Florida, and to the licensed site of Station WGWD, Channel 264A, Gretna, Florida. The coordinates for Channel 263A at Panacea are North Latitude 29-54-33 and West Longitude 84-21-01.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Clyde Scott, Jr., Rt. 3, Box 485-C, Moultrie, Georgia 31768 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-229, adopted July 23, 1993, and released August 6, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, D.C. 20037.

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

Members of the public should note that from the time a Notice of Proposed

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93-19311 Filed 8-11-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93-57; Notice 1]

RIN 2127-AF00

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of request for comments.

SUMMARY: In implementation of the grant of a petition for rulemaking from Robert Bosch GmbH, this notice requests comments for information relevant to a decision on whether to proceed with rulemaking to amend Standard No. 108 to allow the lens to be replaceable on a replaceable bulb headlamp equipped with an on-vehicle aiming device.

DATES: Comments are due on the notice September 27, 1993.

ADDRESSES: Comments should refer to Docket 93-57; Notice 1, and be submitted to: Administrator, Docket Section, room 5109, Nassif Building, 4090 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION: Section S4 of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* defines a "replaceable bulb headlamp" as "a headlamp comprising a bonded lens and reflector assembly and one or two replaceable light sources." Robert Bosch GmbH, a manufacturer of headlamps, has petitioned to delete the word "bonded" from the definition as it relates to replaceable bulb headlamps which use on-vehicle aiming devices. This would permit the lens to be replaced on such headlamps without the necessity of simultaneously replacing the reflector. Bosch ascribed the following benefits were its request to be implemented:

1. The possibility of recycling lenses and reflectors or housings without any additional expensive process for the separation of both parts.

2. Cost savings to the consumer resulting from the ability to replace a lens instead of the entire lens-reflector assembly.

3. A new lens for an old headlamp provides better photometrics than a lens that is scratched or cracked.

4. With on-board aiming, the repeatability of headlamp aim performance will not be influenced by the lens.

5. When a lens is replaced, the reflecting surfaces of the reflector may be cleansed of dirt and other contaminants.

When NHTSA amended Standard No. 108 in 1983 to allow replaceable bulb headlamps, it thoroughly examined the issue of whether the lens should be bonded to the reflector assembly, and concluded that the lens and reflector must be an integral unit. This was intended to reduce the likelihood that a replacement headlighting system would fail to conform to Standard No. 108. A further intent was to preserve the original performance of headlamps in service by minimizing the number of components that could be detached for repair. Before the 1983 final rule permitting replaceable bulb headlamps, whenever a sealed beam light source failed, the entire headlamp had to be replaced. The replacement headlamp and its original equipment counterpart had to meet the same requirements of Standard No. 108. That established a level of identical safety for replacement headlighting equipment. Standard No. 108 maintained this level for replaceable bulb headlamps by requiring that replaceable light sources be designed to meet the same requirements as original equipment light sources.

As a consequence, the safety of motor vehicles today is influenced by the fact that replacement headlamps must meet the same photometric requirements and overall level of performance as headlamps on new motor vehicles. Thus, when headlamps are replaced because of damage (burnout or lens damage on sealed beams, or lens damage on replaceable bulb types), the performance of the replacement lamp is equivalent to that of the original. This occurs because NHTSA does not allow replacement of either the lens or reflector as a separate component to minimize the possibility of noncompliant photometric, aiming and environmental performance. On the other hand, new complying replacement bulbs may be used to replace failed bulbs in replaceable bulb headlamps without the need for installing a new lens/reflector assembly. The rulemaking did not address the condition of the lens of reflector at the time of bulb replacement. In allowing such replacements NHTSA expected that the lens and reflector would be in sufficiently good condition that replacement of the bulb could be expected to result in performance similar to that of a new lamp. NHTSA also believed that state laws would continue to regulate the performance of headlamps on vehicles in use.

Because the petition from Bosch seeks to change this longstanding position, this notice seeks information on whether permitting lens replacement on replaceable bulb headlamps equipped with on-board aiming devices would result in any change, either positive or negative, to the safety of vehicles in use. As in the case with replacement headlamp bulbs, the ability to replace a broken lens, without having to replace the entire headlamp assembly, as Bosch argues, might result in substantial cost savings to consumers, more frequent replacement of broken lenses, and the ability to clean the interior surfaces of the lens and reflector surface in the hope of improving headlamp performance. On the other hand, the agency is concerned that unregulated lens replacement might adversely affect the photometric, aim, and environmental performance of a headlamp, and thus adversely affect a vehicle's ability to avoid accidents.

Additionally, NHTSA is concerned about the process of lens replacement and the ability of the lens installer to make the repair in such a manner as would return a headlamp to at least the level of performance it exhibited just before its lens was damaged, if not to that of a new replacement headlamp. Thus, the agency seeks information about the suitability of lamps for lens replacement, the replacement process including disassembly, cleaning, assembly, and quality assurance procedures for determining the photometric and environmental viability of the relensed lamp, and the

safety effects, positive or negative, that may occur should Standard No. 108 be amended to allow lens replacement.

While the Bosch petition has caused the agency to reexamine its assumptions of a decade ago, NHTSA (which has granted the petition) will not adopt a final rule that may have the effect of derogating from the existing level of safety. For this reason, NHTSA has decided to seek the views of the public with respect to each of petitioner's five arguments, stated above.

NHTSA has also formulated a series of questions to which it seeks public response. Accordingly, in addition to Bosch's five arguments, NHTSA invites comments on the following matters:

1. In previous denials of petitions to allow removable headlamp lenses, NHTSA argued that mechanical aiming of lamps with lens-mounted aiming pads could be affected by any change of the alignment relationship established between lenses and reflectors at the time of manufacture. Thus, alteration of the original alignment during lens replacement could misaim the beam. Given that Bosch's request for removable lenses covers only replaceable bulb headlamps with on-vehicle aiming devices, there may be no need for concern about misaim of headlamps that are aimed mechanically, certainly if the headlamp lens does not participate in the formation of the beam pattern, photometric compliance, and the beam pattern's relationship to beam aim. This also assumes that the correct lens is used. While this tentative conclusion may be true if the lens exhibits absolutely no fluting (i.e., no discernible prescription), NHTSA seeks comments on whether this tentative conclusion is also true for lenses that have a prescription. Comments should discuss the extent to which fluting (the prescription) or its identicality with the original lens would have to be limited or prescribed to assure proper photometry if the lens were replaced, and how this should this be specified as a requirement if it needs to be limited. Comments should also recommend how such a regulation might be implemented, whether within Standard No. 108 or in a public information docket similar to that established for new types of replaceable headlamp bulbs, i.e., Part 564 *Replaceable Headlamp Light Source Information.* (Under this regulatory scheme, part 564 establishes a docket that is a public repository for headlamp replaceable light source information. Standard No. 108, in turn, requires that replaceable light sources manufactured for headlamps covered by Standard No. 108 comply with the appropriate dimensional and performance information filed pursuant to part 564. A similar process could be established for replacement headlamp lenses, except that the information filed would be about the necessary dimensions, prescriptions, processes, and performances necessary for the interchangeability of the lenses.)

2. NHTSA is also concerned about the ability of a headlamp with a replacement lens to achieve the same immediate and long-term performance as it would have had if the lens had not been broken, and, alternatively, as is the case today, the headlamp itself were replaced with a complying one. Because Standard No. 108 requires that replacement equipment meet the same requirements as original equipment, a level of safety performance of vehicles in use has been established. Any change to Standard No. 108 that affects the performance of headlamp replacement will have an effect on safety. If a commenter believes that performance and life of new replacement headlamps and headlamps that have lenses replaced in the field by (a) consumers, and (b) typical repair facilities, are comparable, it should provide supporting data. It should also describe all the circumstances that should be regulated or limited in the relensing process that would be necessary for the used headlamps with new lenses to achieve a level of performance comparable to that which existed immediately before the lens was damaged. NHTSA would also like to know whether there are certain types of headlamps that, if relensed, would not or could not be expected to have the same level of performance as new replacement headlamps. If there are any such types, the agency requests the commenter to discuss those features of the headlamps such as lens-to-reflector shims or special vents or seals that would hinder that performance and to describe the means to regulate those features.

3. NHTSA would also like to know whether any manufacturer has studied sales of headlamp lens replacements as an alternative to sales of replacement headlamps, and, if so, the premises and conclusions of those studies.

4. Bosch provided photometric data from a laboratory on new reflector and new lens interchangeability performance as a demonstration of the suitability of field replacement of lenses. NHTSA requests comments on whether the Bosch data represent a realistic and appropriate demonstration, and whether a headlamp with its lens replaced by (a) consumers and (b) typical repair facilities would be able to demonstrate similar performance.

5. Some headlamps that are mechanically aimable have shims between the lens and reflector. NHTSA asks whether any headlamps intended for use with on-vehicle aiming devices have been manufactured with such alignment shims, whether any are being designed that would use such shims, and whether lens replacement should be prohibited on headlamps using shims, or, alternatively, whether the replacement process can be designed to accommodate their use.

6. If lenses were allowed to be replaceable, NHTSA is interested in knowing the information that would or should be available regarding whether a damaged headlamp can be relensed, how the relensing would occur, and, if undertaken, a description of the quality assurance aspects that would ensure a return of performance to some expected level.

7. Commenters should indicate how acceptable and unacceptable replacement work would be verified, and whether state periodic motor vehicle inspections are capable of performing this verification. This comment should also include a discussion of the federal or state controls that should be implemented for states that do not have periodic motor vehicle inspection.

8. NHTSA is interested in any data that would indicate that U.S. consumers might be more likely to replace/repair the lenses on poorly performing headlamps if replacement lenses were permitted than to continue to use the poorly performing lamp. Similarly, NHTSA is interested in any data that U.S. consumers would choose headlamp replacement over continuing use of a poorly performing lamp.

9. (For vehicle manufacturers) Provide the percentages of your Model Year 1993 and/or 1994 vehicle/replaceable bulb headlamp production that will have glass lenses and plastic lenses. For both groups of vehicles, please indicate the percentage of each type that will have on-vehicle aiming devices. Finally, please indicate the anticipated long-term apportionment between glass and plastic headlamp lenses for future model vehicles.

10. (For vehicle manufacturers) Provide the anticipated volume of replacement for 1992 and/or 1993 model glass-lensed headlamps as a percentage of new vehicle headlamp sales, and the same figure for plastic-lensed lamps.

11. (For vehicle manufacturers) Please provide the data requested below on the

cost of headlamps, lenses, repairs and replacements:

A. The retail prices for your replacement Model Year 1993 (a) glass-lensed and (b) plastic-lensed replaceable bulb headlamps.

B. Your estimate of the retail cost of replacement lenses for the headlamps in A., above.

C. The time and cost allowances for replacing the lamps in A.

D. Your estimate of the time and cost to replace the lens in the headlamps in A., above.

E. The instances discussed in A. through D., above, where you would be likely to choose not to provide a replacement lens, and an explanation why in each case.

12. List the benefits (including safety) and costs that would be expected to accrue to vehicle owners, OEM lamp manufacturers, vehicle manufacturers, and non-OEM lamp parts manufacturers, respectively, as a result of replaceable headlamp lenses.

13. Discuss the requirements that should be placed on the process of headlamp lens replacement to verify that a repaired headlamp meets some particular level of performance. Discuss the level that should be reached if it is not to the same performance as now required of replacement headlamps, and why it should be different? What are the test procedures and equipment necessary to achieve this? What are the costs associated with this process? Who would likely be the regulated parties? What compliance problems are envisioned with such a strategy?

14. In some other countries, headlamp lens replacement is allowed. Discuss the safeguards that may exist in those countries to prevent installation of the wrong lens, and to restore performance and correct beam aim after lens replacement. Discuss any governmental regulatory compliance programs that may exist for replacement lenses and other lamp parts. Are non-OEM lenses prohibited in these countries? Commenters are asked to list the countries, and categorize them, if the answers are different among them. Comments are also requested on whether there are any reported problems with this approach to lens replacement.

15. Ford Motor Company suggested years ago that plastic headlamp lenses would help to make headlamps last the life of the vehicle since they were 20 times more resistant to impact damage than glass lenses. In view of the ever increasing use of impact resistant plastic for headlamp lenses, NHTSA asks whether it would be more pertinent to drop the lens replacement issue and develop a performance requirement that would reduce or eliminate the incidence of lens breakage, thus preventing any safety or cost disbenefit from broken lenses.

Comments

Interested persons are invited to submit comments on the notice. It is requested but not required that 10 copies be submitted.

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 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 in the agency's deliberations whether to proceed with rulemaking. Comments on the notice 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.

Authority: 15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 5, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-19291 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018-AB93

Importation of Exotic Wild Birds to the United States; Proposed Rule Implementing the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On October 23, 1992, the Wild Bird Conservation Act of 1992 (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. This proposed rule proposes regulations implementing the prohibitions stipulated in the WBCA and provides permit requirements and procedures for some allowed exemptions. This notice also proposes to replace the feather importation quota regulations.

DATES: The Fish and Wildlife Service (Service) will consider comments and information received by September 13, 1993 in formulating a final rule.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Dr., room 420C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358-2093.

SUPPLEMENTARY INFORMATION: This rule proposes regulations implementing some aspects of the WBCA, which was signed into law on October 23, 1992. The WBCA limits or prohibits imports of exotic bird species to ensure that their populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by both ensuring that all trade in such species involving the United States is biologically sustainable and to the benefit of the species, and by creating an Exotic Bird Conservation Fund to provide conservation assistance in countries of origin. The effects of the WBCA, which this rule proposes regulations to implement, are as follows:

The WBCA covers the importation of all bird species not indigenous to the 50 United States and the District of Columbia, while exempting the following bird families from its provisions: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiinae, and Gruidae, based on "Reference List of the Birds of the World" by Morony, Bock, and Farrand. 1975.

An immediate moratorium, effective October 23, 1992, was established on the importation of ten species of wild birds of particular concern that are listed in Appendix II of the Convention on International Trade in Endangered Species (CITES), two of which were moved to Appendix I at the March 1992 CITES meeting. The prohibition on importation of those species was announced in the **Federal Register** of December 4, 1992 (57 FR 57510).

During the one-year delay period from October 23, 1992, to October 22, 1993, there has been a maximum number of individuals of any CITES-listed bird species that can be imported. That quota, equal to the number imported during the last year for which the Service had complete data (1991), was announced in the **Federal Register** of December 4, 1992 (57 FR 57510). A notice published on March 30, 1993 (58 FR 16644) solicited public comments and announced a public meeting, held April 15–16, 1993, to receive input from the public in the development of regulations to implement some of the provisions of the WBCA. Useful input was received from a broad cross-section of interested members of the public who participated in the meeting and submitted comments in writing; that input has been utilized in developing this proposed rule. A notice published on April 16, 1993, (58 FR 19840) announced species for which the quota had been met and no further individual birds could be imported.

Effective October 22, 1993, imports of all CITES-listed birds are prohibited, except for species included in an approved list, or for which an import permit has been issued. The approved list will include species (by country) and/or specific captive-breeding facilities. The Service will publish a proposed rulemaking establishing the criteria for adopting the approved list in the near future. The Service also has the emergency authority to suspend imports of any CITES-listed bird species at any time based on a series of criteria.

In a future notice of proposed rulemaking, the Service will propose regulations called for in the WBCA that will accomplish the following: For wild-caught CITES-listed birds to be on an approved list, the Service must determine that: CITES is being effectively implemented for the species for each country of origin from which imports will be allowed; CITES-recommended measures are implemented; there is a scientifically based management plan for the species that provides for the conservation of the species and its habitat, includes incentives for conservation, ensures that the use of the species is biologically sustainable and maintained throughout its range at a level consistent with its role in its ecosystem, addresses factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and that the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health, including humane treatment.

For captive-bred birds to be imported from other countries, in order to be listed in an approved list, the Service is required to determine either that the species is regularly bred in captivity and no wild-caught birds of the species are in trade, or that the species is bred in a qualifying facility.

The Service is required to review trade in all non-CITES species, and establish a moratorium on any species, by country of origin, if any of a series of findings cannot be made. If a country of origin does not have a management program for exotic birds that ensures conservation and humane treatment during capture, transport, and maintenance, the Service is authorized to establish a moratorium on importation from that country, or of that species from any country of re-export. In order to make these assessments, the Service is required to call for information on the wild bird management plans of all countries exporting their birds.

The WBCA authorizes the Service to issue permits for the importation of individual birds from otherwise prohibited species for the following purposes (after a finding that it is not detrimental to the survival of the species): (1) Scientific research; (2) personally owned pets of individuals returning to the United States after being out of the country for at least a year; (3) zoological breeding or display programs; and (4) cooperative breeding programs designed to promote the conservation of the species and maintain the species in the wild, as long as such programs are developed and administered by organizations meeting certain standards. This proposed rule promulgates that process.

Regulatory Schedule

This proposed rule proposes the replacement of CFR part 15 so that it relates only to implementation of the Wild Bird Conservation Act. Thus, actual text is proposed for the following subparts: Subpart A (Introduction and General Provisions), subpart B (Prohibitions and Requirements), and subpart C (Permits and Approval of Cooperative Breeding Programs). It is the Service's intent to propose actual text for subparts D (Approved list of species) and E (Qualifying foreign breeding facilities) in the near future, and to propose actual text for subpart F (Prohibited non-CITES species) not long thereafter.

Feather Import Quotas: Elimination of Rule

This proposed rule would eliminate regulations currently in 50 CFR part 15, which implement feather import quotas contained in the Tariff Classification Act of 1962 (19 U.S.C. 1202). The current regulations in 50 CFR part 15 contain three subparts regulating the importation of skins bearing feathers of the mandarin duck, a jungle fowl, and six species of pheasants, under the authority of the Tariff Classification Act of 1962; these regulations were last amended in January, 1974 (39 FR 1168). The Service believes that the current feather import quota regulations are unnecessary and wasteful of government and private resources, with no benefit to wildlife species. The Service notes there are a number of other laws and regulations that protect species of birds for which there is cause for concern and for which importation of skins bearing feathers could be of concern. These laws include the Lacey Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, the Endangered Species Act, and CITES. The Service notes that the regulations in 50 CFR part 15, and the Tariff Classification Act, were passed prior to the signing and implementation by the United States of the CITES treaty. The current feather import regulations (50 CFR part 15) prohibit the importation of feathers of those two species that are listed in the CITES Appendices; *Gallus sonnerati* and *Crossoptilon mantehuricum* were listed in CITES Appendix II and I, respectively, in 1975. The Service believes that if there were any conservation concern regarding trade in feathers of the other species listed in 50 CFR part 15, the government authorities responsible could have proposed their listing in the CITES Appendices.

There are currently only nine companies that participate in the feather import quota program. The experience of the Service in implementing the quotas in 50 CFR part 15 has shown that importers rarely, if ever, import their full allocation. The Service will communicate with the governments of those countries in which the pheasant and duck species listed in 50 CFR part 15 are found in the wild (through the Department of State or the CITES Secretariat), to determine if any of the species should be listed in CITES Appendix II or III. The Service is interested in the comments of any interested individuals with information on the status in the wild of the species of ducks and pheasants listed in 50 CFR part 15, and on the possible impact of elimination of these regulations.

Section-by-Section Analysis

Renumbering of 50 CFR Part 15

The Service proposes to include the regulations implementing the WBCA in 50 CFR part 15. Currently, 50 CFR part 15 contains three subparts regulating the importation of skins bearing feathers of the mandarin duck, a jungle fowl, and six species of pheasants, which the Service is proposing to eliminate. The Service proposes to include the regulations implementing the WBCA in 50 CFR part 15 subparts A–G.

Subpart A—Wild Bird Conservation Act: Introduction and General Provisions

Section 15.1 Purpose of Regulations

This section outlines the general purpose of the regulations in part 15, which apply to all species of exotic birds as defined in this subpart.

Section 15.2 Scope of Regulations

This section clarifies that all of the requirements of part 15 are in addition to the existing requirements in parts 13 and 14, part 17 (species listed as endangered or threatened under the Endangered Species Act (ESA)), part 21 (Migratory Bird Treaty Act) and part 23 (species listed in the Appendices to the Convention on International Trade in Endangered Species). Thus, for example, in addition to the requirements of part 15 relating to the Wild Bird Conservation Act (WBCA), importation of a species of bird listed in CITES Appendix I would still require a CITES Appendix I import permit and be required to comply with the requirements of 50 CFR part 23. It is the Service's intent that one application will suffice for both sets of requirements, and one permit will be issued covering CITES, ESA, and Wild Bird Conservation Act requirements, as is now done for imports requiring both CITES and ESA permits.

Section 15.3 Definitions

This section defines a number of terms used in part 15. The definitions in part 10 and 23 of 50 CFR, unless defined herein, also apply. The definitions of exotic bird, person, species, and United States are taken directly out of the text of the WBCA. Import, although defined in the WBCA, is not included here, as the term import is defined in 50 CFR part 10. Based on the definition of exotic bird, bird species indigenous to the 50 States or the District of Columbia are exempt from these regulations, as are bird species in any of ten families of birds. The definition of species clarifies that hybrids of any species or subspecies are also covered by these regulations. In order to be consistent with CITES requirements, hybrids will be treated according to the more restrictive Appendix or category in which either parental species is listed. For example: a hybrid between a species prohibited from import under these regulations and one approved for import would be prohibited from import; a hybrid between two species listed in the CITES Appendices is treated according to the more restrictive CITES Appendix; a hybrid between a CITES Appendix II species, and an unlisted species is treated as an Appendix II species.

Subpart B—Prohibitions and Requirements

Section 15.11 Prohibitions

This section describes the prohibitions under the Act, which relate to the importation of birds into the United States. It is unlawful to import any exotic bird listed under CITES if it is not listed either in the approved list of species, based on a country of export's sustainable-use management plan, or because the species is exclusively captive-bred (subpart D), or in the approved list of qualifying foreign captive-breeding facilities (subpart E). It is unlawful to import any bird from an approved breeding facility if the bird was not bred at that facility. It is unlawful to import any non-CITES bird if it is listed under subpart F as a prohibited species, or if it was exported from a prohibited country, also under subpart F. It is also unlawful to possess any bird imported in violation of this part, or to engage in any activity in violation of a specified condition of a permit issued that authorizes the import of an exotic bird under this part 15. If a species is re-exported from a country, whether or not it can be imported into the United States is dependent on the country of origin (the country of export) of the bird. For example, if a CITES-listed bird species is re-exported from country A, but originated in country B, that species must be listed as an approved species from country B. This section clarifies that Appendix III species are considered CITES-listed species for the purposes of these regulations only if they originate in the country that listed them in Appendix III.

These regulations can be illustrated through an example; these examples are not meant to imply approval or disapproval of any species or country but are just for the sake of giving an example: *Example 1:* If exports of *Amazona aestiva* are approved from Argentina but not from any other country, then *A. aestiva* could not be imported into the United States with an export permit from Venezuela or Peru; a re-export from Belgium could only be imported with a valid CITES permit indicating the original country of export as Argentina, and giving the valid Argentina CITES Permit number. *Example 2:* If Species X is listed as a captive-bred species under subpart D, it can be imported from any country with a valid CITES permit; no additional permits are required. *Example 3:* If Smith's Breeding Farm in England is listed under subpart E as approved for *Amazona aestiva* and *Amazona albifrons*, then those two species can be imported from Smith's Breeding Farm with a valid CITES permit; no additional import permit is required from the Service; they must have been bred at Smith's. If Smith's is the only approved facility for the species, imports from any other facility or country are only allowed with a valid import permit issued by the Service, pursuant to subpart C.

Section 15.12 Requirements

This section establishes that no exotic bird can be imported into the United States except in accordance with the provisions of subparts D–F, or under the terms of a valid import permit issued pursuant to subpart C. Thus, even if a species is prohibited from import, or originates in a prohibited country, individuals are eligible to apply for a permit under subpart C if the purpose for which they desire to import a bird qualifies for one of the four types of permits.

Subpart C—Permits and Approval of Cooperative Breeding Programs

This subpart establishes procedures, application requirements, and issuance criteria for four types of permits authorized under the WBCA.

Section 15.21 General Application Procedures

All applications should be submitted to the Service's Office of Management Authority. In all cases, any additional requirements in 50 CFR parts 13, 14, 17, 21, and 23 must also be met. For each of the four types of permits, each section (§§ 15.22–15.25) is organized in the following manner: (1) Application requirements, which contains the information the applicant must provide to the Service; (2) Issuance criteria, which includes the findings the Service must make before a permit can be issued; (3) Permit conditions: All permits are subject to the general conditions set forth in 50 CFR part 13, as well as any special conditions; and (4) Publication in the **Federal Register**. A notice of permit applications for scientific research and zoological breeding and display will be published in the **Federal Register** for public comment. Approval of cooperative breeding programs, § 15.26, is organized in the following manner: (1) Application requirements, which contains the information the applicant must provide to the Service; (2) Approval criteria, which includes the findings the Service must make before approval can be granted; (3) Approval conditions: All approvals are subject to the general conditions set forth in 50 CFR part 13. In addition, the cooperative breeding program is required to maintain records of birds imported and their progeny, and their disposition, which shall be made available to the Service on request; and (4) Publication in the **Federal Register**. Requests for approval will be published in the **Federal Register** for public comment.

Section 15.22 Permits for Scientific Research

Persons desiring to import otherwise prohibited species of exotic birds for scientific research must provide information to the Service as prescribed in this section, including: Information on the exotic birds to be imported, including whether they are still in the wild, have been removed from the wild, or were bred in captivity; information on the bird's removal from the wild, if applicable; or if the exotic bird was bred in captivity, information on its breeding history; a description of the scientific research to be conducted on the exotic bird including a research protocol and the relationship of such research to the conservation of the species; qualifications of the principal investigator and other scientific personnel to conduct the proposed research; a description of the proposed care and maintenance of the exotic bird; and a description of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport. The Service will consider the following questions in evaluating the merits of scientific research: Are the research hypothesis and objectives clearly stated? Is the research question valid? Are the techniques and sampling design appropriate, adequate, and humane? Is the sample size appropriate? Is the research feasible? How does the research relate to previous work; is it duplicative? How will the research benefit the species? Did previously conducted research under previously issued permits accomplish the stated objectives? Have the results of previous research been adequately disseminated? All of the information required is necessary in order to allow the Service to determine whether the research would benefit the conservation of the species, and the research objectives could be accomplished successfully, including but not limited to the scientific and husbandry expertise of the applicant. Permit applications will be published in the **Federal Register** for public comment, and import permits will be valid for up to one year.

Section 15.23 Permits for Zoological Breeding or Display

Persons desiring to import otherwise prohibited species of exotic birds for zoological breeding or display must provide information to the Service as prescribed in this section, including: Information on the exotic birds to be imported, including whether they are still in the wild, have been removed from the wild, or were bred in captivity; information on the bird's removal from the wild, if applicable; or if the exotic bird was bred in captivity, information on its breeding history; a description of the breeding or display program and protocol; information about the facility and expertise of individuals responsible for the birds; and information as to how the program will benefit the conservation of the species. All of the information required is necessary in order to allow the Service to determine whether the zoological breeding or display program would enhance the conservation of the species, and the objectives could be accomplished successfully, including but not limited to the expertise of the applicant. Permit applications will be published in the **Federal Register** for public comment, and import permits will be valid for up to one year.

Section 15.24 Permits for Cooperative Breeding

Persons desiring to import otherwise prohibited species of exotic birds for cooperative breeding programs must first be affiliated with a cooperative breeding program approved under the provisions of § 15.26. If a person is affiliated with an approved program, to apply for a permit they must provide information to the Service as prescribed in this section, including: Information on the exotic birds to be imported, including whether they are still in the wild, have been removed from the wild, or were bred in captivity; information on the bird's removal from the wild, if applicable; or if the exotic bird was bred in captivity, information on its breeding history; information on their breeding protocol, and their relationship with the approved program; and information about their facility and their qualifications. All of the information required is necessary in order to allow the Service to determine whether the breeding program and this particular import would enhance the conservation of the species, and the objectives could be accomplished successfully, including but not limited to the expertise of the applicant. Permit applications may be published in the **Federal Register**, but will only be done so at the discretion of the Service and will not be required by regulation. Import permits will be valid for up to one year.

Section 15.25 Permits for Personal Pets

Persons desiring to import otherwise prohibited species of exotic birds that are their personal pets may do so if they have resided outside of the United States for at least a year, and they are returning to the United States; such import permits are limited to two birds per household per year. In addition, any person that has legally exported a pet bird from the United States on an export permit or re-export certificate issued by the Service may apply for a permit to re-import the bird, without any time restriction on the period outside of the United States. Applicants must provide information to the Service as prescribed in this section, including information on the history of their ownership of the bird. All of the information required is necessary in order to allow the Service to determine whether the import will not be detrimental to the species in the wild, and if the individual has indeed been outside of the United States for at least a year. Permit applications will not be published in the **Federal Register**.

Section 15.26 Approval of Cooperative Breeding Programs

Cooperative breeding programs that wish to import otherwise prohibited species of exotic birds must be approved under this section before persons can apply for import permits under § 15.24. In applying for approval, a cooperative breeding program must provide information to the Service as prescribed in this section, including information on their breeding protocol, including a genetic management plan and breeding methods, plans for developing a self-sustaining population in captivity, relationship of the program to enhancement of the species in the wild, the source of the birds requested, and information about participants' qualifications. All of the information required is necessary in order to allow the Service to determine whether the breeding program would enhance the conservation of the species, and the objectives could be accomplished successfully. Applications will be published in the **Federal Register** for public comment, and the Service will periodically publish a notice as appropriate with a list of all approved programs. Approvals will be valid for up to two years, and are eligible for renewal. All approvals are subject to the general conditions set forth in 50 CFR part 13.

Subpart D—Approved List of Species Listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

This subpart is established in this proposed rule; actual text will be proposed in a future proposed rulemaking. The subpart is proposed to be organized as follows:

15.31 Criteria for including species in the approved list.
(a) Captive-bred species
(b) Non-captive-bred species
15.32 Species included in the approved list.
(a) Captive-bred species
(b) Non-captive-bred species

Subpart E—Qualifying Facilities Breeding Exotic Birds in Captivity

This subpart is established in this proposed rule; actual text will be proposed in a future proposed rulemaking. The subpart is proposed to be organized as follows:

Section 15.41 Criteria for including facilities as qualifying for imports.
Section 15.42 List of foreign qualifying breeding facilities.

Subpart F—List of Prohibited Species Not Listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

This subpart is established in this proposed rule; actual text will be proposed in a future proposed rulemaking. The subpart is proposed to be organized as follows:

Section 15.51 Criteria for including species and countries in the prohibited list.
Section 15.52 Species included in the prohibited list.
Section 15.53 Countries of export included in the prohibited list.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations, or any other interested party concerning any aspect of this proposal are hereby solicited.

Effects of the Rule

The Service has determined that this proposed rule is categorically excluded under Departmental procedures in complying with the National Environmental Policy Act (NEPA). The proposed regulations are procedural in nature, and the environmental effects are judged to be minimal, speculative, and do not lend themselves to meaningful analysis. The permits authorized under the WBCA and regulations may be subject to NEPA documentation requirements, on a case-by-case basis.

Executive Orders 12291, 12612, and 12630 and the Regulatory Flexibility Act

It has been determined that these revisions to 50 CFR part 15 do not constitute a "major" rule under the criteria established by Executive Order 12291. This action is not expected to have significant taking implications for U.S. citizens, as per Executive Order no. 12630. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Since the rule applies to importation of live wild birds into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Paperwork Reduction

The information collection requirement(s) contained in this section has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Author

The primary author of this final rule is Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/358–2093).

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to revise part 15 of chapter I of title 50 of the Code of Federal Regulations to read as follows:

PART 15— WILD BIRD CONSERVATION ACT

Subpart A—Introduction and General Provisions

Sec.
15.1 Purpose of regulations.
15.2 Scope of regulations.
15.3 Definitions.

Subpart B—Prohibitions and Requirements

15.11 Prohibitions.
15.12 Requirements.

Subpart C—Permits and Approval of Cooperative Breeding Programs

15.21 General application procedures.
15.22 Permits for scientific research.
15.23 Permits for zoological breeding or display programs.
15.24 Permits for cooperative breeding.
15.25 Permits for personal pets.
15.26 Approval of cooperative breeding programs.

Subpart D—Approved List of Species Listed in the Appendices to the Convention

15.31 Criteria for including species in the approved list.
15.32 Species included in the approved list.

Subpart E—Qualifying Facilities Breeding Exotic Birds in Captivity

15.41 Criteria for including facilities as qualifying for imports. [Reserved]
15.42 List of foreign qualifying breeding facilities. [Reserved]

Subpart F—List of Prohibited Species Not Listed in the Appendices to the Convention

15.51 Criteria for including species and countries in the prohibited list. [Reserved]
15.52 Species included in the prohibited list. [Reserved]
15.53 Countries of export included in the prohibited list. [Reserved]

Authority: Pub. L. 102–440; 16 U.S.C. 4901–4916

Subpart A—Introduction and General Provisions

§ 15.1 Purpose of regulations.

The regulations in this part implement the Wild Bird Conservation Act of 1992, Pub. L. 102–440; 16 U.S.C. 4901–4916.

§ 15.2 Scope of regulations.

(a) The regulations in this part apply to all species of exotic birds, as defined in section 15.3 of this part.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this subchapter B which may require a permit or prescribe additional restrictions or conditions for the import, export, re-export, and transportation of wildlife.

§ 15.3 Definitions.

In addition to the definitions contained in parts 10 and 23 of this subchapter B, and unless the context requires otherwise, in this subpart:

Exotic bird means any live or dead member of the Class Aves that is not indigenous to the 50 States or the District of Columbia, including any egg or offspring thereof, but does not include domestic poultry, dead sport-hunted birds, dead museum specimens, dead scientific specimens, products manufactured from such birds, or birds in any of the following families: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiinae, and Gruidae.

Indigenous means a species that is naturally occurring, not introduced as a result of human activity, and that currently regularly inhabits or breeds in the 50 States or the District of Columbia.

Person means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

Species means any species, any subspecies, or any distinct population segment of a species or subspecies, and includes hybrids of any species or subspecies. Hybrids will be treated according to the more restrictive Appendix or category in which either parental species is listed.

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subpart B—Prohibitions and Requirements

§ 15.11 Prohibitions.

(a) Except as provided under a permit issued pursuant to subpart C of this part, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any exotic bird.

(b) It is unlawful to import into the United States any exotic bird species listed in the Appendices to the Convention which is not included in the approved list of species, pursuant to subpart D of this part, except that

(1) This paragraph (b) does not apply to any exotic bird that was bred in a foreign breeding facility listed as qualifying pursuant to subpart E of this part, and

(2) This paragraph (b) does not apply to an exotic bird species listed in Appendix III to the Convention that originated in a country that has not listed the species in Appendix III.

(c) It is unlawful to import into the United States any exotic bird species not listed in the Appendices to the Convention which is listed in the prohibited species list, pursuant to subpart F of this part. In addition to all other exotic bird species, this paragraph also applies to exotic bird species listed in Appendix III to the Convention that originated in a country that has not listed the species in Appendix III.

(d) It is unlawful to import into the United States any exotic bird species from any country included in the prohibited country list, pursuant to subpart F of this part.

(e) It is unlawful to import into the United States any exotic bird species from a qualifying facility breeding exotic birds in captivity, listed pursuant to subpart E of this part, if the exotic bird was not captive-bred at the listed facility.

(f) It is unlawful for any person subject to the jurisdiction of the United States to either possess any exotic bird imported into the United States contrary to any of the provisions or requirements of this part 15, or to engage in any activity with an exotic bird imported under a permit issued pursuant to this part that violates a condition of said permit.

§ 15.12 Requirements.

No person shall import into the United States any exotic bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of subpart C and 50 CFR part 13, or in accordance with the provisions of subparts D through F of this part 15.

Subpart C—Permits and Approval of Cooperative Breeding Programs

§ 15.21 General application procedures.

(a) The Director may issue a permit authorizing the importation of exotic birds otherwise prohibited by § 15.11, in accordance with the issuance criteria of this subpart, for the following purposes only: scientific research; zoological breeding or display programs; cooperative breeding programs designed to promote the conservation and maintenance of the species in the wild; or personally owned pets accompanying persons returning to the United States after being out of the country for more than 1 year.

(b) Additional requirements as indicated in parts 13, 14, 17, 21, and 23 of this subchapter must also be met.

(c) Applications for permits under this subpart and approval of cooperative breeding programs under this subpart shall be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, Virginia 22203 by the person wishing to engage in the activity. Each application must be submitted on an official application (Form 3–200) provided by the Service and must contain all of the information specified in the applicable section, § 15.22 through 15.26. The sufficiency of the application shall be determined by the Director in accordance with the requirements of this part.

§ 15.22 Permits for scientific research.

(a) Application requirements for permits for scientific research. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including:

(i) The common and scientific names of the species, number, age, and sex; and

(ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is still in the wild or was taken from the wild within the last year, include:

(i) The country and specific location where the removal occurred;

(ii) A description of the manner of taking of each bird;

(iii) The names and qualifications of persons who will capture or captured the bird;

(iv) A description of the status of the species in the area of capture; and

(v) A copy of any foreign collecting permit or authorizing letter;

(3) If the exotic bird has been held in captivity for more than 1 year, include:

(i) the country and specific location where removal occurred;

(ii) The date and purpose of removal; and

(iii) Any other information in paragraph (a)(2) of this seciton that may be applicable;

(4) If the exotic bird was bred in captivity, include:

(i) Documents or other evidence that the bird was bred in captivity, identifying the parental birds, hatch date, and the name and address of the breeder; and

(ii) If the applicant is not the breeder, copies of breeders records, invoices, or other documentation showing the bird was acquired from the breeder and a history of multiple transactions;

(5) A statement of the reasons the applicant is justified in obtaining a permit, and a complete description of the scientific research to be conducted on the exotic bird requested, including:

(i) Formal research protocol with timetable and details on the funding of the research;

(ii) The relationship of such research to promoting the conservation of the species in the wild;

(iii) A discussion of possible alternatives and efforts to obtain birds from other sources; and

(iv) Planned disposition of the exotic birds and any progeny upon completion of the research project;

(6) Qualifications of the principal investigator and other scientific personnel to conduct the proposed research, including:

(i) Applicable educational experience;

(ii) Description of relevant past research conducted and any published or unpublished results of the research;

(iii) Evidence of professional affiliation with an accredited research institution; and

(iv) Three letters from other scientists as to the adequacy of the proposed research. If the research requires the removal of the exotic bird from the wild, one of these letters shall be from the Convention Scientific Authority in the country from which the exotic bird is going to be or was removed from the wild;

(7) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards, including:

(i) The name and address, as well as photographs or diagrams, of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each;

(iii) Husbandry practices; and

(iv) Qualifications and experience of the personnel who will be responsible for the care of the exotic bird; and

(8) A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the purpose of the scientific research is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild;

(3) Whether the permit, if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed;

(4) Whether the research for which the permit is required has scientific merit, is not unnecessarily duplicative, and would be likely to promote the conservation of the exotic bird species in the wild;

(5) The opinions or views of scientists or other persons or organizations having expertise concerning the exotic bird or other matters germane to the application;

(6) Whether the expertise, facilities, or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and to successfully accomplish the research objectives stated in the application;

(7) Whether the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions as the Director may deem appropriate.

(d) Publication in the **Federal Register**. The Director shall publish notice in the **Federal Register** of each application. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the application. This public comment period may be waived by the Director in an emergency situation where the life or health of an exotic bird is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **Federal Register** within 10 days following issuance of the permit.

(e) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.23 Permits for zoological breeding or display programs.

(a) Application requirements for permits for zoological breeding or display programs. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including: (i) The common and scientific names of the species, number, age, and sex; and (ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is still in the wild or was taken from the wild within the last year, include:

(i) The country and specific location where the removal occurred;

(ii) A description of the manner of taking of each bird;

(iii) The names and qualifications of persons who will capture or captured the bird(s);

(iv) A description of the status of the species in the area of capture; and

(v) A copy of any foreign collecting permit or authorizing letter;

(3) If the exotic bird has been held in captivity for more than 1 year, include:

(i) the country and specific location where removal occurred;

(ii) The date and purpose of removal; and

(iii) Any other information in paragraph (a)(2) of this section that may be applicable;

(4) If the exotic bird was bred in captivity, include:

(i) Documents or other evidence that the bird was bred in captivity, identifying the parental birds, hatch

date, and name and address of the breeder; and

(ii) If the applicant is not the breeder, copies of breeders records, invoices, or other documentation showing the bird was acquired from the breeder and a history of multiple transactions;

(5) A statement of the reasons the applicant is justified in obtaining a permit, and a complete description of the breeding or display program to be conducted with the exotic bird requested, including:

(i) A breeding or education protocol that provides information on conservation educational materials provided to the general public;

(ii) Plans, if any, for developing or maintaining a self-sustaining population of the exotic bird species in captivity;

(iii) A statement on efforts to obtain birds from alternative sources or sources within the United States;

(iv) Details on recordkeeping and veterinary care;

(v) The relationship of such a breeding or display program to promoting the conservation of the species in the wild; and

(vi) Planned disposition of the exotic birds and any progeny.

(6) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards of the public display community, including:

(i) The name and address, as well as photographs or diagrams, of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each;

(iii) Husbandry practices; and

(iv) Qualifications and experience of the personnel who will be responsible for the care of the exotic bird;

(7) A history of the zoological facility's breeding programs with the same or similar species, including:

(i) participation in any cooperative breeding programs;

(ii) breeding and inventory records for the last two years, including hatching, survival and mortality records;

(iii) causes of any mortalities and efforts made to correct any problems; and

(iv) a qualification statement for the principal investigator who will be involved in the breeding program;

(8) A qualification statement for each individual and/or principal investigator who will be overseeing the breeding or display program. This statement should include information on the personnel's husbandry experience with the same or similar bird species;

(9) Three letters of endorsement are required for the breeding or display program on the exotic bird. If the breeding or display requires the removal of the exotic bird from the wild, one of these letters shall be from the Convention Scientific Authority in the country from which the exotic bird is or will be removed from the wild; and

(10) A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport;

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the zoological breeding or display program is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild;

(3) Whether the permit, if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed;

(4) Whether the breeding program for which the permit is required would be likely to enhance or promote the conservation of the exotic bird species in the wild or whether the display program for which the permit is required would be likely to promote conservation through education efforts for the exotic bird species or the habitat in which it lives;

(5) The opinions or views of scientists or other persons or organizations having expertise concerning the exotic bird or other matters germane to the application;

(6) Whether the expertise, facilities or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and to successfully accomplish the zoological breeding or display objectives stated in the application; and

(7) Whether the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions as the Director may deem appropriate.

(d) Publication in the **Federal Register**. The Director shall publish notice in the **Federal Register** of each application. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the application. This public comment period may be waived by the Director in an emergency situation where the life or health of an exotic bird is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **Federal Register** within 10 days following issuance of the permit.

(e) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.24 Permits for cooperative breeding.

(a) Application requirements for permits for cooperative breeding. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including:

(i) The common and scientific names of the species, number, age, and sex; and

(ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is still in the wild or was taken from the wild within the last year, include:

(i) The country and specific location where the removal occurred;

(ii) A description of the manner of taking of each bird;

(iii) The names and qualifications of persons who will capture or captured the bird(s);

(iv) A description of the status of the species in the area of capture; and

(v) A copy of any foreign collecting permit or authorizing letter;

(3) If the exotic bird has been held in captivity for more than 1 year, include:

(i) the country and specific location where removal occurred;

(ii) The date and purpose of removal; and

(iii) Any other information in paragraph (a)(2) of this section that may be applicable;

(4) If the exotic bird was bred in captivity, include:

(i) Documents or other evidence that the bird was bred in captivity, identifying the parental birds, hatch date, and name and address of the breeder; and

(ii) If the applicant is not the breeder, copies of breeders records, invoices, or other documentation showing the bird was acquired from the breeder and a history of multiple transactions;

(5) A statement of the reasons the applicant is justified in obtaining a permit, and a statement detailing the applicant's participation in a cooperative breeding program approved under section § 15.26 of this chapter, including:

(i) copies of any signed agreements or protocols with the monitoring avicultural, conservation, or zoological organization overseeing the program; and

(ii) applicable records of the cooperative breeding program of any other birds imported, their progeny, and their disposition;

(6) A complete description of the relationship of the exotic bird to the approved cooperative breeding program, including:

(i) A statement of the role of the exotic bird in a breeding protocol;

(ii) A plan for maintaining a self-sustaining captive population of the exotic bird species;

(iii) Details on recordkeeping and veterinary care; and

(iv) Planned disposition of the exotic birds and any progeny produced during the course of this program.

(7) A statement outlining the applicant's attempts to obtain the exotic bird in a manner that would not cause its removal from the wild, and attempts to obtain the specimens of the exotic bird species from stock available in the United States;

(8) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards, including:

(i) The name and address, as well as photographs or diagrams, of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each; and

(iii) Husbandry practices;

(9) A history of the applicant's past participation in cooperative breeding programs, including:

(i) breeding and inventory records for at least the last two years;

(ii) hatching, survival and mortality records;

(iii) causes of any mortalities and efforts made to correct any problems;

(10) A qualification statement for each individual who will be handling or responsible for the care of the exotic bird. This statement should include information on the individuals' husbandry experience with the same or similar bird species; and

(11) A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport;

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the cooperative breeding program is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild;

(3) Whether the permit, if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed;

(4) Whether the breeding program for which the permit is required would be likely to enhance or promote the conservation of the exotic bird species in the wild or result in a self-sustaining population of the exotic bird species in captivity;

(5) Whether the expertise, facilities, or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and to successfully accomplish the cooperative breeding objectives stated in the application; and

(6) Whether the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions as the Director may deem appropriate.

(d) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.25 Permits for personal pets.

(a) Application requirements for personal pets not intended for sale. No household may import more than two exotic birds as pets in any year. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird to be imported, including:

(i) The common and scientific names, number, age, and sex (if known);

(ii) A band number, house name, or any other unique identifying feature; and

(iii) A statement as to whether the exotic bird was bred in captivity or taken from the wild;

(2) A statement of the reasons the applicant is justified in obtaining a permit;

(3) Documentation showing that the applicant has continually resided outside of the United States for a minimum of one year;

(4) A statement of the number of exotic birds imported during the previous 12 months as personal pets by the applicant and other members of the applicant's household;

(5) Information on the origin of the exotic bird, including:

(i) Country of origin; and

(ii) A description and documentation of how the exotic bird was acquired, including a copy of any Convention permit under which the bird was re-exported or exported. If there is no such permit, a sales receipt or signed statement from seller with name and address of seller, date of sale, species, and other identifying information on the bird or signed breeders certificate or statement with name and address of breeder, date of sale or transfer, species and hatch date; and

(6) A description, including photographs or diagrams, of the shipping methods and enclosure to be used to transport the exotic bird, including but not limited to feeding and care during transport.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild;

(2) Whether the exotic bird to be imported is a personal pet owned by the applicant who has continuously resided outside the United States for a minimum of one year, or whether the exotic bird was previously exported or re-exported from the United States as a personal pet under a permit issued by the Service;

(3) Whether the number of exotic birds imported in the previous 12 months by the applicant and other members of the applicants's household does not exceed two; and

(4) Whether the exotic bird will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions that no household may import more than two exotic birds as personal pets in any year, the exotic birds cannot be imported with the intention to sell, and any other conditions as the Director may deem appropriate.

(d) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit.

§ 15.26 Approval of cooperative breeding programs.

Upon receipt of a complete application, the Director may approve cooperative breeding programs which will allow individuals to import exotic birds otherwise prohibited by § 15.11, with permits under § 15.24. Such approval for cooperative breeding programs shall be granted in accordance with the issuance criteria of this section.

(a) Application requirements for approval of cooperative breeding programs. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including the common and scientific names of the species, number, age, and sex ratio (if applicable);

(2) A statement of the reasons the applicant is justified in obtaining this approval, and a description of the cooperative breeding program requested for the exotic bird species, including:

(i) A breeding protocol, including a genetic management plan and breeding methods;

(ii) A statement on the plans for developing and maintaining a self-sustaining population in captivity of the exotic bird species;

(iii) Details on the system of recordkeeping and tracking of birds and their progeny;

(iv) A statement on the relationship of such a breeding program to the conservation of the exotic bird species in the wild;

(v) Details on the funding of this program;

(vi) Planned disposition of the exotic birds and any progeny;

(3) A qualification statement for each individual who will be overseeing the cooperative breeding program. This statement should include information on the individual's prior experience with the same or similar bird species. Individuals overseeing the program will be required to demonstrate a professional affiliation with the avicultural, conservation or zoological organization;

(4) Three letters of endorsement are required for the cooperative breeding program. If the cooperative breeding program requires the removal of any exotic birds from the wild, at least one of these letters shall be from the Convention Scientific Authority in the country from which the exotic birds are to be removed from the wild;

(5) A statement of the oversight of the program by the avicultural, zoological, or conservation organization, including their monitoring of participation in the program, criteria for acceptance of individuals into the program, and the relationship of the cooperative breeding program to enhancing the propagation and survival of the species; and

(6) A history of the cooperative breeding program, including an annual report for the last 3 years, mortality records, breeding records, and a studbook if one has been developed for the species.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a cooperative breeding program should be approved. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the cooperative breeding program for which the approval is requested is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the granting of this approval would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic birds were bred in captivity or will be taken from the wild;

(3) Whether the granting of this approval would conflict with any known program intended to enhance the survival of the population from which the exotic bird species was or would be removed;

(4) Whether the cooperative breeding program would be likely to enhance or assist the conservation of the exotic bird species in the wild, enhance the propagation and survival of the species, and result in self-sustaining populations of the exotic bird species in captivity; and

(5) Whether the expertise or other resources available to the program appear adequate to successfully accomplish the objectives stated in the application.

(c) Publication in the **Federal Register**. The Director shall publish notice in the **Federal Register** of each application. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the application. The Director shall publish periodically a notice as appropriate in the **Federal Register** of the list of approved cooperative breeding programs.

(d) Approval conditions. In addition to the general conditions set forth in part 13 of this subchapter, every approval issued under this paragraph shall be subject to the special condition that the cooperative breeding program shall maintain records of all birds imported under permits issued under this subpart and their progeny, including their sale or transfer, death, or escape, and breeding success. These records shall be made available to the Service on request and when renewing an approval.

(e) Duration of approval. Cooperative breeding programs shall be approved for two years, at which time applicants may apply to the Service for renewal of a program's approval. Applications for renewal of approval shall comply with the general conditions set forth in part 13 of this subchapter.

Subpart D—Approved List of Species Listed in the Appendices to the Convention

§ 15.31 Criteria for including species in the approved list.

(a) Captive-bred species.

(b) Non-captive-bred species.

§ 15.32 Species included in the approved list.

(a) Captive-bred species.

(b) Non-captive-bred species.

Subpart E—Qualifying Facilities Breeding Exotic Birds in Captivity

§ 15.41 Criteria for including facilities as qualifying for imports. [Reserved]

§ 15.42 List of foreign qualifying breeding facilities. [Reserved]

Subpart F—List of Prohibited Species Not Listed in the Appendices to the Convention

§ 15.51 Criteria for including species and countries in the prohibited list. [Reserved]

§ 15.52 Species included in the prohibited list. [Reserved]

§ 15.53 Countries of export included in the prohibited list. [Reserved]

Dated: June 30, 1993.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 93–19285 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 6, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

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

Revision

• Agricultural Marketing Service. Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR, part 110). Recordkeeping; On occasion. State or local governments; Farms; Federal agencies or employees, 184,800,000 responses; 1,615,600 hours. Bonnie Poli (703) 330–7826.

Reinstatement

• Farmers Home Administration, 7 CFR 1951–M, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Single Family Housing, On occasion Individuals or households; Non-profit institutions; 2,400 responses; 2,229 hours, Jack Holston (202) 720–9736.

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 93–19429 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–01–M

Food and Nutrition Service

Food Stamp Program: Recipient Claims Collection; Expansion of Test of Offsetting Federal Income Tax Refunds

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department hereby gives notice that it intends to expand the test of the feasibility and effectiveness of offsetting Federal income tax refunds to collect claims against households for overissued food stamp benefits. The offsets are made from Federal income tax refunds payable to individuals liable for those claims. This notice identifies additional States where this procedure will be tested.

DATES: This notice will be effective September 13, 1993. Implementation of the expansion of this test will begin September 13, 1993.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, room 905, Alexandria, Virginia 22302, telephone (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Secretary's Memorandum 1512–1

This proposed action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The action will affect the economy by less than $100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the notice as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This Notice has been reviewed under Executive Order 12778, Civil Justice Reform. This notice is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This notice is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this Notice or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers wholesalers—7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Ellen Hass, Assistant Secretary for Food and Consumer Services, has certified that this notice does not have a significant economic impact on a substantial number of small entities. This notice will affect the State and local agencies which administer the Food Stamp Program, and individuals who have received excess food stamp benefits.

Paperwork Reduction Act

As discussed below, this General Notice announces the expansion of the Federal income tax offset program from nine to 21 State agencies. In accordance with 44 U.S.C. 3507, the public burden for the reporting and recordkeeping provisions of the tax offset program have been submitted to the Office of Management and Budget (OMB) and will not be effective until OMB has approved them. That burden is estimated at 58,555 hours.

The reporting and recordkeeping provisions were specified in a General Notice (August 20, 1991, 56 FR 41325–31) which gave notice that the Department intended to test the offset of Federal income tax refunds as a means of collecting Food Stamp Program recipient claims for overissued benefits. The Notice described the tax offset procedures, including due process notices to individuals, appeal rights and related requirements for State agencies. Substantially all the public burden for tax offset is associated with due process notices and appeals.

Background

In section (a) of the above cited General Notice, the Department advised that the initial test of the offset procedures would be conducted in States of Alabama and California and might be expanded to other States and extended for subsequent years. The Notice also advised that if other test States were added, appropriate Notice would be published. Accordingly, prior to expanding the tax offset procedures for 1993, the Department published a second General Notice (August 28, 1992, 57 FR 39176–77) which added the following States to the test: Arkansas, Colorado, Kentucky, Louisiana, Maine, Oregon, and Tennessee. This second notice also clarified the scope of the tax offset procedure and summarized comments received on the earlier General Notice.

The Department plans to add 12 States to the tax offset program for 1994. Those States are: Florida, Georgia, Illinois, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Utah, West Virginia and Wisconsin. The offset program will continue to be conducted according to the terms of the August 20, 1991 General Notice.

The August 28, 1992 General Notice stated that if the second year of the test proved successful, the Department intended to incorporate the offset procedures into Food Stamp Program regulations by proposing appropriate regulations. The Department is continuing to obtain and evaluate the results from the second year of the test. Based on the results to date, the Department believes it is necessary to evaluate how the procedure will work on a broader scale in States with more varying geographic and demographic characteristics. Should this broad-based test prove successful, the Department is prepared to propose regulations which will add Federal income tax refund offset to the Food Stamp Program regulations on a permanent basis beginning in 1995.

Dated: August 5, 1993.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 93–19374 Filed 8–11–93; 8:45 am]

BILLING CODE 3410-30-U

Forest Service

Establishment of Bayou Beouf Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Bayou Beouf Purchase Unit.

SUMMARY: On July 23, 1993, the Assistant Secretary, Natural Resources and Environment created the Bayou Beouf Purchase Unit. This purchase unit comprises 2,264 acres, more or less, within Rapides Parish, Louisiana. A copy of the establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

EFFECTIVE DATE: The effective date of this purchase unit was July 23, 1993.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

Dated: August 4, 1993.

James C. Overbay,

Acting Chief.

Establishment of Bayou Beouf Purchase Unit, Rapides Parish, LA

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949) the Bayou Beouf Purchase Unit is being established and is described as follows:

Lands lying in Townships 3 and 4 North, Range 2 West, Rapides Parish, Louisiana more particularly described as:

T3N R2W
- Section 10: That part lying west of Bayou Beouf.
- Section 11: That part lying west of Bayou Beouf.
- Section 14: That part of the Northwest Quarter (NW ¼) lying west of Bayou Beouf.
- Section 15: That part of the North half (N ½) lying east of Section 38 and west of Lost Bayou.
- Section 38: All.
- Section 41: All.
- Section 42: All.
- Section 43: All.

T4N R2W
- Section 84: All.

The area described contains 2,264 acres, more or less, and the lands are adjacent to the Kisatchie National Forest boundary.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: July 23, 1993.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 93–19297 Filed 8–11–93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–829]

Notice of Postponement of Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value; Defrost Timers From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Raphiel Hampton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–0176.

POSTPONEMENT: Pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.15(b), regarding the investigation of defrost timers from Japan, the Department of Commerce (the Department) determines that this case is "extraordinarily complicated", because of the complexity of the issues surrounding the date of sale in the United States based on long-term contracts. Additionally, the respondent is cooperating in this investigation.

Therefore, we are postponing the date of the preliminary determination in this investigation until not later than August 17, 1993. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended (the Act).

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: June 4, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–19423 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–05–M

Texas A&M Research Foundation, 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 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

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: 93–035. *Applicant:* Texas A&M Research Foundation, College Station, TX 77843. *Instrument:* Submersible Fluorimeter, Model 6000 AQUATRACKA MkIII. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 27266, May 7, 1993. *Reasons:* The foreign instrument provides (1) a single 4-decade logarithmic range for measuring widely varying chlorophyll densities and (2) deployment to a depth of 6000 m. *Advice Received From:* National Oceanic and Atmospheric Administration and a private research institute, May 7, 1992 (comparable case).

Docket Number: 93–008. *Applicant:* University of California, Los Angeles, Los Angeles, CA 90024-1547. *Instrument:* Backward Wave Type Millimeter Wave Spectrometer. *Manufacturer:* International Center for Scientific Culture World Laboratory, CIS. *Intended Use:* See notice at 58 FR 14559, March 18, 1993. *Reasons:* The foreign instrument provides a wavelength range of 1.16 to 0.8 mm with quasioptical transmission measuring for sub-millimeter spectroscopy. *Advice Received From:* National Institute of Standards and Technology, June 10, 1993.

The National Oceanic and Atmospheric Administration, private research institute 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 Programs Staff.

[FR Doc. 93–19421 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DS–F

Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Acting Under Secretary for the International Trade, Timothy J. Hauser, of the Performance Review Board. This is a revised list of membership which includes previous members as listed in the July 20, 1992 **Federal Register** Announcement (57 FR 32001) with additional members added for a two-year term. The purpose of the International Trade Administration's PRB is to review and make recommendations to the appointing authority on performance and other issues concerning members of the Senior Executive Service (SES). The members are:

Marjory Searing, Deputy Assistant Secretary for Japan, International Economic Policy.

Richard Moreland, Director, Office of Antidumping Investigations, Import Administration.

Roland MacDonald, Director, Office of Antidumping Compliance, Import Administration.

Ann Hughes, Deputy Assistant Secretary for the Western Hemisphere, International Economic Policy.

Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, Trade Development.

Rita K. Hayes, Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods, Trade Development.

Eleanor Roberts Lewis, Chief Counsel for International Trade Administration (non-ITA member).

Dated: August 6, 1993.

James T. King, Jr.,

Personnel Officer, ITA.

[FR Doc. 93–19413 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–25–F

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: By a decision dated July 27, 1993, the Binational Panel reviewing the final affirmative material injury determination made by the U.S. International Trade Commission respecting certain softwood lumber products from Canada (Secretariat File No. USA–92–1904–02) remanded that determination to the Commission for further action. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the Federal

Register on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the Federal Register on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

BACKGROUND: On July 15, 1992, the U.S. International Trade Commission ("Commission") published its final affirmative injury determination finding that an industry in the United States was being materially injured by reason of imports from Canada of softwood lumber products determined by the Department of Commerce to be subsidized.

The Commission, in its final determination, found that the like product consisted of all softwood lumber, and that there was one domestic industry producing the like product—mill operators. It noted that the domestic industry is comprised of almost 6000 producers, most of whom are small, and that the production of softwood lumber is concentrated in the West and South.

The Commission determined that "Canadian imports were significant in terms of both absolute volume and market share throughout the period of investigation. It further noted that in light of the highly substitutable nature of, and inelastic demand for, softwood lumber, the volume of Canadian imports had a significant impact on U.S. lumber prices and sales. The Commission also found that "the ability of the industry to raise prices, commensurate with rapidly increasing costs [due to the reduced supply of timber resulting from environmental restrictions], demonstrated significant price suppression.

Binational Panel Review was requested on a timely basis by the Government of Canada, a number of Canadian provincial governments, and several other Canadian interested persons.

PANEL DECISION: On July 27, 1993, the Binational Panel remanded the final injury determination and directed the Commission to make a determination about causation of material injury by reason of imports of subsidized softwood lumber from Canada not inconsistent with their opinion. The Panel instructed the Commission that if price suppression is the basis of a new affirmative determination by the Commission, the Commission should indicate the actual price suppressing effect of the subject products. The Commission should also address the "to a significant degree" requirement of 19 U.S.C. Sec. 1677(7)(C)(ii).

The Panel further found that should the Commission on remand decide to rely on a cross-sectoral comparison, it must explain the statutory and other basis permitting the Commission to conduct such a comparison in this case. It must also establish, define, and apply an appropriate methodology as discussed in the Opinion.

Finally, the Commission was instructed to provide an adequate explanation of the basis for its finding that imports of softwood lumber from Quebec are not entitled to a separate injury determination.

The Binational Panel instructed the Commission to provide its determination on remand within 90 days of the panel decision (by October 25, 1993).

Dated: August 5, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93–19424 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–GT–M

Applications for Duty-Free Entry of Scientific Instruments

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 part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–075. *Applicant:* Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, SEFSC, Charleston Laboratory, 217 Fort Johnson Road, Charleston, SC 29412. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used for studies of marine biotoxins that are synthesized by microscopic marine plants (phytoplankton). Toxins of unknown structure will be extracted from the phytoplankton that biosynthesize them and from fish and shellfish that have ingested the toxins. These extracts will be purified and injected at atmospheric pressure into the mass spectrometer to gain information on the molecular weights and structures of the toxins. *Application Received by Commissioner of Customs:* June 29, 1993.

Docket Number: 93–076. *Applicant:* United States Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. *Instrument:* Fuel Cell Subsystem. *Manufacturer:* Fuji Electric Company, Japan. *Intended Use:* The instrument will be used as a power source in a research program to develop a phosphoric acid fuel cell/battery hybrid electric bus with methanol as the fuel as a countermeasure of the air pollution brought about by combustion engine, especially diesel engine. *Application Received by Commissioner of Customs:* July 2, 1993.

Docket Number: 93–077. *Applicant:* University of Nebraska, Department of Chemistry, Room 404 Hamilton Hall, Lincoln, NE 68588. *Instrument:* Helium Cryostat Attachment for Single Crystal X-Ray Diffractometer. *Manufacturer:* Oxford Cryosystems, United Kingdom. *Intended Use:* The instrument will be used to cool single crystals to temperature between 200 and 20K to support measurements of X-ray diffraction data from cooled crystals. These crystals will be of materials being studied in connection with solid state chemical reactions and/or materials science applications. *Application Received by Commissioner of Customs:* July 7, 1993.

Docket Number: 93–078. *Applicant:* Yale University School of Medicine, Department of Molecular Biophysics and Biochemistry, P.O. Box 6666, New Haven, CT 06511. *Instrument:* NMR Spectrometer/Imager, Model BIOSPEC 760/2.3. *Manufacturer:* Oxford Research Systems, United Kingdom. *Intended Use:* The instrument will be used to obtain 13C, 31P and 1H nuclear magnetic resonance signals from low molecular weight metabolites present in various tissues of the human body and the bodies of large animals. Normal and impaired metabolism will be studied in humans and in large animals by analyzing these signals. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–079. *Applicant:* Florida State University, Department of Oceanography, B-169, Tallahassee, FL 32306. *Instrument:* Mass Spectrometer with GC Combustion System and Interface, Model Delta S. *Manufacturer:* Finnigan, MAT, Germany. *Intended Use:* The instrument will be used to

study the ratio of 13C/12, 15N/14N and H/D content from samples from the natural environment. These ratios will be used to study biogeochemical and biological processes as they occur in nature. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–080. *Applicant:* Dartmouth College, Dartmouth Medical School, 7055 Vail Building, Hanover, NH 03755. *Instrument:* Imaging and In-Vivo Spectroscopy System, Model 7T/200. *Manufacturer:* Surrey Medical Imaging Systems, United Kingdom. *Intended Use:* The instrument will be used for studies of metabolic and ionic regulation in living tissues, including tumors, brain, skeletal muscle and cardiac muscle in order to obtain an understanding of the potential for NMR as a clinical tool for tumor therapy. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–081. *Applicant:* Brandeis University, 415 South Street, Waltham, MA 02254-9110. *Instrument:* Microvolume Stopped Flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used in research that is directed towards (1) the elucidation of the folding pathway of Bacteriorhodopsin (BR) as it attains its final conformation in the membrane, and (2) the conformation of the sequences of BR which are not embedded in the membrane. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–082. *Applicant:* East Carolina University, Materials Management, Whichard Building, Greenville, NC 27834. *Instrument:* Spectrometer Workstation, Model A5000. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the change in binding constant of ATP and ATPγS to myosin-actin-tropomyosin-troponin with changes in calcium concentration to study the regulation of muscle contraction and the mechanism by which muscle produces force. In addition, the instrument will be used for educational purposes in the courses Introduction to Research, Dissertation Research and Physical Biochemistry. *Application Received by Commissioner of Customs:* July 8, 1993.

Docket Number: 93–083. *Applicant:* University of California, San Francisco, Department of Ophthalmology, 10 Kirkham Street, Room K-301, San Francisco, CA 94143-0730. *Instrument:* Electrode Micromanipulators (2), Model SM-11-S and SM-15-S. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* The instrument will be used to hold and position microscopic glass pipettes with the brains of living animals to recording electrical signals within single cells in order to learn more about how the brain processes visual information. *Application Received by Commissioner of Customs:* July 9, 1993.

Docket Number: 93–084. *Applicant:* University of California, Santa Barbara, Marine Science Institute, Santa Barbara, CA 93106. *Instrument:* Thermistor Chain, Mooring Assembly, and Meteorology Tower. *Manufacturer:* Coastal & Hydraulic Engineering Laboratory, Australia. *Intended Use:* The instrument will be used to identify qualitatively and quantitatively the physical processes which occur in the hypersaline water body, Mono Lake, CA, in studies of various one-dimensional vertical mixing mechanisms, internal wave field dynamics, and seasonal and diurnal heating and cooling dynamics. *Application Received by Commissioner of Customs:* July 9, 1993.

Docket Number: 92–186R. *Applicant:* University of Arkansas, Department of Chemistry, Fayetteville, AR 72701. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX.1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Original notice of this resubmitted application was published in the* **Federal Register** *of* February 8, 1993.

Docket Number: 93–086. *Applicant:* University of Massachusetts at Amherst, Polymer Science & Engineering, LGRT, Amherst, MA 01003. *Instrument:* Laser Light Scattering Goniometer System, Model ALV/DLS-5000. *Manufacturer:* ALV-Laser Vertriebsgesellschaft, m.b.H., Germany. *Intended Use:* The instrument will be used to study the fundamental properties of polymer molecules and colloids in solution and in gels measuring the molecular weight (mass), the radius of gyration (size), the second virial coefficient (degree of interaction), the diffusion coefficient (rate of movement through the solution), and the distributions of all these characteristics. In addition, the instrument will be used for educational purposes by Ph.D. level students in various polymer science courses. *Application Received by Commissioner of Customs:* July 15, 1993.

Docket Number: 93–087. *Applicant:* Southern Illinois University at Edwardsville, Supporting Services Building, L.D. #2, Campus Box 1012, Edwardsville, IL 62026-1012. *Instrument:* Rotating Fatigue Machine, HSM.19. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used by students for educational purposes in the course ME482L, Strength of Materials Laboratory, Assessment of Material Characteristics. *Application Received by Commissioner of Customs:* July 15, 1993.

Docket Number: 93–088. *Applicant:* University of Minnesota Medical School, Department of Therapeutic Radiology, Radiation Biology Section, 425 E. River Road, Room K119 Diehl, Minneapolis, MN 55455. *Instrument:* pO2 Histograph, Model 6650. *Manufacturer:* Eppendorf-Netheler-Hinz, GmbH, Germany. *Intended Use:* The instrument will be used to measure the pO_2 in experimental tumors of mice and rats in a study to determine the tumor pO_2 before and during the treatment of experimental tumors with the ultimate goal of finding means to increase the oxygenation in human tumors with radiotherapy or certain chemotherapeutic drugs. *Application Received by Commissioner of Customs:* July 15, 1993.

Docket Number: 93–089. *Applicant:* Illinois Institute of Technology, Metallurgical and Materials Engineering Department, 10 W. 33rd Street, Chicago, IL 60616. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to study the structure of metals, ceramics, semiconductors, glasses, polymers and composite materials. In addition, the instrument will be used for graduate M. Sc. and Ph.D. courses and dissertation research, and will be demonstrated to students in undergraduate metallurgy and materials science courses. *Application Received by Commissioner of Customs:* July 15, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–19422 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: Louisville, KY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to

operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is *$169,125* in Federal funds and a minimum of *$29,846* in non-Federal (cost-sharing) contributions. This federal amount includes *$4,125* for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from *January 1, 1994* to *December 31, 1994*. The MBDC will operate in the *Louisville, Kentucky* geographic service area.

The award number for this MBDC will be *04-10-94001-01*.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDA program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Awards under this program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of DOC to cover pre-award costs.

Consistent with OMB Circular A-129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 Part 28, Appendex B.

Lower Tier Centifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure from, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by an tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for submitting an application is *September 17, 1993.* Applications must be postmarked on or before *September 17, 1993.* Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference to assist all interested applicants will be held on *September 1, 1993,* 9:00 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Room 1715, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: *Sunny L. Guider, Acting Regional Director* of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

11.800—Minority Business Development (Catalog of Federal Domestic Assistance)

Sunny L. Guider,

Acting Regional Director, Atlanta, Regional Office.

[FR Doc. 93–19441 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Jackson, MS

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is *$169.125* in Federal funds and a minimum of *$29,845* in non-Federal (cost-sharing) contributions. This federal amount includes *$4,125* for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from *January 1, 1994* to *December 31, 1994.* The MBDC will operate in the *Jackson, Mississippi* geographic service area.

The award number for this MBDC will be *04–10–94002–01.*

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (technologies and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross rates of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

MBDCs performing satisfactorily may continue to operate after the initial competitive year of up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the local discretion of DOC.

Awards under this program shall be subject to all Federal laws and Federal and Department regulations, policies, and procedures applicable to Federal assistance awards. If applicants incur

any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of DOC to cover pre-award costs.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Example of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 part 28, appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for submitting an application is *September 17, 1993.* Applications must be postmarked on or before *September 17, 1993.* Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference to assist all interested applicants will be held on *September 1, 1993,* 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: *Sunny L. Guider, Acting Regional Director* of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

11.800—Minority Business Development (Catalog of Federal Domestic Assistance).

Sunny L. Guider,

Acting Regional Director, Atlanta Regional Office.

[FR Doc. 93–19442 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Greensboro-Winston Salem-High Point, NC

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is *$169,125* in Federal funds and a minimum of *$29,846* in non-Federal (cost-sharing) contributions. This federal amount includes *$4,125* for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from *January 1, 1994* to *December 31, 1994.* The MBDC will operate in the *Greensboro-Winston Salem-High Point, North Carolina* geographic service area.

The award number for this MBDC will be *04–10–94003–01.*

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical

assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Awards under this program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of DOC to cover pre-award costs.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for submitting an application is *September 17, 1993.* Applications must be postmarked on or before *September 17, 1993.* Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street,

NW., Suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference to assist all interested applicants will be held on *September 1, 1993*, 9:00 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: *Sunny L. Guider, Acting Regional Director* of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Room 1715, Atlanta, Georgia 30308–3516.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Sunny L. Guider,

Acting Regional Director, Atlanta Regional Office.

[FR Doc. 93–19443 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 080593E]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team (Team) will hold a public meeting on August 17–19, 1993, at the Pacific Fishery Management Council, 2000 SW First Avenue, Portland, OR. The meeting will begin on August 17 at 8 a.m. and continue through noon on August 19.

The Team will review:

(1) Stock assessments for important groundfish species and recommend preliminary acceptable biological catch (ABC) levels, where appropriate.

(2) Current rates of landing of various species and recommend any necessary adjustments;

(3) Management of the open access fishery in 1994;

(4) A draft analysis of proposed individual transferrable quotas;

(5) At-sea processing of groundfish other than Pacific whiting; and

(6) A draft analysis of the whiting allocation proposal.

Immediately following the meeting on August 19, the Team will hold a public workshop on the new groundfish stock assessment and preliminary ABC recommendations.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: August 6, 1993.

David S. Crestin,

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

[FR Doc. 93–19323 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 080593C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public meeting of its Pelagics Advisory Panel (Panel) on August 16, 1993, at the Hawaii Maritime Center, Pier 7, Honolulu Harbor, HI. The meeting will begin at 8 a.m.

The Panel will discuss and possibly make recommendations to the Council regarding:

(1) Council program planning for 1994–1996;

(2) The 1992 annual reports for the pelagics and bottomfish fishery management plans;

(3) The status of the Pacific Pelagic Fisheries Research Program;

(4) The need for comprehensive data collection in all fisheries;

(6) Proposed Amendment #7 to the pelagics fishery management plan (Hawaii longline limited entry program); and

(7) Other business.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974.

Dated: August 6, 1993.

David S. Crestin,

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

[FR Doc. 93–19324 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 080593D]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public meeting of its Scientific and Statistical Committee (SSC) on August 24–27, 1993, beginning at 8:30 a.m. on each day.

On August 25–26, the full SSC will meet in the conference room of the National Marine Fisheries Service (NMFS), Honolulu Laboratory, 2570 Dole St., Honolulu, HI. A location for the concluding SSC session on August 27 has not been determined; further information will be available from the contact listed below.

The SSC will discuss, and possibly make recommendations to the Council regarding:

(1) Council program planning for 1994–1996;

(2) The 1992 annual reports for the pelagics and bottomfish fishery management plans;

(3) The status of the Pacific Pelagic Fisheries Research Program;

(4) The need for comprehensive data collection in all fisheries;

(5) A review of the NMFS Biological Opinion regarding longline-turtle interactions;

(6) Proposed Amendment #7 to the pelagics fishery management plan (Hawaii longline limited entry program);

(7) An economic review of the Northwestern Hawaiian Islands bottomfish fishery;

(8) An evaluation of the need to maintain the precious corals fishery management plan; and

(9) Other business.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974.

Dated: August 6, 1993.

David S. Crestin,

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

[FR Doc. 93–19325 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals; Permits

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

ACTION: Issuance of modification to permit No. 723 (P77#45).

SUMMARY: Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 723 (P77#45) issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on March 22, 1991 (56 FR 13128), has been modified to extend the effective date through December 31, 1995. This modification becomes effective upon publication in the **Federal Register.**

ADDRESSES: Documents pertaining to this modification and permit are available for review by appointment in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 (310/980–4016).

Dated: August 5, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–19339 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

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

ACTION: Application for public display permit, Chaffee Zoological Gardens (P95A).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Chaffee Zoological Gardens, 894 Belmont Avenue, Fresno, California 93782.

2. *Type of Permit:* Public display.

3. *Number and Name of Animals:* Two California sea lions (*Zalophus californianus*) from captive stock. One harbor seal (*Phoca vitulina*) from captive stock.

The applicant requests authorization to obtain permanent custody of two female California sea lions currently in the custody of Point Defiance Zoo and Aquarium, Tacoma, WA; and one female harbor seal currently in the custody of the Hogle Zoological Garden, Salt Lake City, Utah.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (310/980–4016); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/525–6150).

Dated: August 5, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–19338 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of scientific research permit (P551).

SUMMARY: Notice is hereby given that on August 5, 1993 Ms. Daniela M. Feinholz, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039 and Dennis L. Kelly, Ph.D., Coastal Dolphin Research Project, Orange Coast College, Costa Mesa, CA 92628, were issued a scientific research permit to approach and inadvertently harass bottlenose dolphins (*Tursiops truncatus*) during the course of observation/photo-identification studies in California coastal waters over a 4-year period, subject to special conditions set forth therein.

ADDRESSES: The permit and associated documents are available for review upon written request or by appointment, in the following offices: Office of Protected Resources, NMFS NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and Director, Southwest Region, NMFS, NOAA, 501 S. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

SUPPLEMENTARY INFORMATION: On April 20, 1993, notice was published in the **Federal Register** (58 FR 21285) that a request for a scientific research permit to take bottlenose dolphins (*Tursiops truncatus*) had been submitted by the above-named Permit Holders. The requested permit was approved and issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 5, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–19337 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 011393A]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an experimental fishing permit.

SUMMARY: NMFS announces the issuance of an experimental fishing permit (EFP) to Terra Marine Research and Education, Inc. (Terra Marine), and 21 vessels and shoreside processors. These vessels, operators, shoreside processors, and Terra Marine are authorized under the EFP to retain Pacific salmon caught as bycatch that would otherwise be required to be discarded at sea as prohibited species. The EFP is designed to test the feasibility of processing and distributing Pacific salmon caught as bycatch to economically disadvantaged individuals through food banks.

ADDRESSES: Copies of the EFP and the Environmental Assessment (EA) are available by writing to Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Biologist, Fisheries Management Division, Alaska Region, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: Issuance of EFPs is authorized by the Fishery Management Plan (FMP) for the

Groundfish Fishery of the Bearing Sea Aleutian Islands management area (BSAI) and its implementing regulations at 50 CFR part 675. The FMP for the Groundfish Fishery of the BSAI and its implementing regulations at 50 CFR part 675 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited. The procedures for issuing EFPs are contained in the regulations at § 675.6.

NMFS announced the receipt of an application for an EFP from Terra Marine in the **Federal Register** on January 22, 1993 (58 FR 5716). The application requested authorization to retain Pacific salmon and Pacific halibut caught as bycatch in directed BSAI groundfish fisheries that would be processed and distributed to economically disadvantaged individuals, free of charge, via food banks. The North Pacific Fishery Management Council (Council) reviewed the EFP application at its December 8–13, 1992, meeting and recommended to the Director of the Alaska Region, NMFS (Regional Director), that the EFP be approved. The International Pacific Halibut Commission also reviewed the EFP application and declined to approve the retention of halibut with trawl gear and recommended that the Regional Director deny the portion of the EFP application that requested authority to retain incidentally caught Pacific halibut.

The Regional Director has partially approved the EFP application and has issued an EFP to Terra Marine and the participating vessels and shoreside processors. The EFP authorizes these vessels, shoreside processors, and Terra Marine to retain Pacific salmon caught as bycatch during: (1) The 1993 BSAI directed pollock non-roe (or "B") season fishery; (2) the 1994 BSAI directed pollock roe (or "A") season fishery; and (3) the 1994 BSAI directed Pacific cod fishery, for the purpose of producing salmon products to be distributed to economically disadvantaged individuals via food banks. In addition, biological sampling of Pacific salmon with clipped adipose fins will occur under this EFP. The objective of this EFP is to provide a framework to reduce the waste of bycatch species that are currently required to be discarded at sea, to provide an economic incentive to reduce Pacific salmon bycatch by requiring the participants to incur the costs of processing and distributing salmon bycatch, and to test the feasibility of distributing the resulting salmon products to economically disadvantaged individuals.

Based on the EA prepared for this EFP, the Assistant Administrator for Fisheries, NOAA, determined that no significant impact on the quality of the human environment will result from this EFP. The Regional Director determined that this experiment will not affect species listed as threatened or endangered under the Endangered Species Act in a way that was not already considered in previous formal and informal section 7 consultations. Additional information, including gear restrictions, scientific sampling procedures, project design, and disposition of harvested fish, is contained in the EFP.

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

Dated: August 9, 1993.

David S. Crestin,

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

[FR Doc. 93–19401 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

[Docket No. 930781–3181]

Request for Information To Aid in the Implementation of the Recordation Requirements of Section 8 of the Fastener Quality Act

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; request for information.

SUMMARY: The Patent and Trademark Office (PTO) is seeking information concerning alphanumeric designations currently in use by manufacturers or distributors of industrial fasteners. These alphanumeric designations may be used to signify the physical characteristics, strength, chemical content, size or other information about the fastener upon which they appear or they may be used as common law trademarks to identify and distinguish the manufacturer or distributor of such fasteners. The PTO needs information concerning these alphanumeric designations in order to administer the proposed fastener recordal system published on August 17, 1992, at 57 FR 37060, 37061 to implement the requirements of section 8 of the Fastener Quality Act, Public Law 101–592. Therefore, the PTO is requesting from fastener industry associations, standards bodies, or individual manufacturers or distributors, any general or specific information available concerning alphanumeric designations currently in use within the industry, whether as unregistered trademarks, as marks required by a standard, or for any other purpose.

DATES: Comments should be submitted on or before September 27, 1993. Comments received after this date will be considered if possible.

ADDRESSES: All comments concerning alphanumeric designations should be addressed to Lynne G. Beresford, Trademark Legal Administrator, Commissioner of Patents and Trademarks, Washington, DC 20231, telephone number (703) 305–9464.

FOR FURTHER INFORMATION CONTACT: Lynne G. Beresford, Trademark Legal Administrator, (703) 305–9464.

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted the Fastener Quality Act, Public Law 101–592 (the Act) to protect public safety, deter introduction of non-conforming fasteners into commerce, improve the tracing of fasteners used in critical applications, and provide customers with greater assurance that fasteners meet stated specifications. The Act requires that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured; provides for accreditation of laboratories engaged in fastener testing; and requires the inspection, testing and certification (in accordance with standardized methods) of fasteners covered by the Act.

Section 8 of the Act prohibits offering fasteners for sale that are required by an applicable standard or specification to bear a raised or depressed insignia identifying the manufacturer or private label distributor unless such manufacturer or distributor has complied with the requirements of a program of the Secretary of Commerce for the recordation of such insignia in order to ensure that the fasteners can be traced to the manufacturer or distributor.

The program for recordation of fastener insignias, established by the Secretary of Commerce and administered by the Patent and Trademark Office, will allow the owner of a mark, which is the subject of a duly filed trademark application or registration, to apply for recordal of that mark as its fastener insignia. However, if the manufacturer or private label distributor does not wish to use a trademark as its fastener insignia, it will be permitted to apply for a unique alphanumeric designation for that purpose.

The PTO wants to ensure that it does not inadvertently issue an alphanumeric designation that is either already in use by a manufacturer or distributor as its identifying insignia, or a designation already in use by the industry to signify the physical characteristics, strength,

chemical content, size or other information about the fastener. For that reason, the PTO is requesting from fastener industry associations, standards bodies, or individual manufacturers or distributors, any general or specific information available concerning alphanumeric designations currently in use within the industry, whether as unregistered trademarks, as marks required by a standard, or for any other purpose. The PTO does not need information concerning specific registered alphanumeric trademarks, as that information is readily available from the PTO's database.

(Authority: 15 U.S.C. 5407)

Dated: July 15, 1993.

Michael K. Kirk,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 93-19184 Filed 8-11-93; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

August 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

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 current limits for certain categories are being adjusted for swing.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 60175, published on December 18, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 6, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1993 and extends through January 31, 1994.

Effective on August 16, 1993, you are directed to amend further the directive dated December 11, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
237	270,375 dozen.
335	167,208 dozen.
336/636	265,449 dozen.
338/339	938,087 dozen.
340/640	1,839,135 dozen.
341	1,853,884 dozen.
342/642	190,613 dozen.
347/348	1,581,054 dozen.
638/639	1,212,383 dozen.
641	482,289 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-19416 Filed 8-11-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

August 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 482-3715.

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 current limit for Category 359-V is being increased by application of swing, reducing the limit for Category 607 to account for the increase.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 6, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products,

produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 6, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
359-V [2]	815,066 kilograms.
607	1,559,889 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 359-V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-19418 Filed 8-11-93; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

August 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

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).

A Memorandum of Understanding dated July 22, 1993 between the Governments of the United States and Guatemala, establishes, among other things, a Designated Consultation Level for cotton and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period beginning on May 28, 1993 and extending through September 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 57 FR 54976, published on November 23, 1992). Also see 57 FR 59334, published on December 15, 1992; and 58 FR 32521, published on June 10, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 6, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 16, 1993, you are directed to amend the December 9, 1992 directive to establish a limit for cotton and man-made fiber textile products in Categories 351/651 for the period beginning on May 28, 1993 and extending through September 30, 1993 at a level of 138,096 dozen [1], as provided under the terms of a Memorandum of Understanding dated July 22, 1993 between the Governments of the United States and Guatemala.

Textile products in Categories 351/651 which have been exported to the United States prior to May 28, 1993 shall not be subject to the limit established in this directive.

You are directed to retain the monitoring data for Categories 351/651 (see directive dated June 4, 1993). These import charges shall be applied to the limit established in this directive. Additional charges will be provided as data become available.

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,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-19414 Filed 8-11-93; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after May 27, 1993.

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Hungary

August 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

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 current limits for certain categories are being adjusted, variously, for swing and carryover.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 53883, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 5, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 13, 1993, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Hungary:

Category	Adjusted twelve-month limit [1]
410	754,150 square meters.
433	18,480 dozen.
435	25,525 dozen.
443	184,730 numbers.
444	59,590 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19417 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

August 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 13, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

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 current limits for certain categories are being increased by application of swing.

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 57 FR 54976, published on November 23, 1992). Also see 57 FR 49074, published on October 29, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 5, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 13, 1993, you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted twelve-month limit [1]
Group I	
200–239, 300–369, 600–670 and 800–899, as a group.	92,868,484 square meters equivalent.
Sublevels in Group I	
333/334/335/833/834/835.	204,655 dozen of which not more than 104,584 dozen shall be in Categories 333/335/833/835.
338	267,644 dozen.
339	1,133,354 dozen.
340	252,032 dozen.
341	166,953 dozen.
345	46,183 dozen.
347/348/847	636,025 dozen.
633/634/635	449,859 dozen.
638/639/838	1,400,873 dozen.
640	99,603 dozen.
641/840	171,191 dozen.
642/842	99,738 dozen.
647/648	470,999 dozen.
Group II	
400–469, as a group	1,449,685 square meters equivalent.
Sublevel in Group II	
445/446	81,157 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–19419 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of El Salvador on Certain Cotton and Man-Made Fiber Textile Products

August 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 29, 1993, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on December 9, 1992,

the Government of the United States requested consultations with the Government of El Salvador with respect to cotton and man-made fiber coats in Categories 335/635, produced or manufactured in El Salvador.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of El Salvador, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 335/635, produced or manufactured in El Salvador and exported during the twelve-month period which began on July 29, 1993 and extends through July 28, 1994, at a level of not less than 101,508 dozen.

A summary market statement concerning Categories 335/635 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 335/635, or to comment on domestic production or availability of products included in Categories 335/635, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of El Salvador.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 335/635. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

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 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—El Salvador

Category 335/635—Women's and Girls' Cotton and Man-made Fiber Coats

July 1993

Import Situation and Conclusion

U.S. imports of women's and girls' cotton and man-made fiber coats, Category 335/635, from El Salvador reached 113,464 dozen for the year ending May 1993, an increase of 54 percent over the 73,628 dozen imported a year earlier. In the first five months of 1993 El Salvador shipped 57,512 dozen, two and a half times their January-May 1992 level.

The sharp and substantial increase in Category 335/635 imports from El Salvador is disrupting the U.S. market for women's and girls' cotton and man-made fiber coats.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' cotton and man-made fiber coats, Category 335/635, declined from 6,724,000 dozens in 1987 to 4,173,000 dozen in 1992, a decline of 38 percent. By contrast, U.S. imports of women's and girls' cotton and man-made fiber coats, Category 335/635, increased from 6,923,000 dozen in 1987 to 9,516,000 dozen in 1992, an increase of 37 percent. Imports continue to increase in 1993, up 11 percent in the first five months of 1993 over the January-May 1992 level.

The ratio of imports to domestic production more than doubled, increasing from 103 percent in 1987 to 228 percent in 1992. The share of this market held by domestic manufacturers fell from 49 percent in 1987 to 30 percent in 1992, a decline of 19 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 69 percent of Category 335/635 imports from El Salvador during the year ending May 1993 entered under HTSUSA numbers 6202.12.2060—girls' cotton overcoats, carcoats, and similar coats, other than those of corduroy fabric; 6202.93.4500—women's and girls' man-made fiber water resistant anoraks, windbreakers and similar articles; and 6204.39.3010—women's artificial fiber suit-type jackets and blazers that are less than 36% wool. These coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable coats.

[FR Doc. 93-19420 Filed 8-11-93; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with the Government of the United Arab Emirates on Cotton Twill Fabric

August 6, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 28, 1993, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of the United Arab Emirates with respect to cotton twill fabric in Category 317, produced or manufactured in the United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton twill fabric in Category 317, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on July 28, 1993 and extends through July 27, 1994, at a level of not less than 23,303,171 square meters.

A summary market statement concerning Category 317 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 317, or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the

Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the United Arab Emirates.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 317. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

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 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—United Arab Emirates

Category 317—Cotton Twill Fabric

July 1993

Import Situation and Conclusion

U.S. imports of cotton twill fabric, Category 317, from the United Arab Emirates reached 23,485,933 square meters in the year ending May 1993, double the 11,549,253 square meters imported a year earlier. In the first five months of 1993, the United Arab Emirates shipped 11,408,774 square meters, 54 percent above their January-May 1992 level. The United Arab Emirates became the second largest supplier of cotton twill fabrics to the U.S., accounting for 11 percent of total Category 317 imports during the year ending May 1993 period. In the year ending May 1992, the United Arab Emirates was ranked eighth among the major suppliers, accounting for six percent of total Category 317 imports.

The sharp and substantial increase of Category 317 imports from the United Arab Emirates is disrupting the U.S. market for cotton twill fabrics.

U.S. Production, Import Penetration and Market Share

During 1991 and 1992 U.S. cotton twill producers retained market share as imports and domestic production increased. However, during the first quarter of 1993, U.S. production remained virtually flat compared to January-March 1992 while imports increased 15 percent. In the first five months of 1993, imports are up 22 percent over the January-May 1992 level.

As a result of the increase in imports in 1993 the domestic producers' share of the cotton twill market dropped three percentage points, falling from 69 percent during January-March 1992 to 66 percent during January-March 1993. During this same time period the ratio of imports to domestic production increased from 45 percent to 52 percent.

Duty-Paid Value and U.S. Producers' Price

Approximately 95 percent of Category 317 imports from the United Arab Emirates during 1993 entered the U.S. under HTSUSA number 5209.12.0020—unbleached 3 or 4-thread twill fabric containing more than 85 percent by weight cotton, not napped, and weighing more than 200 grams per square meter. These fabrics entered the U.S. at landed duty paid values below U.S. producers' prices for comparable fabrics.

[FR Doc. 93–19415 Filed 8–11–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Environmental Assessment: Theater Missile Defense Lethality Program

AGENCY: Ballistic Missile Defense Organization (BMDO); DoD.

ACTION: Notice.

Summary

The U.S. Army Space and Strategic Defense Command (USASSDC), at the request of the Ballistic Missile Defense Organization (BMDO), has conducted an assessment of the potential environmental consequences of the TMD Lethality program.

The objective of this program is to develop validated lethality criteria for a high-confidence kill against all theater threat warheads. The TMD Lethality program activities would include stimulant development, electromagnetic irradiation, impact, shock, penetration, and aerobreakup tests of biological, chemical, or nuclear/conventional stimulants within laboratory or other indoor test facilities and at outdoor test facilities. Testing involves use of simulated environmental conditions or test parameters to determine how each material would react to stresses expected from a typical theater missile defense engagement.

Test activities would be conducted at the following facilities: Battelle facilities in Columbia and West Jefferson, Ohio; Southern Research Institute, Birmingham, Alabama; Illinois Institute of Technology Research Institute, Chicago, Illinois; U.S. Army Research Laboratory, Aberdeen, Maryland; Arnold Engineering Development Center, Arnold Air Force Base (AFB), Tennessee; Dyna East Corporation, Falling Waters, West Virginia; High Speed Test Track, Holloman AFB, New Mexico; Kaman Sciences Corporation, Colorado Springs, Colorado; Lawrence Livermore National Laboratory facilities in Washington, DC, and the Chesapeake Bay Detachment, Maryland; New Mexico Institute of Mining and Technology, Socorro, New Mexico; University of Alabama in Huntsville, Huntsville, Alabama; Yuma Proving Ground, Yuma, Arizona; and Hurricane Mesa Test Track Facility, Hurricane, Utah. All of the proposed locations were selected based on their ongoing work for similar programs.

Alternative Considered

The only alternative to the proposed TMD Lethality program activities is the no-action alternative. The no-action alternative would be not to proceed with any TMD Lethality program testing.

The environmental impact of the testing at the locations and activities required in the TMD Lethality program were evaluated in the TMD Lethality Programmatic Environmental Assessment.

Anticipated Environmental Impacts:

TMD Lethality program activities are considered to be routine for all proposed test locations and would use mostly existing personnel. Although potential cumulative health and safety impacts are possible, these are easily mitigated to a not significant level by using established safety procedures. In particular, hazardous materials will be handled and disposed of according to existing compliant procedures.

Employees will follow standard, established procedures for handling and neutralizing hazardous materials during TMD testing.

Factors Considered in the Determination of No Significant Impact

To assess the significance of potential environmental impacts, a list of site-specific activities necessary to accomplish the proposed action was developed. The areas of environmental consideration were air quality, biological resources, cultural resources, hazardous materials/waste, health and safety, infrastructure, land use, noise, physical resources, socioeconomics, and water quality. If a proposed activity was determined to present a potential for environmental impact, then the activity was evaluated by considering the intensity, extent, and context in which the impact would occur. As a result of the evaluation, impacts were assigned to one of three categories: Not significant, potentially significant but mitigable, or potentially significant.

Conclusion

Evaluation of the areas of environmental considerations has shown that no significant impacts would occur from activities evaluated associated with the TMD Lethality program.

Point of Contact

Ms. Linda Ninh, CSSD–EN–V, U.S. Army Space and Strategic Defense Command, Post Office Box 1500, Huntsville, Alabama 35807–3801, or by calling (205) 955–1154.

Dated: August 9, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19364 Filed 8–11–93; 8:45 am]

BILLING CODE 5000–04–M

DoD–DOE System Safety Red Team Advisory Committee

ACTION: Notice of advisory committee meeting.

SUMMARY: The DoD–DOE System Safety Red Team Advisory Committee (Red Team) will meet in closed session on September 9–10, 1993, at Alexandria, Virginia.

The mission of the Red Team is to perform technical evaluations of the safety of nuclear weapons in development and in the stockpile. At this meeting, the Red Team will finalize its report assessing the safety of the W–80 warhead and weapon systems (Air Launched Cruise Missile, Advanced Cruise Missile and TOMAHAWK). Upon completion of this meeting, the report will enter a required review process prior to its submission to the Secretary of Defense and the Secretary of Energy.

In accordance with section 10(d) of the Federal Advisory Committee Act PL 92–463, as amended, (5 U.S.C. App. II, (1988)), it has been determined that this Red Team meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

August 8, 1993.

Linda M. Bynum,

Alternate OSC Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19298 Filed 8–11–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Partnerships for Global Competitiveness

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Department is making available and publishing in this notice a strategic plan entitled "Partnerships for Global Competitiveness." [1] Through its partnerships with industry, the Department has pioneered innovative arrangements with integrated industrial sectors, broad industry associations, and State governments. These market-driven collaborations are causing a fundamental redefinition of the term technology transfer. To help meet these strategies and to contribute to the accelerated change necessary for the Department's technology partnerships, the Secretary will implement a package of initiatives detailed in this report.

DATES: Any comments should be received by September 27, 1993.

ADDRESSES: To receive a copy of the Strategic Plan write to the Department of Energy, Office of Technology Utilization, ST–40, 1000 Independence Avenue, SW., Washington, DC 20585. Comments should be mailed to this address.

FOR FURTHER INFORMATION CONTACT: For general information on the Strategic Plan call Laura Thomas, 202–586–4479 or Ora Cooke, 202–586–5388. Requests may also be sent by fax machine to 202–586–8854.

[1] This notice reflects the text of the Secretary's remarks before the House Committee on Science, Space, and Technology on July 29, 1993.

SUPPLEMENTARY INFORMATION:

Partnerships for Global Competitiveness

Draft Technology Partnership Strategic Plan

New challenges and new national needs have made the 1990s a fundamentally different decade for the Department of Energy. The economic imperative facing the nation requires the Department to reorient programs and redirect resources—particularly at its laboratories—toward partnerships that contribute to American industrial competitiveness while maintaining a strong science and technology base. Although change at the Department already is well underway, the pace of change must accelerate. Our challenge and our cause is to become part of the quality revolution that is transforming American enterprise.

The Department of Energy has a long record of partnerships with the private sector, particularly through its applied research programs. These partnerships take many forms, from relatively simple technical assistance arrangements with small businesses to complex cost-shared agreements with industrial alliances. Until recently, the Department's technology transfer program was characterized predominantly by a technology-push approach to assisting the private sector, with involvement from the private companies generally occurring late in the research and development process.

During the past few years, however, the Department has entered into an unprecedented number of agreements involving collaborative technology development, with the industrial partner playing a central role in defining the research agenda.

These market-driven collaborations are causing a fundamental redefinition of the term technology transfer. More appropriate for today's environment is the concept of technology partnerships—which recognizes the mutuality of interest essential for success.

Through its partnerships with industry, the Department has pioneered innovative arrangements with integrated industrial sectors, broad industry associations, and State governments. By all indicators (i.e., number of partnerships, annual industrial visitors, partnership proposals), industry interest in the Department of Energy laboratories is at an all-time high. The science and technology base of the laboratories offers valuable and often-unique expertise in areas such as advanced materials and manufacturing, high-

performance computing, microelectronics, and environmental technologies. The Department's scientific user facilities permit industry to conduct research that generally cannot be done anywhere else.

Many of the partnerships developed during the past few years have been highly successful; others have failed to meet the expectations of either the Department or its partners. Through these experiences, however, we have learned many lessons which can help increase our successes in the future. This approach of aggressive experimentation, with a focus on continuous improvement, is necessary and must continue as the nation moves into the unchartered terrain of the 1990s and beyond.

Technology partnerships must become integral to the way we do our business—all our business. From the earliest stages of program planning to the final steps in meeting our mission responsibilities, we must fully consider opportunities for establishing partnerships which leverage departmental resources to maximize their contributions to society.

Our goal must be to get the maximum value for the American public out of the budget made available to the Department. This means that every dollar spent toward meeting the Department's missions—whether for basic research, nuclear weapons stewardship, environmental cleanup, or energy production and conservation—must be examined for its potential to be leveraged toward a mutual benefit with industry, academia, or other agencies. The benefits from these partnerships are truly mutual—with the Department meeting its missions and sustaining its science and technology base more effectively, while also helping to meet the goals of our partners.

To accelerate the change already underway, we must be customer-focused and user-friendly. We must listen to our customers, understand their requirements, develop plans for helping to meet those requirements, assign responsibilities for implementing those plans, and measure success—with these measurements driving the continuous improvement process.

President Clinton's technology policies create both an opportunity and an obligation for all federal agencies to sharpen their strategic focus on American industrial competitiveness and job creation. For the Department of Energy, this sharpened focus creates an enhanced framework for our technology partnership efforts. Specifically, this framework will increase our focus on achieving dual-use benefits from our mission-oriented work—where dual-use means accomplishing goals that serve both the public missions of the Department and commercialization interests of the private sector. In addition, this framework will make us a better partner and help us achieve the full potential of our partnership opportunities, while demonstrating real results for the American taxpayers.

Technology Partnership Vision

With both the Administration's technology policies and the Department's new core values in mind, we have developed a vision statement for the Department's technology partnership activities. That vision is for the Department to be a recognized leader and partner with industry in developing and transferring science and technology to enhance economic performance and to serve public needs.

Realizing the Vision

Five critical strategies, each with a set of high priority goals, will help the Department realize this vision. These strategies are:

(1) *The Department must change its culture.* This will require integration of technology partnerships into every mission of the Department, continual reinforcement of customer focus as a core value of the Department, and continual measurement of performance.

(2) *We must optimize our technology partnership processes.* This will require streamlining of existing technology partnership mechanisms and the creation of new mechanisms that are responsive, reliable, and consistent.

(3) *We must make it easier for industry to access Departmental technology, resources and facilities.* This will require consistent policies and procedures across the Department and its facilities, and will depend on improved strategies for helping industry learn about the specific resources of the Department.

(4) *We must ensure that our technology transfer process and technology development programs are guided by market-pull.* This will require the Department to actively seek industry involvement to provide market context at all stages of Departmental programs—including at the conceptual stages of new initiatives.

(5) *We must develop, with industry and others, integrated program plans.* This will require increased collaboration within the Department of Energy, among the Department and other Federal agencies—including the Office of Science and Technology Policy—and between the Government as a whole and key industrial sectors, universities, and State and local governments.

Department of Energy Core Values

We are Customer Oriented.
We value Creativity and Innovation.
We are Committed to Excellence.
We are a Team, and DOE is a Team Player.
We respect the Environment.
People are Our Most Important Resource.
Leadership, Empowerment, and Accountability are Essential.
We are Technically and Ethically Respected.

Department of Energy Technology Transfer Mechanisms

Data and information exchanges.
Cooperative agreements.
Cost-shared procurements.
Licensing agreements.
Personnel exchanges.
Technical assistance agreements.
User facilities agreements.
Work-for-others agreements.
Cooperative Research and Development Agreements.

Key Initiatives

To help meet these strategies and to contribute to the accelerated change necessary for the Department's technology partnerships, the Secretary will implement a package of initiatives, detailed in this report, which fall into three categories:

Streamlining the Process. One of the most important strategies for the Department is to streamline our partnership mechanisms. To help achieve this strategy:

(1) The Secretary has established a goal of reducing the processing time for cooperative research and development agreements, from initial negotiations until the start of work, by 50 percent within one year;

(2) By October 31, 1993, the Secretary will delegate authority to the Directors of the Departmental laboratories to directly execute cooperative research and development agreements involving $500,000 per year or less in Federal funds and which conform to certain guidelines;

(3) Within 60 days, the Department will release a plan for providing block cooperative research and development agreement funding during fiscal year 1994 to select laboratories on a trial basis, to facilitate quick responses to industry;

(4) Within 60 days, the Department will issue a "modular" cooperative research and development agreement, comprised of specific pre-approved terms and conditions;

(5) By December 31, 1993, the Department will establish a streamlined approach for private sector entities interested in accessing Departmental resources on a reimbursable basis.

Planning For Success. Developing integrated program plans with industry, other government agencies, and—perhaps most importantly—internally within the Department will be essential for achieving our vision. To plan for success:

(1) Within six months, and annually thereafter, the Department will develop an integrated technology partnership plan, which will be carefully coordinated with other Federal agencies and the Office of Science and Technology Policy, to provide a multi-year framework for partnership activities;

(2) By September 30, 1993, a new high-level team will be established immediately within the Department for achieving consistent policies and expedited problem-solving;

(3) Within 60 days, senior executives from the private sector will be appointed to the Secretary of Energy Advisory Board to provide independent reviews of the Department's partnership activities.

(4) By December 31, 1993, the Department, with its customers, will jointly develop and implement a system for measuring success in our partnership programs.

Reaching Small Business. One of our high priority goals as a Department is to work with existing public and private business networks for reaching small businesses, which create 80 percent of the new jobs in the United States. The following actions will help the Department reach small business:

(1) During fiscal year 1994, the Department will build on a highly successful pilot program that has helped create jobs for small businesses through the provision of technical assistance by laboratory scientists and engineers;

(2) The Department will take immediate steps to make its integrated laboratories and facilities available as a technical resource for and integral component of the manufacturing outreach and extension system being developed by the Department of Commerce;

(3) By December 31, 1993, the Department will streamline all existing mechanisms, and will issue a dramatically simplified cooperative research and development agreement, for increased ease of use by small businesses.

Issued in Washington, DC on August 6, 1993.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 93-19408 Filed 8-11-93; 8:45 am]

BILLING CODE 6450-01-P

DOE Response to Recommendation 93-4 of the Defense Nuclear Facilities Safety Board; DOE's Management and Direction of Environmental Restoration Management Contracts

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93-4 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on June 24, 1993 (58 FR 34247) concerning DOE's management and direction of environmental restoration management contracts.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before September 13, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on July 22, 1993.

Mark B. Whitaker,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

August 6, 1993.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Dear Mr. Chairman: Your letter of June 16, 1993, forwarded Defense Nuclear Facilities Safety Board Recommendation 93-4 concerning health and safety factors associated with the Fernald Environmental Management Project and the management and oversight of environmental restoration management contracts.

The Department accepts Recommendation 93-4 and will develop and implement a technical management plan for Fernald and future environmental restoration management contracts; ensure that all elements of the Technical Management Plan recommended for environmental restoration management contracts are addressed in the plan; include insights gained as a result of addressing Recommendations 1 and 2 in our planned review of contracting mechanisms and practices; conduct an independent Headquarters review of the corrective actions taken subsequent to the recent incidents at Fernald and communicate "lessons learned" to other DOE facilities, as appropriate; formalize a clear process for restart of the uranyl nitrate hexahydrate stabilization project; and accelerate ongoing efforts to fully implement the facility representative program at Fernald in accordance with the action plan for Recommendation 92-2.

Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, will develop an Implementation Plan for this recommendation by November 5, 1993. The Implementation Plan will provide specific milestones and dates for accomplishing the commitments described in the preceding paragraph.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 93-19403 Filed 8-11-93; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of

respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 13, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–583
3. 1902–0136
4. Annual Kilowatt Generating Report (Annual Charges)
5. Revision
6. Annually
7. Mandatory
8. State or local governments; Businesses or other for-profit; and Small businesses or organizations.
9. 640 respondents
10. 1 response
11. 2 hours per response
12. 1,280 hours
13. The legislative requirements of section 10(e) of the Federal Power Act directs the Commission to collect annual charges from hydropower licensees for the cost of administering part I of the Federal Power Act. This information will be used to determine the charges to assess against such licensees for such use.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, August 6, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–19404 Filed 8–11–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. SBE–001]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Small Business Exemption From the January 1, 1993, Standard for Single Package Air Conditioning Systems to Consolidated Technology Corp.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. SBE–001) granting a Small Business Exemption to Consolidated Technology Corporation (Consolidated) from the January 1, 1993, Seasonal Energy Efficiency Ratio of 9.7 and Heating Seasonal Performance Factor of 6.6 for single package air conditioning systems for a period of 10 months, from January 1, 1993, through October 31, 1993.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock Jr., U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–5778

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.56(b), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Consolidated has been granted a Small Business Exemption from the January 1, 1993, Seasonal Energy Efficiency Ratio of 9.7 and Heating Seasonal Performance Factor of 6.6 for its Insider Heat Pump for a period of 10 months, from January 1, 1993, through October 31, 1993.

Issued in Washington, DC, June 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the matter of: Consolidated Technology Corporation. (Case No. SBE–001.)

Background

The Energy Conservation Program for Consumer Products (other than automobiles), which was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat, 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct–92), Public Law 102–486,[1] prescribes energy conservation standards for certain consumer products, including central air conditioners and heat pumps, and requires DOE to administer an energy conservation program for these products. For each of the covered products, the act prescribes initial Federal energy conservation standards, section 325 (b)–(h).

On February 7, 1989, DOE amended the prescribed procedures by adding 10 CFR part 430, subpart E, creating the small business exemption process, 54 FR 6080.

The small business exemption process allows the Assistant Secretary for Energy Efficiency and Renewable Energy to grant manufacturers of covered consumer products with annual gross revenues that do not exceed $8 million, exemption from all or part of the applicable energy conservation standards.

The exemption terminates according to its terms, but not later than twenty-four months after the effective date of the rule for which the exemption is allowed.

On June 23, 1992, Consolidated submitted an application for a two-year exemption from the DOE, January 1, 1993, standard for single package air conditioning systems. The firm manufactures a line of single package air conditioner heat pumps which are designed for use in manufactured/modular homes. The entire product line was designed to use a high efficiency

[1] Part B of title III of EPCA, as amended by NECPA, NAECA, NAECA 1988 and EPAct–92, is referred to in this notice as the Act.

scroll compressor. In its application, Consolidated claimed that the manufacturer of the scroll compressor had oversold its product, and therefore, the manufacturer was unable to supply the firm with these compressors. Efforts to obtain a comparable compressor from other sources also failed.

Consolidated redesigned the product line to use a reciprocating compressor. Because reciprocating compressors are less efficient than scroll compressors, and configuration and size constraints imposed by the manufactured/modular home industry limit other design changes, the units with reciprocating compressors are less efficient than the same size units with scroll compressors.

DOE published notice of Consolidated's Application for Small Business Exemption in the **Federal Register** on December 18, 1992, 57 FR 60196, and requested the written views of the Attorney General on January 7, 1993.

Comments concerning the Application for Small Business Exemption were received from the California Energy Commission and from the Nordyne Company. The Commission took no position on the merits of the application; however, it requested that, if the application is granted, "the precise extent of the exemption" be published in the **Federal Register**. Nordyne commented that there are 15 companies that manufacture single package air conditioner heat pumps, most of which could be used in manufactured/modular homes providing the same function of heating and cooling the air in the home. Nordyne further stated that it understood that there is no longer a shortage of scroll compressors. For these reasons, Nordyne opposes granting Consolidated's application.

The Attorney General responded (see Attachment A) that the courts consistently have held that Congress designed the Federal antitrust laws to protect market competition rather than individual competitors. He further stated that it could be assumed that Congress had a similar intent when it employed the concept of "a lessening of competition" in section 325(q)(2) of the Energy Policy Conservation Act, 42 U.S.C. 6295(q)(2). Consolidated currently possesses a market share in the 2–3 percent range, assuming that the relevant market consists of unitary systems, split systems and "insider" systems. Nevertheless, because Consolidated is a recent market entrant and offers a product different from that of its rivals, its current market share may understate its ability currently to constrain the pricing discretion of its rivals, as well as its future competitive significance. In these circumstances, the Attorney General believes the Secretary of Energy could find that denial of the company's application would likely result in the lessening of competition.

DOE also consulted with the Federal Trade Commission by telephone on March 9, 1993, concerning the Application for a Small Business Exemption. The Trade Commission did not have any objection to the issuance of a Small Business Exemption to Consolidated. The Commission did suggest that the Decision and Order state, "Today's action does not affect the company's obligation to test and label its equipment in compliance with the FTC labeling requirements."

Assertions and Determinations

Consolidated's Application seeks a Small Business Exemption from DOE's January 1, 1993, standards for single package air conditioning systems. The Application requests a Small Business Exemption for a period of 24 months beginning January 1, 1993, through December 31, 1994, by which time the company expects to be supplied with scroll compressors which will enable the product to meet the standard.

The Department has examined the information and data provided by Consolidated and finds that the company meets the conditions of 10 CFR 430.52 to qualify for a Small Business Exemption: (1) Annual gross revenues do not exceed $8 million; (2) Consolidated neither controls, nor is controlled by, nor is under common control with, another manufacturer.

DOE concurs with the written views of the Attorney General that while the firm currently possesses only a small market share, it is a recent market entrant and offers a product different from that of its rivals. Therefore, its current market share may understate its ability to constrain the pricing discretion of its rivals, as well as its future competitive significance.

In its comments, Nordyne stated that there are 15 companies that manufacture single package air conditioner heat pumps, most of which could be used in manufactured/modular homes, providing the same function of heating and cooling the air in the home. DOE agrees with Nordyne that there are a large number of systems which functionally are the same as the Consolidated system. However, DOE believes Consolidated's system possesses some unique design features which enable it to be used in applications where most of these other systems could not be used. In these applications, the only alternative is a system which uses resistance electric heat which, while functionally the same, uses considerably more energy. Therefore, DOE believes that there are only two other companies which manufacture a similar product.

Concerning Nordyne's statement that there is no shortage of scroll compressors, in a letter dated March 8, 1993, Consolidated notified DOE that it had received a verbal commitment from Copeland Corporation to supply the scroll compressors it needs. Based on this commitment, Consolidated stated that it now only requires a Small Business Exemption for a period of ten months. This period of time is required to meet its prior commitments to its suppliers and customers and to permit conversion to the scroll compressor.

Therefore, DOE is granting Consolidated's request for a Small Business Exemption from the 1993 standard for single package air conditioning systems for a period of ten months from January 1, 1993, through October 31, 1993.

In its comments, the company requested that, if the application is granted, the precise extent of the exemption also be published. This Small Business Exemption applies only to the requirement to meet the 1993 standard (Seasonal Energy Efficiency Ratio of 9.7 and Heating Seasonal Performance Factor of 6.6) for single package air conditioning systems.

It is therefore ordered that:

(1) The Application for Small Business Exemption filed by Consolidated Technology Corporation (Case No. SBE–001) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) The Consolidated Technology Corporation Insider Heat Pumps manufactured during the period from January 1, 1993, through October 31, 1993, are not required to meet the January 1, 1993, DOE standards for single package air conditioning systems of 9.7 Seasonal Energy Efficiency Ratio and 6.6 Heating Seasonal Performance Factor.

(3) Today's action does not affect Consolidated Technology Corporation's obligation to test and label its equipment in compliance with Federal Trade Commission labeling requirements.

(4) This Small Business Exemption, granting Consolidated Technology Corporation an Exemption for its Insider Heat Pumps from the requirement to meet the January 1, 1993, standards for single package air conditioning systems shall remain in effect from January 1, 1993, until October 31, 1993.

(5) This Small Business Exemption is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Small Business Exemption may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, June 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93-19405 Filed 8-11-93; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CAS-RM-79-112-A]

Draft Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings; Withdrawal

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Withdrawal of Draft Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings; Request for Comments on DOE Proposals for Voluntary Building Codes; Request for Comments on Content of Energy Standards for Federal Residential Buildings.

SUMMARY: On August 31, 1992, the Department published draft interim energy conservation voluntary performance standards for new non-Federal residential buildings (57 FR 39424) as required by the Energy Conservation and Production Act. However, on October 24, 1992, the Energy Conservation and Production Act was revised by the Energy Policy Act of 1992 (Pub. L. 102-486) that, among other things, deleted the requirement that DOE develop energy conservation voluntary performance standards for new non-Federal residential buildings and, instead, required DOE to support the upgrading of voluntary building energy codes. Therefore, DOE is withdrawing the draft interim standards for new non-Federal residential buildings.

Under the Energy Policy Act, DOE is also charged with recommending amendments to the various voluntary building energy codes developed by consensus standards organizations for new private sector residential buildings. The amendments, to be based on a review of the technical and economic bases of those codes, must be technologically feasible and economically justified. The Department has proposed several such amendments to the Model Energy Code of the Council of American Building Officials during 1993. The Department is requesting comments on those proposals for use in preparing revised proposals for resubmission to the Council of American Building Officials.

Pursuant to Section 305 of the Energy Conservation and Production Act, as modified by the Energy Policy Act, the Department must establish building energy efficiency standards for new Federal residential and commercial buildings by October 24, 1994. DOE anticipates that it will propose such standards by that date through notices in the **Federal Register**. The Federal building energy efficiency standards must satisfy several criteria set forth in the Energy Policy Act. The Department is requesting input from both public and private sector organizations on approaches to best satisfy these criteria.

ADDRESSES: Additional written comments on any of the above topics may be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-432, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Turchen, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-432, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6262.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC-41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9526.

SUPPLEMENTARY INFORMATION:

Draft Interim Energy Conservation Voluntary Performance Standards

Title III of the Energy Conservation and Production Act of 1976 (Pub. L. 94-385), as amended by the Housing and Community Development Act of 1980 (Pub. L. 96-399) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), required the Department of Energy (DOE or Department) to administer an energy conservation program for new buildings. Among other things, the Housing and Community Development Act and Omnibus Budget Reconciliation Act amendments required DOE to establish interim voluntary energy performance standards for the construction of new non-Federal residential buildings. On August 31, 1992, DOE published a **Federal Register** Notice requesting public comment on a draft version of interim standards for new non-Federal residential buildings at 57 FR 39424. Public hearings were held on October 23, 1992, and October 27, 1992. To date, the Department has received approximately 50 comments on the draft standards.

Section 101 of the Energy Policy Act of 1992 amended the Energy Conservation and Production Act by striking sections 304, 306, and 308 through 311 deleting the Department's authority for prescribing voluntary energy performance standards for non-Federal residential buildings. Furthermore, the Energy Policy Act of 1992 added new sections 304, 305, 306, 307, and 308. These new sections direct the Department to administer a three-part program supporting improved energy efficiency for new buildings throughout the United States, including residential buildings. Under the new program, DOE is to 1) support the upgrading by consensus standards groups of "voluntary building energy codes"; 2) adopt mandatory "Federal building energy standards" for new Federal buildings; and 3) support State adoption of "voluntary building energy codes" by providing technical assistance and appropriate incentive funding. A "voluntary building energy code," as defined by the Energy Policy Act of 1992, principally refers to the latest model building energy code for new residential buildings adopted by the Council of American Building Officials, or the latest energy efficiency standard for new commercial buildings adopted by the American Society of Heating, Refrigerating, and Air Conditioning Engineers.

Included in the August 31, 1992, **Federal Register** Notice was an Automated Residential Energy Standard computer program that the Department developed to analyze the life-cycle cost-effectiveness of residential building thermal envelope levels and heating, ventilating and air-conditioning equipment efficiencies. Many of the comments on the August 31, 1992, notice discussed the Automated Residential Energy Standard methodology and the appropriateness of the recommended input values.

The Department invites additional comments and data that may help to improve the Automated Residential Energy Standard program or any other aspect of that program discussed in the August 31, 1992, Notice. If the Automated Residential Energy Standard is revised in response to persuasive public comment, the results will be improved analytic methods and objective guidelines for evaluating the cost-effectiveness of energy efficiency measures.

The Department will evaluate all comments received on the August 31, 1992, Notice and all comments submitted in response to this Notice. If the Department makes any significant revisions to the Automated Residential Energy Standard as a result of these or other comments received, it intends to publish a technical report describing these changes and explaining their basis. Notice of the availability of any such technical report will be provided to all persons who had filed comments on the August 31, 1992, Notice or on this Notice.

Copies of all comments received on the non-Federal residential standards and a copy of any DOE technical report describing subsequent change made to the Automated Residential Energy Standard or standards program will continue to be available for inspection and viewing by interested persons at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20505, (202) 586–6020, 9 a.m.–4 p.m., Monday–Friday.

1992 Model Energy Code Change Proposals

Section 307 of the Energy Conservation and Production Act, as amended by the Energy Policy Act of 1992, directs DOE generally to support the upgrading of voluntary building energy codes for new buildings by providing technical evaluation and analysis. The Department is also directed periodically to review the technical and economic basis of voluntary building energy codes and, based upon ongoing research, recommend amendments to such codes and seek the adoption of all technologically feasible, economically justified energy efficiency measures.

The Department has already used the Automated Residential Energy Standard to evaluate several portions of the 1992 edition of the Model Energy Code of the Council of American Building Officials and to develop recommended modifications. Providing change proposals to the 1992 Model Energy Code is a critical portion of DOE responsibility to support the upgrading of voluntary building energy codes as authorized by the Energy Policy Act of 1992 (Energy Conservation and Production Act Sections 307 (b) (1) and (2)).

The 1992 Model Energy Code includes requirements for the maximum permissible "U_o" for walls, floors, and ceilings. The U_o value is the heat transfer rate through the building component, expressed in BTUs per hour per square foot of component area per degree Fahrenheit of temperature difference across the component. In the 1992 Model Energy Code, the U_o requirement is a function of the annual heating degree-days for the geographic location in which the 1992 Model Energy Code will be applied.

The Department used the Automated Residential Energy Standard to determine, on a nationwide average basis, the optimum U_o values for walls, floors, and ceilings of low-rise single family and multi-family residences that minimize life-cycle energy costs to new home buyers. The results were then expressed in the familiar U_o versus heating degree-day format of the 1992 Model Energy Code. The outcome of the Automated Residential Energy Standard analysis demonstrates that in most U.S. climate regions, it is cost-effective to increase insulation levels in walls, ceilings below attic spaces, and floors over unheated spaces, as compared to the 1992 Model Energy Code requirements. For ceilings without attics, i.e., flat roofs or cathedral ceilings, insulation levels can be cost-effectively reduced from the existing 1992 Model Energy Code levels.

In January 1993, DOE submitted 10 Model Energy Code change proposals to the Council of American Building Officials for consideration during the 1993 review cycle. These proposals covered several topics; three proposals addressed the recommended revisions to the U_o requirements. At a public hearing on March 31, 1993, in St. Louis, Missouri, a committee of the Council of American Building Officials disapproved five of the Department's proposals, including the proposals to modify the U_o requirements. At this time, DOE is planning to file a formal request with the Council of American Building Officials to have the denied proposals reconsidered at a second public hearing in Little Rock, Arkansas, on October 21, 1993.

The public is encouraged to comment to DOE on the Department's change proposals and to otherwise participate in the Model Energy Code review process. Copies of the proposals and an accompanying technical support document are available by direct request to the Department of Energy. Copies of the proposals are also available by contacting the Staff Secretariat for the Council of American Building Officials Codes at the Southern Building Codes Congress International, 900 Montclair Road, Birmingham, Alabama 35212–1206, (205) 591–1853. The Southern Building Codes Congress can also provide information on the mechanics of the code change review process, including specifics on the public hearings that the Council of American Building Officials holds to review all change proposals.

The Department will also meet with those persons or groups that have factual data or other information to contribute on voluntary building energy codes or the 1992 Model Energy Code change proposals. Such data or information should be non-proprietary, non-confidential, and help to improve the technical basis of DOE analysis of building codes. Especially useful to the Department is information that improves the methodologies, databases, and inputs contained in the Automated Residential Energy Standard and information that addresses the costs and technical feasibility of residential construction techniques that relate to energy conservation.

Federal Building Energy Efficiency Standards

The Energy Policy Act of 1992 requires DOE to establish "Federal building energy standards" (also referred to as Federal building energy efficiency standards) for new Federal residential and commercial buildings by October 24, 1994. The term "Federal building energy standards" includes "energy consumption objectives to be met without specification of the methods, materials, or equipment to be employed in achieving those objectives, but including statements of the requirements, criteria, and evaluation methods to be used ***." (42 U.S.C. 6832(13).) Four of the statutory criteria on these standards are very similar to the work DOE has already performed in the non-Federal (voluntary) building energy codes area:

— the standards shall be technologically feasible;
— they shall be economically justified;
— they shall use the "format" of the Council of American Building Officials 1992 Model Energy Code to the extent practicable; and
— they shall meet or exceed the energy saving specifications of the Council of American Building Officials 1992 Model Energy Code.

The Energy Policy Act of 1992 continued in effect the interim energy performance standards for Federal residential buildings (53 FR 32536) until the Federal building energy standards required are effective. The Department welcomes any comments from public and private organizations and individuals on the format and content of a Federal residential standard that would best satisfy the above constraints.

Many of the comments already received on the August 31, 1992, Notice

on non-Federal residential buildings are also relevant to a building energy standard for Federal residences because the comments address issues of feasibility and cost-effectiveness. These and any future comments on the non-Federal residential standards will be given serious consideration for potential applicability to the Federal residential standard development required by the Energy Policy Act of 1992.

Issued in Washington, DC August 5, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–19409 Filed 8–11–93; 8:45 am]

BILLING CODE 6540–01–P

Federal Energy Regulatory Commission

[Docket No. JD93–13529T New Mexico–48]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 6, 1993.

Take notice that on July 30, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Group underlying certain lands in the Blanco Mesaverde Area of the Blanco Mesaverde Pool in San Juan and Rio Arriba Counties, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 480,076 acres, more or less, and consists of 78.68% Federal, 0.33% Navajo Allotted, 12.08% State and 8.91% Fee Lands. The recommended area is described on the attached appendix.

The notice of determination also contains BLM's and the New Mexico Department of Energy, Minerals and Natural Resources' findings that the referenced portion of the Mesaverde Group meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix

TOWNSHIP 27 NORTH, RANGE 7 WEST
Sections 1–12: All
Section 15: W/2
Sections 16–21: All
Section 22: W/2
Section 27: NW/4
Section 28: N/2
Sections 29–30: All
TOWNSHIP 27 NORTH, RANGE 8 WEST
Sections 1–36: All
TOWNSHIP 28 NORTH, RANGE 7 WEST
TOWNSHIP 28 NORTH, RANGE 8 WEST
TOWNSHIP 28 NORTH, RANGE 9 WEST
TOWNSHIP 28 NORTH, RANGE 10 WEST
Sections 7–36: All (Irregular Township)
TOWNSHIP 29 NORTH, RANGE 7 WEST
TOWNSHIP 29 NORTH, RANGE 8 WEST
TOWNSHIP 29 NORTH, RANGE 9 WEST
TOWNSHIP 29 NORTH, RANGE 10 WEST
TOWNSHIP 29 NORTH, RANGE 11 WEST
TOWNSHIP 30 NORTH, RANGE 7 WEST
TOWNSHIP 30 NORTH, RANGE 8 WEST
TOWNSHIP 30 NORTH, RANGE 9 WEST
TOWNSHIP 30 NORTH, RANGE 10 WEST
TOWNSHIP 30 NORTH, RANGE 11 WEST
Sections 1–36: All
TOWNSHIP 31 NORTH, RANGE 6 WEST
Sections 6–7: All
Sections 18–19: All
Section 30: All
TOWNSHIP 31 NORTH, RANGE 7 WEST
TOWNSHIP 31 NORTH, RANGE 8 WEST
TOWNSHIP 31 NORTH, RANGE 9 WEST
TOWNSHIP 31 NORTH, RANGE 10 WEST
TOWNSHIP 31 NORTH, RANGE 11 WEST
Sections 1–36: All
TOWNSHIP 32 NORTH, RANGE 10 WEST
TOWNSHIP 32 NORTH, RANGE 11 WEST
Sections 7–36: All (Irregular Township)

[FR Doc. 93–19327 Filed 8–11–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–137–009]

Williston Basin Interstate Pipeline Co.; Report of Refunds

August 6, 1993.

Take notice that Williston Basin Interstate Pipeline Company (Williston Basin) on June 18, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with the Commission's "Order on Remand, Rehearing and Compliance Filing" issued May 6, 1993, in Docket Nos. RP90–137–005, –006, and –007.

Williston Basin states that on June 3, 1993, refund schedules applicable to Rate Schedule X–3 and reflecting the elimination of the take-or-pay throughput surcharge from July 1990 through March 1993 with interest through June 3, 1993 were mailed to KN Energy, Inc. Williston Basin states that the refund amount of $1,197,480.81, including interest of $103,692.02, due KN Energy, Inc. was offset against the outstanding Rate Schedule X–3 transportation invoices owed Williston Basin. The net result of offsetting the refund against the amount owed Williston Basin was to reduce the outstanding balance due Williston Basin to $286,512.60.

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 rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before August 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19326 Filed 8–11–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–74–NG]

Natural Gas Clearinghouse; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada, and To Import Liquefied Natural Gas From Any Foreign Country

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 Natural Gas Clearinghouse (NGC) blanket authorization to import and export natural gas from and to Canada and to import liquefied natural gas (LNG) from any foreign country. The authorization allows NGC to import a combined total of up to 400 Bcf of gas and LNG and to export up to 130 Bcf of gas over a two-year term beginning on the date of the first delivery of either imports or exports after October 31, 1993.

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, August 6, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-19407 Filed 8-11-93; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 93-80-NG]

Utility—2000 Energy Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

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 Utility—2000 Energy Corp. blanket authorization to import and export up to a combined total of 60 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first delivery.

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, August 6, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-19406 Filed 8-11-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4692-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 13, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Beverage Can Surface Coating (Subpart WW)–Information Requirements–(EPA ICR No. 0663.05; OMB No. 2060-0001). This is a request for renewal of a currently approved information collection.

Abstract: The provisions of this subpart apply to the following affected facilities in beverage can surface coating lines: (1) Each exterior base coating operation; (2) each over-varnish coating operation; and (3) each inside spray coating operation. The owner or operator of an affected facility must provide EPA, or the delegated State regulatory authority, with one-time notifications and initial compliance reports, and must keep records, as required of all facilities subject to the general NSPS requirements.

In addition, owners or operators of affected facilities that apply only coatings with VOC content less than that specified in the regulations must provide a list of the coatings and the VOC content of each coating used. Where one or more coatings do have VOC content higher than that specified in the regulations, owners or operators must install measuring and recording devices and report on specified operating characteristics of their equipment based upon how compliance is achieved.

(1) If compliance is achieved through the use of thermal incineration the owner or operator must install equipment to measure and report on the temperature of the combustion gases upstream and downstream of the incinerator combustion chamber.

(2) If compliance is achieved through use of catalytic incineration, the owner or operator must install equipment to measure and report on the upstream and downstream temperatures of the catalytic bed.

(3) If compliance is achieved through the use of a solvent recovery system, the owner or operator must install equipment to measure and report the amount of solvent recovered by the system for each affected facility.

The owner or operator of an affected facility must also notify EPA or the State regulatory authority of the date upon which demonstration performance commences. Owners or operators must report all periods of emissions in excess of the standard, and must report on monitoring system performance quarterly. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 6.7 hours per response for reporting and 103.2 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of beverage can surface coating lines.

Estimated No. of Respondents: 21.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2,729 hours.

Frequency of Collection: One-time notifications and reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW.,Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 6, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-19390 Filed 8-11-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4691-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 13, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Pressure Sensitive Tape and Label Surface Coating (Subpart RR)–Information Requirements (EPA ICR No. 0658.05; OMB No. 2060–0004). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of coating production lines used in the manufacture of pressure sensitive tape and label materials must provide EPA, or the delegated State regulatory authority, with one-time notification and reports on performance, and must keep records, as required of all facilities subject to the general NSPS requirements. Owners or operators of the subject facilities must also notify EPA or the State regulatory authority of the date when the demonstration of performance starts. In addition, the owner or operator of the subject facilities must maintain a calendar month record of all coatings used, and must monitor and report on the operating characteristics of the devices selected to control emissions:

(1) If emissions are controlled by a solvent recovery device, the owner or operator must install and operate a monitoring device for showing the cumulative amount of solvent recovered over a calendar month period;

(2) If emissions are controlled by a thermal incineration solvent destruction device, the owner or operator must install and operate a monitoring device that shows and records the temperature of the solvent destruction device's exhaust gases;

(3) If emissions are controlled by a catalytic incineration solvent destruction device, the owner or operator must install and operate a monitoring device that shows and records the gas temperature both upstream and downstream of the catalyst bed; and

(4) If emissions are controlled by a solvent destruction device which uses a hood or enclosure to capture fugitive VOC emissions, the owner or operator must install and operate a monitoring device that shows that the hood or enclosure is operating continuously.

Owners or operators must report all periods of excess emissions quarterly. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 6.3 hours per response for reporting, and 74.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of production lines used in the manufacture of pressure sensitive tape and label materials.

Estimated No. of Respondents: 549.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 54,921.

Frequency of Collection: One-time notifications and demonstration reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 6, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19389 Filed 8–11–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4692–6]

Mississippi; Adequacy Determination of State Municipal Solid Waste Permit Program.

AGENCY: Environmental Protection Agency (Region 4).

ACTION: Notice of tentative determination to fully approve the adequacy of the State of Mississippi's municipal solid waste permitting program, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Mississippi applied for a determination of adequacy under section 4005 of RCRA. Mississippi's final application contains proposed regulations which are expected to be adopted in September, 1993. EPA has reviewed Mississippi's final MSWLF application and has made a tentative determination that the State's MSWLF permit program meets the requirements necessary for full program approval and ensures compliance with the revised MSWLF Criteria. Full approval of the Mississippi MSWLF permit program is based in part upon the State's adoption of its proposed regulations. Prior to the final determination on Mississippi's program, EPA will review any changes in the State's regulations to ensure the regulations remain technically comparable to the Federal program at 40 CFR part 258. Mississippi's application for program adequacy determination is

available from EPA Region IV for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a significant number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the **"DATES"** section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **"CONTACTS"** section below.

DATES: All comments on Mississippi's application for a determination of adequacy must be received by the close of business on September 13, 1993. If significant public interest is expressed in holding a hearing, the hearing will be held on September 29, 1993, at 7 p.m., in Jackson Mississippi. The location of the hearing, if held, can be obtained by contacting the appropriate person(s) listed below in the "Contacts Section". The State will participate in the public hearing if held.

ADDRESSES: Copies of Mississippi's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying:

Mississippi Department of Environmental Quality, 2380 Highway 80 West, Jackson, Mississippi 39204, Attn: Mr. Billy Warden, telephone 601–961–5047.

U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia, 30365, Attn: Ms. Priscilla Pride, telephone 404–347–4216.

Written comments should be submitted to: Ms. Patricia S. Zweig, Program Manager, mail code 4WD-RCRA, EPA Region IV, Office of Solid Waste, 345 Courtland Street, NE., Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, Program Manager, mail code 4WD-RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The EPA Region IV will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Mississippi

On May 6, 1993, Mississippi submitted a final application for adequacy determination. EPA reviewed the final application and submitted comments to Mississippi. Mississippi addressed EPA's comments and submitted a revised final application for adequacy determination on August 2, 1993. Region IV has reviewed Mississippi's revised final application and has tentatively determined that all portions of Mississippi's Subtitle D program meet all of the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria. The public may submit written comments on EPA's tentative determination until September 13, 1993 or until the close of the public hearing, if a hearing is held. Copies of Mississippi's application are available for inspection and copying at the location indicated in the **"ADDRESSES"** section of this notice.

Mississippi does not have the statutory authority to enforce the MSWLF permit program on Indian Lands. MSWLFs located on Indian Lands are subject to the Federal Criteria.

EPA will consider all public comments on its tentative determination received during the public comment period and during the public hearing if held. Issues raised by those comments may be the basis for a determination of inadequacy for Mississippi's program. EPA will make a final decision on whether or not to approve Mississippi's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule 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. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: August 5, 1993.

Donald Guinyard,

Acting Regional Administrator.

[FR Doc. 93–19385 Filed 8–11–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL-4692-5]

Utah; Partial Program Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of tentative determination on partial program application of Utah for partial program adequacy determination, public comment period, and public hearing.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will allow both States and Tribes to apply for and receive approval of a partial permit program. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal Criteria will apply to all permitted and unpermitted MSWLFs.

Utah applied for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed Utah's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The State plans to revise the remainder of its permit program to assure complete compliance with the revised Federal Criteria and gain full program approval. Utah's application for partial program adequacy determination is available for public review and comment. Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing, by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the **"DATES"** section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **"CONTACTS"** section below.

DATES: All comments on Utah's application for a partial determination of adequacy must be received by the close of business on September 27, 1993. The public hearing is tentatively scheduled for 11 a.m. to 2 p.m., September 27, 1993, at the Cannon Health Building, room 101, 288 North 1460 West, Salt Lake City, Utah, 84116. Should a public hearing be held, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing by close of business on September 27, 1993. The hearing may adjourn earlier than 2 p.m. if all of the speakers deliver their comments before that hour. The State of Utah will participate in this public hearing held by EPA.

ADDRESSES: Copies of Utah's application for partial adequacy determination are available from 8 a.m. to 5 p.m. during normal working days, at the following addresses for inspection and copying: Department of Environmental Quality, Division of Solid and Hazardous Waste, Cannon Health Building, 4th Floor, 288 North 1460 West, Salt Lake City, Utah, 84116, Attn: Ralph Bohn ; and from 8 a.m. to 4 p.m. at U.S. EPA Region VIII Library, 999 18th Street, suite 500, Denver, Colorado 80202-2466, phone 303/293-1444. All written comments should be sent to U.S. EPA, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, Attn: Brian Rimar, mail code (8HWM-WM).

FOR FURTHER INFORMATION CONTACT: Brian Rimar (8HWM-WM), Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, Phone 303/293-1673.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria. Subtitle D also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. These requirements, if promulgated, will address the potential problems posed by the dual State/Tribal and Federal programs that will come into effect in October 1993 in those States/Tribes that only have partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State/Tribe's program that has not received EPA approval will become enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary

changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the revised Federal Criteria, EPA's national Subtitle D standards will take effect on October 9, 1993 in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by that date would apply directly to the owner/operator.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in the STIR.

B. State of Utah

On July 20, 1993, Utah submitted an application for partial program adequacy determination. EPA has reviewed Utah's application and has tentatively determined that all parts, with the exception listed below, of the State's Subtitle D program will ensure compliance with the Federal Criteria.

1. Financial assurance requirements (State of Utah Solid Waste Permitting and Management Rules, R315–309.) do not meet the Federal Minimum criteria found in 40 CFR part 258, subpart G.

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

To ensure compliance with all the Federal Criteria, Utah needs to revise the following aspects of its permit program.

1. All requirements of Solid Waste Permitting and Management Rules, R315–309 Financial Assurance, must be applicable to all permitted MSWLF units, as required by 40 CFR part 258, subpart G.

On May 7, 1993, the U.S. court of Appeals for the District of Columbia Circuit vacated the small landfill exemption for ground-water monitoring. Following this decision, and pending EPA regulatory changes, the Federal Minimum criteria for ground-water monitoring will apply to all MSWLF units, including small and rural landfills. At the July 14, 1993 meeting of the Utah Solid and Hazardous Waste Control Board two proposed rule changes were released for public comment. First, the board has proposed to remove the small landfill ground-water monitoring exemption found in the State of Utah Solid Waste Permitting and Management Rules, R315–303–4(3)(f). Secondly, the board has proposed to add the requirement for the owner/operator to provide the name, address, and telephone number of the person to contact about the facility during the post-closure period, as required by 40 CFR 258.61(c)(2). At the September 9, 1993 meeting the board will adopt the rule changes as proposed. The rule changes will be effective September 10, 1993. If the State of Utah takes the necessary actions to bring their ground-water monitoring and post-closure care requirements into full Federal compliance, EPA is proposing approval in both of these areas. If the state does not take the above actions, EPA will not approve their ground-water monitoring and post-closure care requirements.

In order for this approval to extend to "existing or former" Indian reservation lands in the State of Utah (Goshute, Navajo, Northwestern Shoshoni, Paiute, Skull Valley, and Uintah and Ouray Indian Reservations), the State Attorney General's demonstration of authority needed to include a demonstration under Federal Indian law that the State courts have jurisdiction to enforce State law against MSWLF owner/operators whose activities take place in "Indian Country," as defined in 18 U.S.C. 1151. Such a demonstration should include an analysis of the State's jurisdiction to enforce against owner/operators, located on reservations, and should specify what areas, if any, the State believes to have been removed from reservation status and may not qualify as "Indian Country." The agency believes that such a demonstration has not yet been made by the State of Utah.

EPA's future decision with regard to approval of the Utah program for "Indian Country," to include Indian reservation lands, will be governed by the Agency's judgement as to whether the State has demonstrated adequate enforcement authority to justify approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

Until EPA approves a State or Tribal MSWLF permitting program for any part of "Indian Country," in Utah, as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Utah's program. EPA will make a final decision on whether or not to approve Utah's program by October 8, 1993, and will give notice of it in the **Federal Register**. The notice

will include a summary of the reasons for the final determination and a response to all major comments.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing, by writing the Region or calling the contact within 30 days of the publication of this notice, the Region will hold a hearing on September 27, 1993, from 11 a.m. to 2 p.m., at the Cannon Health Building, room 101, 288 North 1460 West, Salt Lake City, Utah, 84116.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF Criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this notice 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 tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 28, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93-19386 Filed 8-11-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4692-7]

Wyoming; Partial Program Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of tentative determination on partial program application of Wyoming for partial program adequacy determination, public comment period, and public hearing (if necessary).

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will allow both States and Tribes to apply for and receive approval of a partial permit program. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal Criteria will apply to all permitted and unpermitted MSWLFs.

Wyoming applied for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed Wyoming's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The State plans to revise the remainder of its permit program to assure complete compliance with the revised Federal Criteria and gain full program approval. Wyoming's application for partial program adequacy determination is available for public review and comment.

If sufficient public interest is expressed during the comment period, a public hearing will be held to solicit comments and public opinion on Wyoming's partial program application for a determination of adequacy.

DATES: All comments on Wyoming's application for a partial determination of adequacy must be received by EPA Region VIII by the close of business on September 27, 1993. The public hearing is tentatively scheduled for 10 a.m. to 12 p.m. on September 27, 1993, at the Wyoming Department of Environmental Quality, Herschler Building, 1st Floor Conference Room (#1299), 122 West 25th Street, Cheyenne, Wyoming 82002. Should a public hearing be held, EPA may limit oral testimony to five minutes per speaker, depending on the number of commentors. Commentors presenting oral testimony must also submit their comments in writing by close of business on September 27, 1993. The hearing may adjourn earlier than 12 Noon if all of the speakers deliver their comments before that hour. Wyoming will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of Wyoming's application for partial adequacy determination are available from 8 a.m. to 4:30 p.m. during normal working days at the following addresses for inspection and copying: Wyoming Department of Environmental Quality, Attn: Carl Anderson, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002; and U.S. EPA Region VIII Library, 999 18th Street, 2nd Floor, Denver, Colorado 80202-2466, phone 303/293-1444. All written comments should be sent to U.S. EPA Region VIII, Attn: Gerald Allen (8HWM-WM), 999 18th Street, suite 500, Denver, Colorado 80202-2466.

FOR FURTHER INFORMATION CONTACT: Gerald Allen (8HWM-WM), Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, phone 303/293-1496.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria. Subtitle D also requires that EPA determine the adequacy of State

municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with Part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. These requirements, if promulgated, will address the potential problems posed by the dual State/Tribal and Federal programs that will come into effect in October 1993 in those States/Tribes that only have partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State/Tribe's program that has not received EPA approval will become enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the revised Federal Criteria, EPA's national Subtitle D standards will take effect on October 9, 1993 in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by that date would apply directly to the owner/operator.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in STIR.

B. State of Wyoming

On November 6, 1992, Wyoming submitted an application to EPA for a partial program adequacy determination. A State/Tribal permit program is eligible for a partial program adequacy determination if the program meets the minimum requirements of enforcement, public participation, and compliance monitoring, and the program largely meets the requirements for ensuring compliance with part 258. EPA reviewed the Wyoming application and determined that the Wyoming program does meet the minimum requirements of enforcement, public participation, and compliance monitoring. However, EPA determined that the Wyoming program did not largely meet the technical Federal Criteria.

To rectify this EPA determination, the Wyoming Department of Environmental Quality has petitioned the Wyoming Environmental Quality Commission to approve emergency rules needed to demonstrate compliance with substantial portions of the Federal Criteria. Once approved, these emergency rules will be effective for 120 days and could be renewed.

Wyoming sent an Attorney General certification letter to EPA dated July 28, 1993, to further support its November 6, 1992, application for a partial program adequacy determination. The letter stated that, assuming emergency rule making proceeds according to schedule, the emergency rules to implement specified portions of the part 258 Federal Criteria will be adopted and have an effective date of October 9, 1993. The emergency rules would be effective for 120 days beginning on October 9, 1993, and would be replaced by permanent rules prior to expiration.

EPA has reviewed Wyoming's revised application (including existing permanent rules and proposed emergency rules), and EPA has tentatively determined that the following portions of the State's program will assure compliance with the part 258 Federal Criteria:

1. Location restrictions for airports, flood plains, wetlands, fault areas, seismic impact zones, and unstable areas (40 CFR 258.10 through 258.15).

2. Operating criteria for the exclusion of hazardous waste, cover materials, disease vector control, explosive gases, air criteria, access requirements, run-on/run-off control systems, surface water requirements, liquids restrictions, and record keeping requirements (40 CFR 258.20 through 258.29).

3. Design criteria requirements (40 CFR 258.40).

4. Closure and post-closure requirements (40 CFR 258.60 through 258.61).

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

If Wyoming takes the necessary rule making action and adopts emergency rules as specified in the Attorney General certification letter dated July 28, 1993, EPA proposes a partial program

adequacy determination for those portions of the State's program identified above. Wyoming has already begun to revise its permanent rules and expects to have the rule changes necessary for full program approval complete by early 1994.

To assure compliance with all of the part 258 Federal Criteria and receive full program approval from EPA, Wyoming needs to revise the following aspects of its permit program.

1. Wyoming will revise its regulations to incorporate the Federal ground-water monitoring and corrective action requirements in 40 CFR 258.50, 258.51, and 258.53 through 258.58.

2. Wyoming will develop new regulations to incorporate the financial assurance requirements in 40 CFR 258.70 through 258.72 and 258.74. Wyoming will revise its regulations to incorporate the financial assurance requirements in 40 CFR 258.73.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribal MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact within thirty (30) days of the publication of this notice, the Region will hold a public hearing on September 27, 1993, at the Wyoming of Department of Quality, Herschler Building, 1st Floor Conference Room (#1299), 122 West 25th Street, Cheyenne, Wyoming 82002.

Wyoming has not asserted jurisdiction within the exterior boundaries of Indian reservations in its application for adequacy determination. Accordingly, this approval does not extend to lands within Indian reservations in Wyoming. Until EPA approves a State or Tribal MSWLF permitting program in Wyoming for any part of "Indian Country," as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLF's located in any part of "Indian country" that is not covered by an approved State or Tribal MSWLF permitting program.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Wyoming's program. EPA will make a final decision on whether or not to approve Wyoming's program by October 9, 1993, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice 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 tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: August 4, 1993.

Kerrigan G. Klough,

Acting Regional Administrator.

[FR Doc. 93-19388 Filed 8-11-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4692-1]

Proposed Administrative Settlement Under Section 122(h) ofthe Comprehensive Environmental Response, Compensation, and Liability Act; International Depository, Inc., North Kingston, RI

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of 56 potentially responsible parties ("PRPs") for unrecovered costs incurred by EPA in conducting response actions at or in connection with the International Depository, Inc. Superfund Site in North Kingston, Rhode Island through and including January 31, 1993.

The potentially responsible parties who are settling their liability under this agreement are: Accent Plating; American Chemical Works, Co.; Atlas Industries; Astra Corp., Inc.; Blount Marine Corp.; C.M. Laboratories; Cametoid Technologies, Inc.; City of Lynn; City of Stamford; Cherry Semiconductor Corp.; Cranston Public Schools; Culbro Tobacco Division; Cumberland Farms, Inc., DIP; Cummins-Conn, Inc.; ECC Corp.; EG&G, Inc.; Esco Realty; F.O. Inc.; Gerber Systems Corp.; Gessay & Ludwig; Giner, Inc.; Gordon Realty, Corp.; Hy-Len Realty Co.; Hy-Sil Manufacturing; Jeffrey Chemical Co.; K.R. Rezendes, Inc.; Keeney Mfg.; Lincoln School Dept.; M&V Electroplating; MA Highway Dept.; MA Mutual; Middletown, CT; Olektron Corp.; Priority Finishing Corp.; RISWMC Co.; RI Air National Guard; RI Analytical Labs, Inc.; RI College; RI Hospital; RI Hospital Trust; Rockville High School; Rocky Point Park; ST. George's School; Siebe North; Skinner & Sherman; State Laboratory Institute; Taco, Inc.; Technical Components, Inc.; Town of Bloomfield, CT; Town of Glastonbury; Town of Windsor; TRI-S, Inc.; ULTRA Scientific; UNC Incorporated; United Oil Recovery, Inc.; University of RI; Warwick Public Schools.

DATES: Comments must be provided on or before September 13, 1993.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of International Depository, Inc. Superfund Site, North Kingston, Rhode Island, U.S. EPA Docket No. I-92-1102.

FOR FURTHER INFORMATION CONTACT: Kathleen Woodward, U.S. Environmental Protection Agency, Office of Regional Counsel, RCV, JFK Federal Building, Boston, Massachusetts 02203, (617) 565-3687.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental

Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the International Depository, Inc. Superfund Site in North Kingston, RI. The settlement was approved by EPA Region I on August 2, 1993, subject to review by the public pursuant to this notice. The 56 settling PRPs, the Settling Parties, have executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Parties are required to pay $1.1 million to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on July 21, 1993.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from the Docket Clerk, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCG, Boston, Massachusetts 02203, (617) 565–3351.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203 (U.S. EPA Docket No. I–92–1082).

Dated: August 2, 1993.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–19391 Filed 8–11–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Application for Federal Deposit Insurance.

Form Number: FDIC 6200/05.

OMB Number: 3064–0001.

Expiration Date of OMB Clearance: October 31, 1993.

Frequency of Response: On occasion.

Respondents: Depository institutions engaged in the business of receiving deposits other than trust funds wishing to obtain Federal deposit insurance.

Number of Respondents: 85.

Number of Responses Per Respondent: 1.

Total Annual Responses: 85.

Average Number of Hours Per Response: 250.

Total Annual Burden Hours: 21,250.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0001), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before October 12, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Under section 5 of the Federal Deposit Insurance Act, depository institutions engaged in the business of receiving deposits other than trust funds wishing to obtain Federal deposit insurance must submit an application to the FDIC. The application must contain information relating to the factors enumerated in section 6 of the Federal Deposit Insurance Act, which the FDIC must consider before acting on the application.

Dated: August 6, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–19322 Filed 8–11–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–997–DR), dated July 9, 1993, and related determination.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended to be April 13, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19376 Filed 8–11–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of July 22, 1993:

Atchison, Brown, Clay, Cloud, Jackson, Nemaha, Jewell, and Republic Counties for Individual Assistance and Public Assistance.

Marshall, Ottowa, and Wyandotte Counties for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Volland,

Chief, Individual Assistance Division, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93-19378 Filed 8-11-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1000-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency [FEMA].

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA-1000-DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993: McPherson and Morris Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Volland,

Chief, Individual Assistance Division, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93-19380 Filed 8-11-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-995-DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-995-DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended to be June 10, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93-19377 Filed 8-11-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-998-DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska (FEMA-998-DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is June 23, 1993, through and including August 5, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Volland,

Chief, Individual Assistance Division, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93-19379 Filed 8-11-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1001-DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA-1001-DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota, dated July 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1993: The counties of Cavalier and Eddy for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93-19375 Filed 8-11-93; 8:45 am]

BILLING CODE 6718-02-M

GENERAL SERVICES ADMINISTRATION

Record of Decision; Atlanta Federal Center, Atlanta, GA

AGENCY: GSA.

ACTION: This is the Record of Decision to lease 1.4 million occupiable square feet of office space and a parking deck for 2200 vehicles in a building to be constructed at the former site of the Downtown Atlanta Rich's Department Store. Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), General Services Administration (GSA) Order PBS P 1095.4B, the decision is hereby announced, to lease from the City of Atlanta, Downtown Development Authority, the aforementioned buildings to be constructed and known as the Atlanta Federal Center, for a period of 27 years. This action was identified as the "preferred alternative" in the Draft Environmental Impact Statement made available to the public on March 29, 1993.

GSA has identified the need to provide replacement housing for agencies currently housed in six major blocks of leased space providing approximately 1,022,000 square feet of space in downtown Atlanta. These lease terms will expire over the next five years and the existing leased buildings will require extensive upgrading in order to meet GSA specifications for new leases. Even if this space were renovated, it would continue to have the

same functional obsolescence found on older buildings such as poor column spacing, insufficient electrical capacity to accommodate automated data processing (ADP) needs, insufficient handicapped accessibility, and the lack of modern construction technology that provides an energy efficient building.

Scoping and public participation for this proposed Federal action was accomplished by the following: The publication of several Public Notices in the Atlanta Journal/Constitution most recently on October 10, 11, 12, 1992; publication in the **Federal Register** of a Notice of Intent to prepare an Environmental Impact Statement (EIS) on October 16, 1992; Notice of Availability of the Draft EIS published in the **Federal Register** on March 26, 1993; a public hearing held on May 5, 1993 in Atlanta during the comment period for the Draft EIS; Notice of Availability of the Final EIS in the **Federal Register** on May 28, 1993, and numerous scoping letters to public and private parties potentially interested in this project, soliciting their input and comments prior to and during the preparation of the EIS.

Federal, state and local agencies were provided copies of the AFC Draft EIS and copies were supplied to the general public upon request and to Atlanta City and Fulton County libraries. The project was widely reported in the newspapers with local and regional distribution. Twelve written comments received throughout the public involvement process were included and addressed in the Final EIS.

Comments received expressed concerns about the potential adverse impacts to the historical and cultural resources associated with the Rich's Department Store buildings. Other minor concerns expressed were associated with the building itself including concerns about air quality, hazardous wastes, prevention of pollution from the building, solid waste, and recycling programs associated with the proposed use. Other comments centered on the buildings potential impacts on traffic, parking, and the MARTA rapid transit system. All of these issues were addressed in the FEIS. Mitigation measures to be undertaken by the Government and by the Downtown Development Authority are discussed in the Environmental Consequences and Mitigation.

In exploring potential housing strategies for satisfying the identified long range housing needs of Federal Agencies in Atlanta, GSA's primary objective was to consolidate Federal agencies into Class "A" office space to one location. This would provide modern, state of the art facilities for agencies and eliminate the current duplication of services including security, building management and maintenance, and child care and fitness centers, all of which are currently duplicated in dispersed locations. Class "A" space would provide for efficient space layouts, energy efficient buildings, and better utilization of modern office automation systems. Consolidation would provide for more efficient housing and space configuration, allow for planned expansions within the consolidated space saving moving and relocation costs.

GSA centered its search for options in the downtown Central Business District (CBS) for several reasons. The Federal government currently owns several significant buildings in the CBD including the Richard Russell Building, the Martin Luther King Federal Building, and the U.S. Court of Appeals. A location with proximity to these buildings would complement efficient housing and consolidation. Two of these structures are listed on the National Register of Historic Places and a nearby location for Federal consolidation would enhance their usefulness and thereby protect their economic and historic values. The following five alternatives were considered viable and selected for further analysis and examination to determine their potential environmental impacts.

Alternatives Considered

1. *No-Action.* Under this alternative, agencies slated for relocation would remain in their current locations and additional space requirements would be satisfied by leasing action. This alternative assumes that the Rich's facility would continue to remain vacant since there is no indication that any other tenants have expressed interest in the building. Federal client agencies would continue to be housed in a dispersed pattern in Class B office space that does not meet current GSA standards.

2. *Lease existing office space.* This alternative involves GSA leasing existing Class "A" office space to consolidate Federal agencies in the CBD or Midtown areas of Atlanta to satisfy long-range space needs for Federal agencies.

3. *Acquisition and Renovation of Rich's Facility.* Under this alternative, GSA would acquire the Rich's buildings, and through adaptive reuse, convert the existing structures for use as office space for Federal agencies. This would involve reconstructing both the east and west buildings retaining only the structural steel and foundations as well as any historically/architecturally significant facades or components. The existing parking deck would be demolished and replaced with a new structure which would be incorporated into the west building to form a single structure.

4. *Acquisition of Rich's Property and Construction of a Federal Center.* With this alternative, GSA would purchase the Rich's property, demolish the existing structures and construct a new 1,376,000 occupiable square foot Federal Center and a parking deck for 2,200 vehicles. The historically/architecturally significant facades along two sides of the east building would be integrated into the design of the new building and retained.

5. *Lease Construction on Rich's Department Store Site.* Under this alternative, GSA would enter into an operating agreement to lease 1,376,000 occupiable square feet of office space from the City of Atlanta, Downtown Development Authority, with the buildings to be constructed on the site of the former Rich's Department Shore. The existing buildings would be demolished with the exception of the original store building, and the City of Atlanta would construct new buildings to be leased to GSA for a period of 27 years. This is the GSA preferred alternative.

Environmental Consequences and Mitigation

While the "No Action" alternative would have no impact on the natural, socioeconomic, or human environment, it would result in the continued inefficient housing of Federal agencies and would have long term impacts as agencies outgrow their current space. Continuing to lease current Class "B" space would not allow for proper client utilization of state of the art ADP systems, would not provide for future projected Federal space needs, and would not allow for improved operational efficiency of Federal agencies housed in dispersed locations that require duplication of services. Under the "No Action" alternative, the continued decline of the neighborhood surrounding the Rich's site would continue as future development of the site is unlikely in the foreseeable future.

The "No Action" alternative (#1) will have minimal or no environmental impacts. However, this alternative fails to meet GSA's objective of efficiently providing for the projected housing need of Federal agencies in Atlanta and was therefore excluded from further consideration.

The impacts of all alternatives (#3, #4, #5) at the Rich's site will be similar when considering the following: Geology and soils, hazardous waste; vegetation; wildlife; wetlands; ambient air quality; commercial activity; the commercial office space market; traffic and transportation; parking; public transit; pedestrian and bicycle traffic; land use and zoning; visual quality; community facilities; cultural and historic resources; utilities; public services; housing; crime; and natural hazards. The impacts of these build alternatives at the Rich's site will be considered collectively. Impacts and any mitigation will therefore be the same for each of the aforementioned three alternatives.

The lease of existing office space alternative (#2) will have similar impacts to the construction alternatives at the Rich's site depending on the site selected. Since this lease alternative is not site specific, analysis impacts for the following categories would require specific site(s) to be identified: Commercial activity; traffic and transportation; parking; public transit; pedestrian and bicycle traffic; visual quality; and cultural and historic resources. The impacts and mitigation therefore are potentially different for this lease alternative (#2), depending on the sites selected. The commercial office space market for Class "B" space would not be adversely affected if Federal agencies were relocated to other Class "B" space. However, if Federal agencies were relocated into Class "A" office space, the market for Class "B" space would be impacted adversely and the Class "A" market would be impacted positively with a decrease in the vacancy rate and a shortened absorption time for Class "A" vacant space.

The impacts of the three construction alternatives at the Rich's site are discussed below:

Geology and Soils: Construction of the proposed project should not adversely affect the subsurface conditions or soils. During construction, mitigation may be necessary to control erosion and storm water runoff. Best management practices will be implemented to mitigrate this short term impact.

Hazardous Waste: Mitigative measures recommended in the Phase I Site Investigation report conducted by Law Engineering will be necessary. Beyond these corrective measures, there will be no impact from the proposed project.

Traffic and Transportation: The roadway network in Downtown Atlanta is not expected to change dramatically from its present configuration. The Department of Public Works currently plans improvements to the roadway networks in preparation for the Olympic Games in 1996 including the rebuilding of the Spring Street Viaduct. The total impact of traffic generated by the project would result in increased congestion levels along the southbound approach of Forsyth Street at MLK with the remaining locations operating at LOS C or better. Mitigation of these traffic impacts could be accomplished by adjusting the timing of traffic signals. Mitigation measures to minimize traffic disruptions during construction consist primarily of reducing construction during peak-hour periods.

Parking: The proposed project will provide 2,200 new parking spaces. It is anticipated that future parking demand in the area will continue to be met with private sector lots which are readily available in the area. These factors will mitigate any impacts.

Public Transit: The proposed project would generate about 2,700 transit trips daily. The current MARTA rail and bus system would have existing capacity to meet the anticipated demand. No negative impacts or necessary mitigation is anticipated. The proposed project will have a positive impact on the MARTA rapid transit system and this will mitigate some of the traffic impacts by attracting more commuters to public transportation.

Air Quality: Mitigation techniques to limit particulate emissions during demolition and construction activities will be undertaken in accordance with all state and federal statutes. It is recommended that signalization of turning movements be implemented at intersections experiencing high traffic volumes to lessen vehicle emission impacts due to idling vehicles. It is not anticipated that the proposed project will cause or contribute to the exceeding of National Ambient Air Quality Standards (NAAQS) for carbon monoxide for the year 1997.

Atlanta Office Space Market: The proposed action would have no significant impact on the Atlanta office market as a whole, although the class "A and B submarkets" could be affected differently depending on general economic conditions.

Federal personnel currently occupying 1,022,010 square feet of leased class "B" space will be vacated to 1,376,102 square feet of newly-constructed class "A" space also to be leased by the Federal government. The moves will occur over a period of four years: 1996 to 2000. Under a "strong economic growth" scenario for the Atlanta area, occupancy of a new, prestigious downtown building is expected to have a positive but not quantified impact on the class "A" market by keeping a significant number of jobs downtown, perhaps encouraging other development. In a "stagnant economy" scenario, the proposed action is expected to have a minor positive impact by statistically reducing the class "A" vacancy rate by .33 percent as fewer class "A" facilities will be constructed in a down economy.

In a stagnant economy scenario, the proposed action is expected to have an adverse impact on the class "B" market as backfill tenants normally generated by increasing commercial activity are less likely to materialize. Thus, as economic activity decreases, vacant class "B" space previously leased by Federal agencies is likely to increase from 1996 through 2000 as existing leases expire. Under a strong economic growth scenario, the impact to the class "B" market is expected to be minimal. In a strong economy, the Atlanta class "B" market has tended to be strong and flexible: Absorption of an additional one million square feet of class "B" space over the 1996–2000 period should cause minimal impacts to the class "B" submarket.

Cultural Resources: The Rich's downtown Atlanta department store complex (Rich's) and the Terminus Historic District have been identified and evaluated as eligible for listing in the National Register of Historic Places. GSA has been in consultation with the Advisory Council on Historic Preservation, Georgia State Historic Preservation Officer, City of Atlanta, local preservation organizations, and persons concerned with African-American and social humanitarian history. A key goal of the design planning process is preservation of significant architectural elements of the Rich's building. Construction of the proposed project requires substantial demolition of the Rich's building and will therefore be an adverse effect. The Memorandum of Agreement (MOA) and case report currently being prepared will document alternatives considered to minimize harm to historic properties. Mitigation measures will include the documentation of Rich's, a design review process, site interpretation, and the preservation of the 1924 Rich's store building. Ratification of the MOA is anticipated to occur in late summer 1993. By following the terms of the MOA, GSA will have fulfilled its responsibilities under Section 106 of the National Historic Preservation Act and the Council's regulations.

Vegetation, Wildlife, Wetlands: No impact.

Pedestrian and Bicycle Traffic: No impact.

Land use and Zoning: No impact.
Community Facilities, Utilities, Police Services, Fire Protection, Health and Emergency Services: No impact.
Natural Hazards: No impact.

Rationale for Decision

In terms of programmatic feasibility, there are no meaningful environmental distinctions to be drawn among the three construction alternatives at the Rich's site and the leasing alternative choosing another location. Having considered all reasonably foreseeable major impacts to the environment, and determined practicable means to avoid or minimize environmental harm, while meeting the GSA objective of consolidating Federal agencies into a downtown location into Class "A" office space that will meet GSA and PBS standards, GSA has decided to lease a 1.4 million occupiable square foot building and a parking deck for 2200 vehicles from the City of Atlanta at the site of the former Rich's Department store for a period of 27 years.

Dated: August 2, 1993.

Paul L. Allison,

Acting Regional Administrator.

[FR Doc. 93-19315 Filed 8-11-93; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulation—HHSAR Part 332 Contract Financing—0990-0134—Extension—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractors. Respondents: State or local governments, small businesses or organizations. Burden Information for the Cost Sharing Clause—Number of Respondents: 24; Annual Number of Responses: 10; Average Annual Burden per Respondent: 1 hours; Estimated Burden: 240 hours—Burden Information for the Letter of Credit Clause—Number of Respondents: 268; Annual Number of Responses: 4; Average Annual Burden per Respondent: 1 hours; Estimated Burden: 1,172 hours—Total Burden: 1,412 hours.

2. HHS Acquisition Regulation—HHSAR Part 333 Disputes and Appeals—0990-0133—Extension—The Litigation and Claims Clause is needed to inform Government personnel of actions filed against Government contracts. Respondents: State or local governments, businesses or other for-profit institution, non-profit institutions, small businesses or organizations; Number of Respondents: 100; Annual Number of Responses: 1; Average Annual Burden per Respondent: .5 hours; Estimated Burden: 50 hours.

3. HHS Acquisition Regulation—HHSAR Part 324 Protection of Privacy and Freedom of Information—0990-0136—Extension—The Confidentiality of Information requirements are needed to prevent improper disclosure of confidential data. Respondents: State or local governments, businesses or other for-profit institution, non-profit institutions, small businesses or organizations; Number of Respondents: 449; Annual Number of Responses: 1; Average Annual Burden per Respondent: 8 hours; Estimated Burden: 3592 hours.

4. HHS Acquisition Regulation—HHSAR Part 316 Types of Contracts—0990-0138—Extension—The Negotiated Overhead Rate—Fixed clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). Respondents: non-profit institutions; Number of Respondents: 376; Annual Number of Responses: 1; Average Annual Burden per Respondent: 10 hours; Estimated Burden: 3,760 hours.

5. HHS Acquisition Regulation—HHSAR Part 342 Contract Administration—0990-0131—Extension—The requirement for Notification of Cost Overrun is necessary better administer HHS contracts. Respondents: State or local governments, businesses or other for-profit institution, non-profit institutions, small businesses or organizations; Number of Respondents: 14; Annual Number of Responses: 1; Average Annual Burden per Respondent: 20 hours; Estimated Burden: 900 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 30, 1993.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 93-19340 Filed 8-11-93; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84N-0154]

Revised Draft of "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1993);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing the availability of a revised draft of a points to consider (PTC) document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1993)." The revised draft PTC document is concerned with the characterization of cell lines used to produce biological products which are subject to licensure under the U.S. Public Health Service Act and also with the identification of possible adventitious infectious agents from the cell lines which may contaminate the final product.

ADDRESSES: Submit written requests for single copies of the revised draft PTC document to the Congressional and Consumer Affairs Branch (HFM-12), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the revised draft PTC document to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The revised draft PTC document 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: Stephen Ripley, Center for Biologics

Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a revised draft PTC document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1993)". This document supersedes the "Points to Consider (PTC) in the Characterization of Cell Lines Used to Produce Biologicals (1987)" announced in the **Federal Register** of April 4, 1988 (53 FR 10948). The revised draft PTC reflects a number of recommendations emanating from several international workshops held since the issuance of the previous PTC. A number of tests previously recommended have been revised or eliminated.

The revised draft PTC provides information regarding the characterization of cell lines used to produce biological products which are subject to licensure under the U.S. Public Health Service Act and also with the identification of possible adventitious infectious agents from the cell lines which might contaminate the final product. FDA's regulation governing biological products contain requirements regarding final product uniformity, consistency from lot-to-lot and freedom from adventitious infectious agents. Topics addressed in the revised draft PTC document include: (1) History and general characteristics of the cell line; (2) the cell bank system; (3) production cultures and product testing; (4) quality control testing; and (5) validation of viral elimination.

Advances in biotechnology are occurring rapidly. Each new product should be evaluated in light of its own particular characteristics and the cell line and manufacturing process being used. Therefore, information in the revised draft PTC is subject to change as new and significant findings become available. Accordingly, discussion in the revised draft PTC should be interpreted as raising scientific issues that manufacturers who produce biological products from cell lines should consider, both during product development under investigational new drug applications (IND's) and before submitting product license applications (PLA's).

As with other PTC documents, FDA does not intend this draft PTC document to be all-inclusive. Alternative approaches may well be suitable in specific situations, and certain aspects may not be applicable to all situations. Furthermore, the scientific basis for determining the appropriateness of the points specified for consideration here is developing rapidly and more appropriate approaches may be developed in the future. Therefore, the Center for Biologics Evaluation and Research will review the adequacy of testing of any cell line on a case-by-case basis. This PTC document does not bind FDA and does not create or confer any rights, privileges, or benefits on or for any private person, but is intended merely for guidance.

Interested persons may submit written comments on the revised draft PTC document to the Dockets Management Branch (address above). Such comments received will be considered in determining whether further revision of the revised draft PTC document is warranted.

Dated: August 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19299 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0166]

M. & G. Ricerche S.p.A.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that M. & G. Ricerche S.p.A., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of pyromellitic dianhydride as a modifier in the manufacture of polyethylene terephthalate copolymers intended for food-contact applications.

DATES: Written comments on petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW.,Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4375) has been filed by M. & G. Ricerche S.p.A., c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814. The petition proposes that the food additive regulation, § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630), be amended to provide for the safe use of pyromellitic dianhydride as a modifier, at a level not to exceed 0.5 weight percent, in the manufacture of polyethylene terephthalate copolymers intended for food-contact applications.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19303 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93C–0248]

BASF Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp., has filed a petition proposing that the color additive

regulations be amended to provide for the safe use of canthaxanthin as a color additive in the feed of salmonid fish.

DATES: Written comments on petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721), (21 U.S.C. 379e), notice is given that a color additive petition (CAP 3C0240) has been filed by BASF Corp., 100 Cherry Hill Rd., Parsippany, NJ 07054. The petition proposes to amend the color additive regulations to provide for the safe use of canthaxanthin as a color additive in the feed of salmonid fish.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19368 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0247]

Exxon Chemical Company; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Exxon Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene/hexene-1 copolymers containing a maximum of 20 percent by weight of polymer units derived from hexene-1 as components of articles intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204,202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4379) has been filed by Exxon Chemical Co., P.O. Box 1607, Baton Rouge, LA 70821–1607. The petition proposes that the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of ethylene/hexene-1 copolymers containing a maximum of 20 percent by weight of polymer units derived from hexene-1 as components of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19367 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

International Workshop on Harmonisation of Reporting of Adverse Events Following Vaccination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER) is announcing an international workshop entitled "International Workshop on Harmonisation of Reporting of Adverse Events Following Vaccination." The objective of this workshop is to encourage international harmonization of surveillance programs by communicating experiences, exchanging information, developing standards for reporting, information management, and monitoring. This workshop will help CBER in preparing guidance consistent with international programs.

DATES: The workshop will be held on Monday, September 27, 1993, and Tuesday, September 28, 1993, from 8 a.m. to 6 p.m., and Wednesday, September 29, 1993, from 8 a.m. to 12 m.

ADDRESSES: The workshop will be held at the Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT:

To receive a brochure containing information on the agenda, registration, hotel, and travel: Pamela S. Milan, KRA Corp., 1010 Wayne Ave., suite 950, Silver Spring, MD 20910, 301–495–1591; facsimile 301–495–2919.

Regarding this notice: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: The workshop entitled "International Workshop on Harmonisation of Reporting of Adverse Events Following Vaccination" is cosponsored by CBER; the National Vaccine Program Office; the National Institute of Allergy and Infectious Diseases; the Centers for Disease Control and Prevention; the Health Resources and Services Administration; and the World Health Organization. The purpose of the workshop is to encourage international harmonization of surveillance of adverse experience reporting programs for vaccines through an exchange of information. The objectives of the workshop are to foster the development of definitions and basic requirements for the use of adverse event terminology and to encourage the standardization of data specific fields for use in reporting and evaluating adverse event case reports. Various national vaccine reporting and surveillance systems will be presented at the workshop to promote the harmonization of international surveillance programs.

Speakers from representative national regulatory agencies, national disease prevention agencies, pharmaceutical manufacturers, and academia will address the following topics:

(1) The systems used by various national regulators, other public health agencies, and manufacturers to process and monitor vaccine adverse event reports;

(2) The development of definitions and basic requirements for the use of surveillance data bases and their use in evaluating case reports; and

(3) Discussions of how internationally standardized data specific fields can promote the worldwide dissemination of information via computerized data bases.

Dated: August 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19370 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0269]

Lonza, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lonza, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of didecyldimethylammonium chloride as a preservative on wooden articles intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4387) has been filed on behalf of Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., Suite 1000, Bethesda, MD 20814. The petition proposes that the food additive regulations in § 178.3800 *Preservatives for wood* (21 CFR 178.3800) be amended to provide for the safe use of didecyldimethylammonium chloride as a preservative on wooden articles intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19369 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0244]

National Starch and Chemical Company; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that National Starch and Chemical Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of starch, modified by treatment with diethylaminoethylchloride, hydrochloride salt and 2-chloro-*N*-(2, 2-dimethoxyethyl)-*N*-methylacetamide, as an internal sizing for paper and paperboard intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by September 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4385) has been filed by National Starch and Chemical Co., Finderne Ave., Bridgewater, NJ 08807. The petition proposes to amend the food additive regulations in § 178.3520

Industrial starch-modified (21 CFR 178.3520) to provide for the safe use of starch, modified by treatment with diethylaminoethylchloride, hydrochloride salt (CAS Reg. No. 869–24–9) and 2-chloro-*N*-(2,2-dimethoxyethyl)-*N*-methylacetamide (CAS Reg. No. 69184–36–7), as an internal sizing for paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 13, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19371 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 94–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, September 20 and 21, 1993, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland.

This meeting will be open to the public on September 20, 1993, from 8:30 a.m. to 11:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 94–463, the meeting will be closed to the public on September 20 at 11:30 a.m. to recess and on September 21, 1993, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 605, Bethesda, Maryland 20892 (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 402–2205, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19359 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 13–14, 1993, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 13 from 9 a.m. to approximately 5 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 14, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, room B1C02, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Herrell in advance of the meeting.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19360 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–10–M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, September 29–30, 1993, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public on Wednesday, September 29, from 8 a.m. to 12 noon for a status report by the Director, NIA, a report on the Biology of Aging Program, and a report on the Working Group on Program.

The meeting will be open again on Thursday, September 30 from 8:30 a.m. until adjournment for a report on the Epidemiology, Demography and Biometry Program; and for brief reports and discussions of ongoing projects, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on September 29 from 1 p.m. to recess for the review, discussion and evaluation of grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19358 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Notice of the Meeting of National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on September 9 and 10, 1993, in Building 31C, Conference room 8, National Institutes of Health, Bethesda, MD.

The NAEC meeting will be open to the public from 8:30 a.m. until approximately 3 p.m. on Thursday, September 9, 1993. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open sessions will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public from approximately 3 p.m. on Thursday, September 9 until adjournment on Friday, September 10 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, suite 350, 6120 Executive Boulevard, Rockville, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19361 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 2–3, 1993, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 2 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., sec. 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on September 2 and from 8:30 a.m. to adjournment on September 3 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, Room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7454, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19362 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Notice of Meeting: National Advisory Council for Nursing Research and its Subcommittes

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Advisory Council for Nursing Research, National Institute of Nursing Research; and its Subcommittees, August 30–September 1, 1993, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session on August 31, from 8:30 a.m. to 4 p.m. and on September 1, from

approximately 11 a.m. to adjournment. Agenda items will include: the NINR Director's Report, Division of Intramural Research Programs, AHCPR Outcomes and General Health Services Research Programs, Support of Research for Pre and Post Docs, NACNR Subcommittee Issues, Policy Issues Relevant to Grant Review, Policy Issues Pertaining to Grant Review, and Revision of *Indicators of Quality in Doctoral Programs in Nursing.*

The Planning Subcommittee will meet in open session August 30, in Building 31C, Conference Room 6, from 10 a.m. to 12 p.m. to discuss long-term and strategic planning and policy issues.

The Biennial Report Subcommittee will meet in open session August 30, in Building 31, NINR Conference Room (5B–03), from 1 p.m. to 3 p.m. to discuss the activities and program policies of the Institute.

The Nursing Resources and Health Policy Subcommittee will meet in open session August 30, in Building 31, NINR Conference Room, (5B–03), from 3 p.m. to 5 p.m. to discuss nursing resources and health policy as they relate to nursing science and the achievement of quality and effective outcomes in patient care.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting of the Research Subcommittee will be closed to the public on August 30, from 1 p.m. to 3 p.m., and the meeting of the full Council will be closed on September 1, from 9 a.m. to approximately 11 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to intend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Teresa Radebaugh 301–594–7590 in advance of the meeting.

Dr. Teresa Radebaugh, Director, Division of Extramural Programs, National Institute of Nursing Research, National Institutes of Health, Building 31, Room 5B25, Bethesda, Maryland 20892, (301) 594–7590, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19363 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the DHHS Advisory Panel on Alzheimer's Disease

Pursuant to Public Law 92–463, notice is hereby given of the DHHS Advisory Panel on Alzheimer's Disease meeting, National Institute on Aging, to be held at the National Institutes of Health, Building 31, Conference Room 2C15, Bethesda, Maryland, from 9 a.m. to 5 p.m. on September 28 and again on September 29 from 9 a.m. to 1 p.m.

The meeting will be open to the public for discussion of draft material for the Panel's fifth annual report and other business before the Panel. Attendance by the public will be limited to space available.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19354 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the National Cancer Advisory Board, Subcommittee on Activities and Agenda

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, Subcommittee on Activities and Agenda (Working Group), September 1, 1993 in the Cardinal Room at the Skybird Meeting Center, O'Hare Airport, Chicago, Illinois.

The entire meeting will be open to the public from 10 a.m. to 2 p.m. Attendance by the public will be limited to space available. Discussions will address the Board's format, agenda items and activities of the National Cancer Advisory Board.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and a roster of the Subcommittee members upon request.

Dr. Paulette S. Gray, Executive Secretary, Subcommittee on Activities and Agenda (Working Group), National Cancer Advisory Board, National Cancer Institute, Executive Plaza North, room 622, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7173) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Paulette Gray on (301/496–7173) in advance of the meeting.

Dated: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19357 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Kidney and Urologic Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on September 26–27, 1993. On Sunday, the Research and Health Care Issues subcommittees will meet from 7 p.m.–9 p.m. On Monday, September 27, the full Board will meet at approximately 8:30 a.m. and adjourn at 11 a.m. and reconvene at approximately 1 p.m. to discuss its future activities and the 1994 Annual Report, adjourning by 5 p.m. The Board will meet at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting will be open to the public, but limited to space available.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801

Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, at least two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

(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: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19355 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on September 20–21, 1993. The Board will meet on Monday, September 20 and Tuesday, September 21, from 8:30 a.m. to approximately 5 p.m. Discussions on Monday will be devoted to diabetes and the lower extremities. On Tuesday, the Board will discuss diabetes translation and the 1994 Annual Report. The meeting will be held at the Washington Dulles Airport Marriott, 333 West Service Road, Chantilly, Virginia, 22021. Although the entire meeting will be open to the public, attendance will be limited to space available.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

(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: August 5, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–19356 Filed 8–11–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–4340–01]

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast New Mexico Playa Lakes, Coordinating Committee Meeting.

DATES: Thursday, September 16, 1993, beginning at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201, (505) 622–9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include presentation by the Planning Group of a draft investigation/remediation plan for the Playa Lakes area of southeast New Mexico. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Greene, Carlsbad, New Mexico. Planning Group recommendations will be presented at 9:30 a.m. to the Southeast New Mexico Playa Lakes Coordinating Committee. Final decisions on recommendations of the Planning Group are expected to be made by the Committee. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.–4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: August 5, 1993.

Timothy R. Kreager,

Acting District Manager.

[FR Doc. 93–19444 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–FB–M

[CA–028–93–4333–05]

Notice of Emergency Road Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Emergency Road Closure.

SUMMARY: Notice is hereby given that effective immediately the High Rock Canyon vehicle road is temporarily closed to all vehicle use and access at a point 4.5 miles from the south gate into the High Rock Canyon Area of Critical Environmental Concern (ACEC), and 9 miles from the north gate into the ACEC. These locations are found in sections 27 and 17 respectively of T.40N.,R23E., Washoe County, Nevada. The purpose of this closure is to protect public safety and prevent significant resource damage to the riparian area and creek bed. The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until the adverse effects are eliminated by completion of a new vehicle crossing.

For further information, contact: Tony Danna, Area Manager, at (916) 279–6101.

John Bosworth,

Assistant District Manager.

[FR Doc. 93–19445 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–40–M

[OR 44130; OR–020–03–3110–10–H003: G3–338]

Realty Action: Land Exchange; Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by land exchange under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1716:

T. 26 S., R. 33 E.
- Sec. 11, W½SW¼;
- Sec. 14, SW¼NE¼, N½NW¼, NW¼SE¼, S½SE¼;
- Sec. 15, S½S½;
- Sec. 16, S½S½;
- Sec. 17, Lots 1, 2, 5, 6, SE¼SE¼;
- Sec. 20, Lots 1 through 5, SW¼NE¼;
- Sec. 21, Lots 4, 5, NE¼, N½NW¼, SE¼NW¼;
- Sec. 22, Lots 1 through 13, SE¼NE¼, N½NW¼, SW¼NW¼, SE¼SW¼;
- Sec. 23, E½NE¼;
- Sec. 24, SW¼NW¼, W½SW¼;
- Sec. 25, W½,W½NE¼NE¼SE¼, W½NE¼SE¼, SE¼NE¼SE¼, W½SE¼, N½SE¼SE¼, SW¼SE¼SE¼, W½SE¼SE¼SE¼;
- Sec. 26, E½, E½NW¼;
- Sec. 27, NW¼;
- Sec. 28, N½;
- Sec. 29, NE¼NE¼.

The area described above aggregates approximately 3,310 acres.

In exchange for these lands, the Federal Government will acquire the following described private land from Nevin Thompson and Shirley Thompson:

T. 32 S., R. 32¾ E.
- Sec. 15, NW¼SW¼, S½SW¼, SW¼SE¼;
- Sec. 21, N½NE¼;
- Sec. 22, N½, E½SE¼.

The area described above aggregates approximately 640 acres.

The purpose of this exchange is to acquire important riparian and big game habitat and to consolidate public land in

a heavily used recreation area on Steens Mountain.

The value of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to Nevin and Shirley Thompson of funds not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation to the United States of an exclusive road right-of-way, as described in BLM Case OR–49780.

3. Valid, existing rights including, but not limited to, any right-of-way, easement or lease of record and to any existing easements for public roads and highways, not shown of record.

4. A reservation to the United States for all oil and gas resources.

5. A restriction which constitutes a covenant running with the land, that the portion of the land lying within the 100-year floodplain may be used only for agricultural purposes or for park and nonintensive open space recreation purposes, but not for dwellings or buildings.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Burns District Manager.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action may become the final determination of the Department of the Interior.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Detailed information including an environmental assessment prepared for this action is available from Glenn T. Patterson, Area Manager or Barbara Kehrberg, Realty Specialist, Andrews Resource Area, Bureau of Land Management, HC 74–12533 Highway 20 West, Hines, Oregon 97738, (503), 573–5241.

Dated: August 5, 1993.

Jerome A. Petzold,

Assistant District Manager for Operations.

[FR Doc. 93–19394 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–33–M

[MT–060–4320–01–241A]

Notice of Meeting for the Lewistown District Grazing Advisory Board

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of meeting for the Lewistown District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Lewistown District Grazing Advisory Board will meet September 9, 1993. The meeting will begin at 10:00 a.m. at the First State Bank, 1 South and 1 East, Malta, Montana. The agenda includes a discussion on fiscal year 1994 range improvements and allotment management plans, implementation of the Section 8 process, the Milk River Memorandum of Understanding, black-footed ferret reintroduction, and grazing administration issues.

DATES: September 9, 1993.

ADDRESSES: First State Bank, 1 South and 1 East, Malta, Montana.

FOR FURTHER INFORMATION CONTACT: District Manager, Lewistown District, Bureau of Land Management, P.O. Box 1160, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The public may make oral statements before the board or file written statements for their consideration.

The board is organized and operates under the Federal Advisory Committee Act 43 CFR 1784.

Dated: August 5, 1993.

Owen Billingsley,

Acting District Manager.

[FR Doc. 93–19440 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–DN–M

[CA–016–02–7122–02–5746; CA 31588]

Realty Action; Exchange of Public and Private Lands in Kern and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian

T .11 N., R. 24 W.,
Sec. 8 SE¼NE¼, E½SE¼;
Sec. 9 S½NW¼, SW¼, W½SE¼.
Containing 440 acres in Kern County, CA.

The surface estate and all mineral rights, except for the oil and gas rights, on the above public land will be exchanged. In exchange for this public land, the Bureau of Land Management (BLM) will acquire an equal value of lands from The Nature Conservancy in the Carrizo Plain Natural Area. The legal descriptions of the Carrizo Plain lands were published in **Federal Register** on March 26, 1993, Vol. 58, No. 57, pp. 16413 and 16414.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire some of the private inholdings within the BLM lands in the Carrizo Plain Natural Area (in Kern and S.L.O. Counties), mainly for endangered species protection. The public interest will be well served by completing the exchange. Publication of this notice in the **Federal Register** segregates the above public lands from settlement, location, and entry under the public land laws, right-of-way laws, permit laws, and mining laws, but not exchange under sec. 206 of the Federal Land Policy and Management Act of 1976. The segregative effect will end upon issuance of patent of two years from the date of publication in the **Federal Register**, whichever occurs first. The exchange will be on an equal value basis, not an acre-for-acre basis. An independent appraisal will establish the fair market value of the public and private lands. On the above public land, the Bureau will reserve to the United States the oil and gas rights with the right of surface entry, and a right-of-way reservation for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Also, in the conveyance document, the above public land will be subject to the following:

CA 32005; powerline right-of-way.
CA 31666; phone line right-of-way
CA 30435 & CA 31829; oil & gas leases.

Interested parties may submit comments to the BLM Area Manager at the following address until September 27, 1993. For further information contact: Bureau of Land Management, Caliente Resource Area Office, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861–4236.

Dated: July 14, 1993.

James Wesley Abbott,

Area Manager.

[FR Doc. 93–17393 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–05; N–57242]

Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Classification modification.

SUMMARY: The following described public land in Laughlin, Clark County, Nevada, by notice published in the **Federal Register** (FR Doc. 92–6316) (March 19, 1992) was classified for disposal pursuant to section 203 and section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713, 1719). It is now intended to modify the classification to allow for lease/purchase of the lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.). The American Legion Post #60 intends to construct a post facility with meeting rooms and recreational facilities to include ball fields.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.,
Sec. 15: SW¼SW¼SW¼.
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement 30.00 feet in width along the north boundary, 30.00 feet in width along the east boundary, 50.00 feet in width along the south boundary, 50.00 feet in width along the west boundary, and includes a 25.00 foot spandrel on the northwest corner, a 54.00 foot spandrel on the southwest corner, a 25.00 foot spandrel on the southeast corner, and a 15.00 foot spandrel on the northeast corner, in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for a water line and related appurtenances purposes which have been granted to Big Bend Water District by Permit No. N–53356 under the Act of October 21, 1976.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Publication of this notice in the **Federal Register,** will modify sale classification N–55292 to allow for lease/purchase under the Recreation and Public Purposes Act.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the modification of the classification will become effective 60 days from the date of publication in the **Federal Register.** The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: August 2, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–19293 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–HC–M

[WY–060–4210–05; WYW106593]

Amended Realty Action; Direct Sale of Public Lands, and Modified Competitive Sale of Public Lands; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended Notice of Realty Action, Direct Sale of Public Lands, and Modified Competitive Sale of Public Lands in Campbell County.

SUMMARY: The Notice of Realty Action, WYW106593, was published in the **Federal Register** on July 14, 1993, *58 FR 37962.* This Notice is amended by rescheduling the sale date of August 25, 1993 to September 22, 1993. This will also extend the reoffered sale date of September 22, 1993 to October 27, 1993, for any parcels that failed to sell in the initial sale. All other sale procedures in the original Notice remain in effect.

FOR FURTHER INFORMATION CONTACT: Dave Pomerinke, Area Manager, Buffalo Resource Area, BLM, 189 Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

SUPPLEMENTARY INFORMATION: The sale date has been extended in order to allow sufficient time for all interested parties to submit comments on the sale action.

Dated: August 2, 1993.

Mike Karbs,

District Manager.

[FR Doc. 93–19296 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–22–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey; Idaho

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., August 4, 1993.

The plat, in 2 sheets, representing the dependent resurvey of portions of the east and north boundaries, subdivisional lines, certain Homestead Entry Surveys, and meanders of the Snake River, and the subdivision of certain sections, Township 1 North, Range 43 East, Boise Meridian, Idaho, Group No. 776, was accepted July 28, 1993.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV.

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.

August 4, 1993.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–19439 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–03–4730–02]

Filing of Plats of Survey; Idaho

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., August 3, 1993.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and 1910 meanders of the left bank of the Salmon River, and the subdivision of sections 7, 8, and 9, and a metes-and-bounds survey in section 8, Township 18 North, Range 21 East, Boise Meridian, Idaho, Group No. 805, was accepted July 26, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

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: August 3, 1993.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93-19320 Filed 8-11-93; 8:45 am]

BILLING CODE 4310-GG-M

[OR-942-00-4730-02: GP3-326]

Filing of Plats of Survey; Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 12 S., R. 1 E., accepted July 12, 1993
T. 13 S., R. 2 E., accepted July 12, 1993
T. 10 S., R. 4 E., accepted July 6, 1993
T. 23 S., R. 26 E., accepted July 12, 1993
T. 6 N., R. 38 E., accepted June 25, 1993
T. 4 N., R. 42 E., accepted June 4, 1993
T. 5 N., R. 42 E., accepted June 4, 1993
T. 10 S., R. 1 W., accepted July 12, 1993
T. 34 S., R. 3 W., accepted July 6, 1993
T. 37 S., R. 4 W., accepted June 1, 1993
T. 21 S., R. 6 W., accepted June 1, 1993
T. 18 S., R. 8 W., accepted July 15, 1993
T. 7 S., R. 9 W., accepted July 15, 1993

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 2, 1993.

William E. Bliesner,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-19317 Filed 8-11-93; 8:45 am]

BILLING CODE 4510-33-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.*):

PRT-697819

Applicant: U.S. Fish and Wildlife Service—Region 4, Atlanta, GA.

Applicant requests amendment to their current permit to include take of various fish, mussels, invertebrates, and plants for purposes of scientific research and enhancement of propagation and survival for the species as prescribed in Service recovery documents.

PRT-781576

Applicant: Henry Doorly Zoo, Omaha, NE.

Applicant requests a permit to import tissue samples of the Asian elephant (*Elephas maximus*) from Malaysia for purposes of scientific research. Applicant proposes to collect tissues to examine the genetic effects of habitat alteration on the large mammal populations of Peninsular Malaysia.

PRT-781377

Applicant: San Marino Environmental Associates, San Marino, CA.

Applicant requests a permit to take Unarmored Three spine Stickleback fish (*Gasterosteus aculeatus williamsoni*) in Santa Clara River & Ventura Counties, CA to survey for the presence or absence of the species, and to monitor its populations using nets to temporarily exclude or rescue individuals from areas of human disturbance.

PRT-781573

Applicant: Steve Martin, Lakeville, MN.

Applicant requests a permit to purchase in interstate commerce a pair of Andean condors (*Vulture gryphus*) from the Buffalo Zoo, NY., for conservation education programs.

PRT-776123

Applicant: Institute for Marine Life Science, Galveston, TX.

Applicant requests a permit to take (capture, tag, release, track, recapture) and collect blood, stomach, and fecal samples of the Kemp's Ridley (*Lepidochelys kempi*), Hawksbill (*Eretmochelys imbricata*), Green (*Chelonia mydas*), and Loggerhead turtles (*Caretta caretta*) from the Gulf of Mexico & throughout the West Central Atlantic area using entanglement nets of different mesh sizes and depths for scientific research.

PRT-780661

Applicant: World Bird Sanctuary, St. Louis, MO.

The applicant requests a permit to import one blue-throated guan (*Aburria (=Pipile) pipile pipile*) from the Grenada Society of the Prevention of Cruelty to Animals, Grenada, for rescue, rehabilitation and breeding purposes.

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 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: August 6, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93-19336 Filed 8-11-93; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Cooperative Research and Development Agreement; Snow Gulch and Galena Creek Quadrangles, NV

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey is interested in pursuing a Cooperative Research and Development Agreement (CRADA) directed at research on geologic

mapping of the Snow Gulch and Galena Creek 7½-minute quadrangles, Nevada. The purpose of the mapping is to study in detail features associated with the Elder Creek Copper Porphyry System. As a classic example of the type deposit, the system is little studied scientifically, and detailed study will lead to a better scientific understanding to improve predictive models for this type of deposit.

DATES: This notice is effective immediately.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location: U S. Geological Survey, Branch of Western Mineral Resources, 345 Middlefield Road, MS 942, Menlo Park, California 94025–3591.

FOR FURTHER INFORMATION CONTACT: Dr. Ted Theodore of the U.S. Geological Survey, Branch of Western Mineral Resources, at the address given above, telephone (415) 329–5365, no later than 30 days from the publication of this notice.

SUPPLEMENTARY INFORMATION: The U.S. Geological Survey is interested in one party, or preferably a group of parties, from the mineral exploration industry to participate in this cooperative research program. The party, or parties, should be able to provide logistic, scientific, and/or financial support for the detailed study to be undertaken. Selection of a party, or group of parties, for this CRADA will be based on the capabilities available from the industry party, or parties; the degree of scientific cooperation to be provided; and total resources to be made available that will contribute directly to advancing the copper deposit modeling program of the U.S. Geological Survey.

B.A. Morgan,

Chief Geologist.

[FR Doc. 93–19319 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Gulf Islands National Seashore

AGENCY: National Park Service.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Gulf Islands National Seashore Advisory Commission will be held at 1:30 p.m. to 4 p.m., at the following location and date.

DATES: September 17, 1993.

LOCATION: Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561.

FOR FURTHER INFORMATION CONTACT: Jerry A. Eubanks, Superintendent.

SUPPLEMENTARY INFORMATION: The Commission was established pursuant to Public Law 91–660, January 8, 1971. The purpose of the Gulf Islands National Seashore Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Gulf Islands National Seashore, and on matters relating to zoning within the Seashore.

The matters to be discussed at this meeting will include:

(1) Superintendent's Annual Report.
(2) Status of Natural Resource Management Projects.
(3) Status of Cultural Resource Management Projects.
(4) Other business.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, an it is expected that not more than 20 persons will be able to attend the meeting in addition to the commission members. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent. Minutes of the meeting will be available at the Park headquarters for public inspection approximately 4 weeks after the meeting.

Dated: July 30, 1993.

James W. Coleman,

Regional Director, Southeast Region.

[FR Doc. 93–19398 Filed 8–11–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32265]

Conrail Inc.—Control—Consolidated Rail Corp.; Notice of Exemption

Conrail Inc. and Consolidated Rail Corporation (CR) have filed a notice of exemption under 49 CFR 1180.2(d)(3),[1] from the prior approval requirements of 49 U.S.C. 11343 for the formation of Conrail Inc. as a noncarrier holding company to control CR and its corporate family.[2] In this corporate family transaction, all outstanding and treasury shares of common and preferred stock of CR will be converted into an equal number of shares of common stock and preferred stock of Conrail Inc., the noncarrier holding company. As a result of this transaction, the shareholders of CR on the consummation date of the transaction will become shareholders of Conrail Inc., and CR will become a wholly-owned subsidiary of Conrail Inc. After the consummation date, both CR and Conrail Inc. will have the same directors, and the officers of Conrail Inc. will be senior officers of CR. The parties anticipated that this transaction would be consummated on July 1, 1993.

The proposed transaction is a corporate family restructuring. This transaction is within a corporate family and is exempt from prior Commission review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The purpose of the transaction is to create a holding company structure for CR like that utilized by the other major publicly-held Class I railroads, with accompanying benefits stemming from such a structure.

As a condition to the use of this exemption, any employee adversely affected by the transaction will be protected by the conditions set forth in the *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

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. Pleadings must be filed with the Commission and served on:

[1] These parties also filed a "Petition to Dismiss for lack of Jurisdiction," requesting a Commission determination that the Commission does not have jurisdiction over the involved transaction and that there will be no acquisition of control within the meaning of 49 U.S.C. 11343. In a decision served July 9, 1993, the Commission required these parties to submit additional evidence on whether CR and its subsidiaries and affiliates constitute a single system before acting on the petition. By letter filed July 19, 1993, Conrail Inc. and CR requested to withdraw that petition. Their request to withdraw the petition is granted.

[2] For the purpose of this proceeding, CR states that its corporate family includes CRR Industries Inc., CRC Properties, Inc., Indiana Harbor Belt Railroad Company, Calumet Western Railway Company, Merchants Despatch Transportation Corporation, The Monongahela Railway Company, St. Lawrence & Adirondack Railway Company, Belt Railway Company of Chicago, Penn Central Communications Company, Akron & Barberton Belt Railroad Company, Albany Port Railroad Corporation, Lakefront Dock & Railroad Terminal Company, Nicholas, Fayette & Greenbrier Railroad Company, Peoria & Pekin Union Railway Company, Pittsburgh Chartiers & Youghiogheny Railway Company, Railroad Association Insurance, Ltd., Transportation Data Xchange, Inc., TTX Company, and each of these companies' subsidiaries and affiliates.

Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Washington, DC 20036, and Timothy T. O'Toole, Esq., Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

Decided: August 4, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland,

Secretary.

[FR Doc. 93–19392 Filed 8–11–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32328]

Jackson, Gordonville and Delta Railroad Company—Acquisition and Operation Exemption—Line in Cape Girardeau County, MO; Notice of Exemption

Jackson, Gordonville and Delta Railroad Company (JGD), a noncarrier, has filed a notice of exemption to acquire from the Jackson Industrial Development Company and to operate 18.4 miles of rail line running from milepost 149.5 near Delta, MO, to its termination near milepost 163.5 in Jackson, MO, in Cape Girardeau County, MO. The line will be operated by JGD under the name Jackson and Southern Railroad. The exemption became effective July 19, 1993.

Any comments must be filed with the Commission and served on: George E. Peo, 1714 Huntington, Cape Girardeau, MO. 63701.

This notice is filed under 49 CFR 1150.31. 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.

Decided: August 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19393 Filed 8–11–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Amelia Associates and Joey's Excavating, Inc.*, Civil Action No. 91–4177 (JFG) (D.N.J.) was lodged on July 29, 1993, with the United States District Court for the District of New Jersey. The Decree provides for defendant Amelia Associates to pay a civil penalty of $125,000 (interest included in this figure) pursuant to the provisions of section 113(b) of the Clean Air Act, 42 U.S.C. 7513(b). Also, the Decree provides for defendant Joey's Excavating, Inc. to agree to list a civil penalty of $2,500 as an unsecured, but undisputed, debt in its ongoing chapter 11 bankruptcy proceedings. The civil penalties are for violations occurring in July and August 1990 of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") promulgated for asbestos pursuant to Sections 112 and 114 of the Clean Air Act, 42 U.S.C. §§ 7412 and 7414. The Decree also requires future compliance with the asbestos NESHAP regulations and, as to defendant Amelia, provides for stipulated penalties for future violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Amelia Associates and Joey's Excavating, Inc.*, DOJ Ref. # 90–5–2–1–1596.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of New Jersey, 970 Broad Street, room 502, Newark, New Jersey, at the Environmental Protection Agency, Region II, 26 Federal Plaza, room 400, New York, New York, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 93–19436 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Resource Conservation and Recovery Act

Consistent with 42 U.S.C. 9622(d), notice is hereby given that on July 16, 1993, a proposed consent decree in *United States of America* v. *Ford Motor Company, et al.*, Civil Action No. 91–4281, was lodged with the United States District Court for the District of New Jersey. The United States' complaint sought recovery of response costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against the Ford Motor Company, Ford International Services and the Borough of Ringwood which are responsible for hazardous substances found at the Ringwood Mines Landfill Superfund Site in the Borough of Ringwood, New Jersey, a National Priorities List facility. The consent decree provides that the defendants will pay $580,300.00 in past response costs to the United States in connection with the Ringwood Mines Landfill Superfund Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ford Motor Company, et al.*, D.J. Ref. 90–11–3–830.

The proposed consent decree may be examined at the office of the United States Attorney, 970 Broad St., room 502, Newark, NJ 07102 and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–19316 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Stipulation and Settlement Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Monitor Sugar Company*, Civil Action No. 85–CV–10309, was lodged on August 2, 1993 with the United States District Court for the Eastern District of Michigan. The stipulation settles an action brought to enforce a 1987 Consent Decree among the United States, the State of Michigan, and Monitor Sugar Company of Bay City, Michigan. The 1987 Consent Decree settled a joint state and federal enforcement action brought against Monitor under the Clean Air Act to enforce the requirements of Michigan's State Implementation Plan. The stipulation settles the governments' joint claims for stipulated penalties owed by Monitor for violations of the 1987 consent decree relating to operation of pulp dryers and boilers at its Bay City facility. Under the stipulation, Monitor agrees to pay $1,064,000 in stipulated penalties, to be divided evenly between the United States and the State of Michigan.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation and settlement order. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Monitor Sugar Company*, DOJ Ref. #90–5–2–1–823B.

The proposed stipulation and settlement order may be examined at the office of the United States Attorney, 1000 Washington Street, 203 Federal Building, Bay City, Michigan 48707; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–19437 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 28, 1993, Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78759, made written request to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 3,4-Methylenedioxy-N-ethylamphetamine (7404).

Radian Corporation plans to bulk manufacture small quantities of this material in order to make exempt deuterated and non-deuterated drug reference standards. These reference standards will be sold to analytical and forensic laboratories for use in drug testing programs.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 13, 1993.

Dated: August 3, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–19306 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–09–M

NUCLEAR REGULATORY COMMISSION

License Renewal Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Atomic Energy Act of 1954 limits the duration of most operating licenses for nuclear power plants to a maximum of 40 years, but also permits the operating licenses to be renewed to allow operation beyond the term of the original operating license. The Commission's regulations in § 50.51 of title 10 of the Code of Federal Regulations (10 CFR) implement this authority by permitting renewal. This rule, however, does not contain specific procedures, criteria, and standards that must be satisfied in order to renew a license. In 1989, the Commission published an advanced notice of proposed rulemaking for license renewal and, in mid-1990, published the proposed rule that established the procedures, criteria, and standards governing nuclear power plant license renewal. The final license renewal rule, 10 CFR part 54, included some changes from the proposed version and was published in December 1991. The rule became effective in January 1992.

Since publishing the final rule, the staff of the U.S. Nuclear Regulatory Commission (NRC) has been conducting various activities related to implementing the license renewal rule. These actions have included developing a regulatory guide and a standard review plan for license renewal, interacting with lead plant licensees, and reviewing generic industry technical reports sponsored by the Nuclear Management and Resources Council.

In late 1992, and partly in response to the identification of several license renewal implementation issues by the nuclear industry, the staff conducted a senior management review and interacted in several public meetings with the Commission, industry groups, and individual licensees to discuss key license renewal issues. The staff discussed its recommendations regarding these key license renewal issues in two recent Commission policy papers (SECY–93–049, "Implementation of 10 CFR Part 54, 'Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'" and SECY–93–113, "Additional Implementation Information for 10 CFR Part 54, 'Requirements for Renewal of Operating Licenses for Nuclear Power Plants'").

In its staff requirements memorandum of June 28, 1993, the Commission indicated that it is essential that there be a predictable and stable regulatory process that defines the Commission's expectations in a clear and unequivocal way, so that licensees can make decisions about license renewal without those decisions being influenced as a result of a regulatory process that is perceived to be uncertain, unstable, or not clearly defined. The Commission directed the staff to convene a public workshop to evaluate alternative approaches for license renewal that best take advantage of existing licensee activities and programs as a basis for concluding that aging will be addressed in an acceptable manner during the extended period of operation. In

particular, the Commission directed the staff to examine the extent to which greater reliance can be placed on the maintenance rule (10 CFR 50.65) as a basis for concluding that the effects of aging will be effectively managed during the license renewal term.

As directed by the Commission, the staff is holding a public workshop to receive comments on how best to take advantage of existing programs as a basis for concluding that the effects of aging will be managed in an acceptable manner during the extended period of operation. As directed by the Commission, the workshop will not be limited to a discussion of approaches that could only be pursued under the language of the current license renewal rule and may include discussions concerning the potential need for additional rulemaking on 10 CFR part 54. Subsequent to the workshop, the NRC staff will submit a summary of workshop results and recommendations for further licensee renewal activities, possibly including rulemaking, to the Commission for its consideration. Written comments on the issues to be covered in the workshop, as described in the questions and the alternative license renewal approaches presented later in this notice, will be accepted before, during, and after the workshop. Advance comments, which could serve to enhance the effectiveness of the workshop, are particularly solicited. Advance notification of the desire to make statements during the workshop is requested.

DATES: September 15, 1993—Notification of intent to attend the workshop, desire to comment or make a presentation during the workshop, or both, should be received by the NRC. Participants are encouraged to submit written comments, presentation summaries, or both to the staff by this date.

September 30, 1993—The workshop will be held at the Holiday Inn, Bethesda, Maryland, from 8 a.m. to 5 p.m.

October 12, 1993—All written comments on matters covered by the workshop received by this date will be considered by the staff. Written comments received after October 12, 1993, will be considered to the extent practical.

ADDRESSES: The workshop will be held in the Versailles Ballrooms 3 and 4 at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Notification of intent to attend, desire to make a statement or presentation should be sent to Thomas G. Hiltz, Office of Nuclear Reactor Regulation, Mail Stop OWFN 11–F–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Written comments may be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch.

Hand-deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received and relevant reference documents may be examined at the NRC Public Document Room at 2120 L Street N.W., (lower level), Washington, DC, between the hours of 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Thomas G. Hiltz, Office of Nuclear Reactor Regulation, Mail Stop OWFN 11–F–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 504–1105.

SUPPLEMENTARY INFORMATION:

Introduction

The workshop has been arranged for the purpose of eliciting information and views on how best to take advantage of existing licensee programs as a basis for concluding that the effects of aging will be managed in an acceptable manner during the extended period of operation. Specifically, the workshop will include discussion on the extent to which greater reliance can be placed on the maintenance rule as a bases for concluding that the effects of aging will be effectively managed during the license renewal term.

The following information includes a discussion of the availability of the reference documents, a tentative workshop agenda, a discussion of how the workshop will be organized and conducted, and a discussion of four potential alternative approaches for incorporating existing licensee programs into the license renewal process.

Availability of Documents

In order to help ensure the workshop's focus, as discussed above, the following documents are specifically identified:

(1) SECY–93–049, "Implementation of 10 CFR Part 54, 'Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'" dated March 1, 1993.

(2) SECY–93–113, "Additional Implementation Information for 10 CFR Part 54, 'Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'" dated April 30, 1993.

(3) COMSECY–93–029, "Draft Rulemaking Package on License Renewal," dated May 14, 1993.

(4) Memorandum from James M. Taylor, Executive Director for Operations, to the Commission dated May 14, 1993, on license renewal.

(5) Commissioner Curtiss' comments attached to his May 28, 1993, vote sheet on COMSECY–93–029.

Additional information relevant to renewal and the workshop include:

(1) Statement of Considerations for the Final Rule and Final Rule for Nuclear Power Plant License Renewal, **Federal Register**, Volume 56, Number 240, December 13, 1991, pages 64943 through 64979.

(2) Staff Requirements Memorandum from Samuel J. Chilk to James M. Taylor and William C. Parler dated June 28, 1993, on COMSECY–93–029, SECY–93–049, and SECY–93–113.

(3) Memorandum from J. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, to Dr. T. Murley, Director, Office of Nuclear Reactor Regulation dated July 9, 1993.

Copies of all documents cited in this section are available for inspection and/or for reproduction for a fee in the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC 20037. A limited number of copies of these documents will be available at the workshop.

Tentative Agenda

September 30, 1993

7:30 a.m. Registration
8:30 a.m. Introduction
8:45 a.m. License Renewal Overview
9:30 a.m. Discussion of Alternative Approaches
11:45 a.m. Lunch
1:00 p.m. Participant Presentations and Comments
3:00 p.m. Break
3:15 p.m. Participant Presentations and Comments (continued)
5:00 p.m. Summary and Conclusions
5:30 p.m. Adjourn

Workshop Content and Structure

The workshop is structured to include NRC staff presentations during the morning and to allow interested parties to make presentations during the afternoon. An opportunity for questions and comments following all presentations is planned. During the morning, the staff will include a license renewal rulemaking overview presentation. The overview is intended to give participants a historical perspective of license renewal activities, focusing on the development of the license renewal rule.

The staff will discuss each of the four approaches which are briefly described in this notice, highlighting key license renewal issues, and noting areas where the approaches deviate from previous staff implementation proposals and where potential conflicts with the current wording of the license renewal rule exist. These approaches represent a range of alternatives for taking advantage of existing licensee programs in a license renewal process and are intended to facilitate workshop discussion. Comments will be solicited and should critically assess the potential strengths and weaknesses of each approach. The review of each approach should help the staff and the participants focus their discussions on (1) the extent to which greater reliance can be placed on the maintenance rule and existing licensee programs and (2) the essential elements that must be incorporated into the final license renewal process.

In the afternoon session, participants will be provided time to make presentations and ask questions. Participants who will be making presentations of alternative approaches will be scheduled first and in the order in which they notified the staff of their intention to make a presentation. These discussions should not be limited to options that could only be pursued under the language of the existing license renewal rule. When potential revisions to the current license renewal rule are proposed, the participant should provide specific language for the proposed revision and the rationale for this proposed wording. To foster meaningful discussions during this session and to aid participants in preparing their presentations and comments on proposed alternative license renewal approaches, participants should consider the following set of questions:

- Will the approach be consistent with the principles of license renewal as discussed in the Statement of Considerations for the final license renewal rule? Will the approach preserve a logical distinction between those age-related degradation issues suitable for license renewal review and other safety issues considered to be adequately addressed by the normal regulatory oversite process for operating reactors?
- Will the proposed license renewal approach maintain the current licensing basis (CLB)?
- Is the concept of age-related degradation unique to license renewal, as discussed in the Statement of Considerations for the final license renewal rule, a useful regulatory concept? Should it be eliminated?
- For any proposed approach, what standard (e.g., 10 CFR 54.29) do you propose the NRC apply for issuing a renewed license?
- How does the proposed approach consider existing licensee programs that help assure acceptable performance or condition of systems, structures and components?
- How is the maintenance rule relied on in the proposed approach? Does the scope of the license renewal rule need to be the same as that of the maintenance rule?
- How does the proposed approach reduce uncertainty and promote stability? If areas of uncertainty or instability remain, how should they be addressed?
- Would the proposed approach alter other aspects of the final license renewal rule, such as content or description of an effective program, contents of a license renewal application, or continuing reporting requirements?
- Is the concept of "fundamental safety importance" as discussed in SECY–93–113 appropriate? Will the proposed approach result in the imposition of regulatory requirements for plant structures or components that are not of "fundamental safety importance?"
- Does the proposed approach incorporate consideration of "like-kind" replacement? If so, should the term "like-kind" be interpreted with respect to structures and components which are replaced such that they will not experience a service life a greater than 40 years during the renewal term?
- How does the proposed approach consider refurbishment? What is a definition of refurbishment? How should guidelines be established to ensure that the concept of "refurbishment" is consistently applied in the implementation of the proposed approach to license renewal?

Comments will be taken from parties in the order in which they notified the staff of their intent to comment. The order of comment will be

(1) Parties who notified the staff by September 15, 1993

(2) Parties registering to comment before 8:30 a.m. the day of the workshop

(3) Parties who have not given prior notice

The workshop will be transcribed and the transcript should be available in the NRC Public Document Room by October 5, 1993.

Discussion of Alternative Approaches

The staff has outlined four possible alternatives for considering ways to best take advantage of existing programs in the license renewal process. The four alternative approaches to license renewal include (1) the staff's proposed approach as discussed in SECY–93–049 and SECY–93–113, (2) an approach that requires relatively minor rulemaking to clarify and modify the current license renewal rule, (3) an approach that includes the current principles but requires a more substantive rulemaking to resolve the implementation issues, and (4) an approach that relies to a great extent on the current regulatory process, particularly the maintenance rule, and would require a substantive rulemaking.

Approach 1: Staff-Proposed Approach in SECY–93–049 and SECY–93–113

This approach represents the least departure from the elements of license renewal as discussed in the Statement of Considerations for the final rule. This approach focuses on effective programs that manage the effects of age-related degradation unique to license renewal (ARDUTLR) rather than the identification of the aging mechanisms. This approach builds on judgments that performance and condition monitoring of plant systems, structures, and components (SSCs) can be relied on to demonstrate that age-related degradation effects, including potential effects during the renewal period are being managed effectively.

Under this approach, the maintenance rule could be used as an "effective program" by defining certain conditions that must be satisfied by such programs. This would also permit the elimination of components as not subject to ARDUTLR if the component is incorporated into a program that employs periodic inspection and like-kind replacement during the first 40 years. SSCs inservice beyond the original operating term would not necessarily be subject to ARDUTLR if an applicant could show (e.g., by analysis and/or inspection) that the continued degradation, if unmitigated, would not result in the plant operating outside its CLB during the extended period of operation.

Technical issues that might raise questions regarding the adequacy of the CLB would be evaluated for potential safety concerns within the current regulatory process and not as a license renewal issue. In order to address the time-dependent elements of a facility's CLB, some additional analyses or actions, or both, would be needed to demonstrate that CLB requirements

continue to be satisfied in the renewal term.

Approach 2: Rule Revisions Proposed by Commissioner Curtiss

Former Commissioner James R. Curtiss, in his vote sheet on COMSECY-93-029, proposed an approach for taking advantage of existing licensee programs in the renewal process. This approach, which, in general, endorses the staff proposals contained in SECY-93-049 and SECY-93-113, would, however, result in rulemaking to ensure that language in the rule and in the Statement of Considerations is consistent. This approach includes language changes in the current license renewal rule to codify the staff proposals contained in SECY-93-049 and SECY-93-113.

Most importantly, this approach would supplement the definition of ARDUTLR. Specifically, the proposal would permit existing programs that involve "like-kind" replacement before 40 years or existing programs that involve replacement or refurbishment based on established time or performance criteria to be the basis for determining that SSCs would not be subject to ARDUTLR.

Approach 3: Rule Revision to Replace Definition of ARDUTLR

This approach builds on Approach 2 with the existing license renewal rule remaining largely intact. Significant differences between this approach and Approach 2 are the increased emphasis on the use of existing licensee programs, including maintenance rule programs, as a basis for determining that structures or components are not subject to ARDUTLR. Revisions to the rule would replace the existing definition of ARDUTLR in 10 CFR 54.3 to specify that structures or components would be considered subject to ARDUTLR only if (1) they are not included in existing documented programs that either specify replacement intervals or monitor performance or condition such that corrective action will be taken to maintain the CLB during the renewal term, and (2) it cannot be demonstrated that the CLB will be maintained in the renewal term absent any action.

Approach 4: Reliance on the Maintenance Rule and Current Regulatory Process

This approach would rely on the current regulatory process to assure an adequate level of safety, including the management of the effects of age-related degradation during the current license term, and assumes that the current regulatory process will continue to provide an adequate level of safety throughout the renewal period. Existing licensee programs and the regulatory process, enhanced by the requirements of the maintenance rule, would assure that the performance or condition of important SSCs would not degrade below an acceptable safety level at any time during plant operation, including any renewal term operations. The license renewal process would only focus on time-dependent analyses (those analyses which were specifically evaluated for the 40 year license term) incorporated into the CLB or used as a basis for any CLB safety determination. These time-dependent analyses would be specifically evaluated for the renewal term. The term ARDUTLR would be modified to reflect the need to consider only pertinent time-dependent analyses or the term ARDUTLR would be eliminated altogether.

This approach would fully integrate the licensee's implementation of the maintenance rule into the license renewal process and any conclusions about license renewal.

Dated in Rockville, Maryland, this 6th day of August 1993.

For the Nuclear Regulatory Commission

Scott F. Newberry,

Acting Deputy Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 93-19365 Filed 8-11-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-2259]

Pathfinder Mines Corp.; Intent To Amend Source Material License

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA-672 for the Lucky Mc uranium mill to approve tailings reclamation and mill decommissioning plans for Pathfinder Mines Corporation's Lucky Mc uranium mill.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-672 to incorporate tailings disposal area reclamation and mill decommissioning plans for the Lucky Mc Mill located near Riverton, Wyoming. The accepted plan will reclaim the disposal area in place and the dismantled mill structure and equipment will be buried in the disposal area, with the foundations buried in place. The proposed actions are supported by a Finding of No Significant Impact (FONSI) as concluded in the Environmental Assessment prepared by the Commission.

DATES: The comment period expires September 12, 1993.

ADDRESSES: Copies of the license amendment request and the staff evaluations which are the bases for revision of the license are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Lakewood, Colorado, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules Review and Directives Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado 80225.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, Maryland, between 7:30 a.m. and 4:15 p.m., on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225. Telephone: (303) 231-5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC complete review and approval of detailed reclamation (i.e., final closure) plans for nonoperational tailings impoundments such that the radon emissions will not exceed a flux of 20 pCi/m^2sec as soon as practicable, but in any event not later than September of 1992.

In accordance with 10 CFR part 40, appendix A, the licensee, Pathfinder Mines Corporation, submitted a reclamation plan by letter dated June 28, 1985. Review of the proposed plan resulted in requests for additional information, reevaluation, and redesign. As a result, Pathfinder submitted a revised reclamation plan by letter dated July 31, 1992. Review of this document resulted in a request for additional information dated May 5, 1993. Revisions to the July 31, 1992, reclamation plan were submitted by letters dated June 4, June 11, and June 21, 1993.

The tailings disposal area for the Lucky Mc Mill consists of six ponds formed by six dams constructed across a natural draw. All of the solid tailings

generated at the mill are contained in three of the ponds while the other three contain overflow and decant tailings solutions. The three tailings ponds, which contain approximately 10.6 million tons of tailings, will be reclaimed in place. Contaminated materials from the three solution ponds will be removed and disposed of in the solid tailings ponds.

Based on a review and independent analyses of the reclamation plan for the Lucky Mc Mill disposal area, it is concluded that the design of the radon attenuation barrier cover meets the 20 pCi/m²sec design criterion specified in the MOU and is therefore consistent with applicable portions of 10 CFR part 40, appendix A. It is also concluded that the erosion protection design is not acceptable and will remain an open item pending reevaluation and redesign by the licensee. The bases for these conclusions are provided in a Memorandum for Docket File No. 40–2259 dated August 3, 1993.

On March 30, 1992, Pathfinder submitted a proposed plan for decommissioning the Lucky Mc Mill. Additional information concerning the plan was submitted on December 23, 1992, and on July 20, and July 23, 1993. The proposed plan calls for dismantling the mill structure and equipment and disposing of the debris in the southeastern portion of Tailings Pond 2A. The building foundations will be buried in place. The staff review of the proposed decommissioning plan is documented in a Memorandum for Docket File No. 40–2259 dated August 2, 1993.

On November 20, 1992, Pathfinder submitted an Environmental Report Supplement in support of the proposed reclamation plan for the disposal area. This document was submitted as a supplement to environmental reports previously prepared and submitted in support of license renewal applications in 1982 and 1989. The supplement described the expected impacts associated with mill decommissioning and tailings reclamation, and evaluated alternatives for performing the decommissioning and reclamation.

The Environmental Assessment was prepared by the Commission to evaluate the proposed licensing action. It was concluded that the reclamation of the tailings and decommissioning of the mill in accordance with the proposed plans will not have a significant impact on the environment. Short-term impacts to the environment will be minimal, while long-term impacts will be reduced to levels determined to be acceptable by promulgation of appendix A to 10 CFR Part 40. The bases for the finding of no significant impact (FONSI) are provided in an Environmental Assessment dated July 23, 1993.

Dated at Denver, Colorado, this 5th day of August, 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 93–19366 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–M

Amendment to Application for a License To Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following amendment to application for an export license. The original export license application was published in the May 26, 1993 **Federal Register**. Copies of the amendment are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this amendment follows.

Name of applicant, date of amendment, date received, application number	Description of material			End use	Country of destination
	Material type	Total element	Total isotope		
Transnuclear, Inc., on behalf of COGEMA, Inc., 07/16/93, 07/19/93, XSNM02748.	93.15% Enriched Uranium Unirradiated fuel fabricated for the Fort St. Vrain high temperature gas reactor and scrap and excess material resulting from production of such fuel. Currently owned by Nuclear Fuel Services in Erwin, TN.	280.0 kgs (unchanged).	260.9 (unchanged).	For defabrication at COGEMA's facility at Pierrelatte France. The recovered uranium will be blended down to less than 20 percent U–235 for ultimate use as fuel for research and test reactors.	France.

Dated this 2 day of August 1993 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Corporation, Office of International Programs.

[FR Doc. 93–19294 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget for review and are available for public review and comment. A copy of the information collection may be obtained from Ms. Robin Dean, Office of Minority Recruitment, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Robin Dean may be called at 202–606–9322. Comments on these forms should be addressed to Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

INFORMATION COLLECTION ABSTRACT:

Title: Application for the Peace Corps Preparatory Grant Program.

Need for and Use of the Information: The Peace Corps needs this information in order to award fifty (50) $1,000 grants to students enrolled in campus Preparatory Programs. This information will be used to determine the qualifications and eligibility of potential grant recipients.

Respondents: Individuals who apply for the Peace Corps Preparatory Program Grant.

Burden on the public:

a. Annual reporting burden: 25 hours
b. Annual record keeping burden: 0 hours
c. Estimated average burden per response: 30 minutes
d. Frequency of response: Biennially
e. Estimated number of likely respondents: 50.

This notice is issued in Washington, DC, on August 3, 1993.

Joan Ambre,

Acting Associate Director for Management.

[FR Doc. 93–19382 Filed 8–11–93; 8:45 am]

BILLING CODE 6051–01–M

Information Collection Request Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Ms. Laurie James, Office of World Wise Schools, Peace Corps of the United States, 1990 K Street, NW., Washington, DC 20526. Ms. James may be called at 202–606–3294. Comments on this information collection should be addressed to Mr. Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: World Wise Schools Questionnaire for Educators

Need for and use of the information: Peace Corps will send this questionnaire annually to teachers enrolled in the World Wise Schools Program. The responses received will enable World Wise Schools to modify its educational materials and program procedures to be more economical, efficient and useful to the educator.

Repondents: Teachers

Burden on the Public:

a. Annual reporting burden: 467 hours
b. Annual recordkeeping burden: 100 hours
c. Estimated average burden per response: 8 mins
d. Frequency of response: annually
e. Estimated number of likely respondents: 3,500.

This notice is issued in Washington, DC on August 3, 1993.

Joan Ambre,

Acting Associate Director for Management.

[FR Doc. 93–19381 Filed 8–11–93; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane, (202) 272–5407.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549.

Revision

Rule 17a–4—File No. 270–198

Extension

Rule 15c2–5—File No. 270–195
Rule 15Ba2–5—File No. 270–91
Rule 17a–10—File No. 270–154
Rule 17a–19 and Form X–17A–19—File No. 270–148

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for approval of an amendment and extensions of currently approved rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*).

Rule 17a–4 requires exchange members, brokers, and dealers to preserve for prescribed periods of time, certain records required to be made by rule 17a–3. The proposed amendment would permit brokers and dealers to employ optical storage technology as an alternative medium for maintaining records subject to the retention requirement, but would not change the substantive requirements of the rule. It is estimated that approximately 8,300 broker-dealers incur an average burden of 250.25 hours per year to comply with this rule, as amended.

Rule 15c2–5 prohibits a broker or dealer from arranging a loan for a customer to whom a security is sold unless, before the transaction is entered into, the broker or dealer reasonably determines that the transaction is suitable for the customer. A total of 50 respondents incur a cumulative total of 600 annual burden hours to comply with the rule.

Rule 15Ba2–5 permits a court-appointed or other fiduciary who succeeds to the business of a municipal securities dealer to assume immediate responsibility for the operation of the municipal securities dealer's business if the fiduciary files a statement with the Commission within 30 days of the date on which the fiduciary assumes its duties. An average of one respondent incurs a total of four annual burden hours to comply with the rule.

Rule 17a–10 enables the Commission to obtain economic and statistical data from broker-dealers that is necessary for ongoing analysis of the securities industry. An average of 7,000 respondents incur a total of 7,000 annual burden hours to comply with the rule.

Rule 17a–19 and Form X–17A–19 require self-regulatory organizations (SRO) to report to the Commission within five business days whenever a member of that SRO is initiated, suspended, or terminated. Eight respondents incur a total of 900 annual burden hours to comply with the rule and form.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act Nos. 3235–0279, 3235–0198, 3235–0088, 3235–0122, and 3235–0133), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19410 Filed 8–11–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-32722; File No. SR-GSCC-93-01]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving a Proposed Rule Change Concerning the Establishment of New Categories of Membership in the Netting System

August 5, 1993.

On February 24, 1993, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to new membership categories in GSCC's netting system. The Commission published notice of the proposed rule change in the **Federal Register** to solicit comment from interested persons.[2] No comments were received. This order approves the proposal.

I. Description

The proposed rule change establishes new categories of membership in GSCC's netting system for dealer and interdealer brokers, issuers of government securities, insurance companies, registered clearing agencies, and registered investment companies, and amends the criteria for continued participation in GSCC's comparison and netting systems. The specific elements of the proposed rule change are summarized below.

A. Establishment of a Second Category of Dealer Netting Member

The second category ("Category 2") of dealer netting member combines a lower net worth threshold[3] with more stringent margin requirements than for current ("Category 1") dealer netting members. Category 2 dealer netting members will have a $25 million net worth requirement and a $10 million excess net/liquid capital requirement (as compared with a $50 million net worth and $10 million excess net/liquid capital requirement for Category 1 dealers). The clearing fund required deposit for Category 2 dealer netting members will be calculated without taking into account offsets (required clearing fund deposits for Category 1 dealers will take into account offsets). Margin factors applicable to positions held by Category 2 dealer netting members will be set at the short-term 99% confidence level (Category 1 dealers will use the current schedule to compute margin factors), and the forward mark allocation for such members will be calculated based on the entire debit mark amount (Category 1 dealers will continue to pay a fraction of their debit mark amount, based on the ratio of the debit marks of the five largest dealers to the debit mark for all dealers in that CUSIP). All other membership requirements (e.g., operational sufficiency apply equally to Category 1 and Category 2 dealer netting members.

B. Establishment of a Second Category of Interdealer Broker Netting Member

1. Scope of Business.

The proposal also establishes a second category of interdealer broker ("IDB") netting member. Category 2 IDBs will be required to act exclusively as a broker as defined in the Act (as will Category 1 IDBs).[4] Category 2 IDBs will be permitted to engage in limited activity with nonmembers; up to 10% of such IDB's trading activity in eligible securities (at least 90% of a Category 2 IDB's business, based on the IDB's overall dollar volume of next-day and forward settling activity in eligible securities, must be with netting members). To enable GSCC to monitor compliance with this requirement, each Category 2 IDB netting member will be required to submit daily to GSCC all of its next-day and forward settling transactions in eligible securities, indicating the buy and sell side of each transaction. If a Category 2 IDB's trades with nonmembers exceeds 10% of its total trading in eligible securities, it may be treated by GSCC as a Category 2 dealer.

For a temporary period established by GSCC's Board of Directors ("Board"), GSCC will grandfather certain nonmember dealers that currently have IDB screen access. GSCC temporarily will allow Category 2 IDBs to trade with nonmember dealers that historically have had access to the IDB's screens.[5] Category 1 IDBs also may continue to act for the grandfathered nonmember dealers for whom it currently acts.[6] Every IDB will be obligated to provide in writing to GSCC a list of all of the legal entities on behalf of whom that IDB acts and to promptly inform GSCC of any change to such list.

2. Financial Requirements

A Category 2 IDB, because it brings net settlement positions into GSCC, would have enhanced minimum financial admission standards. A Category 2 IDB will have minimum financial admission standards of $25 million in net worth (Category 1 IDBs have no minimum requirement) and $10 million in excess net or liquid capital (Category 1 IDBs have a $4.2 million net or liquid capital requirement). However, Category 2 IDBs will not have a base net/liquid capital requirement. These enhanced minimum financial admission standards would mirror those for a Category 2 dealer (i.e., $25 million in net worth and $10 million in excess net or liquid capital), which will make enforcement of the scope-of-business requirements for a Category 2 IDB more feasible.[7] That is because if a Category 2 IDB fails to meet the applicable scope-of-business requirements (i.e., no more than 10 percent of its business with nonmembers), it can be treated as a Category 2 dealer.

3. *Clearing Fund and Margin Requirements*

The clearing fund required deposit for Category 2 IDBs will be calculated the same way it is calculated for Category 1 dealer netting members, by taking into account all of its net settlement positions. The $1.6 million minimum margin requirement that applies to Category 1 IDBs will not apply to Category 2 IDBs. Each Category 2 IDB will have the same obligation to pay transaction adjustment payments ("TAP"), fail mark amounts, forward mark allocation amounts on its forward net settlement positions, and to receive credit amounts as if it were a Category 1 dealer netting member. A Category 2 IDB's liability for loss allocation for trades with members will continue to be capped at $1.6 million per calendar year and will be mutualized among all the IDB netting members. Its liability for trades with nonmembers will be the same as the liability of a dealer netting member in addition to the liability the IDB will have on a mutualized basis for 10% of such losses. Finally, a Category 2 IDB will pay financing and clearance charges as if it were a dealer netting member.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32208 (April 26, 1993), 58 FR 26367.

[3] As discussed infra, this proposed rule change, however, does not lower the minimum excess net or liquid capital standard for Category 2 dealers below that for current Category 1 dealers.

[4] 15 U.S.C. 3(a)(4) (1988).

[5] An IDB's trading activity with grandfathered dealers will not be included for purposes of determining when an IDB meets the 10% scope of business limitation.

[6] With the establishment of this second category of IDB netting member, GSCC will restrict Category 1 IDBs to trading only with other netting members, with the exception of the grandfathered nonmember dealers for whom they currently act.

[7] Both Category 1 and Category 2 dealer netting members will have margin, mark, and loss allocation requirements. IDBs traditionally have not had such requirements.

C. Establishment of New Netting Member Categories for Issuers of "Government Securities," Insurance Companies, Registered Clearing Agencies, and Registered Investment Companies

The proposal establishes a category of netting system membership for various international organizations and types of governmental entities that issue government securities.[8]

There will be no automatic approval of any entity that falls within this new category. Applicants will be judged on a case-by-case basis. A key factor that will be considered in determining whether an applicant that falls within this new category should be approved for membership in the netting system is whether its debt securities are rated and whether those ratings are favorable.

The proposed rule change also provides netting system membership for registered clearing agencies, registered investment companies, and insurance companies.[9] GSCC will not develop specific minimum capital or net worth requirements for these classes of entities unless and until a registered clearing agency, a registered investment company, or an insurance company joins the comparison system and expresses an interest in applying for membership in the netting system.

D. Key Procedures To Take Effect When a Netting Member Falls Below an Applicable Requirement

For the protection of itself and its members, GSCC proposes to provide that if GSCC has reason to believe that a member soon may fail to comply with any of its membership requirements, GSCC may require the member to provide it with assurances in writing that the member will not, in fact, violate such requirements. If a member fails to maintain the relevant requirements of any of GSCC's rule, GSCC may either cease to act for the member or terminate its membership in the comparison system, the netting system, or both the comparison and netting systems. If the member requests that such action not be taken GSCC may, depending upon the specific circumstances and the record of the member, instead establish for such member a time period during which the member must resume compliance with all GSCC requirements. In the event that the member is unable to satisfy such requirements within the set time period, GSCC will either cease to act for the member or terminate its membership in the comparison system, the netting system, or both the comparison and netting systems. Moreover, if GSCC determines at any time that a netting member's financial condition has deteriorated significantly, it immediately either may cease to act for the member or terminate its membership in the comparison system, the netting system, or both.

There are specific penalties that will apply, based on type of membership, to netting members that are not in compliance with an applicable membership standard. For example, if a bank falls below the $250 million equity capital level or a Category 1 dealer falls below the $50 million net worth level, it will, until ninety calendar days after the date on which it complies with such standard, be treated by GSCC for margin purposes as if it were a Category 2 dealer. Also, if a dealer falls below either the $25 million net worth level or the $10 million excess liquid or excess net capital level, as applicable, it will, until the ninetieth calendar day after the date on which it returns to compliance with such standard, have a clearing fund deposit requirement equal to 150% of the normal clearing fund calculation for Category 2 dealers.

With regard to IDBs, if a Category 1 IDB falls below the $4.2 million liquid capital or net capital level, as applicable, it will, until the ninetieth calendar day after the date on which it complies with the standard, be marked and margined as if it were a Category 1 dealer. If a Category 1 IDB no longer meets its scope of business requirements, it will either be treated as a Category 2 IDB (if it qualifies as such) or its membership in the netting system will be terminated. In addition, if a Category 2 IDB falls below an applicable financial standard and does not qualify to be a Category 1 IDB, it will have, until the ninetieth calendar day after the date on which it returns to compliance with such standard, a clearing fund deposit requirement equal to 150% of the normal calculation for such member. Finally, if a Category 2 IDB no longer meets its scope of business requirements, it essentially will be considered to be a Category 2 dealer.

II. Discussion

The Commission believes GSCC's proposal is consistent with the Act and particularly with sections 17A(b)(3) (A) and (F) of the Act.[10] Those sections require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. Section 17A(b)(3)(F) further requires the rules of a clearing agency to be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. As discussed below, the Commission believes the proposed rule change is consistent with these provisions.

In the *Joint Report on the Government Securities Market* ("Joint Report"),[11] the Commission, Treasury, and the Federal Reserve Board noted that certain enhancements could be made to GSCC's system that likely would improve the processing of government securities.[12] Those enhancements included expansion of GSCC's membership base to include more government securities brokers and dealers.[13] Specifically, the Joint Report recommended that GSCC change its membership standards to enable a second tier of market participants, in addition to the primary dealers, aspiring primary dealers, and interdealer brokers which then constituted a significant percentage of GSCC's membership, to participate in GSCC. The likely potential members identified were a small group of arbitrage firms and registered government securities brokers and dealers, the latter of which were expected to meet the government securities needs of their retail equity

[8] Section 3(a)(42) of the Act defines "government securities" to include (A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; (B) securities which are issued or guaranteed by corporations in which the United States has direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors; or (C) securities issued or guaranteed as to principal or interest by a corporation, the securities of which are designated by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission.

[9] To date, GSCC has established admission standards for registered brokers, dealers, and banks. To comply with the Act, GSCC's rules must allow for the admission to membership in the netting system of each type of statutorily enumerated entity. GSCC, as a registered clearing agency, is subject to section 17A of the Act which, among other things, requires that a registered clearing agency's rules provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, or (v) insurance company may become a participant in such clearing agency.

[10] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[11] Department of the Treasury ("Treasury"), the Commission, and the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), Joint Report on the Government Securities Market (January 1992).

[12] Id. at 31.

[13] Id. Other recommendations included processing of repurchase agreements, including more trades in the netting system, and developing a centralized comparison system to include nondealer, institutional customers.

customers. This proposal implements the increased membership enhancement recommended in the Joint Report.

In its registration application, GSCC requested an exemption from sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act.[14] At that time, GSCC's rules did not enumerate all of the statutory categories of Membership. In addition, GSCC's rules did not include applicant and membership financial standards as contemplated by section 17A(b)(4)(B) of the Act.[15] In its temporary registration order,[16] the Commission stated that in developing member financial and operational standards, GSCC should ensure that the standards would allow GSCC to allocate losses resulting from member defaults in order to support GSCC's netting system. The Commission believes that GSCC's experience in operating a clearing and settlement facility for government securities transactions has provided the necessary guidance to develop applicant and continuing membership standards that are both fair and adequate to protect GSCC and its participants from unreasonable risk. The Commission, therefore, believes that the proposal promotes the safeguarding of securities and funds in GSCC's custody or under its control.

The Commission is aware that because of the proposed rule change allows IDBs to expand their business base, a potential risk is created to the extent that the expansion of the IDB's business causes it to have net settlement positions that are not fully collateralized. Therefore, by temporarily allowing Category 2 IDBs to engage in limited activity with nonmember dealers up to 10% of such IDB's trading activity in eligible securities, the proposal limits the risks posed by the activity of IDBs. The Commission believes also that the net capital and clearing fund requirements for IDBs will help to mitigate any risk to GSCC resulting from trading activity of Category 2 IDBs. GSCC's proposal recognizes that IDBs historically have a business base of primary and aspiring primary dealers and their affiliates. In this regard, the proposal avoids potential disruption to the marketplace while allowing for a transition period during which GSCC will work to bring all grandfathered dealers into the netting system. The Commission believes that by providing a mechanism for incorporating more government securities transactions into a centralized clearing facility, the proposal will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and increase protection to investors.

Although the Treasury and the Commission have established minimum capital requirements for government securities brokers and dealers, the Commission recognizes that those requirements may need to be modified to address the anticipated credit risks associated with clearing agency membership.[17] The Commission believes GSCC's admission standards concerning creditworthiness can be applied in a neutral manner to all market participants.

Finally, by bolstering its rules for dealing with a member that may fall or already has fallen below an applicable financial or other requirement, GSCC has acted prudently and established procedures that will make enforcement of its new membership standards more effective.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19329 Filed 8–11–93; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78q–1(b)(3)(B) and 78q–1(b)(4)(B) (1988).

[15] The Commission has published the Division of Market Regulation's ("Division") clearing agency registration standards ("Standards") which illustrate specific objectives that a clearing agency's rules, procedures, or systems should achieve to be granted full registration. The Standards provide additional information concerning the Division's interpretation of subparagraphs (A) through (I) of section 17A(b)(3) of the Act. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[16] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639. The Commission extended GSCC's temporary registration as a clearing agency until May 31, 1995. See Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; and 32385 (June 3, 1993), 58 FR 32405.

[17] However, the Commission does not believe that GSCC's membership criteria should substitute for broker and dealer members' own determinations of which market participants are acceptable counterparties.

[18] 17 CFR 200.30–3(a)(12) (1990).

SELECTIVE SERVICE SYSTEM

Computer Matching Between the Selective Service System and the Department of Labor, Office of Job Corps

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. Name of participating agencies

The Selective Service System and the Department of Labor, Office of Job Corps

2. Purpose of the Match

The purpose of this matching program is to ensure that the requirements of section 604 of the Job Training Partnership Act (29 U.S.C. 1504) are met.

3. Authority for Conducting the Matching Program

Authority for the Job Corps program is Title IV IV–B of the Job Training Partnership Act, as amended (29 U.S.C. 1691 *et seq.*). Section 604 of the Job Training Partnership Act (29 U.S.C. 1504) requires the Secretary of Labor to insure that each individual participating in any program established under the Act has not violated section 3 of the Military Selective Service Act (MSSA), as amended (50 App. U.S.C. 453). Section 3 requires all men to present and submit themselves for registration as required pursuant to that section.

Benefits under Title IV–B of the Job Training Partnership Act will be denied to any man who fails to present and submit himself to registration as required under section 3 of the MSSA. In addition, 20 CFR 638.403 requires any male required to present himself and submit to registration under section 3 of the MSSA to present evidence that he is in compliance with the MSSA. The Department of Labor has republished its system of records maintained under the Privacy Act of 1974 (55 FR 7084, 7138, February 28, 1990). Job Corps students' records are maintained in System of Records DOL/ETA–14, "Job Corpsmember Records." Routine Use (14) of those records is "to disclose to the Selective Service System name, social security number, date of birth, and address of student, to insure registration compliance for eigible

enrollees applying for Job Corps training benefits."

4. Categories of Records and Individuals Covered

Records of all male Job Corps students 17 and 10 months of age and above.

5. Inclusive Dates of the Matching Program

Commerce on October 1, 1993, or 30 days after copies of the matching agreement are transmitted simultaneously to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier termination or modified by agreement of the parties.

6. Address for Receipt of Public Comments or Inquiries

Mr. Richard S. Flahavan, Associate Director for Operations, The Selective Service System, Washington, DC 20535.

Dated: August 4, 1993.

Robert W. Gambino,

Director.

[FR Doc. 93-19283 Filed 8-11-93; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2669; Amendment #2]

Kansas; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated July 30 and 31 and August 1, 1993 to include Ellsworth, Jefferson, Lincoln, Marshall, Rush, and Russell Counties, and the Townships of Dover, Menoken, Rossville, Silver Lake, Soldier, and Tecumseh in Shawnee County, in the State of Kansas, as a disaster area as a result of damages caused by flooding and severe storms beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Barton, Ness, Pawnee, and Rice in the State of Kansas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 25, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 3, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93-19347 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2663; Amendment #2]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated August 1, 1993 to include Audrain, Cass, Clinton, Dekalb, Grundy, Hickory, Jasper, Knox, Linn, Mercer, Morgan, and Randolph Counties and the City of Kansas City in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Barton, Dade, and Polk Counties in Missouri; and Crawford County in Kansas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 7, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury numbers are 793300 for Missouri; and 793500 for Kansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 5, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93-19342 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2670; Amendment #1]

North Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective July 30, 1993 to include Benson, Grand Forks, Griggs, McLean, Mercer, Nelson, Oliver, Ramsey, Sheridan, Stark, Steele, Traill, Walsh, and Wells Counties in the State of North Dakota as a disaster area as a result of damages caused by severe storms and flooding beginning on June 22, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specific date at the previously designated location: Billings, Cavalier, Dunn, Eddy, McHenry, Mountrail, Pembina, Pierce, Towner, and Ward Counties in North Dakota; and Kittson, Marshall, and Polk Counties in Minnesota.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 27, 1993 and for economic injury the deadline is April 26, 1994.

The economic injury numbers are 795500 for North Dakota and 793000 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 5, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93-19344 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2660; Amendment 3]

Wisconsin; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated August 2, 1993 to include Richland County in the State of Wisconsin as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is

September 1, 1993 and for economic injury the deadline is April 4, 1994.

(Catalog of Federal Domestic Program Nos. 59002 and 59008)

Dated: August 5, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disease Assistance.

[FR Doc. 93-19343 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

Honolulu District Advisory Council; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting at 9:30 a.m. on Thursday, September 2, 1993, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, 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. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2314, Honolulu, Hawaii 96850, (808) 541-2965.

Dated: August 4, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-19346 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

Chicago District Advisory Council; Public Meeting

The U.S. Small Business Administration Chicago District Advisory Council will hold a public meeting from 10 a.m. to 1 p.m. on Wednesday, September 8, 1993 at the Small Business Administration, Chicago District Office, 500 W. Madison Street, suite 1250, Chicago, Illinois, 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. John L. Smith, District Director, U.S. Small Business Administration, 500 W. Madison Street, suite 1250, Chicago, Illinois 60661-2511, (312) 353-4508.

Dated: August 4, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-19345 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[License Number 03/03-0195]

CIP/QED Capital L.P.; Application for a Small Business Investment Company To Restructure and Convert From a Corporation to a Limited Partnership

An application for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661, *et seq.*) has been filed by CIP/QED Capital L. P. (Applicant), 300 Chester Field Parkway, suite 200, Malvern, Pennsylvania 19355, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1992).

It is proposed that the current holder of the SBIC license, CIP Capital, Inc. (CIP) will be restructured. CIP Trust (Trust) will be formed, whereby, CIP and Trust will be merged, with Trust becoming the surviving entity. CIP will transfer substantially all of its assets, including the SBIC license, and liabilities to Trust. After the merger, Trust will transfer all of its assets, including CIP's SBIC license, to Applicant to exchange for a limited partnership interest in Applicant. Simultaneously, a new investor, Boehringer Mannheim America, Ltd. (Boehringer) will be admitted as the other limited partner in Applicant. The partners and their respective partnership interest in the Applicant are as follows:

Name and address	Title	Partnership interest (percent)
Boehringer Mannheim America, Ltd., 22 Church Street, P. O. Box H7 2026, Hamilton H7HX, Bermuda.	Limited Partner	73.22
CIP Trust, 300 Chester Field Parkway, Suite 200, Malvern, PA 19355.	Limited Partner	22.56
CIP Capital Management, Inc., 300 Chester Field Parkway, Suite 200, Malvern, PA 19355.	Corporate General Partner & Investment Manager	4.22

It is further proposed that the existing officers, directors and owner of CIP will be the officers, directors and owner of Trust and the corporate general partner, CIP Capital Management, Inc. Proposed officers, directors and owner of Trust and of the corporate general partner are as follows:

Name and address	Position	Percentage of ownership
Winston J. Churchill, Bean Tree Farm, Hollow Road, Birchrunville, PA 19421.	Chairman of the Board and Chief Executive Officer	100
Joseph M. Corr, 63 Charter Oak Drive, Newtown Square, PA 19073.	President and Director	0
Wayne B. Weisman, 220 Locust Street, 16A, Philadelphia, 19106.	Vice President and Director	0
Joseph L. Jackson, 470 Hickory Lane, Berwyn, PA 19312	Secretary, Treasurer and Director	0

Applicant proposes to have operations with initial capitalization of $3,755,184. An additional $9,000,000 in capital has been committed by one of Applicant's proposed limited partners, Boehringer. Applicant will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business operations primarily in the general area from the State of Massachusetts to the State of North Carolina.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations to the Applicant under their management, including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in Malvern, Pennsylvania.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 3, 1993.

Charles Shepperson,

Deputy Associate Administrator for Investment.

[FR Doc. 93-19349 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0193]

Legacy Fund Limited Partnership; Application for a Change in Ownership in a Small Business Investment Company

An application for a change in ownership has been filed by Legacy Fund Limited Partnership (Applicant), License No. 03/03-0193. Applicant, located at 1225 19th Street, NW., Washington, DC 20036, was issued a license to operate as a Small Business Investment Company on April 16, 1992.

It is proposed that Applicant's current sole limited partner, Jonathan Ledecky, will sell his $3,000,000 limited partnership interest to Steelcase, Inc. (Steelcase). In addition, Steelcase will purchase additional limited partnership interests for $9,000,000, thereby increasing Applicant's private capital to $12,000,000.

Applicant's investment advisor and general partner will remain unchanged. The proposed partners and managers of Applicant are as follows:

Name and address	Title	Partnership interest (percent)
Steelcase, Inc., 901-44th Street SE., Grand Rapids, Michigan 49508.	Limited Partner.	99
The Legacy Fund, Inc., 1225 19th Street NW., Washington, DC 20036.	Investment Advisor.	0
Legacy Fund Partners, Inc., 1225 19th Street NW., Washington, DC 20036.	Corporate General Partner.	1

Applicant's Investment Advisor and Corporate General Partner are 100% owned by Jonathan Ledecky.

Applicant proposes to be a source of debt and equity capital and long-term loan funds for qualified small business concerns for growth expansion and modernization. Specifically, it will target family-owned, independent dealers of office furniture. Applicant will continue its business operation in the Mid-Atlantic region of the United States.

Notice is hereby given that any person may submit, no later than 30 days from the date of publication of this Notice, written comments on the proposed change in ownership. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Washington, DC area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 3, 1993.

Charles Shepperson,

Deputy Association Administrator for Investment.

[FR Doc. 93-19348 Filed 8-11-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice No. 1845]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 10 a.m., on Wednesday, September 8, 1993, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The primary purpose of this meeting is to prepare for the 69th Session of the International Maritime Organization (IMO) Legal Committee, to be held September 27 through October 1, 1993, in London.

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention). The second subject, which will be considered at approximately 11:30 a.m., will be a discussion on possible revisions to the 1976 International Convention on Limitation of Liability for Maritime Claims ('76 LLMC).

By way of background, the draft HNS Convention would impose strict liability upon the shipowner for damages arising from hazardous substances up to a yet-to-be-determined limit of liability with a second-tier international fund available to provide compensation for catastrophic damages or when the shipowner, for one reason or another, could not pay. The second-tier international fund, modeled after the International Oil Pollution Compensation Fund, may be financed by levies imposed upon hazardous cargo shipments or by postincident collections.

The draft convention would provide compensation for environmental damage as well as personal injury and property damage. Compensation for damage caused by a broad range of substances including oils (those not covered under the oil regimes), bulk liquid cargo, bulk solid cargo, bulk gases, packaged cargo, and flammable residues are all within the scope of the draft convention as presently written.

Important questions remain to be decided which include: (1) Whether the second-tier international fund can be implemented with an acceptable balance between equity and practicality; (2) which substances would be included within the scope of the convention's coverage for purposes of both

compensating damage as well as for contributing to the financing of the second-tier fund; (3) how the levy amounts imposed upon cargo would be determined and collected; (4) whether postincident funding of the second-tier fund is appropriate in some cases; and (5) whether the second-tier fund should be separated into multiple accounts for different sectors of the industry (see, for example, document LEG 68/4/4 proposing four separate accounts and postincident funding).

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested. In addition to the issues raised above, comment is specifically requested regarding the definition of "carriage by sea" (defining when the convention would be applicable in Article 1(9)).

As for the '76 LLMC, the Legal Committee at its 68th Session in March decided to put work on revisions to the '76 LLMC on a priority basis equal with the draft HNS Convention. Several delegations at the session pushed strongly for urgent, extensive revisions to the '76 LLMC, while others were reluctant to address anything other than the actual limits of liability and a streamlined tacit amendment procedure.

The '76 LLMC has been in force since December 1, 1986, and has been ratified by 22 nations. The United States has not ratified, and U.S. law on maritime limitation of liability is different in several respects. Nevertheless, interests within the United States—such as owners of foreign flag vessels and passengers on foreign flag vessels—may be affected by changes to this convention. The views of the public are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Lee A. Handford, U.S. Coast Guard (G-LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4496.

Dated: July 27, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93-19314 Filed 8-11-93; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 93-8-10; Docket 48759]

Application of Sun Jet International, Inc. for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Sun Jet International, Inc. fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than August 23, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 48759 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: August 6, 1993.

Joseph F. Canny,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-19372 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

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 FAA's Aviation Rulemaking Advisory Committee on air traffic issues.

DATES: The meeting will be held on August 24, 1993, at 9:30 a.m.

ADDRESS: The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Boxer, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202-267-8783.

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 Aviation Rulemaking Advisory Committee on air traffic issues to be held on August 24, 1993, at the Air Transport Association of America, 1301 Pennsylvania Ave., Washington, DC. The agenda for this meeting will include:

- Status report on the advisory circular on the operation of unmanned airspace vehicles;
- Status report on the advisory circular on pilot procedures at non-towered airports;
- Status of the Mode S ground sensor evaluation study; and

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the committee at any time by providing 30 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC., on August 6, 1993.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-19397 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

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 Aviation Rulemaking Advisory Committee to discuss training and qualifications issues.

DATES: The meeting will be held on September 2, 1993, at 9 a.m.

ADDRESSES: The meeting will be held at FAA Headquarters in Room 804, 800 Independence Avenue SW., 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 Aviation Rulemaking Advisory Committee to be held on September 2, 1993, at the FAA Headquarters Building, room 804, 800 Independence Avenue SW., Washington, DC. The agenda for this meeting will include progress reports from the Air Carrier Working Group and the Cabin Safety 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.**

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on August 5, 1993.

Jan DeMuth,

Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–19396 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In July 1993, there were 10 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: City of Redmond, Redmond, Oregon.

Application Number: 93–01–C–00–RDM.

Application Type: Impose and use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $1,191,552.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: March 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Air Taxis and Small Air Charters as defined by the city of Redmond's resolution 92–03.

Determination: Approved. Based on information submitted in the city of Redmond's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at the airport.

Brief Description of Projects Approved to Impose and Use PFC Revenue:

Install Airfield Signage.
Renovation and Expansion of the Air Carrier Terminal.
Reconstruct Runway 4/22.
Reconstruct Runway 10/28.
Pavement Study.
Acquire Aircraft Rescue and Firefighting (ARFF) Vehicle.

Brief Description of Projects Approved-in-Part to Impose and Use PFC Revenue: Resurface and expansion of the air carrier ramp.

Determination: Approved in part. The ramp rehabilitation portion of this project is approved. However, the city of Redmond did not provide sufficient justification for the ramp expansion in this application and that portion of the project is disapproved.

Decision Date: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (206) 227–2654.

Public Agency: City of Lubbock, Lubbock, Texas.

Application Number: 93–01–C–00–LBB.

Application Type: Impose and use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $10,699,749.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: February 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Part 135 Operators Who Operate with a seating capacity of less than 10 passengers.

Determination: Based on information submitted in the city of Lubbock's application, the FAA has determined that the proposed class accounts for less than 1 percent of the annual enplanements at Lubbock International Airport.

Brief Description of Projects Approved To Impose and Use PFC Revenue:

Airport Master Plan Update.
Purchase Snow Removal Equipment.
Security/Access Control and Fencing.
Airport Land Acquisition.
Airfield Guidance Signs and Emergency Generator, ARFF Clothing and Equipment, and Phase 1 Paved Runway and Taxiway.
PFC Application.
Emergency Access Road and Terminal Apron Access Road.
Phase 2 Paved Runway and Taxiway Shoulders.
Acquire Airfield Operations Equipment—Ramp Snow Sweeper.
Phase 3 Paved Runway and Taxiway Shoulders.

Brief Description of Projects Approved Only to Impose PFC Revenue:

Runway 17 Runway Protection Zone Land Acquisition.
Airport Land Acquisition.
Conduct Part 150 Study.
Commercial Apron and Taxiway.
Construct Taxiway W1.
Aircraft Deicing Apron and Connection Taxiway.
Acquire Airfield Operations Equipment.

Brief Description of Projects Disapproved: ARFF Training Burn Area.

Determination: Disapproved. The ARFF training burn area has been reviewed under AIP criteria which permits projects to be reviewed on a case-by-case basis. The FAA is currently implementing a policy of funding only regional ARFF training facilities. A regional ARFF facility at the Dallas/Fort Worth International Airport, previously designated by the FAA's Southwest Region, is intended to serve the training needs of Lubbock International Airport.

Acquire Airfield Operations Equipment—Backhoe and Dump Truck

Determination: Disapproved. This project does not meet the requirements of section 158.15(b); therefore, it is not PFC eligible.

Strengthen Taxiway H.

Determination: Disapproved. The city of Lubbock failed to demonstrate that the project will provide capacity enhancement. Therefore, the FAA has determined that this project does not meet the requirements of § 158.15(a) at this time.

Acquire Airfield Operations Equipment—Emergency Mobile Command Post and Mowers/Tractors

Determination: This project does not meet the requirements of § 158.15(b); therefore it is not PFC eligible. The equipment requested in this project is not required by part 107, part 139, or for snow removal operations as required for AIP eligibility.

Decision Date: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624–5979.

Public Agency: Bureau of Aviation and Ports, Windsor Locks, Connecticut.

Application Number: 93–01–I–00–BDL.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $12,030,000.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: September 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: On-Demand Air Taxi Commercial Operators.

Determination: Approved. Based on information submitted in the bureau's application, the FAA has determined that the proposed class accounts for less than 1 percent of Bradley International Airport's total annual enplanements.

Brief Description of Projects Approved Only to Impose PFC Revenue:

New Aircraft Ramp.
Terminal B Roadway System.
Construction of Taxiway "J" Between Taxiway "R" and Runway 15/33 on the Westerly Side of Runway 6/24 and Miscellaneous Items.
Sanitary Sewer Renovations.
Peak Mountain Lights.
Design of Glycol Collection System.
Airport Security Roadways.
Security Fencing Project.
Remote Ramp Lights.

Decision Date: July 9, 1993.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, New England Region Airports Division, (617) 273–7054.

Public Agency: Cities of Fort Collins and Loveland, Loveland, Colorado.

Application Number: 93–01–C–00–FNL.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $207,857.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: June 1, 1996.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved To Impose and Use PFC Revenue:

Expand Aircraft Parking Apron.
Modify Taxiway Guidance Signs.
Terminal Building Expansion.
Construct ARFF Building.
Groove Runway 15/33.
Update Airport Master Plan.
Rehabilitate Aircraft Parking Apron.

Decision Date: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 286–5525.

Public Agency: Hillsborough County Aviation Authority, Tampa, Florida.

Application Number: 93–01–C–00–TPA.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $87,102,000.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: September 1, 1999.

Class of Air Carriers Not Required to Collect PFC's: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use PFC Revenue:

Construct Airside Terminal A With Shuttle System.
Constuct Commuter Airline Terminal Facilities.
Replace Shuttle System for Airsides C and D.
Formulate Land Acquisition Program.

Brief Description of Project Approved to Impose: Acquire Drew Park Land.

Decision Date: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: C. Ed Howard, Orlando Airports District Office, (407) 648–6582.

Public Agency: Columbus Municipal Airport Authority, Columbus, Ohio.

Application Number: 93–02–I–00–CMH.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $16,270,256.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: September 1, 1996.

Class of Air Carriers Not Required to Collect PFC's: Air Taxi/Commercial Operators.

Determination: Based on information submitted in the application, the FAA has determined that the proposed class accounts for less than 1 percent of the annual enplanements at Port Columbus International Airport.

Brief Description of Projects Approved to Impose PFC Revenue:

Electronic Monitoring/Airfield Lighting (Construction).
Sawyer Road Rehabilitation (Engineering/Construction—East).
Airfield Guidance Signs.
Relocate Taxiway D, Construct Runway 28L Runup Apron.
Master Plan/Part 150 Amendments.
Ramp Sweeper.
Airfield Fencing Phase II.
Emergency Preparedness Equipment/Communications.
Relocate Control Room.
Land Acquisition/Relocation—West Side Properties.
Land Acquisition/Relocation—Englewood Heights.
Residential Soundproofing—Phase I.
North Concourse Expansion.
Terminal Building Modification.
Terminal Curb Front Improvements—Planning Study.
Gate 17 Ramp Expansion.

Decision Date: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Laredo, Texas.

Application Number: 93–01–I–00–LRD.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $11,983,000.

Earliest Permissible Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: September 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved Only To Impose PFC Revenue:

PFC Reimbursable Projects.
Construct New Passenger Terminal Building and Related Improvements.
Overlay Runway 17L/35R.
Construct Parallel Taxiway.
Airfield Signage Improvements.
Airfield Electrical Improvements.
Bond Financing and Related Costs.

Decision Date: July 23, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624–5979.

Public Agency: Capital Region Airport Authority, Lansing, Michigan.

Application Number: 93–01–C–00–LAN.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.
Total Approved PFC Revenue: $7,355,483.
Earliest Permissible Charge Effective Date: October 1, 1993.
Estimated Expiration Date: March 1, 2002.
Class of Air Carriers Not Required To Collect PFC's: Part 135 Air Taxi/ Commercial Operators Filing FAA Form 1800–3.
Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
Brief Description of Projects Approved To Impose and Use PFC Revenue at Capital City Airport (LAN):
Taxiway B Lighting Replacement.
Southeast General Aviation Ramp Reconstruction.
Security Fencing Terminal Area.
Land Acquisition.
Building Demolition and Removal.
Security Access Control.
Freight Ramp.
Snow Removal Equipment Replacement.
Airport Maintenance Building.
Reconstruction of Main Access Road.
Acquire Runway Protection Zone Properties.
Master Plan Update.
Airfield Signage.
Rehabilitate Terminal Apron.
Replace Snow Removal Equipment.
Security Access Control—Phase II.
Brief Description of Project Approved to Impose PFC at Lan and Use PFC Revenue at Mason Jewett Field:
Reconstruct Taxi Streets.
Brief Description of Projects Approved to Only Impose PFC Revenue at Lan:
ARFF Access Road Construction.
Paved Tie Downs.
Rehabilitate Access Roads.
Obstruction Removal.
Freight Ramp Construction.
Construction of Taxiway.
Rehabilitate and Widen Runway 6/24.
Extend Runway 6/24 and Extend Taxiway C.
Navigational Aids, Runway 6/24.
Brief Description of Projects Disapproved: Master Plan Update.
Determination: Disapproved. A notice to proceed occurred prior to November 5, 1990; therefore, the project is not PFC eligible under § 158.3.
Connector Taxiways
Determination: Disapproved. This project is based on a recommendation for future development contained in the master plan. However, the taxiway locations are not defined to the point where justification can be established. Therefore, this project does not meet the requirements of § 158.15(b) and so is not PFC eligible.
Decision Date: July 23, 1993.
FOR FURTHER INFORMATION CONTACT: Dean Nitz, Detroit Airports District Office, (313) 487–7300.
Public Agency: Montrose County Airport Authority, Montrose, Colorado.
Application Number: 93–01–C–00–MTJ.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved PFC Revenue: $1,461,745.
Earliest Permissible Charge Effective Date: November 1, 1993.
Estimated Charge Expiration Date: February 1, 2009.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved to Impose and Use PFC Revenue:
Site Preparation and Grading of Runway 17/35 and Taxiway A.
Pave Runway 17/35 and Install Taxiway Guidance signs on Runway 12/30 and Taxiway B.
Overlay Runway 17/35, Taxiways A–1 and A–2, and Relocate the Terminal Very High Frequency OMNI Directional Radio Range.
Construct and Pave Taxiways A–7, A–8, and D; Install Runway and Taxiway Lights, Taxiway Guidance Signs; and Construct a New Electrical Vault.
Acquire an ARFF Vehicle and Instrument Landing System.
Decision Date: July 29, 1993.
FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 286–5525.
Public Agency: Cheyenne Airport Board, Cheyenne, Wyoming.
Application Number: 93–01–C–00–CYS.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved PFC Revenue: $742,261.
Earliest Permissible Charge Effective Date: November 1, 1993.
Estimated Charge Expiration Date: August 1, 2000.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved to Impose and Use PFC Revenue:
Acquire Snow Removal Equipment.
Rehabilitate Snow Removal Equipment Storage Building.
Rehabilitate Taxiway "B", Phase I.
Prepare Environmental Assessment.
Acquire Land.
Rehabilitate Electrical Vault.
Decision Date: July 30, 1993.
FOR FURTHER INFORMATION CONTACT: Phillip Braden, Denver Airports District Office, (303) 286–5530.

Issued in Washington, DC, on August 5, 1993.

Lowell H. Johnson,
Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California:					
Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	06/01/1993	07/01/1998
Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
Ontario International, Ontario	03/26/1993	3	49,000,000	06/01/1993	07/01/1998
Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
San Jose International, San Jose	02/22/1993	3	29,228,826	5/01/1993	08/01/1995
San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
Colorado Springs Municipal, Colorado Springs	12/11/1992	3	5,622,000	03/01/1993	02/01/1996
Denver International (new), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Florida:					
Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
Southwest Florida International, Fort Myers	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
Southwest Florida International, Fort Myers	05/10/1993	3	252,548,262	11/01/1992	06/01/2014
Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
Marathon, Marathon,	12/17/1992	3	153,556	03/01/1993	06/01/1995
Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
Georgia:					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
Capital, Springfield	04/28/1993	3	562,104	06/01/1992	02/01/1994
Indiana:					
Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
Iowa:					
Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Louisiana:					
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts:					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota:					
Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
Minneapolis-St Paul, International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
Lambert-St Louis International, St Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Great Falls International, Great Falls	05/25/1993	3	3,010,900	11/01/1992	07/01/2002
Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Nevada:					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
New Hampshire:					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1993
John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota:					
Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio:					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma:					
Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon:					
Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
Pennsylvania:					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
Philadelphia International, Philadelphia	05/14/1993	3	76,169,000	08/01/1993	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
Tennessee:					
Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virgina:					
Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	09/01/1992	11/01/1993
Washington:					
Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	07/01/1994
William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
Yeager, Charleston	05/28/1993	3	3,256,126	08/01/1993	04/01/1998
Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
Wyoming:					
Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
Virgin Islands:					
Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

Federal Highway Administration

Environmental Impact Statement; Allegheny and Washington Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project, known locally as the Southern Beltway, in Allegheny and Washington Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P. O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411; Daryl L. Kerns, Turnpike Liaison Engineer, Pennsylvania Department of Transportation, 1113 Transportation & Safety Building, Harrisburg, Pennsylvania 17120, Telephone: (717) 787–0185; or James B. Wilson, Chief Engineer, Pennsylvania Turnpike Commission, P. O. Box 8531, Harrisburg, Pennsylvania 17105, Telephone: (717) 939–9551.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission will prepare an environmental impact statement (EIS) on a proposal to improve circumferential transportation in Allegheny and Washington Counties, South and West of Pittsburgh, Pennsylvania. The proposed improvement would extend from the recently completed State Route 60 west of the Pittsburgh International Airport (15 miles west of Pittsburgh), southeasterly to the vicinity of State Route 51, State Route 837, and the proposed Mon/Fayette Transportation Project, 13 miles south of Pittsburgh. The improvement corridor is about 35 miles long.

The proposed improvement is considered necessary to improve circumferential movement of people and goods in the area south and west of Pittsburgh and to provide access from the Mon Valley to the Greater Pittsburgh International Airport area. Alternatives under consideration include: (1) Taking no action; (2) Transportation System Management Activities; (3) upgrading existing roadways; (4) mass transit improvements (new facilities and/or upgrade existing facilities); (5) a new tolled expressway; and (6) combinations of alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and Local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Allegheny and Washington Counties. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A scoping meeting will be held on August 18 and 19, 1993, in Washington, Pennsylvania. State and Federal agencies have been invited.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 5, 1993.

George L. Hannon,

Assistant Division Administrator, Pennsylvania Division, FHWA.

[FR Doc. 93–19430 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: West Virginia Counties of Grant, Hardy Randolph, and Tucker, and the Virginia Counties of Frederick and Shenandoah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an alignment supplemental draft environmental impact statement will be prepared for proposed Appalachian Corridor H in the West Virginia Counties of Grant, Hardy, Randolph, and Tucker, and the Virginia Counties of Frederick and Shenandoah.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, suite 300, Charleston, West Virginia 25301, telephone: (304) 347–5329 or Mr. Ben L. Hark, Environmental Section, Roadway Design Division, Department of Transportation, Division of Highways, Charleston, West Virginia 25305, telephone: (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in Cooperation with the West Virginia Department of Transportation and the Virginia Department of Transportation, will prepare an alignment supplemental draft environmental impact statement (EIS) on a proposal to construct an approximately 115 mile highway; completing Corridor H of the Appalachian Development Highway System in northeastern West Virginia to Interstate 81 in Virginia. The Corridor Selection EIS for the proposed project (FHWA–WV–EIS–92–01–SD) was approved on October 21, 1992. The Corridor Decision Document was prepared in March of 1993, specifically detailing the information upon which the WVDOT's corridor selection was based. The document contained a review of comments received on the 1992 Corridor Selection SDEIS, as well as a summary of the results of the 1992 Corridor Selection SDEIS Location Public Meetings and Public Hearings. Draft copies of the document were presented to the cooperating agencies for their input. The final Corridor Selection Decision Document is available to the public. The EIS for the proposed project is an Alignment SDEIS, providing detailed evaluations of prudent and feasible alignments developed within the selected corridor, Scheme Option D5.

The proposed Corridor H facility provides a divided, four-lane highway with partial control of access on new and existing location between the Towns of Elkins, West Virginia and I–81 in Strasburg, Virginia. As prescribed by the 1965 Appalachian Regional Development Act, the corridor system is intended to open up the Appalachian Highlands Region for development potential where commerce and communications have been inhibited by lack of adequate access. Alternatives under consideration include, (1) the No-Build Alternative which consists of taking no action; (2) the Improved Roadway Alternative, which consists of improving major roadway deficiencies along the existing route between Elkins and I–81 at Strasburg; and (3) the Build Alternative, which consists of one primary Build Alternate and several avoidance Alternatives.

Detailed engineering, social, economic, and environmental studies will be conducted for the Alternatives under consideration.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local

agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this project. After approval of the Draft EIS, public meetings will be held in the study area prior to public hearings. A formal scoping meeting will be scheduled later.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: August 5, 1993.

Dave Leighow,

Environment/Right-of-way Specialist.

[FR Doc. 93-19436 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Harris County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Harris County Texas.

FOR FURTHER INFORMATION CONTACT: Mr. G.E. Olvera, 826 Federal Building, 300 East 8th Street, Austin, Texas 78701. Telephone: (512) 482-5516. Mr. Kenneth C. Bohuslav, P.E., Texas Department of Transportation, Division of Highway Design, 125 East 11th Street, Austin, Texas, 78701. Telephone: (512) 416-2606.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and the Grand Parkway Association, is considering an upgrade to the existing road network in Harris County. Under this proposed action, a limited access freeway (State Highway 99) will be constructed between IH 10 and US 290, a distance of approximately 14.7 miles. Ultimate construction will produce a six-lane facility with overpasses at major thoroughfares and direct connection ramps at US 290. The highway will be constructed on primarily donated right-of-way. The majority of this corridor crosses relatively undeveloped properties in western Harris County. Cities in the region include Katy and Houston.

The FHWA is considering funding participation for the proposed State Highway 99 to provide improved transportation characteristics in the region, including additional northbound capacity for hurricane evacuation. Reasonable alternative routes for Segment E of State Highway 99 will be evaluated in the draft EIS, including the no action alternative. Impacts caused by the construction and operation of State Highway 99 will vary according to the alternative alignment utilized.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed interest or are reasonably expected to be interested in this proposal. A public scoping meeting will be held to explain the proposal and to offer an opportunity for the public and agencies to identify significant issues that should be focussed upon in the EIS. A public hearing will be held after the draft EIS is completed. Public notice will be given of the time and place of the scoping meeting and the public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To insure that the full range of issues related to this proposed action are addressed and significant issues identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding Intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: August 3, 1993.

G.E. Olvera,

District Engineer, Austin, Texas.

[FR Doc. 93-19433 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement, New River Parkway Extension, Hinton to I-77, or to US 460, Mercer and Summers Counties, WV

AGENCY: Federal Highway Administration [FHWA], DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project extending from Hinton to either I-77 (West Virginia Turnpike) or to US 460 in Mercer County and Summers County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, suite 300, Charleston, West Virginia 25301, Telephone (304) 347-5329, or Mr. Ben L. Hark, West Virginia Department of Transportation, Division of Highways, Building 5, room A830, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305-0430, Telephone (304) 558-3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposed new highway known as the New River Parkway Extension. Most of the highway will likely be on new right of way, but existing roadways will also be utilized. The New River Parkway Extension (Parkway Extension) is a planned touring Scenic Parkway designed to link the rich and diverse historical, cultural, recreational, scenic, and natural resources of the middle New River basin.

The intent of the Parkway Extension is to provide for a pleasant and leisurely driving experience along the New River, Bluestone Lake, and the surrounding Appalachian highlands, through scenic and essentially undisturbed examples of historic West Virginia community lifestyle. Access to nearby recreation facilities is a primary consideration. Pursuant to these objectives, functional, operational and physical deficiencies of existing WV 20, in combination with the narrow local roadways that now lead to most resources, compel this action.

Project alternatives will involve the No-Action Alternative, and a combination of Corridor Alternatives.

The EIS will assess the corridors and their environmental effects through detailed studies of socioeconomic, natural, visual, and cultural resources; air quality; noise impacts; secondary and cumulative effects; energy utilization; hazardous wastes; utilities; and permitting. Joint development prospects, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action will be determined.

A Plan of Study describing the proposed action and studies, and soliciting comments will be forwarded to appropriate Federal, State, and local agencies. Agencies will be invited to attend a scoping meeting where aspects of the proposed action will be

discussed. When completed, the draft EIS will be provided for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or West Virginia Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program).

Issued on: August 4, 1993.

Dave Leighow,

Environment/Right-of-way Specialist.

[FR Doc. 93-19284 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Okaloosa County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Okaloosa County, Florida.

FOR FURTHER INFORMATION CONTACT: Ms. Melisa Ridenour, District Engineer, Federal Highway Administration, 227 N. Bronough Street, room 2015, Tallahassee, Florida 32302, telephone: (904) 681-7239.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to construct the Niceville/Ft. Walton Beach Bypass in Okaloosa County, Florida. The proposed bypass will be a limited access multi-lane facility divided by a wide grassed median. This will consist mainly of a new roadway on a new alignment. However, there are some areas where the route may follow existing streets, and in some areas of the project, there is the potential for creation of a urban roadway typical section with associated frontage roads for access management. The route will reach from U.S. 98 west of Ft. Walton Beach to S.R. 20 east of Niceville, a distance of 25 miles. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand in the area.

Alternatives under consideration include (1) taking no action; (2) construction of a multi-lane limited access facility; (3) widening of existing streets to provide a multi-lane facility with frontage roads; (4) alternate corridors.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. Public meetings will be held in Ft. Walton Beach and Niceville, Okaloosa County, between January and March 1994. In addition, a public hearing will be held in January of 1995. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned at the project site during mid-1993.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 2, 1993.

Melisa Ridenour,

District Engineer, Tallahassee, FL.

[FR Doc. 93-19318 Filed 8-11-93; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 93-37; Notice 2]

Panoz Auto Development Co.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Panoz Auto Development Company of Braselton, Georgia, petitioned for a temporary exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*. The basis of the petition was that compliance will cause it substantial economic hardship.

Notice of receipt of the petition was published on June 8, 1993, and an opportunity afforded for comment (58 FR 32168).

Petitioner sought an exemption until January 25, 1995, of its Panoz Roadster from paragraph S4.1.4 of Motor Vehicle Safety Standard No. 208. The basis for the petition was that immediate compliance with the automatic restraint requirements of Standard No. 208 will cause the petitioner substantial economic hardship, within the meaning of 49 CFR 555.6(a). Petitioner has not yet produced any motor vehicles, and the company's income statement reflects a net loss of $277,011 in calendar year 1992. Its cumulative net losses from incorporation on January 25, 1989, through 1992 total $1,265,176.

The Panoz is a two-seat convertible sports car. It features a front engine—rear drive configuration, with a body/chassis described as "triangulated stainless steel space frame, vacuum-formed aluminum body panels attached with 3M aerospace bonding process." During 1990, Panoz began to study the installation of restraint systems when prototyping began. To date, it has expended 750 man hours and $15,000 on the project, and has concluded that an automatic belt system would require design changes that would substantially affect the character of the vehicle "as a true convertible sportscar in the tradition of the classic older models." For this reason, Panoz has decided to engineer a driver side airbag to meet the Federal requirements. It has determined that "a Ford airbag system" would be best "since the majority of components (power train, primary mechanical, and electrical) are produced by Ford or based on Ford systems." The modifications required to adapt the Ford system into the Panoz require expenditures that total $325,000. The company intends to engineer a passenger-side airbag concurrently, which will require an additional expenditure estimated as $147,000, for a total cost of $472,000. An exemption would permit the company to spread its development costs, and to sell vehicles to help fund the compliance program. Without an exemption, the company "will most likely have to discontinue the Panoz Roadster development project." The company estimates that it will achieve full compliance with Standard No. 208 by April 5, 1995.

According to the petitioner, a temporary exemption would be in the public interest because the car is produced in the United States "utilizing 100% U.S. components." It currently has 8 full time employees, and estimates that 200 employees from 80 different companies are involved in the project. The car will be marketed nationally which will provide "jobs through marketing, advertising, and service

activities." An exemption would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act as the car fully complies with the remaining Federal Motor Vehicle Safety Standards including the 1997 side impact requirements. During the exemption period, the Panoz will be equipped with three-point belt systems.

Finally, the company points out that its product will be "the only vehicle to utilize molded aluminum body panels for the entire car." The new technology is said to reduce vehicle weight, and improve body strength and fuel efficiency.

No comments were received on the petition.

The financial data submitted by the petitioner showing that its cumulative net loss exceeds $1,000,000, together with the estimated cost of $472,000 for immediate conformance, is a convincing hardship argument. In addition, the compliance studies conducted by Panoz together with its estimated date of full compliance with the automatic restraint requirements indicate that the company is making a good faith effort to comply with Standard No. 208. This American-made vehicle is represented as meeting all remaining standards, and will afford its occupants with the protection inherent in all applicable standards other than Standard No. 208, and will comply with new side intrusion requirements in advance of its effective date. An exemption is merited. NHTSA is providing one of approximately 2-years duration, affording a few months leeway in the event that Panoz cannot achieve full compliance by April 5, 1995.

Accordingly, the Administrator finds that compliance with the automatic protection requirements of Standard No. 208 would cause the petitioner substantial economic hardship, that the petitioner has made a good faith effort to meet the automatic protection requirements, and that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Panoz Auto Development Company is hereby granted NHTSA Temporary Exemption 93–5, expiring August 1, 1995, from S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.*

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50).

Issued on: August 5, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–19289 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–38; Notice 2]

The Goodyear Tire and Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

The Goodyear Tire and Rubber Company (Goodyear) of Akron, Ohio, determined that some of its tires fail to comply with 49 CFR 571.119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars," (Federal Motor Vehicle Safety Standard (FMVSS) No. 119), and filed an appropriate report pursuant to 49 CFR Part 573, Defect and Noncompliance Reports. Goodyear also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on June 7, 1993, and an opportunity afforded for comment (58 FR 31999). This notice grants that petition.

In March 1993, Goodyear manufactured 1,246 Marathon Trailer Tires that bore incorrect maximum load ratings on the serial sidewalls. The subject tires were marked "Max load 1620 lbs at 50 psi cold" on the serial side. The tire marking should read "Max load 1820 lbs at psi cold." The non-serial side is marked correctly.

This is a noncompliance with paragraph S6.5(d) of Standard No. 119 which specifies that each tire be labeled with the maximum load rating and corresponding inflation pressure.

Goodyear supported its petition for inconsequential noncompliance with the following:

> The Goodyear Tire and Rubber Company believes that this noncompliance is inconsequential to motor vehicle safety. All other labeling requirements as specified by 571.119, paragraph S6.5 (a) thru (j) are correct and comply [with] the standard. The correct maximum load is shown on the non-serial sidewall and even if the incorrect maximum load on the serial sidewall was followed, it is 200 pounds less than the prescribed maximum load and would therefore not cause an unsafe condition.

No comments were received on the petition.

The reported labelling noncompliance is a simple one, an understatement of maximum load on the serial side of the tire. The correct load is stated on the non-serial side. Further, reference to the incorrect load given on the serial side will not create a safety problem since loading to that poundage is substantially less than the maximum recommended.

Accordingly, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 5, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–19290 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–33: OTS No. 0391]

First Federal Savings and Loan Association of Independence, Independence, Kansas; Approval of Conversion Application

Notice is hereby given that on August 3, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Independence, Kansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 6, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–19309 Filed 8–11–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–31: OTS No. 5826]

New Jersey Savings and Loan Association, Atco, New Jersey; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on June 15, 1993, the Deputy Director for Washington Operations approved the application of New Jersey Savings and Loan Association, Atco, New Jersey, for permission to convert to the stock form of organization, in a voluntary supervisory conversion in connection with a transfer of assets application. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW.,

Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18 Floor, Jersey City, New Jersey 07302.

Dated: August 6, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93-19307 Filed 8-11-93; 8:45 am]

BILLING CODE 6720-01-M

[AC-32: OTS No. 3321]

Suburban Federal Savings Bank, Cincinnati, Ohio; Approval of Conversion Application

Notice is hereby given that on August 2, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Suburban Federal Savings Bank, Cincinnati, Ohio to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: August 6, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93-19308 Filed 8-11-93; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Hubert H. Humphrey Fellowship Program: Cooperative Agreement for Administrative Services

ACTION: Notice—Request for proposals.

SUMMARY: The United States Information Agency (USIA) seeks applications from non-profit organizations with at least four years of experience in successfully administering international exchange programs to provide administrative and program services for the FY 95 Hubert H. Humphrey Fellowship Program.

Each year the Humphrey Program brings approximately 185-190 accomplished professionals from developing countries, East and Central Europe, and the former Soviet Union to the U.S. at a mid-point in their careers. The Program involves a year of non-degree graduate level study and related professional experiences. Fellows are nominated by U.S. embassies or Fulbright commissions based on their professional background, academic qualifications and potential for national leadership. By providing these future leaders with exposure to U.S. society and culture, and to current U.S. approaches to the fields in which they work, the Program provides a basis for establishing lasting ties among U.S. citizens and their professional counterparts in other countries.

Fellowships are granted competitively to public and private-sector candidates with a commitment to public service in the fields of natural resources and environmental management, public policy analysis and public administration, economic development, agricultural development/agricultural economics, finance and banking, human resource management/personnel, urban and regional planning, public health policy and management, technology policy and management, educational planning, and communications/journalism. The typical Fellow ranges in age from 35-45 years old, holds a masters degree from an institution in his/her own country, may be the director of an office in a Ministry, provincial headquarters, or central bank, or the director of a hospital, and has probably represented his/her office at a major international conference. The Program is also attracting an increasing number of applicants from the private sector, including consultants attorneys, journalists, and directors of local or international non-governmental organizations (NGOs).

Fifteen universities are currently serving as Humphrey host institutions, selected through a competitive process. Fellows are placed at one of these fifteen Humphrey host institutions in groupings by profession of ten to fifteen Fellows, e.g., thirteen Fellows in public health policy and management from thirteen different countries are placed at the same host institution.

The FY 94 administrative agreement will be amended to cover monitoring the FY 94 Fellows (academic year 1994-1995) until their department at the end of June, 1995. The FY 95 administrative agreement, which this announcement covers, will be a transition year during which the successful organization will have responsibility for selection and placement of Fellows for academic year 1995-1996.

Activities in chronological order for FY 95 (October 1, 1994-September 30, 1995), the first year of the agreement, will include: Receive, log, and review applications (approximately 450 applications from more than one hundred participating countries); coordinate candidate review panel meetings; prepare candidate list for the Agency to submit to the J. William Fulbright Foreign Scholarships Board for final review; in close consultation with the Agency, evaluate the quality and appropriateness of all Humphrey host institutions and coordinators; prepare and send letters of award and program guidelines to Fellows; open and maintain an up-to-date file on each Fellow; place Fellows in short-term, pre-academic English language programs, as needed; place Fellows at appropriate Humphrey host institutions; enroll Fellows in an Agency medical insurance plan; submit final placement reports to Agency; plan and implement a workshop in Washington, DC, for coordinators and assistant coordinators at Humphrey host institutions; issue maintenance, book allowance, and other support to Fellows; disburse fall semester tuition payments; assume overall responsibility for complying with all applicable tax treaties and federal, state and local laws on tax withholding and reporting for Fellows; begin monitoring Fellows; maintain contact with approximately 1900 alumni and 34 alumni associations worldwide and provide support for alumni activities in consultation with the Agency.

In addition to all activities above, activities for the FY 96 (October 1, 1995-September 30, 1996) renewal agreement will include: Assume overall responsibility for monitoring all Fellows; arrange Fellows' professional development activities as an integral part of the Program; arrange professional enhancement workshops in joint consultation with Agency; make round trip travel arrangements for Fellows to attend the Washington Workshop, a one-week orientation and introduction to the nation's capital attended by all Fellows; continue to issue maintenance, book allowance, and other support to Fellows during the academic year; disburse spring semester tuition payments; assist Fellows with health insurance claims; respond to all visa extension requests in consultation with the Agency; make travel arrangements for Fellows to attend the Minnesota Workshop, the final program workshop during which Fellows discuss papers they have written in their on-campus professional groups and participate in program graduation ceremonies; arrange return travel to Fellows' home countries; assume responsibility for complying with all federal, state and local laws on tax withholding and reporting for Fellows; coordinate competition for Humphrey host institutions, as necessary; provide

appropriate training for Humphrey host institutions and coordinators; produce and distribute Program guidelines, information packets, application forms, selection guidelines, program brochures, and newsletters.

Subject to USIA review and availability of funds, the cooperative agreement will be renewed annually for five years.

DATES: Deadline for proposals: All copies must be received by 5 p.m. Washington, DC time on November 8, 1993. Faxed documents will not be accepted, nor will documents postmarked on November 8 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. The cooperative agreement should begin October 1, 1994.

ADDRESSES: The original and ten copies of the completed application, including required forms, must be submitted by the deadline to: U.S. Information Agency, REF: Humphrey Fellowship Program, Administrative Services, Grant Management Division, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547

FOR FURTHER INFORMATION CONTACT: Interested United States organizations/ institutions should contact Aleta Wenger or Leigh Rieder at the U.S. Information Agency, Humphrey Fellowship Program (E/ASU), room 349, 301 4th Street, SW., Washington, DC 20547, telephone, (202) 619–5289, 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 information.

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.

Overview: Authority for the Hubert H. Humphrey Fellowship Program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the U.S. and people of other countries.

Guidelines

The cooperating organization will perform administrative and program functions for the Humphrey Fellowship Program. The cooperating organization will have the responsibility for:

A. Observing and complying with the policies of the United States Information Agency (USIA) and the J. William Fulbright Foreign Scholarship Board (BFS) in the administration of this cooperative agreement;

B. Providing data, as requested by USIA, concerning the Humphrey Fellowship Program;

C. Submitting quarterly budget and program reports and an annual program report with recommendations for project improvements.

Eligibility

Non-profit organizations with key program staff based in the Washington, DC metropolitan area and available for frequent meetings with Agency staff or organizations willing to establish a Washington, DC office are invited to submit proposals for a cooperative agreement award from the Agency. Organizations must also have expertise and creditable experience in management of professional exchanges and/or academic exchanges.

Proposed Budget

A comprehensive line item administrative budget must be submitted with the proposal by the deadline. It is anticipated that the total Humphrey Fellowship Program budget for FY 95 will be approximately $8 million with a caseload of about 185 Fellows and 450 applications. A program budget which provides maintenance, tuition, book allowance, professional allowance, domestic and international return travel, university fee, the coordinator's workshop, and other support for the Fellows, will be developed in consultation with the Agency in February–March, 1995. Specific guidelines for budget preparation are available in the application packet.

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. In addition, all eligible proposals will be reviewed by the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of 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.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of programs approach: Proposals should exhibit originally, substance, innovation, and creativity.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Proposals should clearly demonstrate how the organization will meet the Program's goals and objectives.

4. Institutional capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the Program's goals. Applicant should demonstrate that proposed staff will be sensitive to the multicultural nature of the Program and the professional status of participants.

5. Institution's track record/ability: Applicant should demonstrate a 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). Applicant should also demonstrate ability to perform the services that are outlined in the application packet. The Agency will consider the past performance of past grantees and the demonstrated potential of new applicants.

6. Evaluation plan: Proposals should provide a plan for program evaluation.

7. Cost effectiveness: The overhead and administrative components of the cooperative agreement, as well as salaries, should be kept as low as possible to attain the highest possible number of fellowships. All expenditures should be necessary and appropriate.

8. Cost-sharing: Proposals should maximize cost-sharing wherever possible.

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 awards 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 January 31, 1994. The awarded cooperative agreement will be subject to periodic reporting and evaluation requirements.

Dated: August 5, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-19221 Filed 8-11-93; 8:45 a.m.]

BILLING CODE 8230-01-M

International Educational and Cultural Activities Human Rights Project for Indonesia

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the U.S. Information Agency proposes the development of a 14-day exchange program on constitutionalism and human rights for government officials, private individuals, academics, and journalists from Indonesia. The participants will be introduced to the American experience of protecting human rights through constitutional provision and governmental action, and will also observe the important role of non-governmental organizations (NGOs) active in the field of human rights including institutions that monitor foreign governments' compliance with international human rights charters and conventions. A review of human rights in the context of U.S. foreign policy will also be covered during the program. The project will be planned and implemented by a U.S. not-for-profit institution will experience in Southeast Asian affairs and with some legal background. Several months following conclusion of the U.S. portion of the program, two or three U.S. human rights specialists will make a reciprocal visit to Indonesia for follow-on consultations.

ANNOUNCEMENT NUMBER: All communications concerning this announcement should refer to the Human Rights Project for Indonesia. The announcement number is E/P-94-3. Please refer to 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, D.C. time on October 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on October 15, 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. This action is effective from the publication date of this notice through October 15, 1993, for projects whose activities will begin between January 1, 1994, and December 31, 1994.

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: EP-94-3, Human Rights Project for Indonesia, Office of Grants Management (E/XE), 301 4th Street, SW., room 336, Washington, DC 20547.

PROGRAM GOALS: The program will engender among participants an understanding and appreciation of American laws and institutions that protect individuals rights; increase participants' understanding of the important role NGOs have in monitoring foreign governments' compliance with international human rights charters and conventions; promote an examination of appropriate strategies to protect human rights in Indonesia; foster communication among Indonesian participants from diverse walks of life who ordinarily do not have an opportunity to discuss human rights issues among themselves; and provide a basis on which to build future cooperation between American and Indonesian specialists in human rights issues.

PARTICIPANTS: Participants will include up to 8 mid- and deputy-level officials or mid-career professionals who have demonstrated leadership qualities and are likely to be able to influence public opinion and policy. They will be individuals from NGOs, government, academia, and the press. English fluency will not be required. Interpretation for foreign participants will be provided by the Department of State's Language Services Division. Indonesian participants will be nominated by U.S. Information Service officers in Indonesia and confirmed by the Office of Citizen Exchanges in consultation with the Office of East Asian and Pacific Affairs and the award recipient.

PROGRAM SUGGESTIONS: The American program might include an overview session to discuss the U.S. approach to human rights protections; division of the participants into two or three groups that will focus on separate human rights issues; a review of American documents that form the legal basis of citizen rights in the U.S. and a discussion of how they have been translated into institutional structures; and an examination of United Nations documents that establish the global context and standards for human rights.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619-5326, to request a detailed concept paper and an application packet, which includes award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, should be balanced and representative of the diversity of American political, social and cultural life.

FUNDING: Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to successful conclusion; and cost effectiveness such as in-kind contributions and the ability to keep overhead costs at a minimum. USIA can devote up to $125,000 for this project, though organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000, and their budget submission should correspond to this limitation.

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. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters: If needed, 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 Department of State 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 are entitled to and escorts are reimbursed 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 $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded 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.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. (Note: the 20 percent limitation on "administrative costs" included in previous announcements does not apply to the RFP.)

APPLICATION REQUIREMENTS: Proposals must be structured as outlined in the application package. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

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. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the USIA's Office of 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 U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design development cost 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 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 originality and substance. Their rationale should persuade the reader that the U.S. taxpayer's dollar is being well-spent for a clearly defined need.

2. *Institution Reputation/Ability:* 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 USIA's 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 professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's 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 realistic and attainable. Proposal should clearly demonstrate how the grantee institution will meet the 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 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-funded programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's 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 the 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 December 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 6, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–19412 Filed 8–11–93; 8:45 am]

BILLING CODE 8230–01–M

International Educational and Cultural Activities Alternative Dispute Resolution

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the U.S. Information Agency proposes the development of a multi-week, two-way exchange program for Indonesian and American participants devoted to non-litigious resolution of industrial disputes. Up to six Indonesian citizens from the private sector, labor unions, and non-governmental organizations (NGOs) involved in labor issues will visit the U.S. for approximately four weeks to observe practices and discuss issues relevant to the program's theme. At the conclusion of the U.S. program, Indonesian and American participants will assess their accomplishments and develop plans for a follow-on visit to Indonesia by American specialists.

The Indonesian component will be a two- to three-week, multi-site visit for a delegation of up to three Americans, who will work with the original Indonesian participants to demonstrate dispute resolution techniques at industrial enterprises in and outside Jakarta.

This project will be implemented by a U.S. not-for-profit institution that, through its proposal, demonstrates extensive experience and success in coordinating international exchange programs for mid-level foreign visitors. Institutions that have substantive working relationships with potential cosponsoring Indonesian institutions are strongly encouraged to apply.

Announcement Number: All communications concerning this announcement should refer to the Alternative Dispute Resolution Project. The announcement number is E/P–94–4. Please refer to 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, D.C. time on October 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on October 15, 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. This action is effective from the publication date of this notice through October 15, 1993, for projects whose activities will begin between January 1, 1994, and December 31, 1994.

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: EP–94–4; Alternative Dispute Resolution, Office of Grants Management (E/XE), 301 4th Street, SW., room 336, Washington, DC. 20547.

Program Goals: The program will acquaint Indonesian participants with theories and techniques of alternative dispute resolution; develop among Indonesian participants an understanding of how programs and institutions are developed to resolve disputes in a non-litigious manner; develop an appreciation for the role of democratic trade unions in the national economy; increase American understanding of the problems encountered by Indonesia's transition to an industrialized society; and provide a basis on which to build future cooperation between American and Indonesian specialists in dispute resolution.

Participants: Indonesian participants will include up to six industrial practitioners, drawn from labor and management in the private sector, labor unions, and NGOs involved with labor issues. English fluency will not be required. Interpretation for foreign participants will be provided by the Department of State's Language Services Division. Indonesian participants will be nominated by U.S. Information Service officers in Indonesia and confirmed by the Office of Citizen Exchanges in consultation with the Office of East Asian and Pacific Affairs and the award recipient. Three Americans on a return visit to Indonesia might include a labor expert in dispute settlement, a management representative, and a practicing mediator or arbitrator.

Program Suggestions: The American program might include visits to trade unions and other organizations that promote negotiated resolution of disputes; visits to training centers or institutions that offer instruction in dispute resolution techniques; discussions with educators, government officials, and private sector representatives; and analysis of culturally based methods and techniques of dispute resolution that might find application in the multi-ethnic fabric of Indonesian life.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5326, to request a detailed concept paper and an application packet, which includes award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character, should be balanced and representative of the diversity of American political, social and cultural life.

Funding: Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to successful conclusion; and cost effectiveness such as in-kind contributions and the ability to keep overhead costs at a minimum. USIA can devote up to $125,000 for this project, though organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000, and their budget submission should correspond to this limitation.

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. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. *Interpreters:* If needed, 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 Department of State 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 are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a book allowance of $50. U.S. staff does 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 $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded 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.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. (Note: the 20 percent limitation on "administrative costs" included in previous announcements does not apply to this RFP.)

Application Requirements: Proposals must be structured as outlined in the application package. Confirmation letters from American and foreign co-sponsors noting their intention to participate in the program will enhance an institution's submission.

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. All eligible proposals will also be reviewed by the appropriate georgraphic area office, and the budget and contract offices. Proposals may also be reviewed by the USIA's Office of 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 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 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 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 originality and substance. Their rationale should persuade the reader that the U.S. taxpayer's dollar is being well-spent for a clearly defined need.

2. *Institution Reputation/Ability:* 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 USIA's 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 professional and logisitcal expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. *Program Planning:* Detailed agenda and work plan should demonstrate substance and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate the organization's 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 realistic and attainable. Proposal should clearly demonstrate how the grantee institution will meet the 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 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-funded programs are not one-time events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's 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 the 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 December 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 6, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–19411 Filed 8–11–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on August 4, 1993, from 10:08 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:

Closed Session*

A. New Business

1. A Request To Issue Preferred Stock.

Dated: August 5, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

[FR Doc. 93–19500 Filed 8–10–93; 10:17 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 12, 1993, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Disclosure to Shareholders—Association Annual Meeting Information Statement (Proposed)

Closed Session*

A. Reports

1. Office of Secondary Market Oversight Quarterly Report.

Dated: August 5, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–19501 Filed 8–10–93; 10:20 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held at the offices of the Farm Credit Administration in McLean, Virginia, immediately following its 10:00 a.m. regular meeting on August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matter to be considered at the meeting is:

Closed Session*

A. New Business

1. FCA Board Approval of the Independent Accountant.

Dated: August 10, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–19553 Filed 8–10–93; 2:15 pm]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–18197.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, August 3, 1993, 10:00 a.m., Meeting Open to the Public.

This meeting was canceled.

DATE AND TIME: Tuesday, August 17, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1993–15: L. Anthony Sutin on behalf of The Tsongas Committee, Inc.
Routine Administrative Matters.

DATE AND TIME: Tuesday, August 17, 1993 (To Convene After the Open Meeting).

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–19569 Filed 8–10–93; 3:39 pm]

BILLING CODE 6715–01–M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

* Session closed—Exempt pursuant to 5 U.S.C. 552b(c)(4).

Corrections

Federal Register
Vol. 58, No. 154
Thursday, August 12, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

Correction

In notice document 93-17885 beginning on page 40111 in the issue of Tuesday, July 27, 1993, make the following correction:

On page 40112, in the second column, in the second full paragraph, in the fifth line, after "rate" insert "for purposes of this review will be 12.66 percent, the "new shipper" rate".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Endangered Karst Invertebrates in Travis and Williamson Counties, TX for Review and Comment

Correction

In notice document 93-17251 beginning on page 39031 in the issue of Wednesday, July 21, 1993, make the following correction:

On page 39032, in the third column, under the heading **Public Comments Solicited**, the third through eighth lines should read: "All comments received by the date specified above will be considered prior to approval of the plan."

BILLING CODE 1505-01-D

federal register

Thursday
August 12, 1993

Part II

Department of Education

34 CFR Part 381
Protection and Advocacy of Individual Rights; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 381

RIN 1820–AB17

Protection and Advocacy of Individual Rights

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary publishes regulations governing the Protection and Advocacy of Individual Rights (PAIR) program to implement requirements added to the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (1992 Amendments), Pub. L. 102–569. The 1992 Amendments moved the PAIR program from title VII, part D, of the Act to title V by adding a new section 509 of the Act. Section 509 establishes the purpose of the PAIR program, eligibility for services, funding requirements, application procedures and assurances, eligibility for assistance, and reporting requirements for new awards for the PAIR program. The final regulations implement the requirements in section 509 and establish application requirements for the PAIR program. The final regulations also include selection criteria to be used in making new awards under the PAIR program.

EFFECTIVE DATE: These regulations take effect either September 27, 1993 or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Deborah Havens, U.S. Department of Education, 400 Maryland Avenue SW., room 3220, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–8733. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The PAIR program is now authorized by new section 509 of the Act (29 U.S.C. 794e). Previously, the PAIR program was authorized by section 731 of the Act. No program regulations existed for the previous PAIR program. The newly authorized PAIR program differs substantially from the previous program. All further references to the PAIR program are to the newly authorized PAIR program.

The PAIR program is an important part of the National Education Goals. The PAIR program addresses Goal 5, that every adult American—including individuals with disabilities—will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The PAIR program provides support to eligible systems within States to protect the legal and human rights of (a) individuals with disabilities who are ineligible for (1) client assistance programs (CAP) under section 112 of the Act; (2) protection and advocacy programs under part C of the Developmental Disabilities Assistance and Bill of Rights Act (DDA), 42 U.S.C. 6041–6043; and (3) protection and advocacy programs under the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI), 42 U.S.C. 10801–10851; or (b) individuals with disabilities who need protection and advocacy services other than the services authorized under CAP.

On May 5, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 26890). In general, the commenters agreed with the NPRM. Thus, there are no major differences between the NPRM and the final regulations.

These final regulations implement section 509 of the Act, as recently added by the 1992 Amendments, and incorporate certain provisions of the Education Department General Administrative Regulations (EDGAR). Any differences between the NPRM and the final regulations are noted in the following analysis of comments and changes.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 13 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. The comments are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes are not addressed.

Eligibility of Territories (§ 381.2(b))

Comments: One commenter requested that territories be allowed to compete for $50,000 grants even if the appropriation for the PAIR program is less than $5,500,000. Although the commenter did not disagree that § 381.2(b), which prohibits the territories from applying for grants under the PAIR program, is consistent with section 509(b)(2) of the Act, the commenter was hopeful that Congress will change section 509(b)(2) through technical amendments to the Act.

Discussion: The Secretary understands the concern that territories should be eligible for grants under the PAIR program even if the amount appropriated for the PAIR program is less than $5,500,000. However, the language of section 509(b)(1) and (2) of the Act is clear that territories are not eligible for grants under the PAIR program if the amount appropriated for the PAIR program is less than $5,500,000. Nothing in the written legislative history of the 1992 Amendments indicates that Congress intended the territories to be eligible for discretionary grants under the PAIR program if the amount appropriated for the PAIR program is less than $5,500,000. If Congress amends section 509(b) of the Act to allow territories to compete for discretionary grants when the amount appropriated for the PAIR program is less than $5,500,000, the Secretary will amend the regulations to implement any change.

Changes: None.

Allotment (§ 381.2(c))

Comments: Three commenters suggested that the word "may" in § 381.2(c) be changed to "shall" to be consistent with section 509(c)(2) of the Act.

Discussion: Even if the PAIR program is administered as a formula grant program, an eligible system still must submit an application for assistance under the PAIR program to the Secretary. If an eligible system does not submit an application for funds under this program or if an eligible system's application does not comply fully with all statutory and regulatory requirements, the eligible system may not receive the PAIR funds allotted to the State in which the eligible system plans to carry out the PAIR program. Therefore, the Secretary believes it is more appropriate to say that, even if the PAIR program is administered as a formula grant program, the eligible system "may" receive the amount allotted to the State.

Changes: None.

Written Plan for Achieving Objectives and Priorities (§§ 381.3(a)(5) and 381.10(a)(5))

Comments: One commenter suggested that the requirement for a written plan in §§ 381.3(a)(5) and 381.10(e), which has been redesignated § 381.10(a)(5), for achieving the eligible system's objectives and priorities be deleted

because a plan would be redundant, create unnecessary paperwork, and would serve no purpose. This commenter pointed out that well-developed objectives and priorities, which are required by section 509 of the Act and § 381.3(a)(5), are, in essence, a plan.

Discussion: The Secretary believes that there is an important difference between developing objectives and priorities and having a specific plan to achieve the objectives and priorities. A written plan describing how and when an eligible system will achieve the objectives and priorities it has established pursuant to section 509 of the Act and §§ 381.3(a)(5) and 381.10(a)(5) of this part will provide more information on which the Secretary can make a decision concerning an eligible system's ability to carry out the PAIR program. In addition, when the PAIR program is a discretionary program, this information will assist the Secretary in making a decision among competing applications. The more information the Secretary has on which to make a decision among competing applicants, the more likely the best applicant will be selected.

Changes: None.

Definition of "Eligible Individual With a Disability" (§ 381.5(b))

Comments: One commenter suggested that paragraph (2) of the definition of "Eligible individual with a disability" in § 381.5(b) be deleted because section 509 of the Act specifies that individuals who are eligible for PAIR services must be ineligible for CAP services. This commenter added that CAP is now able to provide all services needed by an individual with a disability. Another commenter expressed his agreement with the proposed definition.

Discussion: The purposes of the eligibility requirements for the PAIR program are (1) to avoid duplicating the services available under the CAP and the protection and advocacy programs under part C of the DDA and under the PAIMI; and (2) to provide protection and advocacy services not otherwise authorized under the CAP and other protection and advocacy programs. An individual with a disability may be eligible for services under the CAP but may be seeking services that a CAP may not have authority to provide. An example is an individual with a disability who is receiving services under the Act and who has a complaint of discrimination on the basis of disability against her landlord. In this example, the individual's housing is not related in any way to any services the individual is receiving under the Act. Although the individual is eligible for services under the CAP to address any complaints she may have with the provider of the services she is receiving under the Act, the CAP does not have the authority to assist the individual with the housing discrimination complaint. Therefore, the individual is eligible to receive assistance under the PAIR program related to the housing complaint. The Secretary believes that the definition of eligible individual with a disability accurately reflects the intent of Congress. However, the Secretary does recognize that a slight revision may clarify who is eligible.

Changes: A minor change has been made to the definition of "Eligible individual with a disability" in § 381.5(b) to clarify that individuals with disabilities who need protection and advocacy services other than the services authorized under the CAP are eligible for services under the PAIR program.

Comments: One commenter suggested that clients and client applicants under the vocational rehabilitation and independent living services programs should not be informed about the PAIR program. The commenter reasoned that these clients and client applicants are currently "baffled" by the CAP and that their understanding of CAP would be further confused if they were to be informed about the PAIR program.

Discussion: The Secretary believes that it is important to inform the public, particularly individuals with disabilities, about all of the services and benefits available under the PAIR program. The Secretary also believes that clients and client applicants under the vocational rehabilitation and independent living services programs are fully capable of understanding what services are available to them under the CAP and PAIR programs.

Changes: None.

Information and Referral (§ 381.10(a)(4))

Comments: One commenter suggested deleting the phrase "including individuals who are exiting from public school programs" from § 381.10(d), which has been redesignated § 381.10(a)(4). This commenter questioned the appropriateness of targeting this particular group of individuals, which gives the appearance of establishing a priority for these individuals for information and referral services over other groups of individuals. This commenter also stated that this language ignores the needs of persons with specific types of disabilities.

Discussion: The Secretary did not intend the language in § 381.10(a)(4) to target or give priority to individuals who are exiting from public school programs. The Secretary intended simply to ensure that the information and referral services that are available to everyone in the State also are made available to these individuals. The Secretary agrees that revision of § 381.10(d) may clear up this confusion.

Changes: The words "but not limited to" have been added after the word "including" in § 381.10(d).

Mediation (§ 381.10(a)(9))

Comments: Three commenters suggested altering or deleting the requirement in § 381.10(i), which has been redesignated § 381.10(a)(9), that mediation and other alternative dispute resolution methods should be used to the maximum extent possible. The commenters pointed out that this requirement is not in the statute and that the decision to use mediation or an alternative dispute resolution method should be made by the individual with a disability or his or her advocate. One of the commenters added that, if the use of mediation or alternative dispute resolution methods is required, the issue of whether the eligible system should be neutral or act as the advocate or representative of the PAIR client in mediation will arise, as it has under CAP.

Discussion: The Secretary does not believe that requiring eligible systems to use mediation or alternative dispute resolution methods to the maximum extent possible is either burdensome, contrary to public policy, or inconsistent with the law. In addition, section 2(a)(2) of Executive Order (E.O.) on Civil Justice Reform (No. 12778), which became effective on January 21, 1991, requires that agency regulations be written to minimize needless litigation to help reduce the costs and delays associated with litigation. Whether mediation or an alternative dispute resolution method is possible in a particular case depends on the circumstances surrounding the issues raised by that case and the applicable administrative requirements. The requirement to use mediation or alternative dispute resolution methods to the maximum extent possible does not mean that mediation or alternative dispute resolution methods must be used in all cases. Finally, the Secretary believes that when an eligible system represents an individual with disabilities in mediation or alternative dispute resolution, the eligible system remains the advocate or representative of the client and is not to assume the neutral role of the mediator. To ensure that no question arises concerning the

role that an eligible system is to assume during mediation or the use of an alternative dispute resolution method, the Secretary agrees that the definition of mediation should be clarified.

Changes: A change has been made to the definition of "mediation" to clarify the role of the eligible system if mediation is used.

Selection Criteria (§§ 381.21(a) and 381.21(g)(2))

Comments: One commenter suggested that the number of points for the selection criterion on "extent of need for the project" in § 381.21(a) be reduced and that a selection criterion on "previous experience implementing a PAIR system" be added. This commenter believes that the statement of findings in section 2 of the Act appears to provide evidence of congressional intent that would justify the need for the PAIR program. This commenter also believes that the intent to make PAIR a formula grant program when the appropriations are equal to or greater than $5.5 million, demonstrates that Congress evidently felt that the need for the PAIR program has already been established.

Discussion: The selection criteria for the PAIR program apply only when the appropriations are less than $5,500,000 and discretionary grants are awarded under the PAIR program on a competitive basis. The fact that the PAIR program will become a formula grant program when appropriations are greater than or equal to $5,500,000 is not evidence that a particular PAIR project is needed in a particular State in fiscal years in which Congress has appropriated less than this level. Whether an applicant for funds under a discretionary grant program can demonstrate a greater need for its proposed project than another applicant is critical for determining which applicant should be selected for funding. The Secretary also believes that the selection criteria related to "plan of operation," "quality of personnel," "service comprehensiveness," and "coordination with other programs and systems" already provide an applicant with an adequate opportunity to capitalize on its previous experience in operating a PAIR program. Therefore, the Secretary does not believe that it is necessary to add a selection criterion on previous experience.

Changes: None.

Comments: One commenter wanted to know if the language in § 381.21(g)(2) regarding individuals with disabilities who may have limited knowledge about the PAIR program was intended to be a priority or preference for PAIR services for these individuals. Another commenter objected to what he perceived as the "targeting" of these individuals for protection and advocacy services.

Discussion: The Secretary did not intend to establish a priority or preference for PAIR services for individuals with disabilities who may have limited knowledge about the PAIR program by including these individuals in the selection criterion in § 381.21(g)(2). However, if the PAIR program is to be useful, individuals with disabilities must know about its existence. To avoid confusion, the Secretary will relocate and clarify this provision.

Changes: The Secretary will remove this reference from the selection criterion in § 381.21(g)(2) and place revised language in the selection criterion in § 381.21(b)(2)(v). The new language in § 381.21(b)(2)(v) of the selection criteria will award points to an applicant that includes in its plan of operation specific activities designed to provide information about the PAIR program to individuals with disabilities, including individuals who may have limited knowledge about the PAIR program, without regard to race, color, national origin, gender, age, or disabling condition. Individuals who may have limited knowledge about the PAIR program may include persons with mental retardation, persons with sensory or communications impairments, persons in isolated rural areas, or persons who are new to the vocational rehabilitation system.

Direct Payment (§ 381.10(b) and § 381.22(b))

Comments: One commenter asked what part of the Education Department General Administrative Regulations would be applicable for States that have a statute requiring Federal funds to pass through a State agency before going to a nonprofit organization.

Discussion: Section 509(g)(1) of the Act states that payments under the PAIR shall go directly to the eligible system "unless the State provides otherwise." Section 509(g)(1) of the Act is implemented by § 381.22(b) of the regulations. If a State's laws, regulations, or policies prevent the direct payment of Federal funds to a private entity in the State, the Secretary will not make a direct payment to that eligible system. The Secretary agrees that a change is necessary to ensure that an eligible system does not receive a direct payment in violation of State law, regulation, or policy.

Changes: A new paragraph (b) has been added to § 381.10 that will require an eligible system to provide an assurance with its application for assistance under this part that direct payment to the eligible system is not prohibited or inconsistent with the laws, regulations, or policies of the State in which the eligible system plans to carry out the PAIR program. Failure to provide this assurance with its application will prohibit the eligible system from receiving a direct payment of PAIR funds.

Contracts With Third Parties (§ 381.30(b)-(d))

Comments: Seven commenters suggested that § 381.30(b) should be deleted or revised to permit an eligible system to enter into contracts with other entities or individuals to carry out part or all of the PAIR program. Several of these commenters pointed out that section 509 of the Act does not specifically prohibit an eligible system from entering into contracts with other entities or individuals to carry out part or all of the PAIR program. Two of these commenters also suggested that eligible systems should be able to award grants or subgrants to third parties to carry out the PAIR program.

Discussion: The Secretary agrees that section 509 of the Act does not prohibit an eligible system from entering into contracts with other entities or individuals to carry out part or all of the PAIR program and will revise § 381.30(b) accordingly. However, the Secretary believes that an eligible system that receives funds under the PAIR program must not violate the independence requirement under part C of the DDA, 42 U.S.C. 6042(a)(2)(A). Therefore, an eligible system must not contract to carry out the PAIR program, in whole or in part, with any entity or individual that provides services under the Act.

In addition, both 34 CFR 75.708 and 76.50 prohibit a grantee under any program administered by the U.S. Department of Education (ED) from awarding a grant or subgrant to an entity or individual to carry out part or all of a program unless grants or subgrants are specifically authorized by the program statute. Nowhere in section 509 of the Act are eligible systems given the specific authority to award grants or subgrants. Therefore, eligible systems under this program do not have authority to award grants or subgrants to other entities or individuals to carry out part or all of the PAIR program. (Section 75.708 applies when the appropriations for the PAIR program are less than $5,500,000 and the PAIR program is a discretionary program. Section 76.50 applies when the appropriations for the

PAIR program are equal to or more than $5,500,000 and the PAIR program is a formula grant program.)

Changes: Section 381.30(b) has been revised to refer only to grants and subgrants. A new § 381.30(c) has been added to specify that an eligible system may contract with another entity or individual to provide PAIR services, in whole or in part. However, the authority to contract for PAIR services may be exercised only with an entity or individual that is independent of, and not connected financially or through a board of directors to, any entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities. A new § 381.30(d) also has been added to specify that, for purposes of § 381.30(c), "services under the Act" and "treatment, services, or habilitation" will not include client assistance services under the CAP authorized under section 112 of the Act, protection and advocacy services authorized under the protection and advocacy programs under part C of the DDA and the PAIMI, or any other protection and advocacy services.

Comments: One commenter suggested adding language that a recipient of funds may not be associated with an organization that provides services that might be the subject of an appeal by an individual with a disability.

Discussion: The Secretary agrees that eligible systems should be independent of any service provider, as required under part C of the DDA, 42 U.S.C. 6042(a)(2)(A).

Changes: The change to § 381.30(b) in response to a previous comment on the contracting authority of eligible systems addresses this commenter's concern.

Protection, Use, and Release of Personal Information (§ 381.31(b))

Comments: One commenter expressed concern about the provision in § 381.31(b) requiring consent from the agency providing personal information about a client for disclosure of personal information to the eligible system. The commenter stated that no apparent justification exists for limiting an individual's control over his or her own personal information by allowing the agency providing the information to the eligible system to prevent disclosure.

Discussion: The Secretary agrees that the consent of the agency, entity, or individual with personal information about an individual who is a client of the eligible system or who applies for services from the eligible system should not be required before disclosure of that information to the eligible system. Only the consent of the individual, his guardian, parent, or other authorized representative or advocate (including the individual's advocate from the eligible system), should be required for disclosure of personal information from another agency to the eligible system.

Changes: The language in § 381.31(b) that requires the consent of another agency to release to the eligible system personal information about an individual has been deleted. In addition, § 381.31(d) has been revised slightly to conform more closely with section 509(h) of the Act and its legislative history.

Reporting (§ 381.32 (a) and (b))

Comments: One commenter suggested that eligible systems be strongly encouraged to record results and outcomes for all three types of advocacy—individual, self, and systems.

Discussion: The Secretary agrees that eligible systems should maintain records of cases in which the eligible system seeks remedies for individuals (individual advocacy) and for classes or groups of individuals (systems or systemic advocacy), and assists individuals with disabilities to advocate for themselves (self advocacy). The Secretary also agrees that eligible systems should maintain records of the outcomes of these efforts.

However, the Secretary does not believe that eligible systems should be required to maintain and submit records with this information. Therefore, the Secretary will provide non-regulatory guidance and data collection forms that will encourage, but not require, eligible systems to include this information with the information required under § 381.32(a) and that is part of the annual report required by § 381.32. In reviewing paragraph (b) of this section, the Secretary also decided to revise the type of information required on the total number of individuals requesting services and actually served. This additional information will enable the Secretary to provide the type of information required by sections 13 and 509(l) of the Act.

Changes: No change has been made to § 381.32(a). A change has been made to § 381.32(b) to require that an eligible system include information on the race, color, national origin, gender, age, and disabling condition of individuals who requested or received services from the eligible system.

Administrative Costs (§ 381.33(b))

Comments: Two commenters suggested that the five percent limitation in § 381.33(b) on administrative costs that an eligible system may charge to the PAIR program be changed to apply only to the States. One of these commenters also suggested that, if a change is not made, the last phrase in § 381.33(b) needs to be clarified. A third commenter suggested that the phrase "cost of administration" be defined more realistically because it is illogical to assume that the costs of administering the PAIR program can be covered by no more than five percent of the allotment.

Discussion: The Secretary understands the concern that the five percent limitation on administrative costs should apply only if an eligible system is conducted or administered by a State agency. However, the language of section 509(j) of the Act is clear that an eligible system may use only five percent of the State's allotment under the PAIR program on administrative costs. Nothing in the written legislative history indicates that this limitation was to apply only to a State and not to the eligible system within the State. If Congress amends section 509(j) to remove this limitation on administrative costs, the Secretary will amend the regulations to implement any change. In addition, the Secretary believes that the definition of administrative costs in § 381.33(b) is appropriate given current law. However, the Secretary agrees that clarification of the last phrase in the definition of "administrative costs" is needed.

Changes: A change has been made in § 381.33(b) to clarify the last phrase in the definition of "administrative costs."

Case File Management

Comments: One commenter asked whether the regulations will include specific guidelines for effective case file management or whether case file management will be left up to the individual PAIR programs.

Discussion: The Secretary believes that eligible systems should be given discretion to decide how best to manage their case files.

Changes: None.

Multi-year Funding

Comments: One commenter expressed concern with the Department's funding of PAIR grants for only one year and the disruption that results if a grantee is not successful in obtaining a grant for a second year.

Discussion: One-year awards were made in the first year of the PAIR program, which has been funded only since FY 1991, because of the uncertainty that funds would continue to be appropriated for this program. In FY 1992, awards were made for two years. The Secretary believes that

appropriations for this program will be more certain in the future. In FY 1993 and in subsequent years, the Secretary intends to make awards under this program for a three-year period.

Changes: None.

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 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.

List of Subjects in 34 CFR Part 381

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Dated: August 6, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.240 Protection and Advocacy of Individual Rights)

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 381 to read as follows:

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Subpart A—General

Sec.

381.1 What is the Protection and Advocacy of Individual Rights program?
381.2 Who is eligible for an award?
381.3 What activities may the Secretary fund?
381.4 What regulations apply?
381.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

381.10 What are the application requirements?

Subpart C—How Does the Secretary Make an Award?

381.20 How does the Secretary evaluate an application?
381.21 What selection criteria does the Secretary use?
381.22 How does the Secretary allocate funds under this program?

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

381.30 How are services to be administered?
381.31 What are the requirements pertaining to the protection, use, and release of personal information?
381.32 What are the reporting requirements?
381.33 What are the requirements related to the use of funds provided under this part?

Authority: 29 U.S.C. 794e, unless otherwise noted.

Subpart A—General

§ 381.1 What is the Protection and Advocacy of Individual Rights program?

This program is designed to support a system in each State to protect the legal and human rights of eligible individuals with disabilities.

(Authority: Sec. 509(a) of the Act; 29 U.S.C. 794e(a))

§ 381.2 Who is eligible for an award?

(a) A State protection and advocacy system that is established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (DDA), 42 U.S.C. 6041–6043, and that meets the requirements of § 381.10 is eligible to receive a grant award under this program.

(b) In any fiscal year in which the amount appropriated to carry out this section is less than $5,500,000, protection and advocacy systems from Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau may not apply for grants under the Protection and Advocacy of Individual Rights (PAIR) program.

(c) In any fiscal year in which the amount appropriated to carry out this section is equal to or greater than $5,500,000, an eligible system from any State and from any of the jurisdictions named in paragraph (b) of this section may receive the amount allotted pursuant to section 509(c)-(e) of the Act, except that the Republic of Palau may receive an allotment under section 509 of the Act only until the Compact of Free Association with Palau takes effect.

(Authority: Sec. 509(b)-(e) of the Act; 29 U.S.C. 794e(b)-(e))

§ 381.3 What activities may the Secretary fund?

(a) Funds made available under this part must be used for the following activities:

(1) Establishing a system to protect, and advocate for, the rights of individuals with disabilities.

(2) Pursuing legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State.

(3) Providing information on and making referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs.

(4) Coordinating the programs provided through an eligible system with the advocacy programs of the Client Assistance Program (CAP) under section 112 of the Act, the State long-term care ombudsman program under the Older Americans Act of 1965, part C of the DDA, and the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI), 42 U.S.C. 10801–10851.

(5) Developing a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities.

(6) Providing to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities described in § 381.10(f).

(7) Establishing a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system.

(b) Funds made available under this part also may be used to carry out any other activities consistent with the purpose of this part and the activities listed in paragraph (a) of this section.

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f)).

§ 381.4 What regulations apply?

The following regulations apply to the PAIR program:

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

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), if the eligible system is not a State or local government agency or Indian tribal organization.

(2) 34 CFR Part 75 (Direct Grant Programs), if the appropriation for the PAIR program is less than $5,500,000.

(3) 34 CFR Part 76 (State-Administered Programs), if the appropriation for the PAIR program is

equal to or greater than $5,500,000 and the eligible system is a State or local government agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.704;

(v) Section 76.734; and

(vi) Section 76.740.

(4) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), if the eligible system is a State or local government agency.

(7) 34 CFR Part 81 (General Education Provisions Act— Enforcement).

(8) 34 CFR Part 82 (New Restrictions on Lobbying).

(9) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 381.

(c) The regulations in 34 CFR 369.43, 369.46 and 369.48 relating to certain conditions that must be met by grantees.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)

§ 381.5 What definitions apply?

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

Award
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether State, local or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether State, local or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities, organizations or government agencies (whether State, local or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is *individual advocacy*;

(2) More than one individual or a group or class of individuals, in which case it is *systems* (or *systemic*) *advocacy*; or

(3) Oneself, in which case it is *self advocacy. Eligible individual with a disability* means an individual—

(1) Who is ineligible for—

(i) The CAP under section 112 of the Act;

(ii) Protection and advocacy programs under part C of the DDA; and

(iii) Protection and advocacy programs under the PAIMI; or

(2) Who needs protection and advocacy services that are other than the services authorized under CAP.

Eligible system means a protection and advocacy system that is established under part C of the DDA, 42 U.S.C. 6041–6043, and that meets the requirements of § 381.10 of this part.

Mediation means the act or process of using a third party to act as sa mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator must not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other third party mutually agreed to by the parties to the dispute.

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association takes effect), except for purposes of the allotments under sections 509(b)–(e) of the Act, in which case State does not mean or include Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(Authority: Secs. 12 and 509 of the Act; 29 U.S.C. 711(c) and 794e)

Subpart B—How Does One Apply for an Award?

§ 381.10 What are the application requirements?

(a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will—

(1) Have in effect a system to protect, and advocate for, the rights of eligible individuals with disabilities;

(2) Have the same general authorities, including access to records and program income, as in part C of the DDA;

(3) Have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State;

(4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State, including individuals with disabilities who are exiting from public school programs;

(5) Develop a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities;

(6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including—

(i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and

(ii) The coordination of programs provided through eligible systems with the advocacy programs of the CAP under section 112, the State long-term care ombudsman program established under the Older Americans Act of 1965, part C of the DDA, and the PAIMI;

(7) Establish a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;

(8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided; and

(9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

(b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Secs. 12 and 509(f) of the Act; 29 U.S.C. 711(c) and 794e(f))

Subpart C—How Does the Secretary Make an Award?

§ 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000—

(a) The Secretary evaluates each application on the basis of the criteria in § 381.21;

(b) The Secretary awards up to 100 points for these criteria; and

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

(Authority: Secs. 12 and 509 (b) and (f) of the Act; 29 U.S.C. 711(c) and 794e (b) and (f))

§ 381.21 What selection criteria does the Secretary use?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the PAIR program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine the extent that the need for protection and advocacy services for eligible individuals with disabilities is justified in terms of complementing or expanding, but not duplicating, existing protection and advocacy or client assistance services.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the PAIR program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable;

(iv) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes; and

(v) Will ensure that the eligible system will provide information about the PAIR program to individuals with disabilities in the State, including individuals who may have limited knowledge about the PAIR program, without regard to race, color, national origin, gender, age, or disabling condition;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The extent to which the project involves individuals with disabilities in the development of the objectives and priorities of the project and will continue to involve individuals with disabilities in the implementation of the project;

(5) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(6) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

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

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable. (Cross-reference: 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment, and supplies.

(g) *Service comprehensiveness.* (20 points) The Secretary reviews each application for information that shows—

(1) The comprehensiveness of the protection and advocacy services to be provided by the eligible system, including evidence that the eligible system will use all available authority and alternatives (including the right to pursue legal, administrative, and other available remedies) to provide for the protection and advocacy of the rights of eligible individuals with disabilities within the State; and

(2) Evidence that the eligible system will provide protection and advocacy services to individuals with a broad range of disabilities without regard to race, color, national origin, gender, age, or disabling condition.

(h) *Coordination with other programs and systems.* (10 points)

(1) The Secretary reviews each application to determine that the agency designated to operate the PAIR program has demonstrated knowledge of the eligibility requirements and the range of

services provided by the following programs and will coordinate, as appropriate, with the advocacy programs of the—

(i) CAP under section 112 of the Act;

(ii) State long-term care ombudsman program established under the Older Americans Act of 1965;

(iii) DDA; and

(iv) PAIMI.

(2) The Secretary reviews each application to determine the extent of planned cooperative activities with relevant public and private agencies and organizations in the community, including local educational agencies, to address barriers that prevent eligible individuals with disabilities, including eligible individuals with disabilities from diverse populations, from obtaining services from those public and private agencies and organizations in the community.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 12 and 509 (b) and (f) of the Act; 29 U.S.C. 711(c) and 794e (b) and (f))

§ 381.22 How does the Secretary allocate funds under this program?

(a) In any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000—

(1) The Secretary sets aside not less than 1.8 percent but not more than 2.2 percent of the amount appropriated to provide training and technical assistance to eligible systems established under this program.

(2) After the reservation required by paragraph (a)(1) of this section, the Secretary makes allotments from the remainder of the amount appropriated in accordance with section 509(c)(2)-(e) of the Act.

(b) Notwithstanding any other provision of law, in any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000, the Secretary pays directly to an eligible system that submits an application that meets the requirements of § 381.10 the amount of the allotment to the State pursuant to section 509 of the Act, unless the State provides otherwise.

(Authority: Sec. 509(c)-(e) of the Act; 29 U.S.C. 794e(c)-(e))

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

§ 381.30 How are services to be administered?

(a) Each eligible system shall carry out the protection and advocacy program authorized under this part.

(b) An eligible system may not award a grant or subgrant to another entity to carry out, in whole or in part, the protection and advocacy program authorized under this part.

(c) An eligible system may contract with another agency, entity, or individual to carry out the PAIR program, in whole or in part, but only if—

(1) The agency, entity, or individual does not provide services under the Act or does not provide treatment, services, or habilitation to persons with disabilities; and

(2) Is independent of, and not connected financially or through a board of directors to, an entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities.

(d) For purposes of paragraph (c) of this section, "services under the Act" and "treatment, services, or habilitation" does not include client assistance services under CAP, protection and advocacy services authorized under the protection and advocacy programs under Part C of the DDA and the PAIMI, or any other protection and advocacy services.

(Authority: Secs. 12 and 509(i) of the Act; 29 U.S.C. 711(c) and 794e(i))

§ 381.31 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any eligible system under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The eligible system's use of information and records concerning individuals must be limited only to purposes directly connected with the protection and advocacy program, including program evaluation activities. Except as provided in paragraph (c) of this section, an eligible system may not disclose personal information about an individual, directly or indirectly, other than in the administration of the protection and advocacy program, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other authorized representative or advocate (including the individual's advocate from the designated agency), has been obtained in writing. An eligible system may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraph (d) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements must be given complete access to all—

(1) Records of the eligible system receiving funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d)(1) The privilege of a person or eligible system not to produce documents or provide information pursuant to paragraph (c) of this section is governed by the principles of common law as interpreted by the courts of the United States, except that, for purposes of any periodic audit, report, or evaluation of the performance of the eligible system established or assisted under this part, the Secretary does not require the eligible system to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the PAIR program.

(2) However, notwithstanding paragraph (d)(1) of this section, if an audit, monitoring review, State plan assurance review, evaluation, or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the eligible system has violated its legislative mandate or misused Federal funds, the eligible system shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the PAIR program, in accordance with the principles of common law as interpreted by the courts of the United States.

(Authority: Secs. 12 and 509(h) of the Act; 29 U.S.C. 711(c) and 794e(h))

§ 381.32 What are the reporting requirements?

Each eligible system shall provide to the Secretary, no later than 90 days after the end of each fiscal year, an annual report that includes information on the following:

(a) The types of services and activities undertaken by the eligible system and how these services and activities addressed the objectives and priorities developed pursuant to § 381.10(e).

(b) The total number of individuals, by race, color, national origin, gender, age, and disabling condition, who requested services from the eligible system and the total number of individuals, by race, color, national origin, gender, age, and disabling condition, who were served by the eligible system.

(c) The types of disabilities represented by individuals served by the eligible system.

(d) The types of issues being addressed on behalf of individuals served by the eligible system.

(e) Any other information that the Secretary may require. (Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 12(c), 13, and 509(l) of the Act; 29 U.S.C. 711(c), 712, and 794e(l))

§ 381.33 What are the requirements related to the use of funds provided under this part?

(a) Funds made available under this part must be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided under this part.

(b) The eligible system may not use more than five percent of any allotment for the costs of administration of the system supported under this part. For purposes of this paragraph, "costs of administration" include, but are not limited to, administrative salaries (including salaries for clerical and support staff), supplies, depreciation or use allowances, the cost of operating and maintaining facilities, equipment, and grounds (e.g., rental of office space or equipment, telephone, postage, maintenance agreements), and other similar types of costs that would be incurred by the eligible system to carry out programs other than the PAIR program.

(c) Funds paid to a State or an eligible system within a State for a fiscal year to carry out this program that are not expended or obligated prior to the end of that fiscal year remain available to the State or an eligible system within a State for obligation during the succeeding fiscal year in accordance with 34 CFR 76.705–76.707.

(d) For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 75.707 and 76.707, as appropriate, apply to this program. If the appropriation for the PAIR program is less than $5,500,000, § 75.707 applies. If the appropriation for the PAIR program is equal to or greater than $5,500,000, § 76.707 applies. An eligible system is considered a State for purposes of § 76.707. For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 76.707 applies to this program.

(Authority: Secs. 12 and 509(f),(g), and (j) of the Act; 29 U.S.C. 711(c) and 794e(f), (g), and (j))

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Chromium Emissions From Industrial Process Cooling Towers; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4689-6]

National Emission Standards for Hazardous Air Pollutants for Chromium Emissions From Industrial Process Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: Chromium compounds are among the 189 hazardous air pollutants listed for regulation under section 112 of the Clean Air Act as amended. Industrial process cooling towers (IPCT's) that use chromium-based water treatment programs have been identified by EPA as significant emitters of chromium compounds to the atmosphere. The IPCT source category is among the group of major source categories scheduled by statute for final rules by November 1994. The purpose of the proposed rule is to eliminate chromium compound emissions from IPCT's. The proposed standard implements a pollution prevention option, the elimination of chromium-based chemicals in new and existing industrial process cooling towers (IPCT's).

DATES: *Comments.* Comments must be received on or before October 12, 1993.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by September 1, 1993, a public hearing will be held on September 13, 1993, beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Mary Hinson at (919) 541-5601 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by September 1, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (A-131), Attention: Docket No. A-91-65, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Mary Hinson, Industrial Studies Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5601.

Background Information Document. The Background Information Document (BID) for the proposed standard may be obtained from the docket or from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Chromium Emissions from Industrial Process Cooling Towers—Background Information for Proposed Standards" (EPA-450/R-93-022).

Docket. Docket No. A-91-65, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. Phil Mulrine at (919) 541-5289, Industrial Studies Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows.

I. Initial List of Categories of Major and Area Sources
II. Background
III. NESHAP Decision Process
IV. Summary of Proposed Standard
V. Summary of Environmental, Energy, and Economic Impacts
VI. Rationale
VII. Administrative Requirements

I. Initial List of Categories of Major and Area Sources

Section 112 of the CAA, as amended November 1990, requires that EPA evaluate and control emissions of HAPs. The control of HAPs is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice standards under section 112(h) for categories of sources that emit HAPs. On July 16, 1992 (57 FR 31576), EPA published an initial list of major and area source categories to be regulated.

The source category for which standards are proposed today is the IPCT source category, which is in the proposed 4-year group of categories of major sources for promulgation of regulations (57 FR 44147). The IPCT source category consists of cooling towers that are used for cooling industrial or chemical processes alone or in combination with heating, ventilating, and air conditioning (HVAC) systems. Subcategorization of IPCT's by industry, size, process temperature, and makeup water quality was studied. However, this study revealed no justification for subcategorization of the IPCT source category for purposes of regulation.

The EPA's findings indicate that no individual IPCT emits 9.1 megagrams per year (Mg/yr) [10 tons per year (tons/yr)] of chromium compounds, and, therefore, no individual IPCT's are known to be major sources. However, the majority of IPCT's that are operated on chromium-based water treatment programs and emit chromium are integral parts of facilities that are major sources as defined in section 112(a)(1). Today's proposed standards would apply only to those IPCT's located at facilities that would qualify as major sources as defined in section 112(a)(1). The few IPCT's that would not be covered by these proposed standards will be considered for regulation as part of the area source strategy authorized under section 112(k). Of course, if any IPCT qualifies as a major source by itself, the standards proposed today would apply to that IPCT. Procedures by which owners or operators of sources can determine if the source is a major source are provided in section 2 of the General Provisions to part 63.

II. Background

A. Description of Cooling Tower Systems

Industrial process cooling towers typically are part of a system that uses recirculating water to cool process fluids that have become hot through contact with or participation in a manufacturing process. (A detailed description of IPCT design and operation can be found in the BID; see the **ADDRESSES** section of this preamble.) The role of the IPCT is to cool the water that is used in the system. In the IPCT system, the hot process fluids pass through one or more heat exchangers, which allow heat to be transferred from the process fluids to the water. The most common type of heat exchanger used in IPCT systems is the shell-and-tube heat exchanger constructed of carbon steel. In this type of heat exchanger, bundles of carbon steel tubes are placed inside a jacket or shell. The cooled water coming from the IPCT flows through the tubes, and the hot process fluids flow through the shell, outside the tubes.

Cooling towers cool the warm water by contacting it with ambient air. Major cooling tower components include the fans, fill material, water distribution

deck, drift eliminator, structural frame, and cold water basin. The warm water is pumped to the top of the IPCT and is distributed across the distribution deck where it flows through a series of nozzles onto the top of the fill material. Fill material is used in cooling towers to create as much water surface as possible and, thereby, to enhance evaporation and heat transfer. Fill material creates either a large number of water droplets (splash fill) or many thin vertical sheets of water (film fill). As the water flows down the fill material, it contacts air that is drawn or forced across the fill material by one or more fans at the top of the tower. A small percentage of the water evaporates, and the air is also heated. The warm, moist air then passes through the drift eliminator and exits the tower through the fan stack(s). The cooled water falls into a cold water basin, which typically is at the base of the IPCT. From there, the water in the cold water basin is pumped back to the heat exchangers served by the tower. In this manner, the cooling water is continuously recirculated through the system. The water flowrate through the system is referred to as the recirculation rate.

As evaporation occurs during cooling, the chemical constituents of the water become concentrated. A percentage of the recirculating water is intentionally discharged (blowdown) to limit the concentrations of suspended and dissolved solids to acceptable levels. Fresh water (makeup) is added to replace water lost due to evaporation, blowdown, and drift.

Water droplets that are carried by the airstream through the cooling tower and emitted into the air are referred to as "drift." Drift eliminators are installed between the outlet side of the fill sections and the fan stack to reduce the amount of drift from the tower. The efficiency of a drift eliminator is a function of its design. Standard-efficiency drift eliminators generally are designed for two air flow directional changes. High-efficiency drift eliminators (HEDE's) generally are designed for three airflow directional changes. In addition, HEDE's are designed so that the water that impacts the drift eliminator drains to the side of the drift eliminator and is less likely to become reentrained in the moving air. High-efficiency drift eliminators are estimated to achieve a 60 to 70 percent reduction in drift over standard-efficiency drift eliminators.

B. Cooling Water Treatment

High recirculating water temperatures, high concentrations of chemical constituents, and process leaks all contribute to maintenance problems in cooling tower systems. These problems include corrosion, scaling and fouling, and microbiological growth. The primary maintenance concern in most systems is corrosion of heat exchangers, piping, and other metal components.

Corrosion is the oxidation of a metal and occurs when anodic (positively charged) and cathodic (negatively charged) areas develop in the metal as a result of differences in electrical potential. Corrosion can be classified as either general corrosion or localized corrosion. General corrosion results when anodic and cathodic areas continuously change locations and the metal dissolves uniformly. Localized corrosion, or pitting, occurs when anodic sites in the metal remain stationary, and corrosion proceeds rapidly at localized points.

Scaling occurs when dissolved solids and gases precipitate out onto piping and heat exchanger surfaces. In most cooling tower systems, scaling increases with increasing temperature and pH. Fouling occurs when deposits of contaminants and insoluble compounds agglomerate in heat exchangers. Scaling and fouling reduce the water flow and heat transfer rate in cooling systems. In addition, scaling and fouling can lead to pitting by preventing corrosion inhibitors from contacting metal surfaces.

Microorganisms, including bacteria, fungi, and algae, commonly thrive in cooling tower systems. In addition to attacking wooden components of cooling towers, these microorganisms can lead to the formation of slime and debris in the cooling system, thereby reducing the efficiency of heat transfer and promoting localized corrosion.

Chemicals are added to the recirculating cooling water to inhibit the corrosive effects of the water, to control the rate of scaling and fouling, and to control the growth of microorganisms in both the cooling tower and the heat exchangers. Typical water treatment programs include corrosion inhibitors to retard corrosion, antiscalants or stabilizing polymers to control scaling, dispersants to control fouling, biocides to control microbial growth, and acid or caustic soda for pH control. The quality of the cooling tower water supply directly affects the type and quantity of chemicals required to maintain a satisfactory chemical treatment program.

Historically, chromium has been the most commonly used corrosion inhibitor in IPCT systems. Not only is chromium very effective in controlling corrosion, but the base cost of chromium chemicals alone is less expensive and requires less control of recirculating water parameters than do other types of corrosion inhibitors. Because chromium is so effective as a corrosion inhibitor, cooling tower systems using chromium can be operated at lower pH levels, which reduces the likelihood of scale formation. Also, chromium is very forgiving of short-term excursions in inhibitor concentration and water quality parameters because the chromium film protects heat exchanger surfaces for a longer period than do other corrosion inhibitors. Currently available formulations typically contain from 10 to 30 parts per million (ppm) as chromium.

Other types of commonly used corrosion inhibitors include organic and inorganic phosphate, zinc, and molybdate. These collectively are referred to as nonchromium corrosion inhibitors. Nonchromium-based water treatment programs generally include both cathodic and anodic inhibitors in addition to stabilizing polymers and other additives to control fouling, microbial growth, and pH. None of these compounds are listed as HAPs under section 112(b) of the CAA.

Because most nonchromium-based water treatment programs rely on the formation of an insoluble precipitate to protect metal surfaces, systems using nonchromium chemicals generally are operated at higher pH levels, which are more conducive to scaling, than are systems on chromium-based programs. In addition, nonchromium-based water treatment programs generally require tighter control of recirculating water quality parameters than do chromium-based programs. This control is achieved by closer monitoring of water quality parameters and the use of automated chemical feed equipment.

As part of recent information-gathering efforts on the IPCT source category, EPA investigated the feasibility of switching IPCT's on chromium-based water treatment programs to programs based on nonchromium chemicals. In almost all cases, the switch is a simple matter of allowing the concentration of chromium in the recirculating water to decline for a period of up to 2 to 3 days by stopping the addition of chromium chemicals to the cooling water and then adding the nonchromium chemicals to the cooling water. In IPCT's with wooden components, a residual chromium concentration can be detected in the cooling water for a period of up to several months following termination of the chromium water treatment program

as chromium leaches out of the wooden components.

C. Factors Affecting Cooling Tower Emissions

The rate of emissions, or drift rate, from a cooling tower is primarily a function of the air velocity through the fill material, the water recirculation rate, and the type of fill material and drift eliminator used. Emission rates increase with increasing air velocity and recirculation rate. Emission rates from towers equipped with splash fill generally are higher than emission rates from towers with film fill; emission rates from towers equipped with high-efficiency drift eliminators are 60 to 70 percent lower than emission rates from towers equipped with standard-efficiency drift eliminators. In addition, because the chemical composition of drift is generally the same as the chemical composition of the recirculating water, the emission rate of any constituent of the drift, such as chromium, is a function of the concentration of that constituent in the recirculating water.

D. Regulatory History

In the early 1980's, EPA initiated a review to examine the potential risks to public health from exposure to chromium in the ambient air because of the potential adverse health effects associated with hexavalent chromium (Cr^{+6}) exposure. As part of this review a comprehensive "Health Assessment Document for Chromium" (HAD) was prepared that summarizes the scientific literature on health effects of chromium and emphasizes the inhalation route of exposure. The HAD was reviewed at a public meeting of the Environmental Health Committee of EPA's Science Advisory Board (SAB) on November 1, 1983. The SAB concurred with the major findings of the HAD including the finding that there is sufficient evidence from the combined human and animal data to consider Cr^{+6} compounds to be carcinogenic (lung cancer) in humans. A final HAD was published in August 1984.

The HAD also included an estimate of the potency of Cr^{+6} compounds of 1.2×10^{-2}. This means that if a person were continuously exposed to 1 microgram of Cr^{+6} per cubic meter of air for 70 years, the probability of developing cancer is not likely to exceed 1.2 in 100. Under guidelines adopted by EPA in 1986 (51 FR 33992) for carcinogenic risk assessment, Cr^{+6} compounds are classified as Group A, meaning that they are classified as known human carcinogens because there is sufficient evidence to support a causal association between exposure to the agents and cancer. Currently, EPA has classified only four other HAPs with potencies higher than that for Cr^{+6} compounds, and only two of those are also classified as Group A.

On June 10, 1985, EPA published a notice of intent to list either total chromium or Cr^{+6} as a HAP under Section 112 of the CAA as amended 1977 (50 FR 24317). Following publication of this notice in the **Federal Register**, EPA conducted in-depth studies of the quantity of Cr^{+6} and total chromium being emitted, possible control techniques, and the possible cancer risk reduction those control techniques could achieve for various source categories. The findings of the studies indicated that cooling towers emitted Cr^{+6} in sufficient quantities to justify the need for developing a national emission standard.

After further investigations of different types of cooling towers, EPA determined that, for the purpose of developing emission standards, cooling towers should be classified into two source categories: Comfort cooling towers (CCT's) and IPCT's. The CCT source category includes cooling towers that exclusively serve and are an integral part of HVAC or refrigeration systems. Major users of CCT's include hospitals, educational facilities, office buildings, and retail shopping malls. In 1988, there were an estimated 250,000 CCT's nationwide, of which 37,000 were estimated to be using Cr^{+6}-based water treatment chemicals. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. Extensive data gathering between 1985 and 1987 indicated that at that time eight industries were significant users of chromium chemicals to control corrosion in IPCT systems. Nationwide, these industries represented about 8,600 IPCT's, of which approximately 2,800 were using Cr^{+6}-based water treatment chemicals at that time. Chromium-based water treatment programs currently are used in approximately 800 IPCT's.

Industrial process cooling tower systems differ from CCT systems in size, operating parameters such as cooling range and inlet water temperature, and heat exchanger construction materials. The higher temperatures in industrial processes promote more corrosion, and the most common IPCT heat exchanger material, carbon steel, is less resistant to corrosion than the copper used in heat exchangers in CCT systems. Thus, the Agency determined that it was appropriate to treat CCT's and IPCT's as separate source categories and develop separate standards.

In January 1990, a rule that prohibited Cr^{+6} compounds from use and sale as CCT water treatment chemicals was promulgated under section 6 of the Toxic Substances Control Act (TSCA) (55 FR 222). Comfort cooling towers were regulated under TSCA to simplify enforcement by targeting primarily water treatment chemical distributors, which numbered fewer than 200, instead of possible users, which numbered about 250,000. The CCT rule is based on the Administrator's determination that use of Cr^{+6} chemicals in CCT's presents an unreasonable risk of injury to human health and that substitute water treatment programs based on nonchromium chemicals are available and demonstrated.

Concurrent with the standards development under TSCA for CCT's, EPA conducted an intensive information-gathering effort specific to IPCT design and operation. In addition, an extensive testing program was conducted to characterize baseline and controlled emissions from IPCT's. The effectiveness and applicability of alternatives to chromium use in IPCT's under various process and operating parameters were also investigated. This data-gathering effort was guided by the CAA as amended in 1977, which authorized EPA to develop national emission standards for hazardous air pollutants (NESHAP) through a risk-based decision-making process. The 1990 CAA Amendments significantly changed the NESHAP decision-making process under section 112. For source categories that emit HAPs, section 112, as amended, requires EPA to develop technology-based standards that require the maximum degree of reduction in HAP emissions.

Unlike the CCT rule, which was promulgated under TSCA, the standard for IPCT's is being proposed under the CAA. In contrast to CCT's, IPCT's are located at industrial and manufacturing facilities, the vast majority of which qualify as major sources under the CAA. As a result, these facilities will be subject to permitting under title V of the CAA regardless of the authority used to establish regulations for IPCT's.

The current NESHAP decision process is described in detail in section III below.

III. NESHAP Decision Process

A. Source of Authority for NESHAP Development

Title III of the CAA Amendments of 1990 was enacted to help reduce the

increasing amount of nationwide air toxics emissions. Under title III, section 112 was amended to require EPA to establish national standards to reduce air toxics emissions from all major and some area sources that emit one or more HAPs. Section 112(b) contains a list of HAPs, which are the specific air toxics to be regulated by NESHAP. Section 112(c) directs EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list all known categories and subcategories of "major sources" (defined below) which emit one or more of the listed HAPs. Area source categories selected by EPA for NESHAP development will be based on the Administrator's judgment that the sources in a category, individually or in aggregate, pose a "threat of adverse effects to health or the environment," warranting regulation under section 112. The initial list of source categories was published on July 16, 1992 (57 FR 31576).

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112, as amended. The statute requires the standard to reflect the maximum degree of reduction in emissions of HAPs that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, and any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors (described below under paragraph C). The emission reduction may be accomplished through application of measures, processes, methods, systems or techniques including, but not limited to, measures which:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;
4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or
5. Are a combination of the above (section 112(d)(2)).

To develop a NESHAP, EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the costs and energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

If sources in the source category are major sources (emitting or having the potential to emit, considering controls, 9.1 Mg/yr (10 tons/yr) or greater of any one HAP or 22.7 Mg/yr (25 tons/yr) or greater of total HAPs), then a MACT standard is required. If emissions are not sufficient to qualify the source as "major," regulation is discretionary. However, under section 112(k) of the CAA, regulation of sources that do not qualify as major will be considered under the area source strategy. The level of control corresponding to the MACT floor needs to be determined as a starting point for developing the regulatory alternatives.

C. Categorization/Subcategorization: Determining Maximum Achievable Control Technology "Floors"

The Act directs the Administrator to list categories and subcategories of major sources and area sources which emit one or more of the HAPs listed in section 112(b).(CAA section 112(c)). The Administrator shall list all major sources which emit HAPs. The Administrator shall list those area source categories and subcategories which he finds present a threat of adverse effects to human health or the environment warranting regulation under section 112. Once EPA has identified the specific source categories or subcategories of major sources and area sources that it intends to regulate under section 112, it must set MACT standards for each and must set such standards at a level at least as stringent as the "floor," unless it regulates area sources under section 112(d)(5) as described below. Congress provides certain very specific directives to guide EPA in the process of determining the regulatory floor.

Congress specified that EPA shall establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable * * *" (CAA section 112(d)(2)). In addition, Congress limited the Agency's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (CAA section 112(d)(3)). Congress provided that existing source standards could be less stringent than new source standards but could be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources (excluding certain sources) for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources (CAA section 112(d)(3)).

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by *all* sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (CAA section 112(d)(1)). Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent, respectively, as the MACT floor for that class of sources.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected must be technically achievable. In selecting a regulatory alternative, the Agency considers the achievable reduction in emissions of HAPs (and possibly other pollutants that are co-controlled), the cost and economic impacts, energy impacts, and other health and environmental impacts. The objective is to achieve the maximum degree of emission reduction

without unreasonable economic or other impacts.

IV. Summary of Proposed Standard

A. Sources to be Regulated

The proposed standard would regulate emissions of chromium compounds from new and existing IPCT's. Cooling towers are devices that are used to remove heat from a cooling fluid, typically water, by contacting the fluid with ambient air. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. The IPCT source category also includes cooling towers that cool industrial processes in combination with HVAC systems. Standards to control chromium emissions from cooling towers that cool HVAC systems exclusively (CCT's) were promulgated on January 3, 1990, under section 6 of TSCA (55 FR 222).

B. Format of Proposed Standard

As authorized under section 112(h) of the CAA as amended, today's proposed standard is a work practice standard rather than an emission standard. There are no reference methods by which chromium emissions from IPCT's can be measured, and the methods commonly used to measure IPCT emissions are expensive and lack the precision necessary to quantify adequately emissions for compliance purposes. Owners and operators of IPCT's located at major sources (as defined in section 112(a), as amended) would be prohibited from operating IPCT's with chromium-based water treatment chemicals.

C. Demonstration of Compliance

Two reports required by the General Provisions to part 63 would be used to demonstrate compliance with the proposed standard. First, the initial notification required by § 63.9(b) requires a statement by the owner or operator concerning whether the source can or has complied with the standard. The initial notification is required within 45 days after the effective date of the standard for existing sources and within 15 days after the actual startup date for new or reconstructed sources. This initial notification will enable enforcement personnel to identify the population of IPCT's subject to the standard and, more specifically, to identify those IPCT's that are already in compliance.

Second, the owner or operator is required by § 63.9(h) to submit a notification of compliance status within 30 days after the compliance date. This notification must be signed by a responsible company official who certifies its accuracy and that the source has complied with the relevant standards. For the IPCT standard, the notification of compliance status would comprise a statement by the company official that no chromium water treatment chemicals had been purchased for use in IPCT's or used in any affected IPCT since the compliance date. Also, a statement regarding the mechanism by which continuing compliance would be assured (for example, the use of a nonchromium water treatment program) is required as part of the notification of compliance status.

The only recordkeeping and reporting requirements for the proposed standards would be those required under the General Provisions to part 63. The General Provisions require that all documentation supporting initial notifications and notification of compliance status be retained for at least 5 years. This requirement would cover invoices for water treatment chemical purchases made by owners or operators to demonstrate initial and continuing compliance with the proposed standard. These invoices would be required to be retained in a manner that enables enforcement personnel to easily identify which water treatment chemicals have been and are being used in a given IPCT. For those IPCT's that do not use water treatment chemicals (for example, an IPCT system constructed of a corrosion-resistant specialty metal), the owner or operator would be required to permanently retain a copy of the initial notification regarding the mechanism by which continuing compliance would be assured.

Owners and operators of existing IPCT's would be required to achieve compliance by 6 months after the promulgation date. Industrial process cooling towers, the construction or reconstruction of which commences after August 12, 1993, are considered new sources under section 112. Owners or operators of new IPCT's that have an initial startup before the date of promulgation are required to comply with the proposed standard not later than the promulgation date. Owners or operators of new IPCT's that have an initial startup after the date of promulgation are required to comply with the proposed standard upon startup of the IPCT's.

V. Summary of Environmental, Energy, Cost, and Economic Impacts

A. Facilities Affected by This NESHAP

Chromium-based water treatment programs currently are used by seven industries in approximately 800 IPCT's nationwide. Over 90 percent of these IPCT's are found in the petroleum refining, chemical manufacturing, and primary metals industries. Other industries that use chromium-based programs include tire and rubber production, tobacco production, textile finishing, and glass production. Based on projected growth rates, 870 new IPCT's in these industries are expected to go into operation by 1998 (the fifth year of the standard). This estimate assumes that all existing IPCT's are at capacity so that any growth in cooling capacity must be accommodated by newly constructed IPCT's.

In estimating the impacts of the proposed standard, it is assumed that in the absence of emission standards on IPCT's, chromium use in both existing and new IPCT's would continue at current levels. Based on this assumption, all existing IPCT's that use chromium-based water treatment programs and 10 percent (87) of the new IPCT's would be operated on chromium-based water treatment programs in the fifth year of the proposed standard.

B. Environmental Impacts

Air. The proposed standard prohibits the use of chromium-based water treatment programs in IPCT's. The total baseline Cr^{+6} emissions from all existing IPCT's are estimated to be 23 Mg/yr (25 tons/yr). The proposed standard would achieve a 100 percent reduction of Cr^{+6} emissions nationwide by eliminating all Cr^{+6} emissions from existing IPCT's. None of the nonchromium chemicals that are used as substitutes for chromium chemicals in cooling water are listed as HAPs under section 112(b) of the CAA.

The proposed standard would also prevent emission of 1.6 Mg/yr (1.8 tons/yr) of Cr^{+6} from the new IPCT's projected by 1998 (the fifth year of the standards). This estimate is based on the assumption that, in the absence of a standard, chromium use would remain at current levels [i.e., 10 percent (87) of new IPCT's would be placed on chromium-based programs].

In 1988, the EPA performed a risk assessment on the IPCT source category. Based on estimates of chromium emissions available at that time, the annual incidence of cancer cases attributed to this source category was estimated to be no more than 6 cases per year. Based on changes in chromium

use since 1988, this estimate has been revised to between 1 to 2 cases per year. This rule will result in reduced exposures to chromium emissions from IPCT's and consequently anticipated reductions in cancer incidence attributable to IPCT's. Assuming that reduction in cancer risk is directly proportional to emissions reduction, this rule would reduce annual cancer incidence by as much as 2 cases per year at an annual cost of approximately $14 million.

Substitute nonchromium-based treatment programs typically require higher levels of phosphates and polymeric dispersants than do chromium-based treatment programs. Nonchromium treatment programs may also contain molybdates. Thus, secondary emissions of these compounds would increase under the proposed standard. Total baseline emissions of phosphates for all existing IPCT's are estimated to be 104 Mg/yr (114 tons/yr). Under the proposed standard, phosphate emissions from existing IPCT's would increase by 46 Mg/yr (50 tons/yr) to approximately 150 Mg/yr (165 tons/yr).

Zinc, which is not a listed HAP, is a common corrosion inhibitor present in many cooling water treatment programs. Almost all current chromium programs contain zinc because the two metals act synergistically to inhibit corrosion. Nonchromium treatment programs may also contain zinc at levels similar to those in the chromium/zinc programs that they replace. As chromium/zinc treatments are replaced by nonchromium treatment programs, zinc emissions are not expected to change significantly.

Molybdate-based programs currently have a very small share (less than 1 percent) of the water treatment market. Although the market for molybdate programs is expected to grow modestly under the proposed standard, molybdate usage is expected to remain limited because these programs are more expensive than other treatment programs. Consequently, molybdate emissions are not expected to increase significantly.

Under the proposed standard, particulate matter (PM) emissions from existing IPCT's would not change from baseline levels of approximately 10,000 Mg/yr (11,000 tons/yr).

In the absence of the proposed standard, phosphate emissions from new sources in 1998 would be approximately 4 Mg/yr (4.4 tons/yr). Under the proposed standard, phosphate emissions from new IPCT's in the fifth year would increase to 5.8 Mg/yr (6.4 tons/yr), and total nationwide phosphate emissions for new and existing IPCT's in the fifth year of the standard would be 156 Mg/yr (172 tons/yr). There are no significant impacts associated with these increased phosphate emissions.

In the absence of the proposed standard, PM emissions from new sources in 1998 would be approximately 450 Mg/yr (500 tons/yr). Under the proposed standard, PM emissions would not be affected and PM emissions for new and existing IPCT's in the fifth year of the standard would be 10,450 Mg/yr (11,500 tons/yr).

Water

Blowdown from existing IPCT's is pretreated to remove Cr^{+6} before discharge. Any Cr^{+6} in IPCT blowdown that is treated would be handled as solid waste. The proposed standard would eliminate any accidental water discharges of Cr^{+6} from IPCT blowdown pretreatment.

Under the proposed standard, nationwide phosphate discharges from existing IPCT's would increase by as much as 830 Mg/yr (910 tons/yr), and new sources that would go into operation by 1998 would discharge an additional 610 Mg/yr (670 tons/yr). As a result, total phosphate discharges would increase from the baseline level of 7,700 Mg/yr (8,470 tons/yr) to 9,140 Mg/yr (10,050 tons/yr). In the absence of the proposed standard, new sources that would go into operation by 1998 would increase nationwide phosphate water discharges by 550 Mg/yr (610 tons/yr). As a result, total phosphate discharges would increase from the baseline of 7,700 Mg/yr (8,470 tons/yr) to 8,250 Mg/yr (9,075 tons/yr). These increases in phosphate discharges are extremely small in comparison to phosphate discharges from cropland and pastureland runoff. Consequently, there are no significant impacts associated with these increased phosphate discharges.

Nonchromium treatment programs contain levels of zinc similar to those in baseline chromium programs. Therefore, zinc discharges are not expected to increase under the proposed standard. Although data are limited, increases in the amount of molybdate discharged under the proposed standard are expected to be negligible.

Solid Waste

The only impacts of the proposed standard on solid waste would result from eliminating all Cr^{+6} in the solid waste from IPCT blowdown treatment processes. Disposal of all other forms of solid waste removed from IPCT blowdown would remain at current levels.

Blowdown from cooling towers may be treated to reduce the concentration of corrosion inhibitors (e.g., chromium, zinc, phosphates, and molybdenum). The concentration of these elements in the resulting sludge is likely to be higher than the concentration in the blowdown before treatment. Chromium-containing solid waste (i.e., the treatment sludge) is sometimes identified as a hazardous waste, EPA hazardous waste No. D007, under Resource Conservation and Recovery Act (RCRA) part 261 Subpart C—Characteristics of Hazardous Waste; it is considered a hazardous waste if its leachate by the Toxicity Characteristic Leaching Procedure contains greater than 5 milligrams per liter (mg/L) total chromium. Chromium-containing waste is also subject to the Land Disposal Restrictions in RCRA part 268, which allows land disposal only if the hazardous waste is treated in accordance with Subpart D—Treatment Standards. A concentration in the waste of 5 mg/L total chromium may not be exceeded to allow land disposal. Hazardous wastes also must be handled and stored according to specific RCRA procedures.

Baseline blowdown discharges are estimated to contain a maximum of 400 Mg/yr (440 tons/yr) of Cr^{+6}. Consequently, the proposed standard would eliminate solid waste disposal of a maximum of 400 Mg/yr (440 tons/yr) of Cr^{+6} by eliminating all Cr^{+6} from IPCT's. Zinc-, molybdenum-, and phosphate-containing wastes are not identified as hazardous wastes and, therefore, do not have the same solid waste disposal requirements as chromium-containing wastes. Under the proposed standard, the solid waste impacts due to zinc-, molybdenum-, and phosphate-containing wastes would be negligible.

C. Energy Impacts

The only energy impacts for the proposed standard over baseline would result from the energy required to operate the additional chemical feed and regulation equipment that is required for nonchromium-based water treatment programs. The nationwide energy impacts associated with the proposed standard are small.

Nonchromium-based water treatment programs typically require tighter control of chemical feed and recirculating water quality parameters. The components required for a basic chemical feed and regulation system include a pH controller, conductivity

controller, and metering chemical feed pumps.

For existing sources, a nationwide increase of up to 3,500 megawatt-hours per year (MWh/yr) (12,000 million British thermal units per year [Btu/yr]) would result from the use of additional automated instrumentation/controller equipment under the proposed standard. This represents an increase of approximately 0.01 percent of the energy required to operate these IPCT's. For new sources, a nationwide increase of up to 370 MWh/yr (1,300 million Btu/yr) would result under the proposed standard.

Typical baseline automated instrumentation/controllers for an IPCT consume approximately 1.5 MWh/yr (50 million Btu/yr). Energy consumption for instrumentation/controllers for a typical IPCT currently on a chromium-based water treatment program would increase to 4.4 MWh/yr (150 million Btu/yr) under the proposed standard.

D. Cost Impacts

Cost components of the nonchromium control measure include the increased cost of nonchromium chemicals over the cost for chromium chemicals and the cost to install, operate, and maintain automated chemical feed and regulation equipment. When properly controlled, nonchromium-based water treatment programs perform comparably to chromium-based programs. Therefore, it is assumed that corrosion rates, heat exchanger lifetimes, cleaning frequencies and costs, and other maintenance requirements are similar for both types of water treatment programs.

Nationwide annualized incremental cost for the proposed standard is $14 million. This corresponds to a projected increase of about 6 percent over the annualized costs to operate all IPCT's nationwide. Total annualized baseline costs for model towers range from $5,100 to $485,000, respectively, for model towers with recirculation rates of 1,000 gallons per minute (gal/min) to 105,000 gal/min. These costs include annualized capital costs for the cooling tower and baseline instrumentation/ controller equipment and annual operating costs for the instrumentation/ controller equipment and chromium-based water treatment chemicals.

To comply with the proposed standard, the total incremental annualized costs above baseline for model towers range from $4,270 to $144,000 for model towers with recirculation rates of 1,000 gal/min to 105,000 gal/min, respectively. These costs include the incremental annualized capital costs for additional instrumentation/ controller equipment and the incremental annual operating costs for the additional equipment and the nonchromium-based water treatment chemicals. The total nationwide increase in annual chemical costs to switch existing IPCT's on chromium-based treatment programs to nonchromium-based programs is $12.5 million. This corresponds to an increase of only 2.5 percent above the total nationwide annual cost of water treatment programs for all IPCT's and CCT's, which is about $500 million.

Under the proposed standard, the estimated nationwide annualized cost in 1998 of prohibiting new sources from using chromium treatment chemicals is $1.2 million. This corresponds to a projected increase of about 0.5 percent over the nationwide annualized costs in the absence of regulation.

E. Economic Impacts

Economic impacts were assessed by examining the effect of the elimination of chromium-based water treatment programs on the final end product prices for each affected industry. The results of this assessment indicate that there are no significant economic impacts on the industries to be affected by this regulation.

Typical price increases range from 0.001 percent to 0.04 percent for the affected industries. The industries that have the highest percentage of IPCT's using chromium corrosion inhibitors will bear higher control costs and experience greater economic impacts than relatively minor users of chromium chemical programs. The chemical manufacturing industry, a relatively major user of chromium, will bear the highest compliance cost and, therefore, is the industry that will experience the greatest economic impact with a typical price increase of 0.011 percent and a projected worst case scenario price increase of 0.33 percent. All other affected industries would experience maximum price increases less than those predicted for the chemical manufacturing industry.

The following criteria are used to determine what constitutes a significant adverse economic impact for small businesses:

(1) Annualized compliance costs increase total cost of production by more than 5 percent;

(2) Capital costs of compliance represent a significant portion of capital available to small entities,

(3) Requirements of the regulation are likely to result in closures of small entities; and

(4) Compliance costs as a percentage of sales for small plants are at least 10 percent higher than for large plants.

The proposed standard will not have any significant impacts on a substantial number of small entities since none of the above criteria are triggered by this regulation.

VI. Rationale

This section describes the decisions made by the Administrator to select the proposed standard.

A. Selection of Pollutant and Source Category To Be Regulated

In the early 1980's, EPA initiated a review to examine the potential risks to public health from exposure to chromium in the ambient air because of the potential adverse health effects associated with Cr^{+6} exposure. As part of this review a comprehensive HAD for chromium was prepared that summarizes the scientific literature on health effects of chromium and emphasizes the inhalation route of exposure. The HAD was reviewed at a public meeting of the Environmental Health Committee of EPA's SAB on November 1, 1983. The SAB concurred with the major findings of the HAD including the finding that there is sufficient evidence from the combined human and animal data to consider Cr^{+6} compounds to be carcinogenic (lung cancer) in humans, and the final HAD was published in August 1984.

On June 10, 1985, EPA published a notice of intent to list either total chromium or Cr^{+6} as a hazardous air pollutant under section 112 of the CAA (50 FR 24317). This notice presented a summary of the HAD findings and described the preliminary estimated risks from exposure to chromium air emissions. The notice indicated that EPA would decide whether to add either total chromium or Cr^{+6} to the list of hazardous air pollutants (HAPs) only after studying possible techniques that might be used to control emissions of chromium compounds and after assessing the public health risks to determine if Federal standards are warranted.

Title III of the 1990 Amendments modifies section 112 by listing 189 HAPs. Chromium compounds are included on the list of HAPs established in section 112(b) of the CAA as amended. Section 112(c)(1) requires the Administrator to publish a list of all categories and subcategories of major sources of the HAPs and such area sources as the Administrator determines warrant regulation. For the categories and subcategories the Administrator

lists, emission standards are to be established under section 112(d).

An initial list of source categories to be regulated was published on July 16, 1992. Industrial process cooling towers were included on that list.

Section 112(a) of the CAA Amendments defines a major source as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 9.1 Mg/yr (10 tons/yr) or more of any HAP or 22.7 Mg/yr (25 tons/yr) or more of any combination of HAPs. Based on EPA's findings, there are few, if any, IPCT's that qualify as stand-alone major sources. However, the majority of IPCT's that are operated on chromium-based water treatment programs are integral parts of facilities that are classified as major sources. Congress made clear in the legislative history of the 1990 CAA Amendments that all portions of a major source are subject to MACT even if, standing alone, individual portions of that source would not qualify as major [Senator Durenburger. Cong. Rec. S. 16927 (October 27, 1990)]. Only those IPCT's that are located at facilities classified as major sources (or are stand-alone major sources) would be regulated under the proposed standards.

Section 112(a) of the CAA as amended defines an area source as any stationary source of HAPs that is not a major source. Under section 112(c), EPA is required to list all categories and subcategories of area sources that, based on the threat of adverse effects to human health or the environment, warrant regulation under section 112. Industrial process cooling towers that are not integral parts of major sources will be considered for regulation as area sources under section 112(c) and would not be affected by the proposed standards.

B. Selection of Bases and Level for the Proposed Standard

The CAA requires EPA to set national emission standards for new and existing major sources based on MACT. For existing sources, the MACT "floor" is defined as the average level of emission control achieved by the best-performing 12 percent of sources in the category or subcategory excluding sources that achieve the lowest achievable emission rate (LAER). For categories or subcategories containing less than 30 sources, the floor shall be based on the average emission limitation achieved by the best performing five sources. Standards for existing sources must be at least as stringent as the MACT "floor" for the source category being regulated.

The most effective method for controlling chromium emissions from IPCT's is to substitute nonchromium-based water treatment chemicals for chromium-based water treatment chemicals or to otherwise eliminate the use of chromium chemicals in cooling water. By eliminating the use of chromium-based chemicals in cooling water, a 100 percent reduction in emissions of chromium from IPCT's can be achieved. The nonchromium chemicals that are used as substitutes for chromium chemicals in IPCT's are the same chemicals that are used in CCT's. None of these nonchromium chemicals are listed as HAPs under section 112(b) of the CAA, and the Administrator has determined that the health risk is less (and, in most cases, much less) from exposure to these nonchromium chemicals than to Cr^{+6}.

A number of nonchromium-based cooling water treatment programs are available for use in IPCT's, and among the industries that use chromium chemicals in IPCT's, nonchromium-based water treatment programs are used in at least 80 percent of the IPCT's. Furthermore, it is EPA's finding that nonchromium-based water treatment programs perform as effectively as chromium-based programs in controlling corrosion in IPCT systems. In addition, the environmental, energy, cost, and economic impacts of eliminating the use of chromium-based water treatment programs are not unreasonable.

Other alternatives that have been investigated for controlling chromium emissions from IPCT's include the use of low-chromium cooling water treatment programs, retrofitting IPCT's with HEDE's, and a combination of these measures. However, none of these control alternatives would completely eliminate chromium emissions from IPCT's, as would the elimination of chromium water treatment chemicals. In addition, use of these control alternatives is very limited and their use does not approach 12 percent of existing IPCT's. Therefore, the MACT "floor" for existing IPCT's has been determined to be the use of nonchromium cooling water treatment chemicals.

For new sources, the "floor" for MACT is defined as the average level of emission control achieved in practice by the best-controlled similar source. Because the use of nonchromium cooling water treatment chemicals allows for the total elimination of all emissions of chromium compounds from IPCT's, MACT for new IPCT's also has been determined to be the use of nonchromium cooling water treatment chemicals, where chemical use is practiced.

In establishing MACT standards, section 112(d) of the CAA Amendments of 1990 allows the Administrator to distinguish among classes, types, and sizes of sources within a category or subcategory. A number of possible subcategories of IPCT's have been investigated for the purpose of determining the need to establish alternate standards for IPCT's. The potential IPCT subcategories investigated include design, size, type of industry, operating temperatures, and quality of makeup water. However, EPA has determined that no such subcategorization of the IPCT source category is warranted.

Cooling tower designs can differ with respect to the source of air movement through the tower, fan location, direction of air flow across the fill material, type of fill material, type of drift eliminator, and stack configuration. However, there is no relationship between cooling tower design and the type, concentration, effectiveness, or cost of water treatment chemicals used in the cooling tower. Nonchromium water treatment programs work equally well in all designs of IPCT's. Therefore, design differences are not a basis for subcategorizing IPCT's.

Nonchromium-based water treatment programs are widely used in all sizes of IPCT's. Among the industries that use only IPCT's that are classified as small—those IPCT's with recirculation rates less than 19,000 liters per minute (L/min) [5,000 gallons per minute (gal/min)]—nonchromium-based programs are used in at least 90 percent of the facilities. Among industries that use medium to large IPCT's [greater than 19,000 L/min (5,000 gal/min)], nonchromium-based water treatment programs are used in at least 80 percent of the facilities. There is no indication that IPCT size limits the types of cooling water treatment program used or that the performance of the water treatment programs is affected by IPCT size. Therefore, subcategorization on the basis of IPCT size is not warranted.

Seven industries have been identified that use chromium-based water treatment programs. Nonchromium-based water treatment programs are used in at least 80 percent of all facilities in each of the seven industries. Therefore, there is no reason to subcategorize the IPCT source category based on type of industry.

Problems related to the type of cooling water treatment used are more likely to occur in IPCT systems that serve high-temperature processes, in systems in which poor quality makeup

water is used, or in systems that operate under both of these conditions. The potential for scaling of heat exchangers increases with increasing operating temperature, and a number of adverse effects are associated with the use of poor-quality makeup water. Using makeup water with high concentrations of suspended solids can lead to increased fouling, which restricts cooling water flow through heat exchangers and piping and promotes pitting of heat exchangers; high levels of hardness can result in increased scaling; and increased pitting of heat exchangers can result from high chloride concentrations.

In order to investigate the limitations of nonchromium-based water treatment programs under conditions of high operating temperatures and poor quality makeup water, EPA surveyed water treatment vendors, petroleum refineries, and chemical manufacturing plants. Petroleum refineries were surveyed because these facilities generally have greater diversity in IPCT size and in heat exchanger design, materials of construction, and operating conditions than do most facilities. The chemical manufacturers targeted for the survey included only facilities that produce chemicals, such as ethylene, propylene, ammonia, and others that require high process temperatures. In addition, many of the chemical plants and refineries surveyed use makeup water with relatively high concentrations of chloride, suspended solids, and hardness. The results of this investigation indicate that nonchromium-based water treatment programs are comparable to chromium-based programs in overall water program performance under all conditions. In addition, at least 80 percent of petroleum refineries and manufacturers of high-process-temperature chemicals currently use nonchromium-based cooling water treatment programs. On the basis of this investigation, there is no justification for subcategorizing the IPCT source category by operating temperature or makeup water quality.

C. Selection of Format of Proposed Standard

Section 112(d) of the CAA, as amended, requires the Administrator to promulgate emission standards for each category or subcategory of listed major and area sources. If, in the judgment of the Administrator, it is not feasible to prescribe or enforce emission standards, the Administrator may instead promulgate design, equipment, work practice, or operational standards, or a combination thereof. Section 112(h) defines two conditions under which it is not feasible to prescribe or to enforce emission standards:

(1) If the HAP cannot be emitted through a conveyance designed and constructed to emit or capture the HAP; or

(2) If the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

In developing the standard being proposed today, EPA conducted an extensive test program to attempt to quantify drift rates and chromium emissions from IPCT's. As a result of this effort, the Administrator has concluded that it is impractical to apply measurement methodology to IPCT's. There are no reference methods by which chromium emissions from IPCT's can be measured, and the methods commonly used to measure IPCT emissions are expensive and lack the precision necessary to adequately quantify emissions for compliance purposes.

The selected standard, therefore, consists of a proposed work standard which prohibits the use of chromium-based water treatment chemicals, in conjunction with recordkeeping requirements for purchases of water treatment chemicals.

D. Selection of Monitoring Requirements

The proposed standard consists of a work practice prohibiting the use of chromium-based water treatment chemicals. The EPA evaluated the utility of requiring periodic water sampling for the presence of chromium. However, this approach would be quite expensive, especially on a continuing basis. Although a relatively simple and inexpensive titrametric method can be used for measuring chromium concentration in water samples, this method is not accurate for samples in which the chromium concentration is less than 10 ppm. Because some chromium-based water treatment programs operate at chromium concentrations as low as 4 to 6 ppm, the titrametric method would not be sufficiently accurate for enforcement purposes. The only analysis technique available that would detect Cr^{+6} at a concentration low enough to be useful to enforcement personnel would be expensive. This technique, diphenyl carbazide derivatization, would require most sources to send water samples to a contract laboratory for analysis. According to representatives from a contract laboratory, current costs for these tests are approximately $350 per sample for a series of seven to eight samples, and only a few laboratories nationwide perform the necessary procedure. The cost per sample will probably be higher if the number of samples submitted from each source is less than seven to eight, if the overall number of samples submitted for testing to a laboratory increases, and if the number of available laboratories does not increase.

In addition, a residual chromium concentration can be detected in the cooling water of IPCT's with wooden components (the majority of IPCT's) for a period of up to several months following termination of a chromium-based water treatment program as the chromium leaches out of the wooden components. Thus, a water sample analysis that yielded a residual chromium concentration would not necessarily be indicative of continued use of chromium water treatment chemicals. For these reasons, EPA has decided that requiring routine water sample analysis for IPCT's is unnecessary and would not significantly enhance the ability of enforcement personnel to evaluate a source's compliance status. As described below in section VI.E, records of water treatment program purchases would be required of all affected sources. Enforcement personnel could, however, require water sample analysis on a case-by-case basis if they believe a source may be out of compliance.

E. Selection of Recordkeeping and Reporting Requirements

The only recordkeeping and reporting requirements for the proposed standard would be those required under the General Provisions to part 63.

Two reports required by the General Provisions to part 63 would be used to demonstrate compliance with the proposed standard. The first report, the initial notification required by § 63.9(b) would require a statement by the owner or operator concerning whether the source can or has complied with the standards. The initial notification is required within 45 days after the effective date of the standard for existing sources and within 15 days after the actual startup date for new sources. This initial notification will enable enforcement personnel to identify the population of IPCT's subject to the standard and, more specifically, to identify those IPCT's that are already in compliance through the use of nonchromium water treatment programs.

For the second report, the owner or operator is required by § 63.9(h) to submit a notification of compliance status within 30 days after the compliance date. This notification must

be signed by a responsible company official who certifies its accuracy and certifies that the source has complied with the relevant standard. For the IPCT standard, the notification of compliance status would comprise a statement by the company official that no chromium-based water treatment programs had been purchased or used in any affected IPCT since the compliance date.

Owners/operators of the source would be required to continue to maintain records of water treatment program purchases in order to demonstrate continuing compliance. A statement regarding the mechanism by which continuing compliance would be assured is required as part of the notification of compliance status. Recordkeeping of purchase invoices is probably already routine at many facilities with IPCT's; however, any additional burden associated with this recordkeeping would not be significant.

The General Provisions require that all documentation supporting initial notifications and notification of compliance status be retained for at least 5 years. This requirement would cover the water treatment program invoices owners or operators must retain to demonstrate initial and continuing compliance with the proposed standard. These invoices would be required to be retained in a manner that enables enforcement personnel to easily identify which water treatment programs have been and are being used in a given IPCT.

F. Operating Permit Program

Under title V of the CAA, all HAP-emitting major sources will be required to obtain an operating permit. Often times, emission limits, monitoring, and reporting and recordkeeping requirements are scattered among numerous provisions of State implementation plans (SIP's) or Federal regulations. As discussed in the final rule for the operating permit program published on July 21, 1992 (57 FR 32250), this new permit program would include in a single document all of the requirements that pertain to a single source. Once a State's permit program has been approved, each facility within that State must apply for and obtain an operating permit. If the State wherein the facility is located does not have an approved permitting program, the owner or operator of a facility must submit the application under the proposed General Provisions of 40 CFR part 63.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentation on the proposed standards for IPCT's should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–91–65.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)).

C. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The criteria set forth in Section 1 of the Order for determining whether a regulation is a major rule are as follows:

(1) Is likely to have an annual effect on the economy of $100 million or more;

(2) Is likely to cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governments; or

(3) Is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation is not major because it would result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be major. The industry-wide annualized costs in the fifth year after the standards would go into effect would be $85 million less than the $100 million established as the first criterion in the Order for a major regulation. The price increase associated with the proposed standards in any one industry is estimated to be 0.33 percent or less. These price increases would not be considered a "major increase in costs or prices" as specified in the second criterion of the Order. Finally, with respect to the third criterion of the Order, the economic analysis of the proposed standards effect on the affected industries did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of United States-based firms to compete with foreign-based firms.

The proposed regulation presented in this notice was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

D. Paperwork Reduction Act

The information collection requirements in this 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 document has been prepared by EPA (ICR No. 1625.01), 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. The public reporting burden for this collection of information is estimated to average 13 hours per response in the first year and 2 hours per response in subsequent years. This includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–

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.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines define an economic impact as significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

(4) Regulatory requirements are likely to result in closures of small entities. The results of an economic assessment indicated that compliance costs as a percentage of production costs or as a percentage of sales are both less than 5 percent. Also, capital availability will not be constrained because total control costs are relatively small and would not require extensive financing. Because capital availability is not a constraint, the standard is not likely to result in closure of small entities.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small business entities that would be affected is not significant.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technological issues.

This proposed regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 2, 1993.

Carol M. Browner,

Administrator.

It is proposed that 40 CFR part 63 be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. By adding a new subpart Q to read as follows:

Subpart Q—National Emission Standards for Hazardous Air Pollutants for Chromium Emissions From Industrial Process Cooling Towers

Sec.

63.400 Applicability.
63.401 Definitions.
63.402 Standard.
63.403 Compliance Date.
63.404 Monitoring requirements.
63.405 Recordkeeping requirements.
63.406 Reporting requirements.

Subpart Q—National Emission Standards for Hazardous Air Pollutants for Chromium Emissions From Industrial Process Cooling Towers

§ 63.400 Applicability.

(a) The provisions of this subpart apply to all new and existing industrial process cooling towers that are either major sources or are integral parts of facilities that are major sources as defined in section 112(a)(1) of the Clean Air Act, as amended November 15, 1990.

§ 63.401 Definitions.

Terms used in this subpart are defined in the Act, in Subpart A of this part, or in this section as follows:

Chromium-based water treatment chemicals means any combination of chemical substances containing chromium used to treat water.

Comfort cooling tower means cooling towers that are dedicated exclusively to and are an integral part of heating, ventilation, and air conditioning or refrigeration systems.

Cooling tower means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to cool warm water by direct contact.

Industrial process cooling tower, also written as "IPCT," means any cooling tower that is used to remove heat that is produced as an input or output of a chemical or industrial process(es), as well as any cooling tower that cools industrial processes in combination with any heating, ventilation, or air conditioning system. Any cooling tower which is not classified as a comfort cooling tower is classified as an industrial process cooling tower for purposes of this subpart.

Start of operation means the initiation of recirculation water flow within the cooling tower.

Water treatment chemicals means any combination of chemical substances used to treat water in cooling towers and can include corrosion inhibitors, antiscalants, dispersants and any other chemical substances.

§ 63.402 Standard.

No owner or operator of an IPCT shall use water treatment programs containing chromium or chromium compounds in any IPCT. No chemicals or treatment additives containing chromium compounds shall be introduced into IPCT's for the purpose of corrosion control, water conditioning, or for any other purpose.

§ 63.403 Compliance date.

The requirements of § 63.402 shall be applied on the following schedule:

(a) For existing IPCT's, the compliance date shall be 6 months after [date of publication of final rule].

(b) For those IPCT's, the construction or reconstruction of which commences on or after August 12, 1993, and have an initial startup before [the date of publication of the final rule], the compliance date shall be [the publication date of the final rule].

(c) For those IPCT's, the construction or reconstruction of which commences on or after August 12, 1993, and that have an initial startup after [the date of publication of the final rule], the compliance date shall be the date that the IPCT is placed into operation (the initiation of recirculation water flow).

§ 63.404 Monitoring requirements.

No routine monitoring, sampling, or analysis is required. In accordance with

section 114 of the Act, the Administrator or delegated authority can require water sample analysis of an IPCT if there is information to indicate that the IPCT is not in compliance with the requirements of § 63.402. Water sample analysis shall be conducted in accordance with Reference Method 7196, "Hexavalent Chromium, Colorimetric," SW 846.

§ 63.405 Recordkeeping requirements.

(a) To demonstrate continuing compliance with § 63.402, the owner or operator of each IPCT shall:

(1) Maintain records of water treatment chemical purchases, including invoices and other documentation that includes date(s) of purchase or shipment, trade name or other information to identify composition of the product, and quantity of the product; or

(2) If no water treatment chemicals are used, maintain a copy of the most recent notification of compliance status submitted in accordance with § 63.9(h)[1].

(b) For facilities that have more than one IPCT located at the same source, records for bulk orders of water treatment chemicals do not need to individually identify the treated IPCT's, provided that records for all the affected IPCT's are retained in the same file location.

(c) For those IPCT's that meet the status requirements of § 63.403, the owner or operator shall:

(1) Document and maintain the inventory of water treatment chemicals containing chromium or chromium compounds in existence at the facility as of the effective date in § 63.403; and

(2) Document the disposition or use of those chemicals.

(d) Any existing Federal, State or other regulatory recordkeeping/reporting requirements which the owner or operator already performs and that specify and document quantity, composition, and ultimate use or disposition will be adequate to meet the above inventory requirement.

§ 63.406 Reporting requirements.

(a) *Initial notification of compliance.* (1) Owners or operators of existing IPCT's and IPCT's, construction or reconstruction of which commenced prior to August 12, 1993, shall submit to the Administrator a statement as required by § 63.9(b)(2) indicating whether the IPCT can comply or has complied with the requirements of § 63.402.

(2) Owners or operators of IPCT's, construction or reconstruction of which commences on or after August 12, 1993, shall submit the initial notification in accordance with § 63.9(b)(3) or § 63.9(b)(4). If such an IPCT is constructed at an existing source, the initial notification shall be submitted within 15 days of the start of operation of the IPCT.

(b) *Compliance status report.* (1) In accordance with § 63.9(h), the owner or operator shall submit to the Administrator a notification of compliance status within 30 days after the initial compliance date and annually thereafter, as required by § 70.6(c) of this chapter.

(2) The compliance status report must:

(i) Be signed by a responsible company official who also certifies the accuracy of the report; and

(ii) Certify whether or not the source has complied with the standard in § 63.402, and, if applicable, an explanation of noncompliance; and

(iii) Include a statement of the mechanism by which the owner or operator will obtain or assure continuing compliance.

[1] The EPA plans to propose regulations for subpart A in the future.

[FR Doc. 93–19001 Filed 8–11–93; 8:45 am]
BILLING CODE 6560–50–P

federal register

Thursday
August 12, 1993

Part IV

Environmental Protection Agency

40 CFR Part 69

Special Exemptions From Requirements of the Clear Air Act for the Territory of Guam; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[FRL-4679-5]

Special Exemptions From Requirements of the Clean Air Act for the Territory of Guam

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rulemaking.

SUMMARY: On October 19, 1992, the Governor of Guam sent to the EPA a petition for a waiver ("Petition") from certain requirements of the Clean Air Act ("CAA"). The Petition was submitted pursuant to section 325(a) of the CAA. On March 12, 1993, the EPA proposed to partially and conditionally approve the Petition. After meeting with and considering comments submitted by the Guam Power Authority ("GPA") and the United States Navy ("USN"), the EPA has made modifications to the proposed waiver and is promulgating a final waiver in this rulemaking action.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Norman Lovelace, Chief, Office of Pacific Islands and Native American Programs (E-4), Office of External Affairs, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744-1599.

SUPPLEMENTARY INFORMATION:

Background

By submitting the Petition, the Governor of Guam seeks to have a class of sources, electric generating units, exempted from certain requirements of the CAA. As stated by the Governor in the Petition's cover letter, the Petition is being submitted because "the Territory of Guam is in the midst of a severe energy emergency." Due to a shortage of electric generating capacity, the GPA has instituted periodic, scheduled, and rotating electrical blackouts across the Island of Guam. These blackouts are negatively affecting the provision of drinking water, the treatment of sewage, and vehicle traffic controls.

On March 12, 1993, the EPA proposed to partially and conditionally approve the Petition and published a proposed waiver. 58 FR 13579. On April 7, 1993, the EPA met with the GPA and the USN regarding the EPA's proposed waiver and rulemaking action. The minutes of this meeting have been made part of the rulemaking docket. In a letter dated April 12, 1993, the GPA and the USN submitted comments on the proposed waiver and rulemaking. The EPA has considered the comments submitted in writing and made orally at the April 7 meeting. In this final rulemaking, the EPA has responded to the comments, below, and made modifications to the proposed waiver.

Comments and Responses

Comment 1: The Guam Power Authority ("GPA") and the United States Navy ("USN") seek clarification of the scope of the proposed waiver. Specifically, the GPA and the USN understand, but seek confirmation that:

(1) The units known as the Tenjo Project, Cabras Diesel No. 1, and the Orote Project may commence construction prior to the issuance of a Prevention of Significant Deterioration ("PSD") permit (re: proposed 40 CFR 69.11(a)(1)); and

(2) The waiver of nonattainment requirements contained in proposed 40 CFR 69.11(a)(2) and the waiver allowing the use of intermittent control strategies ("ICS") contained in proposed 40 CFR 69.11(a)(3) applies to the three units covered by proposed 40 CFR 69.11(a)(1) as well as future electric power generating units at the Cabras and Piti power plants.

Response 1: The GPA's and the USN's understanding of the scope of the proposed waiver is not completely correct. Under the terms of the proposed waiver, the Tenjo, Cabras Diesel No. 1 and Orote Projects may commence construction (but not operation) prior to the issuance of a PSD permit for the facilities. The waiver of three nonattainment area requirements (construction ban, lowest achievable emissions rate, and emission offsets) applies to all major sources in the Cabras-Piti nonattainment area, including Cabras Diesel #1 and future electrical generation sources in the area. However, the waiver allowing the use of ICS, as governed by a revised protocol, is applicable to the existing Cabras and Piti Power plants and to the future units known as Cabras Diesels Nos. 1 and 2.

Comment 2: The EPA does not have the authority to terminate a waiver once effected through the rulemaking process and to retroactively enforce the underlying requirements of the Clean Air Act. Termination or modification of a waiver must be accomplished through rulemaking.

Response 2: We disagree with the GPA's and the USN's analysis of the EPA's ability to grant a waiver with terms and conditions that make the waiver automatically self-terminating.

The case cited in the comment, *American Methyl Corp.* v. *E.P.A.*, 749 F.2d 826 (4th Cir. 1984), is not relevant to this situation. In *American Methyl Corp.*, the waiver did not include terms and conditions which could trigger self-termination of the waiver. In such a situation, the Court of Appeals held that termination of the waiver could be accomplished only through a rulemaking action.

It is our position that the EPA has the legal authority to include in waivers such terms and conditions as the EPA determines are necessary to protect the integrity of both the environment and the regulatory process. This includes, in our view, provisions which make a waiver self-terminating. In such a situation, the self-termination of a waiver would neither be nor require a rulemaking action. Rather, the self-termination would be an integral aspect of the original waiver.

While the EPA has the legal authority to create a self-terminating waiver, the EPA has concluded that such a provision is not required in the waiver being granted to Guam. Instead, waiver provisions will create liability for violations of the conditions and requirements set forth in the waiver. For some violations, i.e., operating certain electric generating units prior to issuance of a PSD permit by the EPA, liability would be retroactive.

Comment 3: The GPA and the USN believe that a showing can be made that meteorological data collected by the National Weather Service will be adequate for PSD analysis rather than a full year of data at the meteorological station at Cabras-Piti area. The provision of the proposed rule (proposed 40 CFR 69.11(a)(1)(ii)) stating the EPA will not issue a PSD permit until one year of data from the Cabras-Piti station is submitted should be modified to enable the GPA or the USN to make the above showing to the satisfaction of the EPA.

Response 3: We agree that the waiver should be flexible enough to allow consideration of alternate meteorological data. Proposed 40 CFR 69.11(a)(1)(ii) has been modified accordingly. However, the new waiver provision granting the flexibility to consider this alternate data explicitly states that the discretion to accept or reject such data lies with the EPA.

Comment 4: The GPA and the USN wish to work with the EPA to complete revisions to the Cabras-Piti Area ICS (re: proposed 40 CFR 69.11(a)(3)(i)) and request that a technical meeting be held to discuss various technical issues.

Response 4: The GPA and the EPA have consulted and the revisions to the Cabras-Piti Area ICS are completed.

Comment 5: The GPA and the USN request that: (1) The analysis for best available control technology ("BACT")

determinations will refer to the date of commencement of construction rather than the issuance of the permit for the facilities affected by proposed 40 CFR 69.11(a) (1) and (2) preliminary BACT determinations be completed as soon as possible. The GPA and the USN are concerned that if any significant technology developments occur between the time construction begins and the permit is issued the cost and delay of retrofitting could be prohibitive.

Response 5: EPA makes final BACT determinations after making and publishing a preliminary determination and after there has been an opportunity for public comment and review. EPA cannot agree to considering as final BACT only those technologies available at the time of commencement of construction of each unit. EPA will endeavor to make preliminary BACT determinations as soon as possible. As a practical matter, we do not anticipate any major developments in control technologies for the affected electric generating units within the relatively short time frames anticipated to initiate and complete the PSD process. No change to the proposed rule is needed to address this comment.

Comment 6: The GPA and the USN note that ambient air quality monitoring is a difficult and expensive proposition on Guam and that the monitoring program required in proposed 40 CFR 69.11(a)(2)(iii) should be cognizant of this. The GPA and the USN wish to work with the EPA to design a monitoring program that is appropriate.

Response 6: The EPA is aware of the logistical and economic difficulties in maintaining air monitoring equipment on Guam. We welcome the opportunity to continue consulting with the GPA and the USN on the design of a monitoring program that is appropriate and sufficient. Based upon our initial assessment we estimate that 3–6 monitoring stations may be needed.

Comment 7: The proposed waiver uses the terms "exceedences" and "violations" of the National Ambient Air Quality Standard ("NAAQS") as though they are interchangeable. Clarification is requested.

Response 7: The terms cited were intended to refer to the exceedences of the primary NAAQS for sulfur dioxide as it is set forth in 40 CFR 50.4. For the 24-hour standard, this includes that the maximum concentration not be exceeded more than once per year. The waiver has been modified to clarify this point.

Comment 8: The GPA and the USN seek clarification on whether the EPA will consider data from the meteorological station required by proposed 40 CFR 69.11(a)(2) (i) and (ii) as "on-site" data for purposes of PSD permitting for the facilities known as Cabras Diesels Nos. 1 and 2, Tenjo, Orote, and Piti MILCON.

Response 8: Data from the Cabras-Piti meteorological station will be considered as on-site data for Cabras Diesels Nos. 1 and 2 and the Piti MILCON facilities. With respect to the Tenjo and Orote facilities, the EPA will consider a proposal from the GPA and the USN to utilize data from the Cabras-Piti meteorological station for PSD permitting purposes. The EPA suggests that a proposal be submitted as soon as possible.

Comment 9: The GPA and the USN seek clarification regarding the requirements stated in proposed 40 CFR 69.11(a)(2) (vi) through (viii).

Response 9: These provisions are triggered if the EPA determines that a violation of the primary NAAQS for sulfur dioxide has occurred or will likely occur. The sequence of events is:

1. The EPA notifies the GPA and the USN that a violation of the primary NAAQS has occurred or will likely occur (proposed 40 CFR 69.11(a)(2)(vi)).

2. Within 6 months of receiving such notification, the GPA and the USN will submit a plan which includes a schedule of emission reductions necessary to achieve the primary NAAQS within one year of plan approval (proposed 40 CFR 69.11(a)(2)(vii)). The final rule has been modified to clarify that the plan must be submitted to both the Guam EPA and EPA rather than just the Guam EPA.

3. Upon approval of the plan by EPA, the GPA and the USN will implement the plan (proposed 40 CFR 69.11(a)(2)(viii)).

The waiver would remain in effect during the preparation, approval and implementation of the plan.

Regulatory Process

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

This rulemaking will apply only to large sources of air emissions used to generate electrical power on Guam. These sources of electrical power will be constructed, owned, and operated by the GPA and/or the USN. Neither of these organizations is a small entity. Therefore, this rulemaking will not impact small entities.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget ("OMB") waived Table 2 and Table 3 rulemaking actions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 rulemaking actions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 69

Air pollution control.

Dated: August 2, 1993.

Carol Browner,

Administrator.

Part 69 of chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 is revised to read as follows:

Authority: Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

Subpart A—Guam

2. Section 69.11 is amended by adding text to reads as follows:

§ 69.11 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act ("CAA") and a petition submitted by the Governor of Guam ("Petition"), the Administrator of the Environmental Protection Agency ("EPA") conditionally exempts electric generating units on Guam from certain CAA requirements.

(1) A waiver of the requirement to obtain a prevention of significant deterioration ("PSD") permit prior to construction is granted for the electric generating units identified in the Petition as Cabras Diesel No. 1, the Tenjo project, and three 6-megawatt diesel generators to be constructed at Orote, with the following conditions:

(i) Each electric generating unit shall not be operated until a final PSD permit is issued for that unit;

(ii) Each electric generating unit shall not be operated until that unit complies with all requirements of its PSD permit, including, if necessary, retrofitting with the best available control technology ("BACT");

(iii) The PSD application for each electric generating unit shall be deemed complete without the submittal of the required one year of on-site meteorological data, however, EPA will not issue a PSD permit to such a unit prior to submission of such data or data which the EPA finds to be an equivalent and acceptable substitute; and

(iv) If any electric generating unit covered by this paragraph is operated either prior to the issuance of a final PSD permit or without BACT equipment, that electric generating unit shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of that unit.

(2) A waiver of the three nonattainment area requirements (a construction ban, the use of lowest achievable emission rate control equipment, and emission offset requirements) currently applicable to the Cabras-Piti area is granted for electric generating units with the following conditions:

(i) A tower and meteorological station shall be constructed in the Cabras-Piti area by May 1, 1993;

(ii) Meteorological data shall be collected from the Cabras-Piti station which is sufficient to run air quality models both to demonstrate no current exceedences of the primary national ambient air quality standard for sulfur dioxide ("sulfur dioxide NAAQS"), as set forth at 40 CFR 50.4, and sufficient to submit a complete request for redesignation of the area to attainment;

(iii) Ambient sulfur dioxide monitors shall be installed and operated in accordance with the procedures set forth at 40 CFR part 58, the PSD air monitoring requirements, and any additional monitoring requested by EPA to verify the efficacy of the intermittent control strategy ("ICS") of fuel switching;

(iv) Within three years from the effective date of this waiver, the Governor of Guam shall submit to the EPA a complete request that the Cabras-Piti area be redesignated to attainment for the sulfur dioxide NAAQS;

(v) Electric generating units to be constructed in the Cabras-Piti area must submit applications for PSD permits as though the area had been redesignated to attainment for the sulfur dioxide NAAQS;

(vi) The Cabras-Piti area electric generating units shall comply with the fuel switching ICS described in paragraph (a)(3)(i) of this section;

(vii) If the collected data and air quality analysis does not demonstrate to the EPA's satisfaction that there are no current or likely future exceedences of the sulfur dioxide NAAQS, the EPA will so notify the Governor of Guam;

(viii) Within six months of such notification, the Governor of Guam shall submit to the EPA an implementation plan which includes a schedule of emission reductions and/or control measures that will ensure achievement of the sulfur dioxide NAAQS within one year of submission of the implementation plan; and

(ix) If the Governor of Guam fails to submit an implementation plan in a timely fashion, or if EPA disapproves that implementation plan, all electric generating units subject to the fuel switching ICS described in paragraph (a)(3)(i) of this section shall be fueled exclusively with low sulfur fuel.

(3) A waiver of the prohibition on the use of the ICS of fuel switching is granted for electric generating units with the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be the one set forth in a separate EPA document entitled Cabras-Piti Area Intermittent Control Strategy; and

(ii) This protocol may be modified by the EPA to protect against exceedences of the sulfur dioxide NAAQS and to accommodate additional electric generating units.

(b) The waiver will be periodically reviewed (at intervals no longer than three years) and, as deemed appropriate by the Administrator, can be modified or terminated at any time through rulemaking procedures.

[FR Doc. 93–18977 Filed 8–11–93; 8:45 am]
BILLING CODE 6560–60–P

federal register

Thursday
August 12, 1993

Part V

Federal Election Commission

11 CFR Parts 107, et al.
Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 107, 114, and 9008

[Notice 1993—18]

Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed revisions to its regulations governing publicly financed Presidential nominating conventions. These regulations implement the Federal Election Campaign Act of 1971, as amended, and the Presidential Election Campaign Fund Act. The proposed changes would reorganize these rules and make them more consistent with the rules governing other publicly financed committees. Please note that the draft rules which follow do not represent a final decision by the Commission on the issues presented in this rulemaking.

DATES: Comments must be received on or before September 17, 1993.

ADDRESSES: Comments must be in writing and should be sent to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463. All comments received will be available for public inspection in the Commission's Public Records Office, 999 E Street NW., Washington, DC from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comments on proposed revisions to its regulations at 11 CFR part 107, § 114.1 and part 9008, which concern the public financing of Presidential nominating conventions. The Commission previously sought comments on the convention regulations by publishing a Notice of Proposed Rulemaking (NPRM) on August 22, 1990. See Notice of Proposed Rulemaking, 55 FR 34267 (Aug. 22, 1990). Written comments were received from the Republican National Committee and the Democratic National Committee in response to the Notice. Subsequently, the Commission decided to table further action on that rulemaking until after the 1992 conventions has been held. See Suspension of Rulemaking, 56 FR 14319 (Apr. 9, 1991). Accordingly, the Commission is now seeking additional comments on the proposed changes to the convention regulations outlined below. While some of these changes are newly proposed, most of them were included in the draft regulations the Commission previously considered.

Part 107—Presidential Nominating Convention, Registration and Reports

There would be no substantive changes in this part. However, it would be reorganized so that reporting by convention committees is covered in section 107.1, and host committee reporting is addressed in section 107.2.

Part 114—Corporate and Labor Organization Activity

Section 114.1 Definitions

In section 114.1(a)(2)(viii), the citations to the convention rules would be amended to correspond to the proposed reorganization of 11 CFR part 9008.

Part 9008—Federal Financing of Presidential Nominating Conventions

The Commission proposes revising and reorganizing its rules governing public financing of Presidential nominating conventions to address several issues that have arisen, and to make the convention regulations more consistent with the rules applying to publicly financed Presidential campaign committees. The reorganization of 11 CFR part 9008 would separate the rules concerning convention committees from those addressing host committee and local government activity. Thus, subpart A of part 9008 would cover only convention committees and subpart B would contain the rules regarding host committees and local government activity.

Subpart A—Expenditures by National Committees and Convention Committees

Under the reorganization of part 9008, subpart A would set forth the rules relating to convention committees set up by the national party committees to make arrangements for the party's presidential nominating convention. Within subpart A, the sequence of sections 9008.1 through 9008.12 would be reordered to follow the progression of convention activity from registration through use of funds and sources of contributions to, finally, audits and repayments. New sections 9008.13 through 9008.16 would be added to follow similar provisions for publicly financed Presidential candidates.

Section 9008.1 Scope

Proposed section 9008.1 would continue to explain the scope of the convention rules found in 11 CFR Part 9008. However, the provisions in current section 9008.1(b) regarding reporting by host committees, government agencies and local municipalities would be deleted because they duplicate portions of proposed section 9008.51.

Section 9008.2 Definitions

This section would generally follow current 11 CFR 9008.2.

Section 9008.3 Eligibility for Payments; Registration and Reporting

Proposed section 9008.3(a) would set forth the eligibility requirements for receiving public financing, which are currently located in 11 CFR 9008.8(b). Paragraph (a) of section 9008.3(a) would also reflect several changes in the agreements convention committees must submit as a condition of eligibility to receive public funding. First, the requirement in current section 9008.8(b)(2)(iv) that convention committees agree to establish a separate account for handling private contributions would be eliminated. If a convention committee were to accept private funds, either due to a decision not to accept its full entitlement of federal funds or due to a deficiency in the Presidential Election Campaign Fund, the draft rules provide the option of either setting up a separate account or depositing private contributions with payments received from the Fund. See, proposed section 9008.6(a)(3). This approach is consistent with the rules governing Presidential candidates who accept public financing for the general election. Second, language would be added to paragraph (a)(4)(v) of section 9008.3 to indicate that the convention committee shall agree to provide copies of contracts with its vendors, and documentation regarding reductions, discounts, and items received in exchange for promotional consideration. Both current section 9008.8(b) and proposed section 9008.3(a)(4) require convention committees to provide the Commission with copies of their contracts with host committees and convention cities, upon request. Comments are sought on whether convention committees should be required to attach these contracts to their regularly filed reports, to enhance public disclosure. Finally, a new provision would be added at section 9008.3(a)(4)(vii) requiring convention committees to agree to comply with the relevant provisions of title 2, United States Code, and the Commission's regulations implementing those provisions. This new condition would parallel the candidate agreements for

publicly financed primary and general election Presidential candidates.

Proposed section 9008.3(b) would set forth the registration and reporting requirements for convention committees now found in 11 CFR 9008.12(b). The suggested revisions would delete language in current section 9008.12(b)(1)(ii) which indicates that other committees and organizations representing political parties in making convention arrangements must register and report as political committees. This language is not necessary because these entities are already clearly subject to the registration and reporting requirements of the FECA. The reporting requirements would also be revised to track the reporting dates for political committees filing quarterly reports under Title 2. See, 11 CFR 104.5. In addition, the Commission is now proposing to require that all convention committees file their first quarterly report following either the quarter in which they receive their first payment from the Fund or when they begin receiving funds or making disbursements for convention activity, whichever is earlier. Under the current rules, these committees are able to obtain loans and begin making convention-related disbursements long before they receive their first public financing payment, but none of this activity need be disclosed until three months after that payment is received. Earlier disclosure would provide a more contemporaneous picture of convention committee activity and may also ease the burden of filing a comprehensive first report covering as much as a year's disbursements. When this change was previously suggested, one commenter indicated that it already files reports for the first quarter after beginning to make disbursements for the convention.

Section 9008.4 Entitlement to Payments From the Fund

Section 9008.4 would be reorganized so that paragraphs (a) and (b) incorporate the rules now found in section 9008.3 concerning entitlements to payments from the Fund. Paragraph (c) of section 9008.4 would contain the provisions concerning limitation on payments, which are presently located at 11 CFR 9008.5.

Section 9008.5 Adjustment of Entitlements

The provisions entitled "Adjustment of entitlement" would be moved to section 9008.5 from current section 9008.4.

Section 9008.6 Payment and Certification Procedures

Section 9008.6, "Payment and certification procedures", would be moved from 11 CFR 9008.8 of the present rules. In addition, paragraph (a)(2) would be revised by combining the rules for major and minor parties on when they may accepted private contributions for convention expenses, and by addressing the possibility of a deficiency in the Fund. Unless there is a deficiency in the Fund, or the national committee does not accept all the public financing to which it is entitled, outright cash contributions cannot be accepted because they would cause the convention committee to exceed its spending limits. The Commission notes that under new section 116.5, payments by committee staff for convention expenses are treated as advances, and therefore contributions until reimbursed. Thus, the question has arisen as to the maximum amount a convention committee can accept in staff advances if it provides reimbursement and accepts full public funding. Given that the convention committee is established by the national committee, and is therefore affiliated with the national committee, it would share the national committee's $20,000 contribution limit. Comments are sought on including in the convention regulations language to this effect.

As noted in the earlier discussion of section 9008.3, paragraph (a)(3) of 11 CFR 9008.6 would offer convention committees the choice of setting up a separate account for private contributions or depositing them in the account used for payments from the Fund. This approach would parallel that provided for publicly financed general election candidates in 11 CFR 9005.2(c). Thus, convention committees' accounts must be maintained at depository institutions insured by the Federal Deposit Insurance Corporation. The 1979 amendments to the FECA also permitted political committees to establish campaign depositories at institutions insured by the National Credit Union Administration. However, the Commission has not made this option available to Presidential candidates or convention committees choosing to receive public funding because credit unions do not return canceled checks, thus preventing committees from providing adequate documentation for disbursements drawn upon credit union accounts. See, *e.g.*, 11 CFR 9005.2(c). In the version of paragraph (a)(3) which follows, the references to accounts insured by the Federal Savings and Loan Insurance Corporation would be deleted because these accounts are now insured by the Federal Deposit Insurance Corporation.

Please note that this section would continue to permit the receipt of federal funds either in one lump sum or in a series of payments if the committee so requests.

Section 9008.7 Uses of Funds

With some minor changes for clarity, section 9008.7, "Use of funds," would current 11 CFR 9008.6.

The prior NPRM sought comments on whether a revision to this section is warranted to clarify the distinction between items which are convention expenses and must be defrayed with public funds (and count against the convention committee's expenditure limit) and expenses which are related to ongoing business of the national committee and are not properly paid for with public funds. Given that the convention not only serves as the vehicle for nominating the party's Presidential candidate, but also provides an opportunity to conduct ongoing party business, the line between convention expenses and party expenses can be a fine one. However, the Commission has encountered instances in which the national committee has sought to pay for expenses that are clearly convention-related, particularly if the convention is close to the expenditure limit. The Commission also wishes to ensure that public funds are used solely for running the nominating convention, and not for expenses related to party business.

One option suggested in the earlier NPRM was the creation of a presumption that expenses are convention-related if they are incurred by the convention committee or national committee around the time of the convention or within the convention city's locale. The presumption was suggested as a method for providing committees with clearer guidance, given the broad definition of "convention expenses" and the open-ended list of examples in the regulations. However, both commenters opposed the creation of such a presumption, citing situations where they believed it could improperly result in the use of federal funds for party business.

The Commission has not included such a presumption in the proposed convention regulations. Instead, the language in the current and proposed rules clearly indicates which types of expenses are convention-related and thus subject to the convention spending limits. Proposed section 9008.7 would also follow current section 9008.6 by setting out the general principle that

convention expenses include all expenses incurred by or on behalf of the national party committee or the convention committee with respect to, and for the purpose of conducting, the convention or convention-related activity. This would include all national committee activity in the convention city except for events clearly separate from the convention, such as fundraising events for the party committees, and meetings of the national committee outside the convention. At this point, additional comments are sought on whether to amend the list of permissible convention expenses to exclude part or all of the salary and travel costs for those whose primary role is to conduct ongoing party business while at the convention. In particular, the Commission welcomes comments on how to allocate salary and travel costs for those who may split their time between party business and convention-related duties.

Another issue concerns the sources of funds used to pay civil or criminal penalties. Both current section 9008.6(b)(3) and proposed section 9008.7(b)(3) indicate that such funds are subject to the prohibitions of 11 CFR 110.4 and parts 114 and 115. Comments are sought as to whether these funds should also be subject to the contribution limits set forth in 11 CFR part 110.

Section 9008.8 Limitation of Expenditures

Proposed section 9008.8 would generally follow current section 9008.7 by setting out the expenditure limits for convention committees and an explanation of the categories exempted from application to that limit. Current section 9008.7 has been a source of some confusion because it sets forth the rules pertaining to activities by state and local governments and host committees in addition to explaining the expenditure limits for convention committees. Therefore, as part of the reorganization of part 9008, the substantive provisions governing contributions to and expenditures by host committees and local governments would be moved to proposed sections 9008.52 and 9008.53 in new subpart B.

In addition, the Commission seeks comments on revised language in section 9008.8(b)(4)(ii) clarifying the current policy that payments made by the national committee for legal and accounting expenses count against the convention spending limits if these expenses are incurred in connection with the convention or convention-related activities. As an alternative, comments are welcome on exempting payments by the national party committee for legal and accounting expenses solely for complying with the FECA and the Fund Act, provided that such funds are raised in accordance with the limits and prohibitions of the Act. Under this alternative, such amounts would be reported, and need not be placed in a separate account.

New language would also be included in paragraph (b) of section 9008.8 to clarify that expenditures by government agencies and municipal corporations, or by host committees, will not count against the convention committee's expenditure limit if the funds are spent in accordance with the provisions of proposed sections 9008.52 and 9008.53. On the other hand, host committee expenditures for convention functions other than the purposes spelled out in sections 9008.52 and 9008.53 would count against the convention committee's spending limits. However, comments are requested as to whether it would be preferable to handle such situations through enforcement actions under 2 U.S.C. 437g. The Commission is also interested in comments on how to address situations where a host committee receives contributions from impermissible sources, such as nonlocal businesses, which are then used to defray convention expenses or for other permissible purposes. In some cases, it may be appropriate to count these amounts against the convention committee's spending limits, although there may be situations where enforcement actions are warranted.

New paragraph (b)(5) would be added to section 9008.8 to indicate that the costs of complying with the technical requirements for submission of computerized records are not treated as convention committee expenditures, and therefore, are not subject to the expenditure limits set out in section 9008.8. This was suggested by one of the comments on the new computerized information provisions found in section 9008.10(h).

Section 9008.9 Receipt of In-Kind Donations From Businesses

Proposed section 9008.9 would specify the circumstances under which convention committees and those attending the convention may accept in-kind donations from businesses, and is based on current section 9008.7(c). During the last two convention cycles, several questions have arisen concerning the application of these provisions.

One question involved the Commission's ability to determine when a retail business is offering its standard reduction or discount to the convention committee under this section. Consequently, new paragraph (a)(1)(ii) would be added to explain the documentation that must be provided to the convention commitee to demonstrate that a reduction or discount, such as volume discount on hotel rooms, is within the vendor's ordinary course of business. Although one commenter argued that these documentation requirements were burdensome and impractical, the other comment urged the Commission to adopt section 9008.9(a) with one modification concerning a different issue. The Commission believes that the documentation provisions of this section are needed to ensure that in-kind donations are only made consistently with the provisions of the Act. The proposed rules which follow would differ from the previously proposed rules, however, in several respects. First, the vendor's documentation would have to describe what is provided and the terms of the reduction or discount. Under the proposed revisions, the documentation must include an affirmation signed by the vendor. If needed, the Commission may seek additional information regarding the basis for the vendor's statement. In addition, vendors who do not have established practices of offering such discounts would be able to offer reductions or discounts that are consistent with established practices in their trade or industry. Comments are sought on whether certain types of retail businesses, possibly including restaurants, should be excluded from these documentation requirements, and if so, which types. The Commission also requests comments on whether retail businesses providing less than a certain dollar amount of goods and services, or providing less than a certain percentage discount should also be exempt from the documentation requirements. If so, what amount or percentage would be an appropriate cutoff for such an exemption?

A second issue relates to the practice of offering free items to the convention, such as pianos or cars. Proposed paragraph (a)(2) of section 9008.9 would follow the Commission's decision in Advisory Opinion 1988–25 by permitting businesses to provide products and services at no charge if they submit a signed statement which affirms, among other things, that it is in the ordinary course of that vendor's business to provide products or services in an equivalent amount and on similar terms, such as in return for recognition as an "official provider" of such

products or services, to non-political groups or events. Although the Commission's previous NPRM proposed incorporating in the regulations the conclusion reached in Advisory Opinion 1988–25, comments were also sought on whether the approach taken in that advisory opinion should be adopted, or whether it should be modified to require that products or services be provided at no less than the vendor's cost, notwithstanding the fact that the same business provides items at no charge to non-political clients. *Compare* AO 1975–1. Both of the commenters opposed changing the result of AO 1988–25 in this manner. One comment maintained that businesses should be able to supply their products if there is a commercial purpose and the terms are similar to those provided to nonpolitical entities. Similarly, the other commenter argued that businesses should be able to take advantage of the unique promotional opportunities presented if they normally provide such services or items for nonpolitical events, and if the value provided and commercial benefit are proportionate. As indicated above, at this time the Commission does not intend to modify the conclusion reached in Advisory Opinion 1988–25. However, the proposed language in section 9008.9(a)(2) would seek to clarify the documentation needed to demonstrate that the transaction is in the ordinary course of business. Comments are also sought as to whether to establish exemptions for certain types of official providers, or those that provide products or services of less than a specified dollar amount. If so, which types of official providers should be excluded, and what amount would be appropriate?

Another issue raised by the prior NPRM was whether convention committees should be required to report their receipt of in-kind donations from businesses, including a statement of what was provided and its value. The single comment on this question opposed such reporting obligations because these donations are exempt from the prohibitions on corporate contributions and the spending limits. The proposed rules which follow do not include such language, but additional comments are welcome on this idea.

This rulemaking also presents a related issue concerning the terminology used in different portions of the convention regulations to describe the kinds of businesses that may donate funds or make in-kind donations. For example, "retail businesses" may provide reductions or discounts to convention committees. See current 11 CFR 9008.7(c)(1). "Local businesses" may donate promotional items of nominal value to convention attendees, and may donate funds and in-kind contributions to host committees to promote the convention city and its commerce. See current 11 CFR 9008.7(c)(2) and (d)(2). "Local retail businesses" may donate funds to the host committee to be used to defray convention expenses. See current 11 CFR 9008.7(d)(3). Finally, under AO 1988–25, businesses of any type may seek official provider status, which would enable them to provide certain items for promotional consideration.

The first NPRM questioned whether the same term should be used in each section, or whether a basis exists for these distinctions. In particular, the Commission has considered whether to require that all businesses qualify as "local" to ensure that their goal in offering goods and services is commercial rather than political. In Advisory Opinion 1975–1, the Commission recognized two situations which would not violate 18 U.S.C. 610 (the predecessor to 2 U.S.C. 441b): volume discounts on goods or services purchased by the convention committee and donations to a group organized to promote the convention city. The rationale underlying these exceptions was that they reflected a commercial, rather than political, purpose by the business so involved.

One comment urged the Commission to apply these provisions to all businesses on the grounds that the criteria for "local" and "retail" are confusing and that these distinctions do not further the Commission's objectives. The other comment believed the Commission should retain the approach adopted in the current rules and Advisory Opinion 1988–25, while taking into account legitimate commercial interests of franchisees, branches and dealers affiliated with national corporations.

The Commission is now proposing to retain the current distinctions between activities that may be conducted by retail businesses, local businesses, local retail businesses, and businesses that are official providers. Retail businesses throughout the nation may have strong commercial motivations for using discounts and reductions to attract the conventions as customers. Similarly, many types of businesses, regardless of whether or not they qualify as local or retail, may have sound business reasons for becoming official providers, since convention proceedings reach a national audience. In contrast, donations to promote the convention city and its commerce, as well as donations of promotional items of nominal value to convention attendees are more clearly of commercial value to local businesses. Following the suggestion of one commenter, the revised proposals include new language to clarify when businesses are considered "retail" and when they qualify as "local." The new language is also intended to distinguish retail businesses from wholesale businesses. Retail businesses would consist of those businesses (including franchisees) whose customers are the general public or other end users of their goods or services. Local businesses would include branches of national or regional chains, as well as franchisees and licensed dealers. Finally, references in the attached rules to "Metropolitan Area" (MA) would be changed from "Metropolitan Statistical Area" (MSA). This change would conform to the Office of Management and Budget's adoption of "Metropolitan Area" as a more general term. See, **Federal Register** Notice, 55 FR 12154 (March 30, 1990).

Section 9008.10 Documentation of Disbursements; Net Outstanding Convention Expenses

Under the current regulations at 11 CFR 9008.8(b)(4)(v), committees must include in the convention committee agreement all the documentation requirements for proving that expenses are convention-related. The proposed revisions to these rules would follow the format of the regulations for publicly financed Presidential candidates by only stating in the convention committee agreement that the committee agrees to comply with the documentation requirements (see attached section 9008.3(a)(4)(iv)), and by setting forth the actual documentation provisions in a separate section. Thus, section 9008.10 would contain the substantive rules regarding the production of evidence of convention expenses. In addition, section 9008.10 would be redrafted to conform to the documentation requirements for publicly financed candidates. See, 11 CFR 9003.5 and 9033.11. For example, the term "particulars" would be changed to "purpose of the disbursement". Also, the language in section 9008.10(a)(4) regarding documentation of disbursements would be modified to indicate that pre-established written committee policies may include daily travel expense policies, but do not include general per diem policies which cover a longer time period or which include a broader range of expenses. This change is consistent with the approach the Commission took in revising the primary and general

election rules. See, 11 CFR 9003.5(b)(1)(iv) and 9033.11(b)(1)(iv).

The Commission is considering adding three new paragraphs to section 9008.10. New paragraph (f) would clarify that convention committees must retain records regarding their disbursements and receipts and present them for Commission review. The records retained by the committee should also reflect its compliance with 11 CFR 104.14. Paragraph (g) would require convention committees to provide a statement of net outstanding convention expenses by October 15th of the election year, which would correspond to the filing date for third quarter reports. The statement would be updated as of six months after the last day of the convention, which is also the date for the interim repayment of unspent funds under current 11 CFR 9008.10(e)(2). This proposal would parallel the current requirements for publicly financed Presidential candidates. See, 11 CFR 9003.5(d), 9004.9, 9033.11(d) and 9034.5. Such statements are intended to enable the audit process to be completed more expeditiously.

Finally, proposed paragraph (h) would apply the Compatible Magnetic Media Requirements ("CMMR") to publicly financed convention committees. The purpose of the CMMR is to establish uniform standards for producing computerized records maintained by publicly financed committees at the time of the Commission's audit. New rules applying the CMMR to publicly financed Presidential candidates became effective on October 3, 1990. See 55 FR 40377 (Oct 3, 1990); see also, 57 FR 4453 (Feb. 5, 1992) (updating the requirements and broadening certain technical standards). During that rulemaking, the Commission noted its intention to include parallel requirements in the convention regulations. See Explanation and Justification, 55 FR 26392 (June 27, 1990). The basic rationale and explanation offered in the June 27, 1990 Explanation and Justification apply equally to convention committees. The categories of computerized records sought from convention committees would be fewer, however, in view of the convention's narrower focus.

Both comments were opposed to these proposals, due to the perceived financial costs associated with altering their existing accounting systems and converting their data to a new format. Given that the Commission has not encountered problems in the past with computerized records maintained and used by the national parties' convention committees, few if any, changes should be necessitated under the CMMR. As noted in the previous discussion of section 9008.8, the costs of complying with the CMMR would not be expenditures by the convention committees, and would not be subject to the national committees' spending limits for the convention.

Section 9008.11 Examination and Audits

Section 9008.11 would contain the provisions on examination and audits which are currently found at 11 CFR 9008.9. Also included would be a new sentence signaling the Commission's intention to follow the same procedures during audits of convention committees as it now does when auditing the committees of publicly financed Presidential candidates.

The Commission would also delete from the convention rules current section 9008.11(e), regarding judicial review of Commission repayment determinations. Although several judicial review provisions are found in the Commission's enabling statutes, the Commission no longer includes references to those provisions in its regulations because any issues arising from a request for such review are issues for resolution by the courts.

Section 9008.12 Repayments

Proposed section 9008.12 would contain repayment rules which generally follow the format of the regulations governing repayment determinations for publicly financed Presidential candidates. See 11 CFR 9007.2 and 9038.2. Section 9008.12 would also include the bases for Commission repayment determinations, currently found in 11 CFR 9008.10, and an expanded version of the repayment determination procedures set out in 11 CFR 9008.11. These changes would apply the same procedures and offer the same opportunities to convention committees as are provided for publicly financed candidates during the repayment process. In addition, paragraph (b)(5)(ii) would specify a 30 day time period for making an interim repayment of unspent funds after the convention has ended.

Section 9008.13 Additional Audits

The Commission's authority to conduct other audits or investigations of a committee in an appropriate case would be set forth in new section 9008.13. It would follow similar provisions for publicly financed Presidential candidates.

Section 9008.14 Petitions for Rehearing; Stays of Repayment Determinations

New section 9008.14 would permit convention committees to file a petition for rehearing after the Commission's final repayment determination, and would also set forth the procedures for seeking a Commission stay of its repayment determination pending appeal. This section would generally follow 11 CFR 9007.5 and 9038.5.

Section 9008.15 Extensions of Time

Section 9008.15 would govern committee requests for extensions of time under part 9008. This new provision would conform to the Commission's established policies concerning extensions of time. See 11 CFR 9007.3 and 9038.4.

Section 9008.16 Stale-Dated Committee Checks

Section 9008.16 would be added to provide procedures for handling stale-dated committee checks, and is based on similar provisions applicable to Presidential candidates accepting public funding.

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

This subpart would be created to separate the rules governing host committees, government agencies and local municipalities from the regulations on publicly financed convention committees. As explained below, it would include portions of previous sections 9008.1, 9008.7, 9008.9 and 9008.12.

Section 9008.50 Scope

This new scope section would alert host committees, government agencies and municipalities to the registration and reporting requirements, and would generally describe the areas covered by proposed subpart B. It would follow current section 9008.1(b) by indicating that the reporting requirements do not apply to unsuccessful efforts to attract a convention.

Section 9008.51 Registration and Reports

Paragraphs (a) and (b) of draft section 9008.51 would contain the rules governing host committee registration and reporting found at current 11 CFR 9008.12(a). There would be several revisions to the reporting provisions, however. First, the requirement to file host committee reports would begin in the first quarter of the presidential

election year, rather than with the post-convention report. It has been the Commission's experience under the current system that the host committees' post-convention reports often cover more than a year of convention-related activity. Earlier disclosure and shorter coverage periods may make filing easier for committees and may provide more timely information regarding the convention process. Second, the deadline for filing quarterly reports would be changed to correspond to the filing deadline for quarterly reports filed under title 2. The time for filing the first quarterly report after the post-convention report would also be clarified to specify coverage of the calendar quarter following the period covered by the post-convention report. Finally, host committees would be required to itemize their receipts and disbursements to the extent required by 11 CFR part 104.

The previous NPRM sought comments regarding a possible additional reporting requirement, which is included in the attached draft of section 9008.51(c). This section would implement 2 U.S.C. 437(1), which requires reporting by committees or organizations representing "a State or political subdivision thereof, or any group of persons, in dealing with officials of a national political party" on matters relating to a national nominating convention to be held in that State or political subdivision. This statutory language can be read to require reporting by an entity established by a state or local government, other than a host committee, to receive funds and make disbursements for a convention in that locality, although in the past these entities have not had to register and report. Consequently, the Commission's previous NPRM proposed specific disclosure requirements for municipalities and other government agencies providing services and facilities to a national nominating convention. Expenditures by these entities are largely for the same purposes as those permitted by the regulations for host committees, although the requirements regarding raising funds differ to some extent. See, *e.g.*, proposed section 9008.53. In addition, Advisory Opinions 1982–27 and 1983–29 permit the acceptance of private donations by these entities to defray convention expenses. See discussion of 11 CFR 9008.53(a)(2). For these reasons, the Commission continues to believe that reporting by these entities will serve an important disclosure function.

Both commenters on the first NPRM argued against new reporting rules, and suggested instead that municipalities file copies of written contracts between the national committees and the cities they select. The Commission is continuing to consider whether to require municipalities to file reports which include copies of these contracts. Although this approach would result in public disclosure of amounts specified in the contracts, it would fail to publicly disclose actual disbursements or the sources of the funds spent. Accordingly, the Commission is also considering additional reporting provisions in light of the increased role municipalities have played in recent conventions. The reporting proposals described below have been scaled back so that meaningful disclosure may be accomplished with as little burden on municipalities as possible.

Under proposed section 9008.51(c), municipal corporations and government agencies would be required to file two statements with the Commission describing their general categories of convention-related activity. Within 10 days after the city is selected as the convention site, the municipality or other agency would have to file a letter listing the kinds of facilities and services it intends to provide to the convention, estimating the cost of providing such facilities and services, and stating whether it will use general revenues or funds donated to a separate account to pay for these activities. After the convention, the municipality would submit a second letter reporting the actual totals spent for each general category of activities provided on behalf of the convention. The proposed rules would also include a list of broad categories of expenses, to assist municipalities in providing the general information needed. Additional comments are sought as to whether convention cities should also be required to disclose the sources of any contributions they receive. In preparing these proposed new reporting requirements, the Commission is seeking to ensure that adequate public disclosure is accomplished without imposing unduly burdensome requirements on municipalities and other governmental entities.

Section 9008.52 Contributions to and Expenditures by Host Committees To Promote Convention City

Receipts and disbursements by the host committee to promote the convention city and its commerce would be addressed in section 9008.52. These provisions are currently located at 11 CFR 9008.7(d)(1) and (2). The explanation of the term "local business" would follow the changes made in section 9008.9(b). Revised language would also be included to clarify that banks do not qualify as local businesses under this section.

Section 9008.53 Expenditures for Convention Facilities and Services by Government Agencies, Municipal Corporations and Host Committees

Proposed new section 9008.53 would combine the rules on receipts and disbursements for convention expenses by both host committees and local municipal corporations and government agencies. Since the scope of permissible convention expenses is the same for these groups, the Commission is considering treating them together to avoid the need for cross-referencing. These provisions are currently set forth in sections 9008.7 (b)(1), (b)(2) and (d)(3).

The Commission sought comment on proposed language in paragraph (a)(2) intended to incorporate the conclusions reached in Advisory Opinions 1982–27 and 1983–29. Under these advisory opinions, convention cities were permitted to establish a municipal fund to receive donations and make disbursements in connection with a nominating convention, provided certain conditions were met. First, the fund must have been created to attract conventions and other events to the locality on a broad scale, and cannot be established for the sole purpose of providing services and facilities to the nominating convention. Second, donations to the fund must be unrestricted and may not be designated for any particular use, including the nominating convention. Previously proposed paragraph (a)(2) would have also required that the creation of such a fund be necessitated by a prohibition under local law against the use of general tax revenue for these purposes. One commenter objected to this requirement on the grounds that it would be inconsistent with Advisory Opinion 1983–29. The Commission agrees with the comment. Consequently, the attached proposed rules would not include a requirement restricting the creation of such municipal funds to situations where local law prohibits using tax revenues for convention purposes.

Attached paragraph (b) of new section 9008.53 would also contain several revisions to the rules governing contributions and expenditures to defray certain convention expenses. First, new language would be added to recognize that host committees may accept in-kind donations such as reductions and discounts, as well as items provided in exchange for official

provider status, subject to the requirements of section 9008.9. Second, new section 9008.53(b) would clarify that banks do not qualify as local retail businesses under this section. All bank loans must meet the requirements of 11 CFR 100.7(b)(11). This paragraph would also indicate that the standards in section 9008.9(a)(1) shall be used to determine retail business status for purposes of section 9008.53. Finally, while local municipal corporations and government agencies may donate funds to host committees for convention expenses, they would no longer be subject to the requirement that the amount of the donation be proportionate to the commercial return reasonably expected during the life of the convention. As municipal corporations and government agencies may defray these expenses on their own, without limit, the Commission believes it may be unnecessary to impose a limit on donations by these groups to host committees for the same purpose. In addition, it has been difficult to determine what would be a proportionate return for these entities. However, this requirement would still apply to donations by local businesses. One of the previous public comments objected to applying this criterion to donations from businesses, particularly if the commercial return is measured only during the life of the convention. However, to date this criterion does not appear to have presented difficulties for local businesses, and it has been an essential element of the limited scope of activities first approved in Advisory Opinions 1975–1 and 1975–47, and subsequently incorporated into the current convention regulations. Comments are also sought as to whether the phrase "proportionate to the commercial return reasonably expected" should be further explained in the regulations. For example, the rules could indicate that a dollar for dollar return during the life of the convention is not expected. In the alternative, the Commission would welcome suggestions as to a more appropriate descriptive term.

Section 9008.54 Examination and Audit

Proposed new section 9008.54 sets out the basic rule regarding Commission audits of host committees, which is currently set forth at 11 CFR 9008.9. Consistent with the proposed changes applicable to convention committees, section 9008.54 would include a sentence indicating the Commission's intention to follow the same procedures during audits of host committees that it uses when auditing committees of publicly financed Presidential candidates. In the case of host committees, however, the Commission does not make any repayment calculations because host committees do not receive public funds.

Additional Issues

Recently, questions have arisen as to whether Title VI of the Civil Rights Act of 1964 is applicable to the selection of delegates to the federally funded national nominating conventions. Under Title VI, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in , be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 U.S.C. 2000d. Recently, the U.S. District Court for the District of Columbia ordered the Commission to promulgate rules under Title VI governing the selection and allocation of delegates to the federally-funded nominating conventions. *Freedom Republicans Inc., et al.,* v. *Federal Election Commission,* 788 F. Supp. 600, 601 (D.D.C. 1992). This case is currently pending on appeal before the D.C. Circuit. See *Freedom Republicans Inc., et al.,* v. *Federal Election Commission,* No. 92–5214 (D.C. Cir.). Consequently, the possible promulgation of such regulations must await the decision of the Court of Appeals. Nevertheless, in the interim, the Commission welcomes public comments on what impact, if any, Title VI may have on federally-funded national nominating conventions.

The Commission welcomes comments on the proposed revisions to the convention regulations and the issues presented in this Notice.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these rules.

List of Subjects

11 CFR Part 107

Political committees and parties, Reporting requirements.

11 CFR Part 114

Business and industry, Elections.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting requirements.

For the reasons set out in the preamble, it is proposed to amend subchapters A and E, chapter I of title 11 of the Code of Federal Regulations as follows:

1. 11 CFR Part 107 would be revised to read as follows:

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

Sec.

107.1 Registration and reports by political parties.
107.2 Registration and reports by committees including host committees, organizations or other groups representing a state, city or other local government agency.

Authority: 2 U.S.C. 437, 438(a)(8).

§ 107.1 Registration and reports by political parties.

Each convention committee established under 11 CFR 9008.3(a)(2) by a national committee of a political party and each committee or other organization, including a national committee, which represents a political party in making arrangements for that party's convention held to nominate a presidential or vice presidential candidate shall register and report in accordance with 11 CFR 9008.3(b).

§ 107.2 Registration and reports by host committees, and committees, organizations or other groups representing a state, city or other local government agency.

Each host committee, and each committee or other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention, shall register and report in accordance will 11 CFR 9008.51.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

2. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

3. Section 114.1 would be amended by revising paragraph (a)(2)(viii) to read as follows:

§ 114.1 Definitions.

(a) * * *

(2) * * *

(viii) Activity permitted under 11 CFR 9008.9, 9008.52 and 9008.53 with respect to a presidential nominating convention;

* * * * * .

4. 11 CFR part 9008 would be revised to read as follows:

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

Subpart A—Expenditures by National Committees and Convention Committees

Sec.
9008.1 Scope.
9008.2 Definitions.
9008.3 Eligibility for payments; Registration and reporting.
9008.4 Entitlement to payments from the fund.
9008.5 Adjustment of entitlement.
9008.6 Payment and certification procedures.
9008.7 Use of funds.
9008.8 Limitation of expenditures.
9008.9 Receipt of in-kind donations from businesses.
9008.10 Documentation of disbursements; net outstanding convention expenses.
9008.11 Examination and audits.
9008.12 Repayments.
9008.13 Additional audits.
9008.14 Petitions for rehearing; stays of repayment determinations.
9008.15 Extensions of time.
9008.16 Stale-dated committee checks.

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

9008.50 Scope.
9008.51 Registration and reports.
9008.52 Contributions to and expenditures by host committees to promote convention city.
9008.53 Expenditures for convention facilities and services by government agencies, municipal corporations and host committees.
9008.54 Examination and audit.

Authority: 2 U.S.C. 437, 438(a)(8); 26 U.S.C. 9008, 9009(b).

Subpart A—Expenditures by National Committees and Convention Committees

§ 9008.1 Scope.

(a) This Part interprets 2 U.S.C. 437 and 26 U.S.C. 9008. Under 26 U.S.C. 9008(b), the national committees of both major and minor parties are entitled to public funds to defray expenses incurred with respect to a Presidential Nominating convention. Under 26 U.S.C. 9008(d), expenditures with regard to such a convention by a national committee receiving public funds are limited to $4,000,000, as adjusted by the Consumer Price Index. New parties are not entitled to receive any public funds to defray convention expenses.

(b) Under 2 U.S.C. 437, each committee or organization which represents a national party in making arrangements for that party's presidential nominating convention is required to file disclosure reports. This reporting obligation extends to all such committees or organizations, regardless of whether or not public funds were used or available to defray convention expenses.

§ 9008.2 Definitions.

(a) *Commission* means the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463.

(b) *Fund* means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

(c) *Major party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(d) *Minor party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office.

(e) *National committee* means the organization which, by virtue of the by-laws of the political party, is responsible for the day to day operation of that party at the national level.

(f) *New party* means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

(g) *Nominating convention* means a convention, caucus or other meeting which is held by a political party at the national level and which chooses the presidential nominee of the party through selection by delegates to that convention or through other similar means.

(h) *Secretary* means the Secretary of the Treasury of the United States.

§ 9008.3 Eligibility for payments; registration and reporting.

(a) *Eligibility requirements.* (1) To qualify for entitlement under 11 CFR 9008.4 and 9008.5, the national committee of a major or minor political party shall establish a convention committee pursuant to paragraph (a)(2) of this section and shall file an application statement pursuant to paragraph (a)(3) of this section. The convention committee, in conjunction with the national committee, shall file an agreement to comply with the conditions set forth at paragraph (a)(4) of this section.

(2) The national committee shall establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention. The convention committee shall register with the Commission as a political committee pursuant to 11 CFR part 102. The convention committee shall receive all public funds to which the national committee is entitled under 11 CFR 9008.4 and 9008.5 and all private contributions made for the purpose of defraying convention expenses. All expenditures on behalf of the national committee for convention expenses shall be made by the convention committee.

(3) The national committee shall file with the Commission an application statement. Any changes in the information provided in the application statement must be reported to the Commission within 10 days following the change. The application statement shall include:

(i) The name and address of the national committee;

(ii) The name and address of the convention committee and of the officers of that committee;

(iii) The name of the city where the convention is to be held and the approximate dates;

(iv) The name, address, and position of the convention committee officers designated by the national committee to sign requests for payments; and

(v) The name and address of the depository of the convention committee.

(4) The convention committee shall, by letter to the Commission, agree to the conditions set forth in paragraphs (a)(4)(i) through (viii) of this section. This agreement shall also be binding upon the national committee.

(i) The convention committee shall agree to comply with the applicable expenditure limitation set forth at 11 CFR 9008.8.

(ii) The convention committee shall agree to file convention reports as required under 2 U.S.C. 437 and 11 CFR 9008.3(b).

(iii) The convention committee shall agree to establish one or more accounts into which all public funds received under 11 CFR 9008.4 and 9008.5 must be deposited and from which all expenditures for convention expenses must be made. Such account(s) shall contain only public funds except as provided in 11 CFR 9008.6(a)(3).

(iv) The convention committee shall agree to keep and furnish to the Commission all documentation of convention disbursements made by the committee as required under 11 CFR 9008.10. The convention committee has

the burden of proving that disbursements by the convention committee were for purposes of defraying convention expenses as set forth at 11 CFR 9008.7(a)(4).

(v) The convention committee shall agree to furnish to the Commission any books, records (including bank records for all accounts), a copy of any contract which the national committee enters into with a host committee, vendor or convention city, a copy of documentation provided by businesses in accordance with 11 CFR 9008.9(a) (1) and (2), and any other information that the Commission may request.

(vi) The convention committee shall agree to permit an audit and examination pursuant to 26 U.S.C. 9008(g) and 11 CFR 9008.11 of all convention expenses; to facilitate such audit by making available office space, records, and such personnel as is necessary to the conduct of the audit and examination; and to pay any amounts required to be paid under 26 U.S.C. 9008(h) and 11 CFR 9008.12.

(vii) The convention committee shall agree to comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9008, and the Commission's regulations at 11 CFR parts 100–116 and 9008.

(viii) The convention committee shall pay any civil penalties included in a conciliation agreement or imposed under 2 U.S.C. 437g.

(5) The application statement and agreement may be filed at any time after June 1 of the calendar year preceding the year in which a Presidential nominating convention of the political party is held, but no later than the first day of the convention.

(b) *Registration and reports by political parties*—(1) *Registration.* (i) Each convention committee established by a national committee under paragraph (a)(2) of this section shall register with the Commission on FEC Form 1 as a political committee pursuant to 11 CFR part 102 and shall file reports with the Commission as required at paragraph (b)(2) of this section. Each report filed by the committee shall contain the information required by 11 CFR part 104.

(ii) A State party committee or a subordinate committee of a State party committee which only assists delegates and alternates to the convention from that State with travel expenses and arrangements, or which sponsors caucuses, receptions, and similar activities at the convention site, need not register or report under this section.

(2) *Quarterly and post convention reports; content and time of filing. Each committee required to register under paragraph (b)(1) of this section shall file reports as follows:*

(i) The first quarterly report shall be filed on FEC Form 4 no later than 15 days following the close of the calendar quarter in which the committee either receives payment under 11 CFR 9008.6 or receives contributions or makes expenditures to defray convention expenses. The committee shall continue to file reports on a quarterly basis no later than the 15th day following the close of each calendar quarter, except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year. Reports shall be complete as of the last day of the preceding calendar quarter and shall be filed until the committee ceases activity in connection with that party's presidential nominating convention under paragraph (c) of this section.

(ii) Any quarterly report due within 20 days before or after the convention shall be suspended and the committee shall in lieu of such quarterly report file a post convention report. The post convention report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. The post convention report shall be complete as of 15 days prior to the date on which the report must be filed.

(c) *Cessation of activity.* A convention committee which has received payments under 11 CFR 9008.6 shall cease activity no later than 24 months after the convention, unless the committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the committee at least 30 days prior to the close of the 24 month period.

§ 9008.4 Entitlement to payments from the fund.

(a) *Major parties.* Subject to the provisions of this Part, the national committee of a major party shall be entitled to receive payments under 11 CFR 9008.6 with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $4 million, as adjusted by the Consumer Price Index under 11 CFR 9008.5(a).

(b) *Minor parties.* Subject to the provisions of this Part, the national committee of a minor party shall be entitled to payments under 11 CFR 9008.6 with respect to any presidential nominating convention in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount which the national committee of a major party is entitled to receive under 11 CFR 9008.5 as the number of popular votes received in the preceding presidential election by that minor party's presidential candidate bears to the average number of popular votes received in the preceding presidential election by all of the major party presidential candidates.

(c) *Limitation on payments.* Payments to the national committee of a major party or a minor party under 11 CFR 9008.6 from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

§ 9008.5 Adjustment of entitlement.

(a) The entitlements established by 11 CFR 9008.4 shall be adjusted on the basis of the Consumer Price Index pursuant to the provisions of 2 U.S.C. 441a(c).

(b) The entitlements established by 11 CFR 9008.4 shall be decreased by the amount of income generated by the investment of public funds under 11 CFR 9008.7(a)(5), less any tax paid on such income.

(c) The entitlements established by 11 CFR 9008.4 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR 9008.8(a) and the amount of private contributions received under 11 CFR 9008.6(a) by the national committee of a political party. In calculating these adjustments, amounts expended by Government agencies and municipal corporations in accordance with 11 CFR 9008.53; in kind donations by businesses to the national committee or convention committee in accordance with 11 CFR 9008.9; expenditures by host committees in accordance with 11 CFR 9008.52 and 9008.53; expenditures to participate in or attend the convention under 11 CFR 9008.8(b)(2); and legal and accounting services rendered in accordance with 11 CFR 9008.8(b)(4) will not be considered private contributions or expenditures counting against the limitation.

§ 9008.6 Payment and certification procedures.

(a) *Optional payments; private contributions.* (1) The national committee of a major or minor party may elect to receive all, part, or none of the amounts to which it is entitled under 11 CFR 9008.4 and 9008.5.

(2) If a national committee of a major or minor party elects to receive part or none of the amounts to which it is entitled under 11 CFR 9008.4 and 9008.5, or if the Secretary determines there is a deficiency in the Fund under 26 U.S.C. 9008(b)(4), the national

committee may receive and use private contributions, so long as the sum of the contributions which are used to defray convention expenses and the amount of entitlements elected to be received does not exceed the total expenditure limitation under 11 CFR 9008.8.

(3) All private contributions received by the national committee to defray convention expenses shall be subject to all reporting requirements, limitations and prohibitions of Title 2, United States Code. The convention committee may establish a separate account for private contributions or may deposit such contributions with payments received from the Fund pursuant to paragraph (d) of this section. The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation.

(b) *Increase in certified amount.* If the application statement is filed before it is possible to determine the cost of living increase for the year preceding the convention, that amount determined by the increase shall be paid to the national committee promptly after the increase has been determined.

(c) *Availability of payments.* The national committee of a major or minor party may receive payments under this section beginning on July 1 of the calendar year immediately preceding the calendar year in which a Presidential nominating convention of the political party involved is held.

(d) *Certification of payment.* After a national committee has properly submitted its application statement and agreement as required under 11 CFR 9008.3(a)(3) and (4), and upon receipt of a written request, payment of the committee's entitlement shall be certified by the Commission to the Secretary of the Treasury.

§ 9008.7 Use of funds.

(a) *Permissible uses.* Any payment made under 11 CFR 9008.6 shall be used only for the following purposes:

(1) Such payment may be used to defray convention expenses (including the payment of deposits) incurred by or on behalf of the national committee receiving such payments; or

(2) Such payment may be used to repay the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses; or

(3) Such payment may be used to restore funds (including advances from the national committee to the convention committee), other than contributions to the committee for the purpose of defraying convention expenses, where such funds were used to defray convention expenses.

(4) "Convention expenses" include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include, but are not limited to:

(i) Expenses for preparing, maintaining, and dismantling the physical site of the convention, including rental of the hall, platforms and seating, decorations, telephones, security, convention hall utilities, and other related costs;

(ii) Salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention;

(iii) Salary or portion of the salary of any national committee employee for any period of time during which, as a major responsibility, that employee performs services related to the convention;

(iv) Expenses of national committee employees, volunteers or other similar personnel if those expenses were incurred in the performance of services for the convention in addition to the services normally rendered to the national committee by such personnel;

(v) Expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, including printing materials and rental costs for meeting space.

(vi) Expenses incurred in securing a convention city and facility;

(vii) Expenses incurred in providing a transportation system in the convention city for use by delegates and other persons attending or otherwise connected with the convention;

(viii) Expenses for entertainment activities which are part of the official convention activity sponsored by the national committee, including but not limited to dinners, concerts, and receptions; except that expenses for the following activities are excluded:

(A) Entertainment activities sponsored by or on behalf of candidates for nomination to the office of President or Vice President, or State delegations;

(B) Entertainment activities sponsored by the national committee if the purpose of the activity is primarily for national committee business, such as fundraising events, or selection of new national committee officers;

(C) Entertainment activities sponsored by persons other than the national committee; and

(D) Entertainment activities prohibited by law;

(ix) Expenses for printing convention programs, a journal of proceedings, agendas, tickets, badges, passes, and other similar publications;

(x) Administrative and office expenses for conducting the convention, including stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention; and

(xi) Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses.

(5) Any investment of public funds or any other use of public funds to generate income is permissible only if the income so generated is used to defray convention expenses. Such income, less any tax paid on it, will be applied against the national committee's payments under 11 CFR 9008.6, where appropriate, the Commission may determine that a repayment is required on the basis of such income.

(b) *Prohibited uses.* (1) No part of any payment made under 11 CFR 9008.6 shall be used to defray the expenses of any candidate, delegate, or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as a delegate or candidate to the convention. This part shall not prohibit candidates, delegates or alternate delegates who are participating in a presidential nominating convention from attending official party convention activities including but not limited to dinners, concerts and receptions, where such activities are paid for with public funds.

(2) Public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the State in which such expense is incurred or paid, or any regulation prescribed under federal or State laws.

(3) Public funds shall not be used to pay civil or criminal penalties required or agreed to be paid pursuant to 2 U.S.C.

437g. Any amounts received or expended by the national committee or convention committee of a political party to pay such penalties shall not be considered contributions or expenditures, except that such amounts shall be reported in accordance with 11 CFR part 104 and shall be subject to the prohibitions of 11 CFR 110.4 and parts 114 and 115.

§ 9008.8 Limitation of expenditures.

(a) *National party limitations*—(1) *Major parties.* Except as provided by paragraph (a)(3) of this section, the national committee of a major party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which such committee is entitled under 11 CFR 9008.4 and 9008.5.

(2) *Minor parties.* Except as provided by paragraph (a)(3) of this section, the national committee of a minor party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which the national committee of a major party is entitled under 11 CFR 9008.4 and 9008.5.

(3) *Authorization to exceed limitation.* The Commission may authorize the national committee of a major party or minor party to make expenditures for convention expenses, which expenditures exceed the limitation established by paragraphs (a) (1) or (2) of this section. This authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, the expenditures are necessary to assure the effective operation of the Presidential nominating convention by the committee. Examples of "extraordinary and unforeseen circumstances" include, but are not limited to, a natural disaster or a catastrophic occurrence at the convention site. In no case, however, will such authorization entitle a national committee to receive public funds greater than the entitlement specified under 11 CFR 9008.4 and 9008.5. All private contributions received to defray expenditures under this paragraph shall be subject to all reporting requirements, limitations (except for limitations imposed by paragraphs (a) (1) and (2) of this section) and prohibitions of the Act (as defined at 2 U.S.C. 431(19)).

(b) *Payments not subject to limit*—(1) *Host committee expenditures.* Expenditures made by the host committee shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section provided the funds are spent in accordance with 11 CFR 9008.52 and 9008.53.

(2) *Expenditures by government agencies and municipal corporations.* Expenditures made by government agencies and municipal corporations shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

(3) *Expenditures to participate in or attend convention.* Expenditures made by presidential candidates from campaign accounts, by delegates, or by any other individual from his or her personal funds for the purpose of attending or participating in the convention or convention related activities, or by State or local committees of a political party on behalf of such delegates or individuals shall not be considered expenditures made by or on behalf of the national party, and shall therefore not be subject to the overall expenditure limitations of this section.

(4) *Legal and accounting services.* (i) The payment of compensation to an individual by his or her regular employer for legal and accounting services rendered to or on behalf of the national committee shall not be considered an expenditure and shall not count against the expenditure limitations of this section.

(ii) The payment by the national committee of compensation to any individual for legal and accounting services rendered to or on behalf of the national committee in connection with the presidential nominating convention or convention-related activities shall be considered an expenditure and shall count against the expenditure limitations of this section.

(5) *Computerized information.* Payments to defray the costs of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9008.10(h), and explaining the operation of the computer system's software, shall not be considered expenditures and shall not count against the expenditure limitations of this section.

§ 9008.9 Receipt of in-kind donations from businesses.

(a) *Discounts by retail businesses; Items provided for promotional consideration—(1) Reductions or discounts.* Retail businesses (excluding banks) may sell, lease or rent their products, materials, services or space to the national committee with respect to a presidential nominating convention at reduced or discounted rates, provided that such reductions or discounts are in the ordinary course of business. For purposes of this section, a business shall be considered a retail business if it sells, leases or rents its products, materials, services or space directly to the general public or to other end users. A reduction or discount shall be considered in the ordinary course of business if:

(i) The contract between the convention committee and the vendor states that the discount or reduction is in the ordinary course of the vendor's business; and

(ii) The vendor provides the convention committee with documentation which describes the products, materials, services or space provided and the terms and conditions of the reduction or discount, and which also contains a statement signed by the vendor affirming that:

(A) The vendor has an established practice of providing similar reductions or discounts on the same scale to non-political clients, or that the reduction or discount is consistent with established practice in the vendor's trade or industry;

(B) The value of the products, materials, services or space provided does not exceed the commercial benefit to the vendor; and

(C) The benefit to the vendor is promotional and commercial and not political.

(2) *Items provided for promotional consideration.* Businesses (excluding banks) may provide their products or services to the national committee for use in connection with the presidential nominating convention at no charge, provided that the provision of products or services under this paragraph is in the ordinary course of business. The provision of products or services shall be considered in the ordinary course of business if the business provides the convention committee with documentation which describes the products or services provided and the terms and conditions under which the products or services are provided, and which also contains a statement signed by the vendor affirming that:

(i) The business has an established practice of providing its products or services on the same scale and on similar terms, such as in return for "official provider" status or other promotional consideration, to non-political clients, or that the terms and conditions under which the products or services are provided are consistent

with established practice in the business' trade or industry;

(ii) The value of the products or services does not exceed the commercial benefit to the business; and

(iii) The benefit to the business is promotional and commercial and not political. In addition, the contract between the business and the convention committee shall state that the provision of products or services is in the ordinary course of business for the business involved.

(3) Discounts or reductions, or items provided for promotional consideration, in accordance with paragraphs (a) (1) and (2) of this section will not count toward the national party expenditure limitation under 11 CFR 9008.8(a). For all products, materials, services or space provided under paragraph (a) (1) or (2) of this section, the difference between the usual and normal charge and the amount paid (if any) by the convention committee shall be disclosed as memo entries on a separate Schedule A attached to the convention committee's report.

(b) *Samples and promotional material.* (1) Local businesses may sell, at nominal cost, or provide at no charge, any of their products or services in the form of samples, discount coupons, promotional items, such as maps, pens, or pencils, with the business' name imprinted on the item, to those attending the convention functions. Such samples, coupons and promotional items shall be: Of nominal value; provided solely for bona fide advertising or promotional purposes; and provided in the ordinary course of business.

(2) The samples and promotional material may be distributed by or with the help of persons employed by the business, or employed by or volunteering for the national party or a host committee.

(3) For purposes of this section, a local bank shall be considered a local business.

(4) For purposes of this section, any business, including a branch of a national or regional chain, a franchisee, or a licensed dealer, within the Metropolitan Area (MA) of the convention city shall be considered a local business. There shall be a rebuttable presumption that any business located outside the MA is not a local business. This presumption may be rebutted by a showing that the volume of business in an area outside the MA would be directly affected by the presence of the convention.

(5) The value of the benefits provided under this section will not count toward the national party's expenditure limitation under 11 CFR 9008.8(a).

§ 9008.10 Documentation of disbursements; net outstanding convention expenses.

The convention committee must include as part of the evidence of convention expenses the following documentation:

(a) For disbursements in excess of $200 to a payee, either:

(1) A receipted bill from the payee that states the purpose of the disbursement; or

(2) If such a receipted bill is not available, the following documents:

(i) A canceled check negotiated by the payee; plus

(ii) One of the following documents generated by the payee—a bill, invoice, voucher or contemporaneous memorandum that states the purpose of the disbursement;

(iii) Where the documents specified at paragraph (a)(2)(ii) of this section are not available, a voucher or contemporaneous memorandum from the committee that states the purpose of the disbursement;

(3) If neither a receipted bill nor the supporting documentation specified in paragraph (a)(2) (ii) or (iii) of this section is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(4) Where the supporting documentation required above is not available, the committee may present a canceled check and collateral evidence to document the convention expense. Such collateral evidence may include but is not limited to:

(i) Evidence demonstrating that the disbursement is part of an identifiable program or project which is otherwise sufficiently documented, such as a disbursement which is one of a number of documented disbursements relating to the operation of a committee office;

(ii) Evidence that the disbursement is covered by a preestablished written committee policy, such as a daily travel expense policy.

(b) For all other disbursements:

(1) If from the petty cash fund, a record that states full name and mailing address of the payee and the amount, date and purpose of the disbursement; or

(2) A canceled check which has been negotiated by the payee and states the identification of the payee, and the amount and date of the disbursement.

(c) For purposes of this section, "payee" means the person who provides the goods or services to the committee in return for the disbursement, except that an individual will be considered a payee under this section if he or she receives $2,000 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(d) For purposes of this section, the term "purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(e) Upon the request of the Commission the convention committee shall supply an explanation of the connection between the disbursement and the convention.

(f) The committee shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related material documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(g) *Net outstanding convention expenses.* A convention committee that is eligible to receive payments under 11 CFR 9008.3 shall file, no later than October 15 of the election year, a statement of that committee's net outstanding convention expenses, which shall be complete as of September 30 of the election year. The convention committee shall file a revised statement of net outstanding convention expenses which shall reflect the financial position of the convention committee as of the end of the sixth month following the last day of the convention. The revised statement shall be filed no later than 30 days thereafter, and shall be accompanied by the interim repayment, if required under 11 CFR 9008.12(b)(5)(ii). The committee's net outstanding convention expenses under this section equal the difference between paragraphs (g) (1) and (2) of this section.

(1) The total of:

(i) All outstanding obligations for convention expenses as of September 30 of the election year; plus

(ii) An estimate of the amount of convention expenses that will be incurred after September 30 of the election year and before the end of the sixth month following the last day of the convention; plus

(iii) An estimate of necessary winding down costs; less

(2) The total of:

(i) Cash on hand as of the close of business on September 30 of the election year, including: all receipts dated on or before that date; currency,

balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the committee in the form of credits, refunds of deposits, returns, receivables, or rebates of convention expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding convention obligations under paragraph (g)(1) of this section shall not include any accounts payable for non-convention expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR 9008.12 or any amounts paid to secure a surety bond under 11 CFR 9008.14(c).

(4) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the convention whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the convention, but does not include property defined as "other assets" under 11 CFR 9008.10(g)(5). A list of all capital assets shall be maintained by the committee, which shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation. If the committee wishes to claim a higher depreciation percentage for an item, it must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(5) *Other assets.* The term "other assets" means any property acquired by the committee for use in raising funds or as collateral for loans. "Other assets" must be included on the committee's statement of net outstanding convention expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on September 30 of the election year unless the item is acquired after this date, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee, which shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition.

(6) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full write-off was determined.

(7) *Winding down costs.* The term "winding down costs" means:

(i) Costs associated with the termination of the convention such as complying with the post-convention requirements of the Act and other necessary administrative costs associated with winding down the convention, including office space rental, staff salaries and office supplies; and

(ii) Costs incurred by the convention committee prior to September 30 of the election year for which written arrangements or commitment was made on or before that date.

(8) *Review of convention committee statement.* The Commission will review the statement filed by each convention committee under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9008.10 during the audit of that committee under 11 CFR 9008.11.

(h) *Production of computer information.* (1) *Categories of computerized information to be provided.* If the convention committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (h)(1)(i) through (h)(1)(iv) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in paragraph (h)(2) of this section:

(i) Information required by law to be maintained regarding the committee's receipts or disbursements;

(ii) Records used to reconcile bank statements;

(iii) Records relating to the acquisition, use and disposition of capital assets; and

(iv) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, or bank reconciliations.

(2) *Time for production.* If the committee maintains or uses computerized information containing any of the data listed in paragraph (h)(1) of this section, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(3) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(4) *Additional materials and assistance.* Upon request, the Committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

§ 9008.11 Examination and audits.

The Commission shall conduct an examination and audit of the convention committee no later than

December 31 of the calendar year of the convention and may at any time conduct other examinations and audits as it deems necessary. The Commission will follow the same procedures during the audit, and will afford the committee the same right to respond, as are provided for audits of publicly funded candidates under 11 CFR 9007.1 and 9038.1.

§ 9008.12 Repayments.

(a) *General.* (1) A national committee that has received payments from the Fund under 11 CFR part 9008 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9008.11 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the committee of any repayment determinations made under this section as soon as possible, but not later than 3 years after the last day of the Presidential nominating convention. The Commission's issuance of an interim audit report to the committee will constitute notification for purposes of the three year period.

(3) Once the committee receives notice of the Commission's final repayment determination under this section, the committee should give preference to the repayment over all other outstanding obligations of the committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that the national committee of a political party that has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Excess payments.* If the Commission determines that any portion of the payments to the national committee or convention committee under 11 CFR 9008.6(b) was in excess of the aggregate payments to which the national committee was entitled under 11 CFR 9008.4 and 9008.5, it shall so notify the national committee, and the national committee shall pay to the Secretary an amount equal to such portion.

(2) *Excessive expenditures.* If the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitations under 11 CFR 9008.8(a), it shall notify the national committee of the amount of such excessive expenditures, and the national committee shall pay to the Secretary an amount equal to the amount specified.

(3) *Excessive contributions.* If the Commission determines that the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify the national committee of the amount of the contributions so accepted, and the national committee shall pay to the Secretary an amount equal to the amount specified.

(4) *Improper usage or documentation.* If the Commission determines that any amount of any payment to the national committee or convention committee under 11 CFR 9008.6(b) was used for any purposes other than the purposes authorized at 11 CFR 9008.7 or was not documented in accordance with 11 CFR 9008.10, it shall notify the national committee of the amount improperly used or documented and the national committee shall pay to the Secretary an amount equal to the amount specified.

(5) *Unspent funds.* (i) If any portion of the payment under 11 CFR 9008.4 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

(ii) The national committee or convention committee shall make an interim repayment of unspent funds based on the financial position of the committee as of the end of the sixth month following the last day of the convention, allowing for a reasonable amount as determined by the Commission to be withheld for unanticipated contingencies. This repayment shall be made no later than 30 calendar days after the date set for determining the committee's financial position under this section. If, after written request by the national committee or convention committee, the Commission determines, upon review of evidence presented by either committee, that amounts previously refunded are needed to defray convention expenses, the Commission shall certify such amount for payment.

(iii) All unspent funds shall be repaid to the U.S. Treasury no later than 24 months after the last day of the convention, unless the national committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the national committee.

(c) *Repayment determination procedures.* The Commission repayment determination will be made in accordance with the procedures set forth in paragraphs (c)(1) through (c)(4) of this section.

(1) *Initial determination.* The Commission will provide the committee with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9008.11 and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the committee of the evidence upon which any such determination is based. If the committee does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the committee disputes the Commission's initial repayment determination(s), it shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the committee within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the committee so desires.

(3) *Oral presentation.* A committee that has submitted written materials under paragraph (c)(2) of this section, may request that the Commission provide the committee with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the committee's request, it will inform the committee of the date and time set for the oral presentation. At the date and time set by the Commission, the committee's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2) of this section. The committee representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under paragraph (c)(2) of this section and any oral presentation made under paragraph (c)(3) of this section. A final determination that a committee must repay a certain amount will be accompanied by a written

statement of reasons for the commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's initial repayment determination(s), the committee shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the committee, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the committee submits written materials under paragraph (c)(2) of this section disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the committee shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the committee, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth in paragraph (b) of this section after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a committee receives or becomes aware of assets not previously disclosed during the audit or repayment process the committee shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified during the audit or repayment process. Newly discovered assets may serve as a basis for additional repayment determinations under paragraph (f) of this section.

(h) *Repayment limit.* No repayment shall be required from the national committee or the convention committee under 11 CFR 9008.12, which, when added to other repayments required from that national committee under this section, exceeds the amount of payments received by the national committee under 11 CFR 9008.4 and 9008.5.

§ 9008.13 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9008.14 Petitions for rehearing: stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final repayment determination, the committee may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds by which questions were not and could not have been presented during the earlier determination process.

(2) If a committee files a timely petition under this section challenging a Commission final repayment determination, the time for repayment will be suspended until the Commission serves notice on the committee of its determination on the petition. The time periods for making repayment under 11 CFR 9008.12(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The committee's failure to raise an agrument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the committee's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The committee may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9008.12 pending the committee's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9008.12(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the committee's presentation of evidence in the stay request that it:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the committee's designated agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(A) It will suffer irreparable injury in the absence of a stay; and, if so, that

(B) It has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interests; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the committee has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9008.12(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9008.15 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR part 9008 will not be routinely granted.

(b) Whenever a committee has a right or is required to take action within a period of time prescribed by 11 CFR part 9008 or by notice given thereunder, the committee may apply in writing to the Commission for an extension of time in which to exercise such right to take such action. The committee shall demonstrate in the application for extension that good cause exists for its request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a committee that has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the committee in its application.

(d) If a committee fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR part 9008, the Commission may, on the committee's showing of excusable neglect:

(1) Permit such committee to exercise its right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9008.

§ 9008.16 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

§ 9008.50 Scope.

Subpart B governs registration and reporting by host committees representing convention cities and by government agencies and municipalities. Unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization. Subpart B also describes permissible sources of funds and other permissible donations to host committees, government agencies and municipal corporations. In addition, subpart B describes permissible expenditures by government agencies, municipal corporations and host committees to defray convention expenses and to promote the convention city and its commerce.

§ 9008.51 Registration and reports.

(a) *Registration by host committees.* (1) Each committee, including a host committee, which deals with officials of a national political party with respect to matters involving a presidential nominating convention shall register with the Commission on FEC Form 1 within 10 days after the date on which such party chooses the convention city. The committee shall clearly indicate on this form its status as a host committee.

(2) Any such committee, organization or group which is unsuccessful in its efforts to attract the convention to a city need not register under this section.

(b) *Post-convention and quarterly reports; content and time of filing.* (1) Each host committee required to register under this section shall begin filing quarterly reports on FEC Form 4 no later than 15 days after the end of the first calendar quarter of the Presidential election year. This report shall disclose all receipts and disbursements, including in-kind contributions, made with respect to a presidential nominating convention, and shall itemize such receipts and disbursements to the extent required by 11 CFR part 104. Each report shall be complete as of 15 days prior to the date on which it must be filed.

(2) In lieu of a third-quarter report, each host committee reporting under this section shall file a post convention report with the Commission of FEC Form 4. This report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall disclose all receipts and disbursements, including in-kind contributions, made after the completion date of the second quarter report. This report shall be complete as of 15 days prior to the date on which it must be filed.

(3) If the host committee has receipts or makes disbursements after the completion date of the post convention report, it shall continue to file quarterly reports beginning no later than 15 days after the end of the calendar quarter which follows the completion date of the post convention report. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the host committee ceases all activity which must be reported under this section.

(4) A host committee shall file a final report with the Commission not later than 15 days after it ceases activity which must be reported under this section, unless such status is reflected in either the post convention report or a quarterly report.

(c) *Registration and post-convention statements by municipalities and local government agencies.* (1) Each organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall file, by letter, a registration statement with the Commission. The registration statement shall be submitted within 10 days after the date on which the party chooses the convention city and shall state: its intention to provide facilities and services to the convention under 11 CFR 9008.53(c), a list of the categories of facilities and services the municipality or government agency expects to provide, an estimate of the cost of providing each category of facilities and services, and whether the municipality or government agency intends to use general tax revenues or private funds donated to a separate convention account to defray the cost of these activities. Categories of facilities and services may include construction, security, communications, transportation, utilities, clean up, meeting rooms and accommodations.

(2) After the convention, the municipality or government agency shall file a statement, by letter, with the Commission reporting the total amounts actually spent for each category of facilities and services provided during the convention. This statement shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election.

§ 9008.52 Contributions to and expenditures by host committees to promote convention city.

(a) *Host committee.* A host committee includes any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau: Which is not organized for profit; whose net earnings do not inure to the benefit of any private shareholder or individual; and whose principal objective is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees. A host committee must register in accordance with 11 CFR 9008.51.

(b) *Contributions and expenditures to promote convention city and its commerce.* (1) Local businesses (excluding banks), local municipal corporations and government agencies, local labor organizations, and individuals may donate funds or make in-kind contributions to a host committee for the purposes set forth at paragraph (b)(3) of this section.

(2) The donor may restrict the use of funds by earmarking them for a particular project, by having the donation acknowledged (e.g., courtesy of XYZ Company) or by placing any other similar restriction on the use of the funds.

(3) A host committee shall use funds donated under paragraph (b)(1) of this section for only the following purposes:

(i) To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site;

(ii) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours;

(iii) To defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples and promotional material specified in 11 CFR 9008.9(b); and

(iv) To defray the administrative expenses incurred by the host committee, such as salaries, rent, travel, and liability insurance.

(4) For purposes of this section, any business (including a branch of a national or regional chain, a franchisee, or a licensed dealer), municipal corporation, agency or labor organization within the Metropolitan Area (MA) of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MA is not local. This presumption may be rebutted by a showing that the volume of business in an area lying outside the MA would be directly affected by the presence of the convention.

§ 9008.53 Expenditures for convention facilities and services by government agencies, municipal corporation and host committees.

(a) *Government agencies and municipal corporations.* (1) Federal, State or local government agencies and municipal corporations may make expenditures for facilities or services with respect to a presidential nominating convention. Such expenditures will not be considered contributions to the national committee, expenditures counting against the national committee's limitation, or illegal corporate contributions by the agency or municipal corporation. In providing facilities or services to the national committee, the agency or municipal corporation may not obtain facilities, services or goods from other persons at less than fair market value, except that the agency or municipal corporation may accept reduced or discounted rates, provided that such reductions were made in the ordinary course of business pursuant to 11 CFR 9008.9(a)(1).

(2) A municipal corporation or other government agency may use private funds donated to a separate account to make the expenditures permitted under this section, provided that:

(i) The separate account is established by the municipal corporation or government agency for the general purpose of promoting the city as a site for conventions and other events or activities and is not used just for the purpose of defraying expenses associated with the presidential nominating convention; and

(ii) Donations to the account are unrestricted and are not solicited or designated for use in connection with any particular convention, event or activity.

(b) *Contributions to and expenditures by host committees to defray convention expenses.* (1) Local retail businesses (excluding banks), as well as local municipal corporations and government agencies may donate funds to a host committee for use by that committee in defraying the convention expenses described in paragraph (c) of this section. Examples of expenditures which the host committee may make for convention expenses include but are not limited to those set forth at paragraph (c) of this section. No other corporate funds may be used to pay such expenses.

(i) The amount of the donation by a local retail business under paragraph (b)(1) of this section must be proportionate to the commercial return reasonably expected by the business during the life of the convention.

(ii) The host committee must maintain funds donated under paragraph (b)(1) of this section in a separate account.

(iii) For purposes of this section, any determination as to whether or not a business, labor organization, municipal corporation or agency is local shall be made in accordance with 11 CFR 9008.52(b)(4). Any determination as to whether or not a business is a retail business shall be made in accordance with 11 CFR 9008.9(a)(1).

(iv) For purposes of paragraph (b)(1)(i) of this section, the life of the convention shall begin seven days before the opening of the convention and end three days after the close of the convention.

(2) Host committees may accept in-kind donations from businesses for use in defraying the convention expenses described in paragraph (c) of this section, provided that such in-kind donations are made and reported in accordance with 11 CFR 9008.9.

(c) *Permissible expenditures.* Examples of expenditures which government agencies, municipal corporations and host committees may make under this section include but are not limited to:

(1) Granting the national committee use of an auditorium or convention center and providing construction and convention related services for that location such as: construction of podiums; press tables; false floors; camera platforms; additional seating; lighting, electrical, air conditioning and loudspeaker systems; offices; office equipment; and decorations;

(2) Various local transportation services, including the provision of buses and automobiles;

(3) Law enforcement services necessary to assure orderly conventions;

(4) Use of convention bureau personnel to provide central housing and reservation services;

(5) Hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention;

(6) Accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and

(7) Other similar convention-related facilities and services.

§ 9008.54 Examination and audit.

The Commission shall conduct an examination and audit of each host committee registered under 11 CFR

9008.51. The Commission will follow the same procedures during the audit, and will afford the committee the same right to respond, as are provided for audits of publicly funded candidates under 11 CFR 9007.1 and 9038.1, except that the Commission will not make any repayment calculations under this section.

Dated: August 6, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

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H.R. 416/P.L. 103–65
To extend the period during which chapter 12 of title 11 of the United States Code remains in effect, and for other purposes. (Aug. 6, 1993; 107 Stat. 311; 1 page)

Last List August 9, 1993