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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AG40

Federal Employees Health Benefits Program; HMO Plan Applications

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to clarify the policy under which it invites applications from comprehensive medical plans (HMO's) after a determination that it would be beneficial to enrollees and the Federal Employees Health Benefits (FEHB) Program to do so. This clarification is necessary in order to ensure that OPM and the HMO's are providing the best possible service to FEHB enrollees.

DATES: Interim regulations are effective January 4, 1995. comments must be received on or before February 3, 1995.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC; or FAXed to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 606–0191.

SUPPLEMENTARY INFORMATION: OPM is issuing interim regulations to clarify the policy under which the Director of OPM invites applications from HMOs interested in participating in the FEHB Program. As administrator of the FEHB Program, it is necessary that OPM consider the needs of FEHB enrollees and the FEHB Program in determining whether to invite applications from HMOs for a given contract year. Consequently, each year, the Director makes a determination whether or not it would be beneficial to enrollees and the FEHB Program to invite HMOs to apply. This authority parallels OPM's discretion to consider changes in the rates and benefits of participating plans when the Director of OPM deems it in the best interest of enrollees and the FEHB Program (§ 890.203(b)).

With only limited possible exception, OPM does not intend to accept HMO applications for the 1996 contract year. We also plan to keep in place for the 1996 contract year the benefits that go into effect in 1995 for plans already participating in the FEHB Program. Further, OPM will print no new plan brochures for existing plans or comparison guide for contract year 1996.

On a limited basis, OPM will entertain applications from HMOs where it would improve the access to medical care in a medically underserved state. That is, we will consider applications from HMOs only in states designated as medically underserved areas (MUAs), as determined by OPM under the methodology cited in 5 U.S.C. 8902(m)(2)(A), where the choice of an HMO is limited or would otherwise be nonexistent. To be considered by OPM, the plan must be in a state that qualifies as an MUA on January 31 of the year preceding the FEHB Program contract year for which the application has been submitted. OPM expects that, under this exception, plans will be accepted only under rare and unusual circumstances.

Except in these situations, the information disseminated during the November–December 1995 Open Season will be limited to rate change information for plans currently participating in the Program. In the future, OPM will publish a notice in the **Federal Register** inviting applications from plans interested in participating in the FEHB Program. We anticipate considering all applications for contract year 1997.

This course of action is necessary so that OPM may utilize its resources in the most effective way and in a manner most beneficial to enrollees. It is in the best interest of enrollees that OPM ensure that FEHB Program contracts are administered so that benefits to enrollees are optimum and the costs to enrollees and the FEHB Program are minimized. OPM shares the concern of the Congress, the General Accounting Office (GAO), and the Office of Management and Budget (OMB) about contract administration under the FEHB Program. In order to improve standards and oversight of insurance carriers and enhance our overall program operations to improve service to OPM's customers, additional emphasis needs to be placed on functions that, of necessity, are given lower priority when staff are occupied with applications, negotiations, and open season materials review.

During 1995, OPM will redirect resources to projects designed to address weaknesses in the oversight of contractor performance as well as improve communication with FEHB enrollees to ensure that we and our participating carriers are meeting their needs. In future years, we will prioritize functions.

While OPM is not required to issue regulations that clarify existing policy, we understand that there is interest in this issue, and we wish to give all parties an opportunity to comment. We are publishing the regulation at this time before interested HMOs begin the time-consuming application process.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(A) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The interim regulations simply clarify OPM's policy under which it invites applications from HMO's interested in participating in the FEHB Program.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect OPM's administrative procedures.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; Subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In § 890.203, paragraph (a)(1) is revised, paragraphs (a)(2) through (a)(4) are redesignated as paragraphs (a)(3) through (a)(5) respectively, the last sentence in newly designated paragraph (a)(5) is revised, a new paragraph (a)(2) is added, and a heading is added for paragraph (b) to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a) *New plan applications.* (1) The Director of OPM shall consider applications to participate in the FEHB Program from comprehensive medical plans (CMP's) at his or her discretion. If the Director of OPM determines that it is beneficial to enrollees and the Federal Employees Health Benefits Program to invite new plans to join the Program, OPM will publish a notice in the **Federal Register.**

(2) When invited to participate, CMP's should apply for approval by writing to the Office of Personnel Management, Washington, DC 20415. Application letters must be accompanied by any descriptive material, financial data, or other documentation required by OPM. Plans must submit the letter and attachments in the OPM-specified format by January 31 of the year preceding the contract year for which applications are being accepted. Plans must submit evidence demonstrating they meet all requirements for approval by March 31 of the year preceding the contract year for which applications are being accepted. Plans that miss either deadline cannot be considered for participation in the next contract year. All newly approved plans must submit benefit and rate proposals to OPM by May 31 of the year preceding the contract year for which applications are being accepted to be considered for participation in that contract year. OPM may make counter-proposals at any time.

* * * * *

(5) * * * The extent of the data and documentation to be submitted by a plan so certified by HHS, as well as by a non-certified plan, for a particular review cycle may be obtained by writing directly to the Office of Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

* * * * *

(b) *Participating plans.* * * *

[FR Doc. 94–29809 Filed 12–2–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 208, 236, 242, 274a, and 299

[INS No. 1651–93; AG Order No. 1937–94]

RIN 1115–AD64

Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule streamlines the adjudication of asylum applications submitted to the Immigration and Naturalization Service (INS). Asylum officers who adjudicate the applications of persons who have no legal immigration status will no longer prepare detailed denials. Instead, in almost all cases, asylum officers will grant meritorious applications and refer applications that they do not grant to immigration judges, who will adjudicate the claims in either exclusion or deportation proceedings. The rule restricts employment authorization to applicants for asylum or withholding of deportation whose claims either have been granted or remain pending after more than 150 days, a period which would not run until the alien has filed a complete application and which would not include delays sought or caused by the applicant. This rule conforms existing regulations to the current practice of receiving applications for asylum and withholding of deportation at the four INS Service Centers. The rule also updates the regulations by removing references to the Asylum Policy and Review Unit.

EFFECTIVE DATE: This rule is effective January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, Asylum Division, Immigration and Naturalization Service, 425 I Street NW., ULLICO 3rd Floor, Washington, DC 20536, (202) 633–4389, or Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 305–0470.

SUPPLEMENTARY INFORMATION: The Department of Justice published a proposed rule on March 30, 1994 (59 FR 14779) as part of a comprehensive initiative to streamline the process for adjudication of applications for asylum and withholding of deportation. Other aspects of this initiative have increased the government's ability to adjudicate such applications efficiently.

The proposed rule was designed to streamline the asylum adjudications process by making several principal reforms. First, the role and functions of asylum officers would change to allow the officers to address a greater volume of applications and to concentrate their efforts on approving meritorious claims. Asylum officers would no longer deny applications from persons who are excludable or deportable, but instead would refer such cases directly to an immigration judge for adjudication. The original application also would be forwarded to the immigration judge to form part of the record of proceedings. Second, the proposed rule would have instituted a fee for filing asylum applications. Third, an asylum applicant would not be eligible to apply for employment authorization based on his or her asylum application until 150 days after the date on which the asylum application is filed. The Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) would strive to complete the adjudication of asylum applications, through the decision of an immigration judge, within this 150-day period. Persons granted asylum would become eligible immediately to apply for and receive employment authorization. Persons whose cases were not decided by an immigration judge within the 150-day period would be eligible to apply for employment authorization. The INS would have 30 days to adjudicate such applications. Persons denied asylum by an immigration judge either within the 150-day period or prior to the issuance of employment authorization by the INS would not be eligible to receive employment authorization.

Beyond these principal reforms, the proposed rule would have: eliminated the requirement that asylum officers and immigration judges await the receipt of advisory opinions from the Department of State; curtailed the authority of asylum officers to grant or deny

withholding of deportation under section 243(h) of the Immigration and Nationality Act, 8 U.S.C. 1253(h) (INA or Act); and specified that information provided in asylum applications could be used as a basis for an Order to Show Cause against the applicant under 8 CFR 242.1. The proposed rule also would have made several technical and conforming amendments.

The Department of Justice received 345 comments in response to this proposed rule. Many were submitted as a result of consultations between various non-governmental organizations. The following sections summarize the comments, set forth the response of the Department of Justice, and explain the revisions adopted.

The comments primarily focused upon the following topics: conformity with the Administrative Procedure Act (APA); constitutional questions; the proposed $130 filing fee; retroactivity of the proposed rule; service of notice; employment authorization; the discretionary nature of asylum interviews; interpreters; the "safe third country" ground of denial for applicants otherwise eligible for asylum; the elimination of the Notice of Intent to Deny (NOID) and the applicant's opportunity to rebut a NOID; and the definition and treatment of persons convicted of an aggravated felony. In addition, there were general comments regarding United States immigration policy.

Many comments agreed that asylum reforms and a solution to the backlog problem are needed. Some stated, however, that even if the proposed rule met the objectives of the Immigration and Naturalization Service, it would do so at the expense of *bona fide* asylum applicants and would compromise fairness and humanitarian principles. Many comments stated that the proposed rule would not stop frivolous claims or reduce the backlog.

1. Administrative Procedure Act Issues

Comment: Several comments stated that the proposed rule violated the requirements of the Administrative Procedure Act (APA) because the rule included changes to regulations affecting the Executive Office for Immigration Review (EOIR), and the INS has no authority to promulgate regulations on behalf of EOIR. Sections alleged to fall within EOIR's jurisdiction were 208.1, 208.2, 208.3, 208.12, 208.14, 208.18, 236.3, and 242.17. The comments suggested that the Department should republish the sections of the proposed rule that pertain to EOIR proceedings with instructions that comments should be directed to the EOIR.

Response and Disposition: The proposed rule was published by the Department of Justice. The Attorney General has authority to promulgate regulations on behalf of all Department of Justice agencies, including INS and EOIR. Officials of EOIR participated in drafting all relevant provisions of the proposed rule. Upon publication of the rule, the name, address, and phone number of the Counsel to the Director of EOIR were included as a point of contact for further information. Since this rule chiefly concerns the process for adjudicating asylum applications that are received in the first instance by the INS, public comments were directed to the INS; however, a copy of every comment was forwarded by the INS to EOIR. Specific suggestions were made by EOIR and have been incorporated into this final rule. Accordingly, this rule has been issued in compliance with the notice and comment requirements of the APA.

2. Constitutional Issues

Comment: Several comments stated that the proposed rule would violate the Constitution by infringing upon liberty and property interests protected under the due process clauses of the Fifth and Fourteenth Amendments. The comments identified the following as violations of due process: (a) not every asylum applicant would receive an asylum officer interview, which is essential for an asylum officer genuinely to evaluate a case; (b) those denied an interview would be deprived of the opportunity to have their claim decided in a non-adversarial setting and instead would be required to present their asylum claim to an immigration judge during an adversarial proceeding; (c) an applicant not granted asylum would be denied the opportunity, available under the current procedures, to rebut the asylum officer's initial determination to deny the claim (Notice of Intent to Deny); and (d) due to elimination of the Notice of Intent to Deny (NOID), the applicant would not have access to the information that the asylum officer relied upon in deciding not to grant the claim. The comments stated that such infringement could not be justified by the Government's interest in improving the efficiency or financial viability of the asylum process.

Comments stated that procedures similar to those in the proposed rule have been invalidated by the federal courts. They pointed to Mendez v. Thornburgh, No. 88–04995 (C.D. Cal., Order filed May 26, 1989, modified June 23, 1989), in which the court preliminarily enjoined an expedited adjudication process put into place in Los Angeles and stated that applicants were entitled to a re-interview. Comments also noted *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (hereinafter "*ABC*"), in which the Government agreed to re-interview Salvadoran asylum-seekers. Comments suggested that agency efforts to expedite the asylum process through measures compromising due process and equal protection have been enjoined as a "pattern and practice violation" in a number of other cases.

Response and Disposition: The proposed rule fully recognized the due process rights of asylum applicants. By preserving asylum and withholding of deportation proceedings before an immigration judge, the rule provides due process: (a) the applicant is permitted to testify and submit all relevant evidence in support of his or her claim; (b) the applicant may be represented by an attorney; (c) the applicant is entitled to cross-examine all witnesses presented by the Government and to rebut any documentary evidence submitted by the Government; and (d) the applicant has the right to administrative appeal and judicial review of an adverse decision. In addition, as discussed below, the final rule amends the proposed rule by providing that the INS will conduct interviews for all asylum applicants within its jurisdiction who have filed a complete application. All who apply for asylum before an asylum officer will thus have an opportunity to present their claim in a nonadversarial proceeding. Furthermore, neither the settlement agreement in Mendez nor the settlement agreement in ABC suggests that INS procedures were invalid. The rule does not single out any class of applicants for distinct treatment and all asylum applicants will be treated in the same manner without regard to nationality or country of origin. Asylum officers will interview all applicants who appear for their scheduled interviews before determining whether to grant, deny, or refer their applications.

3. Federalism Issues

Comments: Several comments argued that the proposed rule required a "cost benefit assessment" under Executive Order 12866 because it constitutes a "significant regulatory action." The comments also suggested that the Department was required to perform a "federalism assessment" under Executive Order 12612, since portions of the regulation could affect state

governments' public welfare programs. The comments argued that the inability of asylum applicants to work for 180 days and during the appeal process could lead the applicants and their families to rely on state public assistance that they might not turn to if authorized to work. This, the comments stated, constitutes a "substantial direct effect on the States," triggering the need for a federalism assessment.

Response and Disposition: Executive Order 12866 requires an agency to submit a draft proposed rule and an assessment of the potential costs and benefits of the regulation to the Office of Management and Budget (OMB) for review if the agency or OMB considers the rule "to be a significant regulatory action" under section 3(f) of that Order. The Department of Justice considered the proposed rule to be a significant regulatory action and complied with the Executive Order by submitting a copy of the draft proposed rule and a summary of the reasons for the regulation to the OMB. *See* 59 FR 14784 (March 30, 1994).

Executive Order 12612 requires a federalism assessment if a proposed regulation has "substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government." Whether policies have federalism implications depends principally on whether the policies would preempt state law or interfere with an area of regulation that is usually reserved to the states. If an agency determines that a policy has federalism implications, the federalism assessment must consider the costs or burdens the regulations would impose on the states and resources available to the states to offset the added costs or burdens.

The Department and OMB determined that Executive Order 12612 did not require a federalism assessment of this rule. Regulations regarding immigration and alienage are an exclusive federal concern, and thus do not preempt state law or impinge upon areas of state regulation. Furthermore, Congress has enacted specific legislation governing the employment of aliens which authorized the promulgation of regulations on the subject. The rule also would not have a substantial direct effect on the states. While it is possible that asylum applicants not eligible to apply for work authorization might seek state benefits, the nature and degree of any such claims are at best an indirect effect of the adoption of new asylum procedures. Many asylum seekers have entered the United States illegally and are not eligible for most state benefits; and some state benefits, such as education, are available regardless of whether an applicant has work authorization. Meanwhile, the overall asylum reform effort should reduce the pressure on state public assistance benefits by more promptly granting asylum and work authorization to those deserving of these benefits and more promptly removing from the United States those who are not. Accordingly, there is no need for a federalism assessment under Executive Order 12612.

4. Filing Fee for Asylum Applications (8 CFR 103.7(b)(1))

Proposed Rule: The proposed rule would have amended 8 CFR 103.7(b)(1) to provide that a fee of $130 be charged for an application for asylum or withholding of deportation. Section 208.4(d) would have been amended to provide that an application be accompanied by such fee or by an application for waiver of fee in accordance with 8 CFR 103.7(c)(1).

Comments: Comments supporting fees argued that asylum applicants should have to pay a filing fee if they can afford to do so, that the general public does not benefit from services provided by the INS, and that taxpayers should not have to bear the entire cost.

Most comments, however, urged either elimination or reduction of the fee. It was argued that the proposed fee would unfairly punish persons seeking protection from persecution, treat asylum as a privilege limited to those who could afford it, discourage *bona fide* applications, and create a burden for the INS in administering the fee waiver provisions. Several comments claimed that the fee would be unfair in light of the proposed rule's limitation on an asylum applicant's access to employment authorization pending the adjudication of the asylum claim. Other comments stated that the amount of the fee was excessive: even if an applicant could not qualify for a fee waiver, he or she might still be unable to apply for asylum due to the overall cost, including those for an attorney, counselor, and interpreter, to complete the asylum application process. These comments unfavorably compared the proposed fee to those charged by The Netherlands ($25.00) and Australia ($30.00), the only countries that now charge an application fee, and suggested that a fee at this level would be more appropriate.

Several comments also argued that charging a fee would not be economically efficient. Collecting the fee and administering a waiver system would create significant administrative costs. Adjudicating waivers, aside from being time-consuming, would increase personnel costs and paperwork, would add an additional step to the adjudication process, and would expose the INS to litigation over contested waiver decisions. If, as anticipated, a large number of applicants applied for and obtained fee waivers, the costs in administering the fee and the waiver might not even offset the relatively low amount of fees collected.

Several comments also questioned whether the INS could fairly administer a fee waiver process. They alleged that the INS previously has used improper criteria in adjudicating applications for waivers of fees for Temporary Protected Status and for renewal of employment authorization documents. These comments urged that the process be fairly implemented by removing irrelevant discretionary factors from the waiver procedure and focusing solely on the applicant's ability to pay the fee. Some argued that the INS should propose, publish, and elicit public comments on uniform guidelines for adjudicating fee waivers for all INS applications. Others argued that the INS should create a fee waiver process for asylum applicants under a separate regulation, independent of 8 CFR 103.7(c). Some proposed that asylum applicants filing through an approved voluntary agency or an accredited representative should receive automatic fee waivers. Many comments suggested that waiver guidelines should incorporate the poverty guidelines of the Department of Health and Human Services. Some comments suggested that a time limit be set within which the INS must make waiver determinations and, if the decision is not made within that time, that the waiver be granted. Comments also suggested that the fee-paying or waiver status of the applicant not be disclosed to the asylum officer adjudicating the claim. One comment suggested that the filing of a fraudulent fee waiver be used as evidence weighing against the applicant's credibility on the underlying asylum claim.

Several comments stated that under section 286(m) of the Act, 8 U.S.C. 1356(m), the INS may not impose a fee for asylum applications. This section provides that the INS may set its fee for providing adjudication and naturalization services at a level that will ensure the full recovery of costs for those services, including those provided without charge to asylum applicants or other immigrants. Several comments also stated that a specific fee for asylum applications is unnecessary because after the implementation of asylum reform, the surcharge added to INS fees

in conformance with section 286(m) should generate sufficient revenues to cover the costs of the asylum program.

A number of comments made recommendations for changing the fee proposal. One comment proposed setting the fee at $615, which is the estimated total cost of adjudicating an asylum application. Under this proposal, if the applicant could not pay the fee at the time of filing, then he or she should pay half of the fee at the time of filing and pay the balance within 90 days or at the time of the interview, whichever is sooner. One comment suggested loaning the entire cost of asylum processing ($615) to the applicant. The loan could be paid back in one to three years as the person begins to work.

Some comments suggested that the fee be deferred so that a person granted asylum pay the fee when he or she applies for adjustment of status or for any other subsequent benefit under the Act. For those whose applications are denied and who subsequently seek another immigration benefit, such as adjustment of status upon marriage or reentry after deportation, the asylum fee would be collected at the time the applicant submits the respective application. The comments argued that applicants will be in a better position to pay the fee at the time of these subsequent applications.

One comment suggested that the fee not be charged to those who file their asylum application before an immigration judge in exclusion or deportation proceedings. This comment noted that most of the alleged abuse of the asylum system occurs in applications filed with asylum officers and that it is unfair to charge a fee to those who are defending themselves in removal proceedings.

Response and Disposition: The comments received in response to the fee proposal have been carefully considered. It has been concluded that imposition of the fee at this time would likely impose administrative burdens that would not be offset by the anticipated receipts from the fee. Accordingly, the provisions relating to the fee are not included as part of the final rule. Adjudication of asylum applications before the INS will continue to be funded by way of a statutorily authorized surcharge assessed on applications for other immigration benefits. Additional funding provided by the 1995 appropriations for Asylum Reform will provide resources for INS and EOIR. As part of an ongoing comprehensive economic review of its entire fee structure, the INS will examine alternative sources of funding for asylum adjudications, including the possibility of a user fee.

5. General (8 CFR 208.1)

a. Effective Date (8 CFR 208.1(a))

Proposed Rule: The proposed rule would have amended 8 CFR 208.1(a) to state that Part 208 applies to all adjudications of asylum applications, whether by an asylum officer or by an immigration judge, on or after the effective date of the final rule.

Comments: Many comments urged INS not to apply some or all of the proposed amendments to Part 208 to applications filed prior to the effective date of the final rule. These comments suggested that a "retroactive" application of the rule could result in different treatment for asylum applicants who filed at the same time, but prior to the effective date of the final rule—namely: claims filed and adjudicated before the effective date of the final rule will have been processed under the prior practice of a mandatory asylum officer interview and opportunity to rebut a NOID; NOIDs are eliminated for claims filed but not adjudicated by the effective date and, under the proposed rule, such claims could be referred immediately to an immigration judge without an interview by an asylum officer. Some comments also noted that making the rule applicable to applications that have already been filed would have no effect in discouraging the prospective filing of non-meritorious applications.

A number of comments argued that the proposed rule is invalid under the Supreme Court's decision in *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988), which held that retroactive rulemaking is improper under the APA absent express statutory authority, because Congress has not given the Attorney General retroactive rulemaking authority through the Immigration and Nationality Act.

Finally, one comment argued that applying the proposed rule to "all adjudications" creates conflicts with judicial decisions and settlement agreements in litigation concerning asylum procedures.

Response and Disposition: These comments were carefully considered, but it was concluded that the effective date provision does not run afoul of *Bowen* v. *Georgetown University Hospital*. The rule is not "retroactive" within the meaning of that case because it does not alter the past legal consequences of past actions; rather, it affects only procedures that are to be followed in cases that are yet to be adjudicated.

The effective date provision applies only to adjudications of applications for asylum or withholding of deportation under 8 CFR Part 208. The rule therefore will not apply to the amended provisions of 8 CFR 242.17(e) regarding the use of information provided on an asylum application as the basis for establishing the alienage or deportability of an asylum applicant, or to the related provision at 8 CFR 208.3(c)(2). These amended provisions will apply only to applications received by the INS after the effective date of the final rule. Similarly, the effective date provisions do not affect 8 CFR 274a.12(c)(8). Thus, asylum applicants who have filed their applications prior to the effective date of the final rule will not be subject to the final rule's provisions governing initial applications for employment authorization. Sections 208.7(a) and 242.17(e) of the final rule will be amended to clarify this point. However, the rule governing extensions of employment authorization in § 208.7(d) shall apply to all asylum applicants upon the effective date of this rule. Furthermore, the final rule cannot and does not intend to alter any obligations imposed on the INS or asylum applicants by judicial decisions or settlement agreements in cases such as *ABC* or *Mendez*. Finally, the rule will not apply to cases pending in district courts, courts of appeals, or the Supreme Court.

The other aspects of the rule, while they would affect pending applications, do not affect the past legal consequences of past actions, but merely affect procedures to be applied in the future. The main procedural differences under this rule are elimination of the NOID and written denial decisions by asylum officers. These changes, however, do not alter the legal circumstances or rights of any person with a pending application. No person eligible for asylum under existing regulations will be rendered ineligible due to any change made by this rule. Asylum claims will continue to be adjudicated under the same legal standard.

Limiting application of the final rule to applications filed after the effective date would severely impair efforts at asylum reform because it would require two parallel systems of adjudication: one for cases filed before the effective date, one for cases filed afterwards. Neither the Supreme Court's decision in *Bowen* nor any section of the APA requires such a result. The rule achieves the goal of streamlining the asylum process while maintaining the same legal standards used to adjudicate each

asylum application in a timely manner. This provision of the proposed rule will be adopted in the final rule with amendments for clarity.

b. Qualifications and Training of Asylum Officers (8 CFR 208.1(b))

Comments: Two comments suggested that both immigration judges and asylum officers receive special training in international human rights law, conditions in countries of origin, and other relevant national and international refugee laws. One comment observed that the current rule that provides for extensive training of asylum officers has improved their decision-making, and reasoned that the same requirement would have a similar effect on the decisions of immigration judges.

Response and Disposition: The Department provides extensive initial training and continuing education to immigration judges that includes training related to asylum adjudications. The Department will continue to work to improve such training programs. However, the Department does not consider it necessary that there be specific regulatory requirements regarding the training of immigration judges.

6. Form of Application (Section 208.3)

a. Required Copies of Forms (8 CFR 208.3(a))

Proposed Rule: Section 208.3(a) of the proposed rule stated that the applicant file three copies of any supporting documentation and one completed fingerprint card (Form FD–258) for all individuals ages 14 years and older who are included on the application.

Comments: One comment stated that it is not clear whether two or three copies of the application are required, and another questioned the reason for requiring three copies of supporting documentation.

Response and Disposition: The final rule has been clarified to make clear that the I–589 and supporting documents, plus two copies, are required. Three copies of supporting documentation are required because one copy is retained by the INS in the applicant's alien registration file, one copy is forwarded to the Department of State under 8 CFR 208.4(a), and, if the application is not granted by the asylum officer, a copy of the application with all supporting documents is forwarded to the immigration judge under the referral process described in 8 CFR 208.14(b). This provision of the proposed rule has been amended to clarify that the original and two copies of the application are required

b. Use of Information in Application (8 CFR 208.3(c)(2))

Proposed Rule: Section 208.3(c)(2) of the proposed rule stated that information provided in an asylum application may be used to satisfy the Government's burden of proof in establishing deportability under section 242 of the Act, 8 U.S.C. 1252.

Comment: One comment asserted that the proposed rule should state that the information in the asylum application may not satisfy the clear, convincing, and unequivocal standard of evidence for deportability.

Response and Disposition: The Department believes that an alien's written admission of alienage and of having no lawful status in the United States is sufficient to satisfy the standard of evidence for establishing deportability. Consequently, the new asylum application will contain a clear warning that the application may be used to establish deportability. This part of the final rule will not be applied retroactively and will affect only those persons who make an application on the new form after the effective date of this rule. Accordingly, this provision of the proposed rule will be adopted without amendment in the final rule.

c. Delivery by Mail (8 CFR 208.3(c)(3))

Proposed Rule: Section 208.3(c)(3) of the proposed rule stated that mailing to the address provided on the application shall constitute adequate service of all notices and other documents, including any charging documents (Forms I–221 and I–122).

Comments: Several comments argued that delivery by regular mail of an Order to Show Cause (OSC) violates section 242B(a)(1) of the Act, 8 U.S.C. 1252b(a)(1), which requires that OSCs be presented by personal service or certified mail. Other comments argued that the OSC should be served by certified mail to ensure that it is actually received and that the rule does not take into consideration that an applicant may move after his or her application has been filed.

Three comments also addressed the issue of service to legal representatives. One comment stated that if the applicant is represented by an attorney, service should be made on the applicant's legal representative, rather than on the applicant. Another comment recommended that mailing documents to the applicant's attorney or representative also should constitute adequate service. Finally, a comment asserted that EOIR should be informed whether an applicant was represented by an attorney at the Asylum Office.

Response and Disposition: This provision is not intended to—and legally could not—alter the certified mail delivery requirements in section 242B of the Act, 8 U.S.C. 1252b. In cases where personal delivery of the OSC is not possible, OSCs will continue to be served by certified mail. This provision is adopted with an appropriate clarifying amendment in the final rule.

The recommendations regarding service upon attorneys or registered representatives have been considered carefully. The Department believes that the rules for service of an OSC must ensure that the person subject to proceedings has actually received the document. The Department also is concerned that an attorney retained for the asylum process might not remain as the applicant's attorney in exclusion or deportation proceedings. As this final rule is implemented, the INS will work with attorneys and advocacy organizations to consider these and other proposals relating to the service of notices and other documents, but the suggestion of having charging documents mailed to an applicant's attorney or representative constitute adequate service has not been adopted.

d. Signatures under Penalty of Perjury (8 CFR 208.3(c)(4) and 8 CFR 208.3(d))

Proposed Rule: Sections 208.3(c)(4) and 208.3(d) of the proposed rule stated that the applicant and anyone other than an immediate relative of the applicant who prepares or assists the applicant in preparing the asylum application must sign the application subject to penalty of perjury. A person other than an immediate relative who prepares or assists the applicant in preparing the application also must provide his or her full mailing address. In addition, if the applicant later claims ignorance of the contents of the application, his or her signature may provide the basis for denial of the claim.

Comments: Several comments suggested that any preparer, including an immediate relative, sign the asylum application under penalty of perjury and provide an address. One comment argued that exempting family members from signing the I–589 weakens the regulation because unscrupulous preparers, to remain undetected, will not sign the application.

Many other comments criticized this provision as unduly punitive because many asylum applicants have limited education, are unfamiliar with United States laws, and rely on those who claim to be qualified to assist them with their asylum applications. Such applicants should not be subject to prosecution if there are errors in the

application. Some comments asserted that this provision will prevent applicants from obtaining help in completing their applications. In addition, one comment claimed that those assisting applicants might fear reprisal from their own governments if their role in assisting asylum applicants were known. Another stated that organizations may not wish to sign the forms because of their unwillingness to incur potential liability for an inaccurate representation not known to them. One comment argued that subjecting persons other than the applicant to penalty of perjury places an undue burden on attorneys and translators who are assisting applicants but can do little to verify the veracity of the applicants' statements.

The comments made several recommendations directed at protecting applicants and the individuals and organizations who assist applicants. One comment recommended that only the preparers, not the applicants, should sign the asylum application subject to a penalty of perjury because genuine asylum-seekers, particularly those that do not speak English, may be unaware of the actions of an unprincipled preparer. One comment advocated that those who prepare asylum applications without charging the applicant a fee should not be required to sign the form. Another comment suggested that if an improperly prepared asylum application is not signed by the preparer, the asylum officer should ask the applicant who prepared the application. With the applicant's permission, the asylum officer then could relay the information about the preparer to the appropriate local INS enforcement division.

Finally, two comments asserted that the signature requirement is too broad. The comments claimed that the signature requirement in the proposed rule is more sweeping than the requirement on the form itself, and that it fails to specify the degree of assistance that triggers the necessity to sign the form.

Response and Disposition: The requirement that the applicant and outside preparers sign the Form I–589 under penalty of perjury is necessary and appropriate for several reasons. An asylum applicant is seeking an important benefit and should be required to provide only truthful information to the Government. The evidentiary rules for adjudicating asylum applications treat the credible testimony of the applicant as sufficient to meet the applicant's burden of proof and thus there should be appropriate consequences for making false statements. Those who assist in preparing applications also should bear these consequences if they have knowingly included false information on the application.

The fact that a signature is made under penalty of perjury does not, of course, alter the Government's burden to establish the elements of the crime in the event of prosecution. Many of the objections raised in the comments would apply to situations where perjury could not be proved. Nevertheless, those applying for asylum and those who assist others in doing so should have the same obligation to make truthful statements as persons who make other applications to the Government. These provisions of the proposed rule will be adopted in the final rule, with amendments for clarity and to eliminate unnecessary words.

e. Incomplete Applications (8 CFR 208.3(c)(5) and 8 CFR 208.3(c)(6))

Proposed Rule: Section 208.3(c)(5) of the proposed rule stated that an application that is incomplete or lacks a response to each of the enumerated questions may be referred to an immigration judge for adjudication or may be denied by the asylum officer. Section 208.3(c)(6) defined an incomplete application as one that does not include a response to each of the questions contained in the Form I–589, that is unsigned, that is unaccompanied by the required materials specified in paragraph (a) of this section, or that is unaccompanied by the required fee or application for fee waiver.

Comments: Numerous comments criticized these provisions for establishing overly harsh penalties and for not including a sufficiently clear definition of what constitutes an incomplete application. The comments claimed that an application may be denied or referred because minor or irrelevant questions were not answered. The comments suggested that the applicant be given a chance to remedy such an omission. The comments also questioned whether an application would be deemed incomplete if certain questions were answered but the responses lacked substance.

Several comments agreed that incomplete applications should not be adjudicated and recommended amendments to the rule. One comment suggested that this provision be moved to a new subsection and labelled "Summary Disposition—Action on Incomplete Forms." Another comment suggested that the term "incomplete" be deleted from the final rule in order to restrict the rule to allow denial or referral only when the applicant has been completely unresponsive to a question. A third comment advocated that incomplete applications be returned to the applicant, rather than denying them or referring them to an immigration judge.

Response and Disposition: The final rule retains the current mandate that all asylum applicants who appear as scheduled will receive an interview with an asylum officer.

Accordingly, incomplete applications will not be denied or referred to an immigration judge without an interview. These sections of the proposed rule are therefore adopted with appropriate amendments in the final rule. The final rule provides that an incomplete application shall be returned by mailing it to an applicant within 30 days of receipt of the application by the INS; and that if an application has not been returned within this 30-day period, the application shall be deemed complete. Under section 208.7 of the final rule, if the application is incomplete, the 150-day period will not begin until the applicant submits a complete application. For clarity, the last sentence of § 208.3(c)(6) of the proposed rule, defining an incomplete application, is moved to paragraph § 208.3(c)(5) of the final rule. This definition also has been clarified to state that an application that is not returned to an applicant within 30 days of having been received by the INS shall be deemed complete.

7. Employment Authorization (Section 208.7)

Proposed Rule: The proposed rule would have amended the regulations governing eligibility of asylum applicants for employment authorization in the following manner: An application for employment authorization (Form I–765) could be submitted to the INS no earlier than 150 days after the date on which a complete application for asylum was filed. If the asylum application was denied by an immigration judge or an asylum officer within the 150-day period, the applicant would not be eligible to apply for employment authorization. After 150 days, the INS would have 30 days from the date of the filing of the application for employment authorization to adjudicate the application for employment authorization. If the INS failed to adjudicate the application for employment authorization within the 30-day period, the applicant would be eligible for interim employment authorization. If the application for asylum was denied by an immigration judge or an asylum officer within this 30-day period, the application for employment authorization would be

denied. The 150- and 180-day periods would be extended by any delay sought or caused by the applicant. The proposed rule also would have prohibited an applicant for asylum who has been convicted of an aggravated felony from applying for or being granted employment authorization. If an applicant who has been convicted of an aggravated felony has previously been granted employment authorization, the employment authorization would be revoked. Finally, an applicant who inexcusably failed to appear for a scheduled interview before an asylum officer or a hearing before the immigration judge would not be granted employment authorization. The proposed rule also would have amended the current rule by requiring a fee for the filing of an initial application for employment authorization.

Comments: A few comments supported these proposals as an appropriate balance between meeting the needs of asylum applicants while discouraging frivolous claims. A greater number of comments criticized these provisions for imposing economic hardship on asylum applicants. The comments stated that many applicants arrive in the United States with few belongings, no money, and no network of family or friends to provide them assistance. Furthermore, the United States does not provide public assistance benefits to most people who apply for asylum. As a result, asylum applicants would be forced to work illegally in jobs where they would be underpaid and treated poorly, but would have no means of redress because of the fear of reprisals. Other comments claimed that the rule would violate the right to work of asylum applicants and is inconsistent with the 1951 Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 19 U.S.T. 6260, T.I.A.S. 6577, and the 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, 19 U.S.T. 6223, T.I.A.S. 6577, because it creates an obstacle to the filing of an asylum application. Comments also stated that the rule would deny due process to asylum applicants because they would be unable to afford attorneys to represent them. Numerous other comments claimed that the rule would impose new burdens on social service organizations and state and local governments because asylum applicants unable to work will turn to these sources for assistance.

One comment specifically observed that a greater number of Cubans and Haitians will apply for cash and medical benefits under the Refugee Education Assistance Act of 1980, 8 U.S.C. 1522 note, and suggested that Cubans and Haitians be exempt from the employment authorization limitations under 8 CFR 208.7(a). Another comment contended that applicants paroled into the United States to file asylum claims will lose their work authorization under the proposed rule, which would be unjust because many such parolees have been recognized by the INS to have credible asylum claims.

Some comments indicated that the proposed rule is confusing because it does not specify that persons granted asylum are immediately eligible for work authorization and does not provide sufficient detail on how the 150-day waiting period will be measured. Other comments expressed doubt that asylum applicants would actually receive work authorization 180 days after the filing of their applications because of difficulty and confusion in applying the 150-day waiting period.

Many comments advocated eliminating the waiting period and maintaining the current rule, which allows immediate applications for employment authorization and issuance within 90 days. Some comments suggested a decrease in the waiting period with one specifically stating that employment authorization valid for 3 to 6 months should be granted at the time of the interview or within 90 days, except for cases deemed "frivolous" or "manifestly unfounded." Another comment advised providing exceptions to the waiting period by granting employment authorization immediately or within 90 days to applicants who demonstrate hardship or economic need (such as those with no relatives in the United States or who have small children). Another comment advocated issuing employment authorization at the time of the interview or hearing because it would ensure that applicants appear for their interview or hearing and allow the applicant to receive employment authorization sooner.

A number of comments suggested clarification of the 150-day waiting period. One comment noted that the 150-day period should begin when the application is received by the INS, rather than when the application is actually processed. Some comments argued that the INS should notify the applicant in writing of the date of receipt and whether the application is complete. Other comments criticized the provision for an extension of the 150-day period in the case of delays caused by the applicant, and one comment recommended that this aspect be eliminated. Another comment suggested, however, that the applicant be notified when additional information is required and the waiting period be extended only if the additional information is not provided. Other comments asked for clarification as to what actions serve to extend the waiting period, and one comment requested that a mechanism to contest the extension be provided.

Finally, some comments opposed the inability of the applicant to obtain work authorization during the appeal period if his or her claim is denied by the immigration judge within the 180-day period. One comment noted that the applicant's access to counsel will be jeopardized on appeal while another observed that negative decisions frequently are reversed. A comment stated that such an applicant may face the choice of either starving or returning to a country where he or she faces persecution. Comments also stated that a decrease in appeals will hinder proper interpretation of the law by preventing the presentation of novel legal issues. These comments suggested that employment authorization be granted to applicants during the appeal process or that an exception for economic necessity be provided.

Response and Disposition: The Department strongly believes that the asylum process must be separated from the employment authorization process. This rule will discourage applicants from filing meritless claims solely as a means to obtain employment authorization. More important, the rule provides legitimate refugees with lawful employment authorization. When the system is fully operational, asylum officers are expected to grant or refer affirmative claims within about 60 days. Thus, persons with bona fide asylum claims would get work authorization in approximately the same time as the current 90-day period for adjudicating work authorization applications. All applicants could have work authorization after 180 days, unless their claims have been denied by an immigration judge. Under existing authority, work authorization may be granted to persons who are paroled into the United States by the INS. 8 CFR 274a.12(c)(11). This provision, which can be employed in the case of asylum applicants seeking admission at a port of entry to the United States and paroled into the country, is not changed in this rule.

The comments presented on this issue have been carefully considered. Particular attention was given to the recommendations that alternative means be established to adjudicate employment authorization on the basis of the merits of the claim or on the economic situation of the asylum

applicant. Either alternative would invite a large number of applications, thus diverting resources and undermining the goals of asylum reform. Using a merit-based standard would require the INS to adjudicate asylum applications for work authorization eligibility either through a paper evaluation or a separate work authorization interview. A need-based standard would impose a similar administrative burden. Given that the vast majority of those deserving asylum will promptly receive their decisions and, hence, their employment authorization, this burden would not be justified by the results achieved.

The Department also considered the claim that asylum applicants will disregard the law and work without authorization. While this is possible, it also is true that unlawful employment is a phenomenon not limited to asylum applicants, but is found among many categories of persons who have illegally entered or remained in the United States. The Department does not believe that the solution to this problem is to loosen eligibility standards for employment authorization. This is particularly so because of the evidence that many persons apply for asylum primarily as a means of being authorized to work. These rules will discourage applications filed for such reasons and thus will enable the INS to more promptly grant asylum—and provide work authorization—to those who merit this relief.

These provisions of the proposed rule also are in keeping with United States obligations under international law. Article 17 of the 1951 Convention provides that a "[c]ontracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment." Under this rule, refugees—i.e., persons granted asylum—are immediately eligible to apply for and receive employment authorization. Article 17 imposes no further obligations on access to employment authorization for those who are applying for asylum.

The Department also has carefully considered the comments directed to the impact that new rules on employment authorization would have upon the states. These concerns are addressed under heading 3.

Consistent with its decision to remove the requirement for an asylum application fee, the Department will not adopt in this final rule a requirement that asylum applicants pay a fee to accompany an initial application for employment authorization under 8 CFR 274a.13. The fee requirement will be retained for applications to renew employment authorization.

The provisions of the proposed rule are adopted with several amendments in the final rule. Sections 208.3(c)(5) and 208.7(a)(1) of the final rule will be amended to provide that the 150-day period shall commence upon the receipt by the INS of a complete application for asylum. The filing of an incomplete application shall not commence the 150-day period provided that the INS has returned the application by mailing it within 30 days in accordance with 8 CFR 208.3(c)(5). Section 208.7(a)(4) also will be amended to specify that an applicant's failure without good cause to appear for an interview under section 208.9(a) precludes the applicant from receiving employment authorization under section 274a.12(c)(8). Failure to appear without good cause to receive the decision of the asylum officer under section 208.9(d) shall be treated as delay caused by the applicant and shall toll the 150-day period. A new paragraph 208.7(a)(5) will be added to specify that the new rules governing eligibility for employment authorization do not apply to persons whose asylum applications have been filed prior to January 4, 1995. Finally, section 208.2(b) will be amended to state that an immigration judge may permit a referred applicant to file an amended application, but that any delay caused by such a request shall extend the period within which the applicant may not apply for employment authorization.

8. Renewal of Employment Authorization (Section 208.7(d))

Proposed Rule: Section 208.7(d) would be amended to require that in order for employment authorization to be renewed before its expiration, an application must be received by the INS at least 90 days before the employment authorization expires. Under current regulations, applications for renewal must be received at least 60 days prior to expiration.

Comment: Several comments criticized this proposal for placing an unfair and unnecessary burden upon applicants for renewal. The comments stated that the INS should be able to process renewals within 60 days. Some comments stated that renewal of work authorization should be assigned to INS District Offices, and not to the INS Service Centers, because the District Offices are more likely to have access to information regarding the alien's status. One comment approved of the practice of charging a fee for renewal of work authorization.

Response and Disposition: Under 8 CFR 274a.13(d), the INS district director shall adjudicate the application for renewal of employment authorization within 90 days of receipt.

The lack of uniformity between the current 60-day rule for filing renewal applications and the 90-day rule for adjudicating such applications led to disagreements between applicants and the INS. The INS believes that fewer disputes will result if these periods are uniform. The INS agrees that many such applications can be adjudicated in significantly less than 90 days, and will continue to work for improvements in this area. Due to the workloads involved in processing a large volume of employment authorization requests, however, the Department believes that it would not be prudent to establish a shorter mandatory period for the adjudication of such requests. Accordingly, these provisions of the proposed rule will be adopted without amendment in the final rule.

9. Interview and Procedure (Section 208.9(a))

a. Mandatory vs. Discretionary Interview

Proposed Rule: Current regulations require that for each application for asylum within the jurisdiction of an asylum officer, an interview shall be conducted by that officer. The proposed rule would provide that interviews on asylum applications are discretionary.

Comments: Many comments opposed making interviews discretionary. Some rested their objections in part on constitutional grounds; these concerns have been addressed above in subheading 2. The comments also expressed concern that direct referral of claims without an interview to an immigration judge is inappropriate because the written application often is not a reliable indicator of the strength or weakness of the applicant's claim. The comments argued that a system of discretionary interviews and direct referrals would be unfair because many applicants are unable fully to articulate their claim in writing due to language barriers, lack of understanding of the laws governing asylum, or innocent reliance on unscrupulous paid preparers of asylum applications. These comments argued as well that the asylum interview is of significant benefit because it allows the applicant to present the facts of the case in a nonadversarial manner and compels the asylum officer to consider the full range of facts, including all relevant country conditions, before making a determination in the case. While many comments acknowledged the advantages

of adversarial proceedings before an immigration judge in eliciting the facts of an asylum claim, the commentators generally felt that the value of an asylum interview should be given greater weight.

Several comments stated that the proposed rule would be contrary to the legislative intent behind section 208 of the Act, 8 U.S.C. 1158, because Congress contemplated that asylum determinations would be made independent of exclusion and deportation proceedings.

Several comments claimed that the system of discretionary referrals would actually make the process less efficient because applicants would be forced to present their claims in a longer, more formal hearing before an immigration judge. The comments claimed that this would increase overall expense to the Government, exacerbate the problem of delay in asylum adjudications, and undermine the intent of the proposed rule to streamline the asylum system.

The vast majority of the comments directed to this question stated that asylum interviews should be mandatory. However, a large number of these comments also suggested that, as an alternative, direct referral without interview should take place only in circumstances where the written application indicates that the claim is frivolous or manifestly unfounded. Some comments criticized the proposed rule for making it appear that the granting of interviews to asylum applicants will be the exception, not the rule. The comments also stated that applicants deserve to know the standard under which the INS will determine whether or not to grant an interview.

Response and Disposition: The Department has carefully considered these comments and determined that the goal of streamlining asylum adjudications can be met without changing the present rule that mandates the opportunity for an interview of each asylum applicant. Accordingly, the present rule is retained and there is no provision for immediate referral of cases, without an interview, to an immigration judge. The rule is clarified to state that an interview will be granted for applications that are complete within the meaning of § 208.3(c)(5). Section 208.10 also is amended to provide that the failure without good cause of an applicant to appear for a scheduled interview under § 208.9(a) may be deemed to constitute a waiver of the right to an interview with an asylum officer or, in the case of an applicant who is a stowaway, alien crewman, alien temporarily excludable under section 235(c) of the Act, 8 U.S.C. 1225, or in current lawful immigration status, may be deemed to constitute an abandonment of the application.

b. Procedural Issues

Proposed Rule: The proposed rule would have amended 8 CFR 208.9 (b) and (c) to require the applicant to provide full identifying information at the time of the application. Section 208.9(d) would have been amended to require that, at the conclusion of the interview, the applicant be notified that he or she must appear in person to receive the written decision of the asylum officer. A new section 208.9(g) would have been added to specify rules regarding the use of interpreters during interviews.

Comment: One comment stated that the proposed rule is unclear on whether witnesses could testify at the interview because section 208.9(b) of the rule states that the applicant "may . . . submit affidavits of witnesses" while section 208.9(g) refers to live witnesses.

Response and Disposition: An asylum applicant may present live witness testimony at the time of his or her interview. In the final rule, section 208.9(b) is amended to clarify this point.

Comment: Several comments criticized the requirement in the proposed rule that the applicant be informed that he or she must appear in person to acknowledge receipt of the written decision of the asylum officer. The comments stated that this requirement would be inefficient and would result in applicants having to make an unnecessary return trip to the Asylum Office, where they may have to wait for a long period of time. A comment also questioned whether those who are interviewed in "circuit ride" locations would be able to go to those locations, or would be required to travel to the more distant Asylum Office with jurisdiction over their cases. Several comments suggested that written decisions be served by certified mail or that mail service be used in cases where the applicant has an attorney or registered representative.

Response and Disposition: In order to streamline asylum adjudications, there must be a reliable system to accomplish and verify service of the decision to grant, refer, or deny the claim and, if applicable, service of the charging document. The INS experience with certified mail under the current rule demonstrates that this may not be the most effective method to meet this goal. If the applicant has provided an invalid address or has moved without notifying the INS, delivery most often will not be accomplished. In addition, postal delays and difficulties in processing return receipt cards detract from the INS's ability to confirm timely delivery. It may be somewhat inconvenient to make a return trip to the Asylum Office; however, under this system, the applicant will receive his or her decision promptly. If the decision is to grant the claim, the applicant will be able to apply more quickly for employment authorization and other benefits. If the decision is to refer the claim, the applicant will receive a charging document that will state the date and time of required appearance in immigration court, and will be able to plan for that proceeding. Finally, both the asylum adjudications and removal proceedings systems will benefit if there are fewer disputes regarding the service of decisions and charging documents. In cases where the applicant has failed to appear at the appointed time to receive his or her decision, certified mail will be used in lieu of personal service to deliver the decision.

The INS has carefully considered whether the rule should be amended to permit the use of mail service in the case of applicants who have an attorney or registered representative. The Department has declined to adopt that proposal at this time, chiefly because of concerns that an attorney retained for the asylum application process may not remain as the applicant's attorney in exclusion or deportation proceedings. However, as this final rule is implemented, the INS will work with attorneys and advocacy organizations to consider this and other proposals relating to service of decisions.

These provisions of the proposed rule have been adopted with an amendment to clarify that an applicant's failure to appear to receive and acknowledge receipt of the decision of the asylum officer shall be treated as delay caused by the applicant for purposes of 8 CFR 208.7(a)(3) and shall extend the period within which the applicant may not apply for employment authorization by the number of days until the applicant does appear to receive the decision or until the applicant appears before an immigration judge in response to the issuance of a charging document under 8 CFR 208.14(b).

Comment: Several comments addressed the proposed rule's provisions governing the use of interpreters (8 CFR 208.9(g)). Some comments criticized the requirement, also contained in current regulations, that the applicant who does not wish to proceed in English provide an interpreter for the asylum interview. These comments stated that this will impose a financial burden on applicants and that it may be difficult for

applicants to find competent interpreters, particularly for certain languages. Other comments recommended that the rule be amended to specifically permit immediate family members to serve as interpreters. Some comments suggested that the rule be more lenient in cases where the applicant has failed to provide an interpreter. One comment stated that the proposed rule should be amended to prohibit representatives, as well as attorneys and immediate family members, from serving as interpreters.

Response and Disposition: The requirement that asylum applicants wishing to proceed in a language other than English provide an interpreter is currently enforced by the INS as an operations policy. Any other rule would impose an undue financial burden on the Government. Currently, asylum applicants may use a family member, friend, or volunteer from the community, or may hire a professional interpreter. The proposed rule was intended to adopt this policy into the regulations. The recommendation that a registered representative, as well as an attorney, be prohibited from serving as an interpreter will be adopted in the final rule; an advocate should not be called upon to serve two distinct roles in the course of a proceeding. However, the final rule does not prohibit an employee of the applicant's attorney or registered representative, such as a paralegal, from serving as the applicant's interpreter. Finally, while an applicant's failure without good cause to provide an interpreter may be considered as a failure without good cause to appear for the asylum interview itself, the asylum officer has discretion in applying this sanction. If the failure to provide an interpreter is justified by good cause, the INS will not consider the applicant to have waived his or her right to an interview or to have abandoned his or her asylum application.

These provisions of the proposed rule are retained with appropriate amendments in the final rule.

10. Failure to Appear (Section 208.10)

New Amendment: The proposed rule would have made no amendment to 8 CFR 208.10. However, in the course of reviewing the comments regarding the interview of asylum applicants, it was concluded that this section should be clarified to modify the provision that an applicant who fails to appear for a scheduled interview may be deemed to have abandoned his or her application for asylum. The final rule will modify this section to provide that failure without good cause to appear for a scheduled interview may be deemed to constitute a waiver of the right to an interview or, in the case of an alien crewman, stowaway, person excludable under section 235(c) of the Act, 8 U.S.C. 1225, or person in current lawful immigration status, may be deemed to constitute an abandonment of the application. The final rule also will amend 8 CFR 208.14(b) to provide that an applicant who is deemed to have waived the right to his or her asylum interview in accordance with this section may be referred to an immigration judge for adjudication in the course of exclusion or deportation proceedings.

11. Comments From the Department of State (Section 208.11)

Proposed Rule: As amended by the proposed rule, 8 CFR 208.11 would retain the practice of submitting asylum applications to the Department of State but would eliminate the mandatory period during which asylum officers and immigration judges must await the receipt of State Department comments in individual cases. The State Department could provide such comments, but the intent of the rule is to change the role of the State Department to one of providing detailed and current country conditions information.

Comments: Comments supported this change. Several comments stated that applicants should have access to the country conditions information provided by the State Department and relied upon by INS, and that applicants should continue to receive copies of case-specific comments from the State Department. Some comments stated that the applicant should be given 30 days to respond to any such comments from the State Department.

Response and Disposition: Under section 208.11(c) of the rule, applicants will receive copies of case-specific comments provided by the Department of State. Immigration judges will have discretion to grant an appropriate time period, if necessary, for rebuttal. A uniform and mandatory waiting period will not be beneficial because it would add unnecessary delay to the process. Copies of generic country conditions information relied upon by immigration judges also will become part of the record available to the applicant. The INS currently is considering means by which country conditions information used by asylum officers may be made more generally available and will continue to work with attorneys, advocacy groups, and other interested members of the public in accomplishing this goal. This provision of the proposed rule is adopted in the final rule with amendments to clarify the text and eliminate unnecessary words.

12. Elimination of Notice of Intent to Deny (Section 208.12(a))

Proposed Rule: The proposed rule, section 208.12(a), would have eliminated the requirement that an asylum officer provide the applicant an opportunity to inspect, explain, or rebut the material relied upon to find that the applicant's claim has not been approved. This is commonly referred to as a Notice of Intent to Deny, or NOID.

Comments: Many comments criticized this proposal, arguing that the NOID requirement protects the rights of applicants and promotes more accurate decisions by asylum officers. Comments characterized the NOID as useful to clear up misunderstandings or incorrect applications of the law before cases reach the immigration court. As discussed previously, some comments also felt that the proposed rule would violate the due process rights of applicants by denying them an opportunity to give a meaningful response to material other than the interview and the application relied upon by the asylum officer.

Other comments praised elimination of the NOID requirement as a means to expedite the asylum process. Some comments proposed that a balance be struck by maintaining the NOID requirement but reducing the time period in which the applicant can respond.

Response and Disposition: The Department gives high priority to all efforts to improve the fairness, quality, and accuracy of decisions made by asylum officers and immigration judges. However, the requirements in 8 CFR 208.12(a) are not necessary to meet these goals, and modification of this section is pivotal to the streamlining of the asylum process. Applicants who are not granted asylum by the asylum officer will have a full opportunity to present their claim to an immigration judge, with all the procedural protections of a full adversarial proceeding. This includes, of course, the right to examine and rebut all evidence and materials that are introduced in opposition to the asylum claim. The NOID system is, at best, an imperfect approximation of this hearing process and one that adds unnecessary time and expense to the process, thus making it more difficult to adjudicate claims in a timely manner. The Department has considered seriously the objections stated to this proposal but believes that the interests of all asylum applicants will best be served by eliminating the

NOID requirement. Accordingly, this provision of the proposed rule is retained without amendment in the final rule. The Department will, however, continue to issue Notices of Intent to Deny in the cases of persons whose asylum applications can be denied by asylum officers, including stowaways, crewmen, and persons with a lawful immigration status.

13. Referrals to an Immigration Judge (Section 208.14(b))

Proposed Rule: The proposed rule would have added a new paragraph 208.14(b) to state that if an asylum officer does not grant an application, and the applicant appears to be deportable or excludable, the asylum officer shall refer the application to an immigration judge for adjudication in exclusion or deportation proceedings. The asylum officer would no longer deny the application in writing, as required under current regulations. The asylum officer would issue a written denial in cases where the applicant has a current legal immigration status not derived from his or her asylum application.

Comments: Several comments stated that the rule should be amended to state specific guidelines that asylum officers must follow in deciding whether to refer cases to an immigration judge. According to these comments, it is unclear whether the application will be judged under the standard of well-founded fear of persecution set forth in section 101(a)(42) of the Act, 8 U.S.C. § 1101(a)(42), or under some other discretionary standard. Some comments also stated that asylum officers may rely on improper factors such as instinct, prejudice, or misinformation in making referral decisions. The comments suggested that a written record of the reasons for referral, provided to the applicant, would be fairer to applicants and would increase confidence in the referral system.

Several comments also criticized the provision for automatic referral of the asylum application to an immigration judge. The comments argued that in the course of exclusion or deportation proceedings, the asylum application is defensive in nature, and the applicant should be able to decide whether to use the application in the proceedings. The comments also stated that initial asylum applications are often erroneous or incomplete, not because the applicant intends to commit fraud, but because the applicant does not know English and has used a preparer who did not complete the application correctly. The comments suggested that the applicant referred to an immigration judge be able to submit an entirely new application.

Response and Disposition: The proposed rule does not change the legal standard for granting asylum set forth in sections 101(a)(42) and 208(a) of the Act, 8 U.S.C. 1101(a)(42) and 1158(a), and 8 CFR 208.13 and 208.14: asylum officers will continue to abide by this standard. Those who have met the burden of proof to establish that they are refugees will continue to be granted asylum. Those who have not met their burden of proof will be referred to an immigration judge or, in the case of those with a current lawful immigration status, will be issued a denial letter. The rule should create no reason for concern that factors other than those set forth in the law and regulations will influence the decisions of asylum officers. Accordingly, there is no reason to provide any additional regulatory guidelines for asylum officer decisions.

We have declined to adopt the recommendation that the applications of referred applicants not be forwarded to an immigration judge. A referred applicant may decline to seek asylum in the course of exclusion or deportation proceedings and, if so, can simply move to withdraw the application. However, if the applicant desires to proceed with the application, he or she should be held accountable for the information that has been provided on the initial application. During the immigration court proceedings, the applicant can provide additional information and explain any errors or inconsistencies in the application. In addition, section 208.2(b) of this rule has been amended to provide that an immigration judge, as a matter of discretion, may permit the applicant to amend the I–589 prior to the hearing on the merits.

The proposed rule would have provided that the INS inform an applicant by letter of the decision to refer his or her case, accompanied by a charging document. The INS will consider the recommendation that the letter state briefly the reasons why the application has not been granted. However, the INS believes that a regulatory standard mandating the contents of the referral letter is not necessary to preserve the procedural rights of applicants and may impede the flexibility that will be necessary to ensure that applicants receive their decisions in a prompt manner. The INS will continue to work with attorneys, advocacy groups, and other interested members of the public on this question.

This provision of the proposed rule will be adopted in the final rule with one substantive amendment. The amendment will specify that an application may be referred to an immigration judge for adjudication in exclusion or deportation proceedings if, in accordance with 8 CFR 208.10, the applicant is deemed to have waived his or her right to an interview on the application under 8 CFR 208.9(a). In addition, this paragraph has been reorganized and sub-divided for clarity.

14. Eligibility Restrictions for Persons Convicted of Aggravated Felonies (Sections 208.14(d)(4) and 208.16(c)(2)(ii))

Proposed Rule: The proposed rule would have added a new paragraph 208.14(d)(4) that would bar individuals who have been convicted of an aggravated felony from applying for or being granted asylum. Proposed 8 CFR 208.16(c)(2)(ii) would bar such individuals from applying for or being granted withholding of deportation.

Comments: Several comments proposed that this portion of the rule be amended. Some comments stated that the effect of the rule is too harsh and that those convicted of an aggravated felony should be able to present their asylum claims. The INS should then balance the likelihood and seriousness of persecution against the gravity of the crime committed by the individual. These comments stated that this approach is supported by the United Nations High Commissioner for Refugees. Some comments also argued that the rule should apply only to convictions entered after November 19, 1988, the date of enactment of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, which added section 101(a)(43) to the Act to define "aggravated felony." *See* 8 U.S.C. 1101(a)(43). These comments argued that application of the aggravated felony ban to convictions entered on or before November 19, 1988, is inconsistent with the holding in *Landgraf* v. *USI Film Products*, 114 S. Ct. 1483 (1994).

Several comments also criticized the proposed rule for barring persons with aggravated felony convictions from eligibility for withholding of deportation. The comments argued that the preclusion in section 243(h)(2)(B) of the Act, 8 U.S.C. 1253(h)(2)(B), which bars a grant of withholding to a person who, "having been convicted of a particularly serious crime, constitutes a danger to the community," requires a two-pronged finding: that the alien was convicted of a particularly serious crime and that the alien constitutes a danger to the community. The comments stated that the INS should not presume that every aggravated felony is a particularly serious crime or that every person

convicted of such a crime is also a danger to the community.

Response and Disposition: These provisions of the rule are mandated by the congressional enactments regarding limitations on the granting of relief to criminal aliens. The definition of "aggravated felony" in section 101(a)(43) of the Act was added by section 7342 of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, 102 Stat. 4181, 4469 (November 18, 1988). The Immigration Act of 1990, Pub. L. 101–649, 104 Stat. 4978 (November 29, 1990) (1990 Act) defined additional crimes as aggravated felonies and added further disabling provisions. *E.g.*, 1990 Act § 501, 104 Stat. at 5048. In addition, section 515(a)(1) of the 1990 Act created section 208(d) of the Act, 8 U.S.C. 1158(d), which states that an alien convicted of an aggravated felony "may not apply for or be granted asylum." 104 Stat. at 5053. Section 515(a)(2) of the 1990 Act amended section 243(h)(2) of the Act, 8 USC 1253(h)(2), to require that, for purposes of the statutory bar to withholding of deportation, "an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime." 104 Stat. at 5053.

Neither section 208(d) nor section 243(h)(2) of the Act provides for a "balancing test" to be employed in the case of a person convicted of an aggravated felony. Such a person is barred from relief without regard to the merits of his or her claim. Inclusion of aggravated felonies as "particularly serious crimes" also is consistent with the long-standing administrative interpretation of the Act that crimes such as armed robbery, robbery, burglary, embezzlement, and possession for sale of cocaine and heroin are "particularly serious crimes." Moreover, the Attorney General, through the Board of Immigration Appeals, consistently has held that section 243(h)(2)(B) compels the finding that an alien constitutes a danger to the community if he or she has been convicted of a particularly serious crime. *Matter of A–A–*, Interim Dec. 3176 (BIA 1992); *Matter of K–*, Interim Dec. 3163 (BIA 1991); *Matter of Carballe*, 19 I&N Dec. 357 (BIA 1986), *modified on other grounds, Matter of Gonzalez*, 19 I&N Dec. 682 (BIA 1988). Federal courts have affirmed this position. *See, e.g., Crespo-Gomez* v. *Richard*, 780 F.2d 932 (11th Cir. 1986); *Ramirez-Ramos* v. *INS*, 814 F.2d 1394 (9th Cir. 1987).

To the extent these provisions have a retroactive effect, such effect clearly was intended by Congress and thus is permissible. *Landgraf*, 114 S.Ct. at 1496. In enacting section 7342 of the Anti-Drug Abuse Act of 1988, Congress defined certain crimes as aggravated felonies without regard to the date of conviction. Section 515(b) of the 1990 Act was amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232, December 12, 1991, 105 Stat. 1733, 1752, to mandate that the statutory bar in section 208(d) of the Act applies to convictions entered before, on, or after November 29, 1990, the effective date of the 1990 Act, and applies to all applications for asylum made on or after the same date. Congress also expressly limited the application of certain disabling provisions (e.g., the deportation ground under section 241(a)(4) of the Act and the ineligibility for voluntary departure under section 244(e) of the Act), to an alien "convicted, on or after the date of enactment of [the 1988] Act, of an aggravated felony." Pub. L. 100–690 §§ 7343(c) and 7344(b), 102 Stat. at 4470, 4471. If the term "aggravated felony" were to be interpreted to apply only to convictions occurring on or after November 18, 1988, then the prospective language that placed limits on the retroactivity of specific sections of the 1988 Act would be redundant, in violation of the maxim that no provision of a law should be construed to render a word or clause surplus. *Matter of A–A–*, Interim Dec. 3176 (BIA 1992) at 8–10 and n.13.

It is clear that Congress intended to prohibit an alien who has been convicted of an aggravated felony from applying for or being granted asylum or withholding of deportation. Therefore, these provisions of the proposed rule are adopted without amendment in the final rule.

15. Discretionary Denial of Asylum (Section 208.14(e))

Proposed Rule: The proposed rule would have added a new section 208.14(e) to provide that an applicant who is otherwise eligible may be denied asylum in the discretion of the Attorney General if the applicant can and will be deported or returned to a country in which the applicant would not face harm or persecution and would have access to a full and fair asylum procedure, in accordance with bilateral or multilateral arrangements with the United States governing such matters.

Comments: A few comments endorsed this proposal. One comment noted that the proposed rule would prevent "country shopping" and encourage potential refugees to seek protection in the first country of refuge. Another comment agreed that the proposed rule will be beneficial, provided that a treaty or other formal agreement designate the "safe country." Another comment recommended that the proposed rule be amended to prohibit an asylum application from a person applying for admission at a Port of Entry and who departed for the United States or is coming from a country which is signatory to either the 1951 Convention or the 1967 United Nations Protocol Relating to the Status of Refugees, and in which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim.

However, most comments opposed giving asylum officers and immigration judges the authority to deny asylum as a matter of discretion on this ground to an otherwise qualified applicant. Several comments claimed that these provisions do not establish acceptable standards for refugee safety or due process in the receiving country, and thus do not fulfill the requirements for a proposed rule under the Administrative Procedure Act. Another comment warned that the ability to determine what is a fair procedure for asylum should not be left to the discretion of governmental agencies where political considerations may play a large role.

A number of comments stated that refugees have the right to seek protection in the country of choice and that many asylum-seekers choose the United States because the countries through which they travel do not offer adequate protection from discrimination or home-country persecutors. Comments also argued that applicants may be deported to a country in which they had never been present. Furthermore, courts have held that an asylum-seeker may not be deported to a third country where there are no assurances that the asylum seeker would not be indirectly returned to the persecuting country, citing *Amanullah* v. *Cobb*, 862 F.2d 362 (1st Cir. 1988), *vacated as moot*, 872 F.2d 11 (1st Cir. 1989). Under the proposed rule, an asylee also would be required to obtain travel documents from his or her country of origin, which might endanger the applicant or the applicant's family.

Other comments questioned how the United States would ascertain that the asylee would be protected in the "safe country." One comment advocated that a careful and open review be conducted to determine that procedures in the designated first country of asylum are carried out in the same manner and with the same safeguards as asylum determinations made within the United States. In addition, this commenter suggested, there should be verifiable assurances that the denied applicant

will be treated by the "safe country" in a manner consistent with United States legal obligations. Other comments expressed the opinion that a "safe country" may forcibly repatriate an asylee to the country of persecution or that the asylee will be transferred from country to country. Several comments stated that current rules regarding "firm resettlement" adequately prevent forum shopping.

Other comments recommended modifications to the proposed rule. One comment advocated that additional factors such as the presence of family members in the United States, the applicant's ties (if any) to the receiving country, and whether the applicant has a criminal record, be used to determine whether or not to exercise the discretion to deny. Another comment stated that only immigration judges should be authorized to deny asylum under the proposed rule because only they have the power to order aliens deported.

Response and Disposition: These comments have been considered carefully. It must be emphasized that the discretionary authority referred to in this provision is contingent upon bilateral or multilateral agreements with other nations, and that no such agreements now exist. In the absence of such agreements, discretionary authority under this section cannot be exercised. Prior to the implementation of any such agreement by the Department, public notice will be provided. The Department is satisfied that the basic standard set forth in this section is sufficient to protect the rights and interests of persons entitled to protection from persecution in the event that the United States enters such an agreement. In the meantime, most of the concerns presented in the comments relate to how the discretionary authority would be exercised. These concerns and others will be taken into account if and when a bilateral or multilateral agreement on this subject is made. This provision is retained in the final rule with an amendment to clarify that the alien may be returned only to a country through which the alien actually traveled en route to the United States.

16. Issuance of Employment Authorization to Asylees (Section 208.20)

Proposed Rule: The proposed rule would have amended section 208.20 to provide that a person granted asylum who desires to work shall receive an employment authorization document (EAD) expeditiously upon application to the INS.

Comments: A comment stated that an asylee should not be required to apply for an EAD, but should be issued an EAD along with notification of the asylum decision.

Response and Disposition: The proposed amendments to section 208.20 are designed to ensure that asylees receive their EAD promptly upon application. They do not create new requirements or obstacles for asylees seeking authorization to work. Asylees are among the categories of persons who are eligible for employment incident to their status but must nevertheless apply for an employment authorization document. 8 CFR 274a.12(a)(5). Among others in this category are those aliens who are admitted as refugees, granted withholding of deportation, or granted Temporary Protected Status. Since authorization for employment is a discretionary immigration benefit, the INS will continue to require that persons in these categories file a separate application for an EAD. Accordingly, this provision of the proposed rule will be retained in the final rule with an amendment for clarity.

17. Aliens in Exclusion or Deportation Proceedings (Sections 236.3(a) and 242.17(c)(2))

Proposed Rule: These provisions require that in the case of an alien in exclusion or deportation proceedings who expresses a fear of harm or persecution upon return to his or her country of origin or country of deportation, the immigration judge shall advise the alien that he or she may apply for asylum or withholding of deportation and shall make available the appropriate application forms. The proposed rule would have amended these provisions to exempt situations where the alien already has filed an asylum application and that application has been referred to the immigration judge in accordance with the proposed amendments to 8 CFR 208.14(b).

Comments: Several comments, all of which also criticized the direct referral of asylum applications under 8 CFR 208.14(b), stated that there should be no exception for situations where an asylum applicant has been referred to an immigration judge. The comments argued that as a result of this change, referred asylum applicants will receive less procedural protection than other persons in removal proceedings.

Response and Disposition: These changes do not deny any substantive procedural protection to asylum applicants. An applicant referred under 8 CFR 208.14(b) already has made an application for asylum, and thus need not be advised of a right he or she has exercised. Referred applicants will enjoy all the procedural rights accorded to other persons in proceedings before an immigration judge. Accordingly, these provisions of the proposed rule are adopted in the final rule, with section 236.3(a) amended for clarity.

18. Use of Information in Application to Establish Deportability (Section 242.17(e))

Proposed Rule: The proposed rule would have amended section 242.17(e) to expressly permit the INS to use information supplied in an application for asylum as the basis for issuance of an Order to Show Cause under 8 CFR 242.1 and thus initiate deportation proceedings.

Comments: A few comments criticized this amendment, stating that it violates confidentiality by exposing the claims of applicants in immigration court and violates due process by shifting the burden of proof to establish deportability away from the INS. The comments stated that this subsection would be an obstacle to the right to apply for asylum because if the applicant's claim is denied, he or she faces immediate deportation based on evidence provided in the application. Some deserving applicants will avoid this risk and choose not to apply.

Response and Disposition: This aspect of the proposed rule is necessary to promptly refer cases to an immigration judge for decision. Often, the asylum application is the only source of information available to the Service to initiate proceedings before the immigration judge. Persons who choose not to file asylum applications for this reason may forego their opportunity for consideration of their claim by an asylum officer; if they are apprehended by the INS and placed directly in proceedings, the immigration judge will have exclusive jurisdiction over their cases. Immigration regulations need not be designed to protect the ability of a person to remain unlawfully in the United States without detection.

At the advice of the public, this provision will be amended for clarity to provide that it applies to applications for asylum or withholding of deportation filed on or after January 4, 1995.

The final rule will further amend section 242.17(e) to state that an application made under section 242.17 may constitute an admission of alienage or deportability if the alien has been properly served with notice of the hearing before an immigration judge even in cases in which the applicant has failed without excuse to appear for the hearing. This amendment is necessary to enable the entry of orders of

deportation against aliens who are not lawfully present in the United States, have been properly served with an Order to Show Cause, and fail to appear for their hearing.

19. Employment Authorization for Persons in Proceedings (Section 274a.12(c)(13))

Proposed Rule: The proposed rule would eliminate 8 CFR 274a.12(c)(13), which provides that a person in exclusion or deportation proceedings who is not detained and not subject to a final order of deportation may apply for employment authorization.

Comments: Several comments opposed this change on the ground that persons in deportation proceedings who have filed no applications for relief, but who contest their exclusion or deportation on other grounds, will have no other basis to obtain employment authorization and support themselves.

Response and Disposition: As stated in the supplementary information to the proposed rule, virtually all persons who are not detained and are subject to exclusion or deportation proceedings are eligible to apply for employment authorization under other provisions of 8 CFR 274.12(c). Retaining this paragraph would be inconsistent with the intent of this rule to limit access to employment authorization to asylum applicants whose cases are granted or whose cases are not decided promptly. Accordingly, this portion of the proposed rule is adopted without amendment in the final rule.

20. Fee for Applications for Employment Authorization (Section 274a.13)

Proposed Rule: The proposed rule would have amended section 274a.13 to provide that an applicant for employment authorization under section 274a.12(c)(8) (relating to asylum applicants) must pay a fee upon both the initial application and applications for renewal of work authorization.

Comments: Numerous comments criticized the proposal for imposing a filing fee upon asylum applicants. These comments are summarized under heading 4. We consider these comments to be directed as well to the proposal to charge a filing fee for initial applications for employment authorization.

Response and Disposition: The Department has determined that the final rule will require payment of a fee only upon application for replacement or renewal of an employment authorization document. This is consistent with the decision not to charge a fee for the filing of an application for asylum. It also is reasonable to charge a renewal fee to those who have previously been granted employment authorization. As part of an ongoing comprehensive economic analysis of its entire fee structure, the INS will examine alternative sources of funding for employment authorization adjudications, including the possibility of a user fee.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities, based upon the following factors. This rule principally affects the adjudication of individual claims for asylum and withholding of deportation and thus would have no significant economic impact on small businesses, organizations, or state or local governmental agencies. The amendments to regulations concerning the issuance and renewal of employment authorization documents could have a small and indirect impact upon business entities by withholding employment authorization in certain cases.

The Department of Justice considers this rule to be a "significant regulatory action" under section 3(f) of Executive Order 12866, and accordingly submitted this rule to the Office of Management and Budget for review.

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

The Attorney General has reviewed this rule in light of section 2(c) of Executive Order 12778 and finds that the rule meets the applicable standards provided in section 2(b) of the order.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

The interim rule's amendments to 8 CFR 208.3(a) and 208.4(a) are superseded by amendments made by this final rule. The interim rule's amendments to 8 CFR 208.4(b) are adopted without amendment as part of this final rule

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

2. Section 208.1 is amended by:

a. Revising in paragraph (a) the first sentence;

b. Removing in paragraph (a), in the second and fourth sentences, the phrase "October 1, 1990" and adding in its place "January 4, 1995";

c. Adding to paragraph (a) a new sentence at the end of the paragraph;

d. Revising in paragraph (b) the second sentence; and

e. Removing in paragraph (c) the phrase "assist the Deputy Attorney General and the Director of the Asylum Policy and Review Unit, in coordination" and adding in its place the word "coordinate", to read as follows:

§ 208.1 General.

(a) This part shall apply to all applications for asylum or withholding of deportation, whether before an asylum officer or an immigration judge, that are filed on or after January 4, 1995 or pending as of January 4, 1995. * * * The provisions of this part relating to a person convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43), shall apply to applications for asylum or withholding of deportation that are filed on or after November 29, 1990.

(b) * * * These shall include a corps of professional asylum officers who are to receive special training in international human rights law, conditions in countries of origin, and other relevant national and international refugee laws. * * *

* * * * *

3. Section 208.2 is amended by:

a. Removing in paragraph (a) the second sentence and adding in its place three new sentences; and

b. Removing in paragraph (b) the second and third sentences and adding in their place three new sentences, to read as follows:

§ 208.2 Jurisdiction.

(a) * * * An application that is complete within the meaning of § 208.3(c)(5) shall be either adjudicated or referred by asylum officers under this part in accordance with § 208.14. With the exception of cases involving crewmen, stowaways, or aliens temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), which are within the jurisdiction of an asylum officer pursuant to § 253.1(f) of this chapter, an asylum officer shall not decide whether an alien is entitled to withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h). An application that is incomplete within the meaning of § 208.3(c)(5) shall be returned to the applicant.

(b) * * * The immigration judge shall make a determination on such claims. In cases where the adjudication of an application has been referred in accordance with § 208.14, that application shall be forwarded with the charging document to the Office of the Immigration Judge by the Asylum Office. As a matter of discretion, the immigration judge may permit the applicant to amend the application, but any delay caused by such a request shall extend the period within which the applicant may not apply for employment authorization in accordance with § 208.7(a).

4. Section 208.3 is amended by revising paragraph (a) and adding a new paragraph (c), to read as follows:

§ 208.3 Form of application.

(a) An application for asylum or withholding of deportation shall be made on Form I–589 (Application for Asylum and for Withholding of Deportation) and shall be submitted, together with any additional supporting material, in triplicate, meaning the original plus two copies. The applicant's spouse and children as defined in section 101 of the Act, 8 U.S.C. 1101(a)(35) and 1101(b)(1), may be included on the application if they are in the United States. One additional copy of the principal applicant's I–589 must be submitted for each dependent listed on the principal's application. An application shall be accompanied by one completed Form FD–258 (Fingerprint Card) for every individual included on the application who is 14 years of age or older. Forms I–589 and FD–258 are available from the INS and from the Offices of Immigration Judges. The application for asylum or withholding of deportation also shall be accompanied by a total of two photographs of each applicant and two photographs of each dependent included on the application.

* * * * *

(c) The application (Form I–589) shall be filed under the following conditions and shall have the following consequences, as shall be noted in the instructions on the application:

(1) Information provided in completing the application may be used as a basis for the institution of, or as evidence in, exclusion proceedings in accordance with part 236 of this chapter or deportation proceedings in accordance with part 242 of this chapter;

(2) Information provided in the application may be used to satisfy the burden of proof of the INS in establishing the applicant's deportability under part 242 of this chapter;

(3) Mailing to the address provided by the applicant on the application or the last change of address form (INS Form AR–11), if any, received by the INS shall constitute adequate service of all notices or other documents, except a Notice to Alien Detained for Hearing by an Immigration Judge (Form I–122), service of which is governed by § 235.6 of this chapter, and an Order to Show Cause (Form I–221), service of which is governed by section 242B(a)(1) of the Act, 8 U.S.C. 1252b(a)(1);

(4) The applicant and anyone other than an immediate relative who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature is evidence that the applicant is aware of the contents of the application. A person other than an immediate relative who assists the applicant in preparing the application also must provide his or her full mailing address;

(5) An application for asylum and for withholding of deportation that does not include a response to each of the questions contained in the Form I–589, that is unsigned, or that is unaccompanied by the required materials specified in paragraph (a) of this section is incomplete. An application that is incomplete shall be returned by mail to the applicant within 30 days of the receipt of the application by the INS. The filing of an incomplete application shall not commence the 150-day period after which the applicant may file an application for employment authorization in accordance with § 208.7(a)(1). If an application has not been mailed to the applicant within 30 days, it shall be deemed complete; and

(6) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act, 8 U.S.C. 1324c. 5. Section 208.4 is amended by revising paragraph (a) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) *With the Service Center by mail.* Except as provided in paragraphs (b) and (c) of this section, applications for asylum or withholding of deportation shall be filed directly by mail with the Service Center servicing the Asylum Office with jurisdiction over the place of the applicant's residence or, in the case of an alien without a United States residence, the applicant's current lodging or the land border port of entry through which the alien seeks admission to the United States. The addresses of the Service Centers shall be made available through the local INS Information Unit. Upon receipt of the application, except in the case of an alien who has been convicted of an aggravated felony, the Service Center shall forward a copy of the application to the Department of State.

* * * * *

6. Section 208.7 is amended by:

a. Revising the section heading;

b. Revising paragraph (a);

c. Revising in paragraph (b) the introductory text;

d. Adding a new paragraph (b)(3);

e. Removing, wherever it appears in the introductory text to paragraph (c), the phrase "Asylum Officer" and adding in its place the phrase "asylum officer";

f. Removing, wherever it appears in the introductory text to paragraph (c), the phrase "District Director" and adding in its place the phrase "district director";

g. Removing in the introductory text to paragraph (c) the phrase "Immigration Judge" and adding in its place the phrase "immigration judge";

h. Removing in paragraph (c)(1) the phrase "before the Immigration Judge" and adding in its place the phrase "before the immigration judge";

i. Removing in paragraph (c)(2) the phrase "by the Immigration Judge" and adding in its place the phrase "by the immigration judge"; and

j. Removing in paragraph (d) the word "sixty" and adding in its place "ninety", to read as follows:

§ 208.7 Employment authorization.

(a) (1) An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to submit an Application for Employment Authorization (Form I–765). The application shall be submitted no earlier than 150 days after the date on which a complete application for asylum submitted in accordance with §§ 208.3 and 208.4 of this part has been received. If an application for asylum has been returned as incomplete in accordance with § 208.3(c)(5), the 150-day period will commence upon receipt by the INS of a complete application for asylum. An applicant whose application for asylum has been denied by an asylum officer or by an immigration judge within the 150-day period shall not be eligible to apply for employment authorization. After the expiration of the 150-day period, the INS shall have 30 days from the date of filing of an initial application for employment authorization to grant or deny that application. If the INS fails to adjudicate the asylum application within that period, the alien shall be eligible for interim employment authorization under this chapter. If an application for asylum is denied by an immigration judge or an asylum officer within the 30-day period, but prior to a decision on the application for employment authorization, the application for employment authorization shall be denied.

(2) An applicant who has been convicted of an aggravated felony shall not be granted employment authorization. In cases where an applicant has previously received employment authorization and his or her application for asylum or withholding of deportation is denied because the applicant has been convicted of an aggravated felony, the employment authorization shall terminate as of the date of the denial.

(3) For purposes of this paragraph (a), the time periods within which the alien may not apply for employment authorization and within which the INS must respond to any such application shall begin when the alien has filed a complete asylum application in accordance with §§ 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under § 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

(4) An applicant who fails without good cause to appear for a scheduled interview before an asylum officer or a hearing before an immigration judge shall not be granted employment authorization pursuant to § 274a.12(c)(8) of this chapter.

(5) The provisions of paragraphs (a)(1), (3), and (4) of this section shall apply to persons who have filed an application for asylum or withholding of deportation on or after January 4, 1995.

(b) Subject to the restrictions in paragraph (b)(3) of this section, employment authorization shall be renewable, in increments to be determined by the Commissioner, for the continuous period of time necessary for the asylum officer or immigration judge to decide the asylum application and, if necessary, for final adjudication of any administrative or judicial review.

* * * * *

(3) If an application for asylum filed on or after November 29, 1990 is denied pursuant to § 208.14(c)(4) or § 208.16(c)(2)(ii) because the applicant has been convicted of an aggravated felony, any employment authorization previously issued under § 208.7(a) shall automatically terminate as of the date of the denial.

* * * * *

7. Section 208.8 is revised to read as follows:

§ 208.8 Limitations on travel outside the United States.

An applicant who leaves the United States pursuant to advance parole granted under 8 CFR 212.5(e) shall be presumed to have abandoned his application under this section if he returns to the country of claimed persecution unless the applicant is able to establish compelling reasons for such return.

8. Section 208.9 is amended by:

a. Revising paragraphs (a), (b), (c), (d), and (e);

b. Removing from paragraph (f) the phrase "Bureau of Human Rights and Humanitarian Affairs of the" and the phrase ", the Asylum Policy and Review Unit of the Department of Justice,"; and

c. Adding a new paragraph (g), to read as follows:

§ 208.9 Interview and procedure.

(a) For each application for asylum or withholding of deportation that is complete within the meaning of § 208.3(c)(5) and that is within the jurisdiction of the Office of Refugees, Asylum, and Parole, an interview shall be conducted by an asylum officer, either at the time of the application or at a later date to be determined by the Asylum Office. Applications within the jurisdiction of an immigration judge are to be adjudicated under the rules of procedure established by the Executive Office for Immigration Review in parts 3, 236, and 242 of this chapter.

(b) The asylum officer shall conduct the interview in a nonadversarial manner and, at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for the form of relief sought. At the time of the interview, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General. The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(c) The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(d) Upon completion of the interview, the applicant or his representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer, in his or her discretion, may limit the length of such statement or comment and may require their submission in writing. Upon completion of the interview, the applicant shall be informed that he or she must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision shall be treated as delay caused by the applicant for purposes of § 208.7(a)(3) and shall extend the period within which the applicant may not apply for employment authorization by the number of days until the applicant does appear to receive and acknowledge

receipt of the decision or until the applicant appears before an immigration judge in response to the issuance of a charging document under § 208.14(b).

(e) The asylum officer shall consider evidence submitted by the applicant together with his or her asylum application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence. Any such extension shall extend by equivalent time the periods specified by § 208.7 for the filing and adjudication of employment authorization applications.

* * * * *

(g) An applicant unable to proceed with the interview in English must provide, at no expense to the INS, a competent interpreter fluent in both English and the applicant's native language. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record nor a witness testifying on the applicant's behalf may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure without good cause to appear for the interview for purposes of § 208.10.

9. Section 208.10 is amended by:

a. Revising the first sentence; and

b. Removing, wherever it appears in the second and third sentences, the phrase "Asylum Officer" and adding in its place the phrase "asylum officer", to read as follows:

§ 208.10 Failure to appear.

The failure without good cause of an applicant to appear for a scheduled interview under § 208.9(a) may be deemed to constitute a waiver of the right to an interview with an asylum officer or, in the case of an alien crewman, stowaway, alien temporarily excludable under section 235(c) of the Act, 8 U.S.C. 1225, or alien currently in lawful immigration status, may be deemed to constitute an abandonment of the application. * * *

10. Section 208.11 is revised to read as follows:

§ 208.11 Comments from the Department of State.

(a) At its option, the Department of State may provide detailed country conditions information addressing the specific conditions relevant to eligibility for refugee status according to the grounds specified in section 101(a)(42) of the Act, 8 U.S.C. 1101(a)(42). Any such information relied upon by an immigration judge in deciding a claim for asylum or withholding of deportation shall be made part of the record and the parties shall be provided an opportunity to review and respond to such information prior to the issuance of a decision.

(b) At its option, the Department of State also may comment on an application it receives pursuant to § 208.4(a), § 236.3, or § 242.17 of this chapter by providing:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(2) Information about whether persons who are similarly situated to the applicant are persecuted in his or her country of nationality or habitual residence and the frequency of such persecution;

(3) Such other information as it deems relevant.

(c) Asylum officers and immigration judges may request specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as they deem appropriate. Any such comments shall be made part of the record. Unless the comments are classified under Executive Order 12356 (3 CFR, 1982 Comp., p. 166), the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of an adverse decision.

§ 208.12 [Amended]

11. In § 208.12, paragraph (a) is amended by:

a. Removing the phrase "the Asylum Policy and Review Unit,";

b. Removing the phrase "Asylum Officer" and adding in its place the phrase "asylum officer";

c. Removing the phrase "District Director" and adding in its place the phrase "district director"; and

d. Removing the second sentence.

§ 208.13 [Amended]

12. § 208.13 is amended by:

a. Removing in paragraph (b)(1)(ii), the last sentence, the citation "§ 208.14(c)" and adding in its place the citation "§ 208.14(d)";

b. Removing in paragraph (b)(2)(ii) the phrase "Asylum Officer" and adding in its place the phrase "asylum officer"; and

c. Removing in paragraph (b)(2)(ii) the phrase "Immigration Judge" and adding in its place the phrase "immigration judge"

13. Section 208.14 is amended by:

a. Revising the section heading;

b. Removing in paragraph (a) the phrase "Immigration Judge" and adding in its place the phrase "immigration judge";

c. Removing in paragraph (a) the words "or Asylum Officer";

d. Removing in paragraph (a) the phrase "paragraph (c)" and adding in its place the phrase "paragraph (d)";

e. Removing in paragraph (b) the phrase "paragraph (c)" and adding in its place the phrase "paragraph (d)";

f. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively;

g. Adding a new paragraph (b);

h. Removing in redesignated paragraph (d)(2) the word "or" at the end of the paragraph;

i. Removing in redesignated paragraph (d)(3) the "." at the end of the paragraph and adding in its place "; or";

j. Adding a new paragraph (d)(4); and

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

§ 208.14 Approval, denial, or referral of application.

* * * * *

(b) (1) An asylum officer may grant asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act, 8 U.S.C. 1101(a)(42), unless otherwise prohibited by paragraph (d) of this section.

(2) In the case of an alien (other than a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c)) who shall appear to be deportable under section 241 of the Act, 8 U.S.C. 1251, or excludable under section 212 of the Act, 8 U.S.C. 1182, the asylum officer shall either grant asylum or refer the application to an immigration judge for adjudication in deportation or exclusion proceedings commenced in accordance with part 236 or part 242 of this chapter. An asylum officer may refer such an application after an interview conducted in accordance with § 208.9 or if, in accordance with § 208.10, the applicant is deemed to have waived his or her right to an interview.

(3) In the case of a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), the asylum officer may grant or deny asylum in accordance with the procedures set forth in § 253.1(f) of this chapter. In addition, where an application filed by such a person is not granted, the asylum officer shall issue a Notice of Intent to Deny to the applicant stating the reasons why the application would be denied. The applicant shall be given a period not less than 10 days to rebut the Notice of Intent to Deny.

(4) In the case of a person other than described in paragraphs (b) (2) and (3) of this section, the asylum officer may grant or deny asylum.

(5) No application for asylum or withholding of deportation shall be subject to denial under the authority contained in § 103.2(b) of this chapter.

* * * * *

(d) * * *

(4) The alien has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43).

(e) *Discretionary denials.* An application from an alien may be denied in the discretion of the Attorney General if the alien can and will be deported or returned to a country through which the alien traveled en route to the United States and in which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral arrangement with the United States governing such matter.

14. § 208.16 is amended by:

a. Revising paragraph (a);

b. Removing in paragraph (b)(4) the phrase "Asylum Officer" and adding in its place the phrase "asylum officer";

c. Removing in paragraph (b)(4) the phrase "Immigration Judge" and adding in its place the phrase "immigration judge"; and

d. Revising paragraph (c)(2)(ii), to read as follows:

§ 208.16 Entitlement to withholding of deportation.

(a) *Consideration of application for withholding of deportation.* With the exception of cases that are within the jurisdiction of an asylum officer pursuant to § 253.1(f) of this chapter, an asylum officer shall not decide whether an alien is entitled to withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h). If the application for asylum is granted, no decision on withholding of deportation will be made unless and until the grant of asylum is later revoked or terminated, and exclusion or deportation proceedings at which a new request for withholding of deportation is made are commenced. In such proceedings, an immigration judge may adjudicate both a renewed asylum claim and a request for withholding of deportation simultaneously whether or not asylum is granted.

* * * * *

(c) * * *

(2) * * *

(ii) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States. An alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime and to constitute a danger to the community of the United States;

* * * * *

15. Section 208.17 is revised to read as follows:

§ 208.17 Decision.

The decision of an asylum officer to grant or to deny asylum or withholding of deportation, or to refer an application in accordance with § 208.14(b), shall be communicated in writing to the applicant, to the Assistant Commissioner, Refugees, Asylum, and Parole, and to the district director having jurisdiction over the place of the applicant's residence or over the port of entry from which the applicant sought admission to the United States. A letter communicating denial of the application shall state why asylum or withholding of deportation was denied. The letter also shall contain an assessment of the applicant's credibility, unless the application was denied pursuant to § 208.14(d)(4) or § 208.16(c)(2)(ii).

Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision.

16. In § 208.18, paragraphs (a) and (b) are revised to read as follows:

§ 208.18 Review of decisions and appeal.

(a) The Assistant Commissioner, Office of Refugees, Asylum, and Parole, may review decisions by asylum officers. Parties shall have no right of appeal to or right to appear before the Assistant Commissioner in the course of such review.

(b) Except as provided in § 253.1(f) of this chapter, there shall be no appeal from a decision of an asylum officer. In a case referred to an immigration judge in accordance with § 208.14(b), the supervisory asylum officer, pursuant to the authority set forth in §§ 235.6(a) and 242.1(a) of this chapter, shall issue respectively a Notice to Applicant for Admission Detained for Hearing Before Immigration Judge (Form I–122) or an Order to Show Cause (Form I–221).

* * * * *

17. Section 208.20 is revised to read as follows:

§ 208.20 Approval and employment authorization.

An alien granted asylum and eligible derivative family members are authorized to be employed in the United States pursuant to § 274a.12(a)(5) of this chapter and if intending to be employed, must apply to the INS for a document evidencing such authorization. The INS shall issue such document within 30 days of the receipt of the application therefor.

18. Section 208.21 is amended by:

a. Revising the introductory text in paragraph (a);

b. Redesignating paragraph (a)(3) as paragraph (a)(4);

c. Removing at the end of paragraph (a)(2) the word "or"; and

d. Adding a new paragraph (a)(3), to read as follows:

§ 208.21 Admission of asylee's spouse and children.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1)(A), (B), (C), (D), (E), or (F) of the Act, 8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E), or (F), also may be granted asylum if accompanying or following to join the principal alien who was granted asylum, unless it is determined that:

* * * * *

(3) The spouse or child has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43); or

* * * * *

19. Section 208.24 is amended by:

a. Revising the heading and introductory text in paragraph (a);

b. Revising the introductory text in paragraph (b);

c. Revising paragraph (c);

d. Removing in paragraph (a)(3) the citation "208.14(c)" and adding in its place the citation "208.14(d)";

e. Removing paragraph (f); and

f. Redesignating paragraph (g) as paragraph (f), to read as follows:

§ 208.24 Revocation of asylum or withholding of deportation.

(a) *Revocation of asylum by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner and following an interview by an asylum officer, the grant to an alien of asylum made under the jurisdiction of an asylum officer or a district director may be revoked if, by a preponderance of the evidence, the INS establishes that:

* * *

(b) *Revocation of withholding of deportation by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner and following an interview by an asylum officer, the grant to an alien of withholding of deportation made under the jurisdiction of an asylum officer or a district director may be revoked if, by a preponderance of the evidence, the INS establishes that:

* * * * *

(c) *Notice to applicant.* Upon motion by the Assistant Commissioner to revoke asylum status or withholding of deportation, the alien shall be given notice of intent to revoke, with the reason therefore, at least thirty days before the interview by the asylum officer. The alien shall be provided the opportunity to present evidence tending to show that he or she is still eligible for asylum or withholding of deportation. If the asylum officer determines that the alien is no longer eligible for asylum or withholding of deportation, the alien shall be given written notice that asylum status or withholding of deportation along with employment authorization are revoked. Notwithstanding any provision of this section, an alien granted asylum or withholding of deportation who is subject to revocation because he or she has been convicted of an aggravated felony is not entitled to an interview before an asylum officer.

* * * * *

PART 236—EXCLUSION OF ALIENS

20. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

21. Section 236.3 is amended by:

a. Revising the introductory text in paragraph (a);

b. Removing from the first sentence in paragraph (b) the citation "§ 208.4(b)" and adding in its place the citation "§ 208.4(c)";

c. Revising the second sentence in paragraph (b);

d. Removing, wherever it appears in paragraph (c), the phrase "Immigration Judge" and adding in its place the phrase "immigration judge";

e. Removing, wherever it appears in paragraph (c)(4), the phrase "Trial Attorney" and adding in its place the phrase "trial attorney";

f. Removing in paragraph (d) the phrase "Immigration Judge" and adding in its place the phrase "immigration judge"; and

g. Removing in paragraph (d) the phrase "Trial Attorney" and adding in its place the phrase "trial attorney", to read as follows:

§ 236.3 Applications for asylum or withholding of deportation.

(a) If the alien expresses fear of persecution or harm upon return to his or her country of origin or to a country to which the alien may be deported after a determination of excludability from the United States pursuant to part 237 of this chapter, and the alien has not been referred to the immigration judge by an asylum officer in accordance with § 208.14(b) of this chapter, the immigration judge shall: * * *

(b) * * * Upon receipt of an application that has not been referred by an asylum officer, the Office of the Immigration Judge shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. * * *

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

22. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

23. 242.17 is amended by:

a. Removing, wherever it appears in paragraph (c)(1), the phrase "Immigration Judge" and adding in its place the phrase "immigration judge";

b. Revising the introductory text in paragraph (c)(2);

c. Removing from the first sentence in paragraph (c)(3) the citation "§ 208.4(b)" and adding in its place the citation "§ 208.4(c)";

d. Revising the second sentence in paragraph (c)(3);

e. Removing from the third sentence in paragraph (c)(3) the phrase "Trial Attorney" and adding in its place the phrase "trial attorney";

f. Removing, wherever it appears in paragraph (c)(4), the phrase "Immigration Judge" and adding in its place the phrase "immigration judge";

g. Removing in paragraph (c)(4)(iv) the phrase "Trial Attorney" and adding in its place the phrase "trial attorney";

h. Removing in paragraph (c)(5) the phrase "Immigration Judge" and adding in its place the phrase "immigration judge";

i. Removing in paragraph (c)(5) the phrase "Trial Attorney" and adding in its place the phrase "trial attorney"; and

j. Adding in paragraph (e) a new sentence immediately after the first sentence, to read as follows:

§ 242.17 Ancillary matters, applications.

* * * * *

(c) * * *

(2) If the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be deported pursuant to paragraph (c)(1) of this section, and the alien has not previously filed an application for asylum or withholding of deportation that has been referred to the immigration judge by an asylum officer in accordance with § 208.14(b) of this chapter, the immigration judge shall: * * *

(3) * * * Upon receipt of an application that has not been referred by an asylum officer, the Office of the Immigration Judge shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. * * *

* * * * *

(e) * * * However, nothing in this section shall prohibit the INS from using information supplied in an application for asylum or withholding of deportation submitted to an asylum officer pursuant to § 208.2 of this chapter on or after January 4, 1995 as the basis for issuance of an Order to Show Cause under § 242.1 or to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter.

24. § 242.18 is amended by:

a. Revising the section heading;

b. Removing, wherever it appears in paragraph (a), the phrase "special inquiry officer" and adding in its place the phrase "immigration judge";

c. Removing, wherever it appears in paragraph (b), the phrase "special inquiry officer" and adding in its place the phrase "immigration judge";

d. Revising the heading in paragraph (c); and

e. Removing, wherever it appears in paragraph (c), the phrase "special inquiry officer" and adding in its place the phrase "immigration judge", to read as follows:

§ 242.18 Decision of the immigration judge.

* * * * *

(c) *Order of the immigration judge.*

* * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

25. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

26. Section 274a.12 is amended by:

a. Revising paragraph (c)(8);

b. Revising the first sentence in paragraph (c)(10);

c. Removing in paragraph (c)(11) the word "emergent" and adding in its place the word "emergency"; and

d. Removing and reserving paragraph (c)(13), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(8) An alien who has filed a complete application for asylum or withholding of deportation pursuant to part 208 of this chapter, whose application has not been decided, and who is eligible to apply for employment authorization under § 208.7 of this chapter because the 150-day period set forth in that section has expired. Employment authorization may be granted according to the provisions of § 208.7 of this chapter in increments to be determined by the Commissioner and shall expire on a specified date;

* * * * *

(10) An alien who has filed an application for suspension of deportation pursuant to part 244 of this chapter, if the alien establishes an economic need to work. * * *

* * * * *

(13) [Reserved].

* * * * *

27. § 274a.13 is amended by revising paragraph (a), and the first sentence in paragraph (d), to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* Aliens authorized to be employed under § 274a.12(a)(3)–(8) and (10)–(13) must file an Application for Employment Authorization (Form I–765) in order to obtain documentation evidencing this fact.

(1) Aliens who may apply for employment authorization under § 274a.12(c) of this part, except for those who may apply under § 274a.12(c)(8), shall file a Form I–765 with the district director having jurisdiction over the applicant's residence, or the district director having jurisdiction over the port of entry at which the alien applies, or with such other INS office as the Commissioner may designate. The approval of applications filed under § 274a.12(c) of this part, except for § 274a.12(c)(8), shall be within the discretion of the district director. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with instructions on Form I–765.

(2) An initial application for employment authorization (Form I–765) filed under § 274a.12(c)(8) of this part shall be filed in accordance with the instructions on or attached to Form I–765, with the appropriate Service Center or with such other INS office as the Commissioner may designate. The applicant also must submit a copy of the underlying application for asylum or withholding of deportation, together with evidence that the application has been filed in accordance with §§ 208.3 and 208.4 of this chapter. An application for an initial employment authorization filed in relation to a pending claim for asylum shall be adjudicated in accordance with § 208.7 of this chapter. An application for renewal or replacement of employment authorization submitted in relation to a pending claim for asylum, as provided for in § 208.7 of this chapter, shall be filed, with fee or with application for waiver of such fee, in accordance with the instructions on or attached to Form I–765, with the appropriate Service Center or with such other INS office as the Commissioner may designate. The Service Center shall adjudicate the application within 30 days of receipt.

* * * * *

(d) *Interim employment authorization.* The district director shall adjudicate the application within 90 days from the date of receipt of the application by the INS, except in the case of an initial application for employment authorization under § 274a.12(c)(8), which is governed by paragraph (a)(2) of this section. * * *

PART 299—IMMIGRATION FORMS

28. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

29. The table in § 299.5 is amended by revising the entry for form I–589 to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	*
I–589	Application for Asylum and for Withholding of Deportation.	115–0086
*	*	*

Dated: November 29, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–29724 Filed 12–2–94; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Chapter XVII and Part 1700

RIN 2501–AB59

Establishment of Chapter; Organization and Functions, and Seal

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: By this document, the Office of Federal Housing Enterprise Oversight (OFHEO) establishes a new chapter in the Code of Federal Regulations for publication of its rules, regulations, and policy statements. Along with the establishment of the chapter, OFHEO adopts final regulations containing a description of its organization and a description of its seal and logo.

EFFECTIVE DATE: December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Anne E. Dewey, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, 4th Floor, Washington, DC 20552, (202) 414–3800.

SUPPLEMENTARY INFORMATION: Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 et seq., established the Office of Federal Housing Enterprise Oversight (OFHEO) as an independent office within the Department of Housing and Urban Development. The primary function of OFHEO is to ensure the financial safety and soundness and the capital adequacy of the nation's two largest housing finance institutions—the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. This document establishes the regulations of OFHEO in title 12, chapter XVII of the Code of Federal Regulations. These regulations delineate the origination of OFHEO, the duties and functions of its Director, and the organization and functions of OFHEO's various offices.

Regulatory Impact

Administrative Procedure Act

In acting on the regulations, the Office of Federal Housing Enterprise Oversight finds that notice and public comment are unnecessary. Section 553(b)(A) of title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the agency may publish

regulations in final form. In addition, OFHEO finds, in accordance with 5 U.S.C. 553(d), that a delayed effective date is unnecessary. Accordingly, these regulations are effective upon publication.

Regulatory Flexibility Act

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

Executive Order 12612, Federalism

The final rule applies only to agency internal organization and functions. It will not affect the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have federalism implications that warrant the preparation of a Federalism Assessment.

Executive Order 12606, the Family

The final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under Executive Order 12606.

Executive Order 12866, Regulatory Planning and Review

OFHEO has determined that this final rule relating to internal organization is not a regulatory action that is subject to the requirements of Executive Order 12866.

Paperwork Reduction Act

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

List of Subjects in 12 CFR Part 1700

Organization and functions (Government agencies), Seals and insignia.

Accordingly, the Office of Federal Housing Enterprise Oversight hereby establishes a new chapter XVII in title 12 of the Code of Federal Regulations to read as follows:

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER A—ADMINISTRATIVE PROVISIONS

PART 1700—ORGANIZATION AND FUNCTIONS

Sec.

1700.1 Office of Federal Housing Enterprise Oversight.
1700.2 Organization of the Office of Federal Housing Enterprise Oversight.
1700.3 Official seal.
1700.4 Official logo.

Authority: 5 U.S.C. 552; 12 U.S.C 4513, 4526.

§ 1700.1 Office of Federal Housing Enterprise Oversight.

(a) *Scope and authority.* The Office of Federal Housing Enterprise Oversight (referred to as OFHEO) is an independent office within the Department of Housing and Urban Development. OFHEO was created by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act), Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, October 28, 1992; 106 Stat. 3943; 12 U.S.C. 4501, *et seq.*). OFHEO is responsible for the examination and financial regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). OFHEO is charged with ensuring that the Enterprises are adequately capitalized and operating in a safe and sound manner. OFHEO's costs and expenses are funded by annual assessments paid by the Enterprises. OFHEO is headed by a Director, who is appointed by the President and confirmed by the Senate for a five-year term.

(b) *Location.* OFHEO is located at 1700 G Street NW, 4th Floor, Washington, DC 20552. OFHEO's hours of business are 8:30 a.m.–5:00 p.m. (eastern standard time), Monday through Friday, excluding Federal holidays.

§ 1700.2 Organization of the Office of Federal Housing Enterprise Oversight.

(a) *Director.* The Director has exclusive authority under the Act with respect to the management of OFHEO, and is responsible for directing the development, implementation, and review of all OFHEO programs and functions. The Director appoints such personnel as may be necessary to carry out the functions of OFHEO. The Director may delegate to OFHEO officers and employees any of the functions, powers, and duties of the Director, as the Director considers appropriate. The Director may establish and fix the responsibilities of the offices within OFHEO as the Director deems necessary for the efficient functioning of OFHEO.

(b) *Deputy Director.* The Deputy Director of OFHEO is appointed by the Director in accordance with the Act. In the event of the absence, sickness, death or resignation of the Director, the Deputy Director serves as acting Director until the Director's return or the appointment of a successor. The Deputy Director performs such functions, powers and duties as the Director determines are necessary with respect to OFHEO's management and the development and implementation of OFHEO's programs and functions.

(c) *Offices and functions.* (1) *Office of Examination and Oversight.* The Office of Examination and Oversight plans and conducts examinations of the Enterprises, as required by the Act, prepares and issues reports of examination summarizing examination findings, and recommends corrective action as appropriate. This office is also responsible for developing appropriate off-site monitoring procedures.

(2) *Office of Research, Analysis and Capital Standards.* The Office of Research, Analysis and Capital Standards conducts research and ongoing financial and economic analyses on issues related to the activities of the Enterprises. This office is responsible for determining the ongoing capital classifications and establishing a risk-based capital test for the Enterprises as required by the Act, to ensure the adequacy of capital levels for the Enterprises.

(3) *Office of Finance and Administration.* The Office of Finance and Administration provides support services in the financial and administrative management of OFHEO. This office is responsible for establishing and implementing policies and procedures in the following areas: human resources management, contracting and procurement, office automation, general office management, records management and security, travel and transportation, budget systems, accounting and related transactions systems, internal control systems, financial reporting systems, and other related services.

(4) *Office of General Counsel.* The Office of General Counsel advises the Director and OFHEO staff on all legal matters concerning the functions, activities, and operations of OFHEO and of the Enterprises under the Act. This office is responsible for interpreting the Act and other applicable law, including

financial institutions regulatory issues, securities and corporate law principles, and administrative and general legal matters. This office also coordinates the preparation of legislation and agency regulations.

(5) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs is responsible for ensuring appropriate coordination and communication by OFHEO with the Congress, for monitoring relevant legislative developments and for analyzing and developing legislative proposals. This office is also responsible for directing and coordinating communication with the news media and the public. The Director for Public Affairs serves as spokesperson for OFHEO.

(6) *Office of the Chief Economist.* The Office of the Chief Economist is responsible for directing, planning and conducting research and economic and policy analyses to assess and project the short- and long-term impact of issues and trends in the housing and mortgage finance industries on OFHEO's financial regulatory and supervisory responsibilities.

(d) *Additional information.* Current information on the organization of the Office of Federal Housing Enterprise Oversight may be obtained from the Office of Congressional and Public Affairs, 1700 G Street NW, 4th Floor, Washington, DC 20552.

§ 1700.3 Official seal.

This section describes and displays the official seal of the Office of Federal Housing Enterprise Oversight.

(a) *Description.* A disc consisting of two concentric circles enclosing the words "Office of Federal Housing Enterprise Oversight" and the inaugural year, 1993. In the center of the disc is a stylized image of a structure consisting of a solid trapezoidal base topped by a solid triangular shape. Placed between the base and the top is the acronym for the organization, "OFHEO." Encircling this stylized building shape are twelve five-pointed stars.

(b) *Display.*

BILLING CODE 4220-01-P



BILLING CODE 4220-01-C

§ 1700.4 Official logo.

This section describes and displays the logo adopted by the Office of Federal Housing Enterprise Oversight as the official symbol representing OFHEO. It is displayed on correspondence and selected documents.

(a) *Description.* A stylized image of a structure consisting of a solid trapezoid-shaped base that becomes increasingly wider at the bottom. At the top is a triangular shape which represents the roof of the structure. Placed between the triangle and the trapezoid are the letters "OFHEO." These letters spell out the acronym of the Office of Federal Housing Enterprise Oversight and act as a visual link between the top and bottom of the structure.

(b) *Display.*

BILLING CODE 4220-01-P

OFHEO

BILLING CODE 4220–01–C

Dated: November 29, 1994.

Aida Alvarez,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 94–29847 Filed 12–2–94; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–96–AD; Amendment 39–9078; AD 94–24–05]

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that requires installation of a certain time delay relay and associated wiring into a circuit of the rudder gust lock. This amendment is prompted by reports of inadvertent engagements of the rudder gust lock on in-service Model SD3–60 series airplanes. The actions specified by this AD are intended to prevent premature locking of the rudder gust lock, which could result in reduced controllability of the airplane in flight and during landing roll.

DATES: Effective January 4, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on August 17, 1994 (59 FR 42186). That action proposed to require installation of a 10-second time delay relay, having part number TDD–AYOF–1002, and associated wiring into a circuit of the rudder gust lock.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. Under these circumstances, at least one operator appears to have incorrectly assumed that its airplane was not subject to an AD. On the contrary, all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement. The FAA has determined that this addition will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 88 airplanes of U.S. registry will be affected by this AD, that it will take approximately 29 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $153,120, or $1,740 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–24–05 Short Brothers, PLC: Amendment 39–9078. Docket 94–NM–96–AD.

Applicability: Model SD3–60 airplanes on which Modification 8112 (reference Shorts Service Bulletin SD360–27–16) has been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane in flight and during landing roll, accomplish the following:

(a) Within 90 days after the effective date of this AD, install a 10-second time delay relay, having part number TDD–AYOF–1002, and associated wiring into a circuit of the rudder gust lock, in accordance with Shorts Service Bulletin SD360–27–23, Revision 1, dated April 15, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Shorts Service Bulletin SD360–27–23, Revision 1, dated April 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 4, 1995.

Issued in Renton, Washington, on November 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29166 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–77–AD; Amendment 39–9081; AD 94–24–08]

Airworthiness Directives; Raytheon Corporate Jets Model BAe 125–1000A and Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Raytheon Corporate Jets Model BAe 125–1000A and Hawker 1000 series airplanes, that requires installation of additional vent areas in the central fuselage. This amendment is prompted by an analysis which indicated that an explosive decompression could not be vented adequately with the currently installed floor venting system on these airplanes. The actions specified by this AD are intended to prevent collapse of the floor and subsequent injury to passengers and crew in the event of an explosive decompression of the fuselage.

DATES: Effective on January 4, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Raytheon Corporate Jets Model BAe 125–1000A and Hawker 1000 series airplanes was published in the **Federal Register** on July 15, 1994 (59 FR 36098). That action proposed to require installation of additional vent areas in the central fuselage (Modifications 253627A and 253661B).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. Under these circumstances, at least one operator appears to have incorrectly assumed that its airplane was not subject to an AD. On the contrary, all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement. The FAA has determined that this addition will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 34 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $38,760, or $2,040 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–24–08 Raytheon Corporate Jets, Inc. [Formerly Dehavilland, Hawker Siddeley, British Aerospace PLC]: Amendment 39–9081. Docket 94–NM–77–AD.

Applicability: Model BAe 125–1000A and Hawker 1000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the floor and subsequent injury to passengers and crew in the event of an explosive decompression of the fuselage, accomplish the following:

(a) Within 12 months after the effective date of this AD, install Modification 253627A in accordance with Hawker—Raytheon Service Bulletin SB.53–76–3627A, dated February 25, 1994; and install Modification 253661B in accordance with Hawker—Raytheon Service Bulletin SB.53–81–3661B, dated February 25, 1994. These modifications shall be installed concurrently.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modifications shall be done in accordance with Hawker—Raytheon Service Bulletin SB.53–76–3627A, dated February 25, 1994, and Hawker—Raytheon Service Bulletin SB.53–81–3661B, dated February 25, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on January 4, 1995.

Issued in Renton, Washington, on November 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29165 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–74–AD; Amendment 39–9079; AD 94–24–06]

Airworthiness Directives; Raytheon Corporate Jets Model BH/HS 125–600A and –700A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Raytheon Corporate Jets Model BH/HS 125–600A and –700A series airplanes, that requires installation of two new circuit breakers in the 6 volt output circuits of the flight deck lighting transformers on electrical Panel 'RY,' below the right pilot's seat. This amendment is prompted by a report of smoke in the flight deck due to a lighting transformer 6 volt output circuit short circuiting to ground. The actions specified by this AD are intended to prevent smoke or fire in the flight deck due to inadequate circuit protection for 6 volt circuits of the flight deck lighting transformer.

DATES: Effective January 4, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton,

Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Raytheon Corporate Jets Model BH/HS 125–600A and –700A series airplanes was published in the **Federal Register** on July 27, 1994 (59 FR 38143). That action proposed to require installation of two new circuit breakers in the 6 volt output circuits of the flight deck lighting transformers on electrical Panel 'RY,' below the right pilot's seat.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. Under these circumstances, at least one operator appears to have incorrectly assumed that its airplane was not subject to an AD. On the contrary, all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement. The FAA has determined that this addition will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 202 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $222,200, or $1,100 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–24–06 Raytheon Corporate Jets, Inc. (Formerly DeHavilland, Hawker Siddley, British Aerospace PLC): Amendment 39–9079. Docket 94–NM–74–AD.

Applicability: All Model BH/HS 125–600A and –700A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke or fire in the flight deck due to short circuiting of the flight deck lighting transformers 6V output circuits, accomplish the following:

(a) Within six months after the effective date of this AD, install circuit breakers in two 6 volt output circuits of the flight deck lighting transformers in accordance with Hawker-Raytheon Corporate Jets Service Bulletin SB.24–310–3544A&B, dated February 14, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Hawker-Raytheon Corporate Jets Service Bulletin SB.24–310–3544A&B, dated February 14, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on January 4, 1995.

Issued in Renton, Washington, on November 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29164 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ANM–33]

Amendment of Class D Airspace; Idaho Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Fanning Field, Idaho Falls, ID, Class D airspace from full-time to part-time operations. Recent staffing reductions, and reduced aeronautical activity, have reduced the need for full-time operations at the airport traffic control tower (ATCT). The information will be published in the Airport/Facility Directory for pilot reference.

EFFECTIVE DATE: February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Melland, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–33, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On August 23, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D airspace area at Fanning Field, Idaho Falls, ID (59 FR 43311). Decreased aeronautical operations and reduced FAA staffing have required elimination of the midnight shift schedule at the ATCT.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D airspace at Fanning Field, Idaho Falls, ID, by providing information regarding part-time operations at the ATCT.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANM ID D Idaho Falls, ID [Revised]

Idaho Falls, Fanning Field, ID
(Lat 43°30'59" N, long. 112°04'05" W)

That airspace extending upward from the surface to and including 7,200 feet MSL within a 5.4-mile radius of Fanning Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Issued in Seattle, Washington, on November 15, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–29812 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–55]

Amendment of Class D Airspace and Establishment of Class E Airspace; Aurora, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the Aurora, Buckley Air National Guard (ANG) Base Airport, Colorado, Class D airspace, establishes Class E airspace, and incorporates part-time information to conform with the actual hours of operation at the Buckley ANG Base, Colorado.

DATES: *Effective date:* 0701 u.t.c., February 28, 1995.

Comment date: Comments must be received before February 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–55, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

The FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) on June 3, 1993, to amend the Class D airspace for the Buckley ANG Base at Aurora, Colorado (58 FR 31486). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. On September 9, 1993, the FAA published a final rule amending Class D airspace (58 FR 47371). On June 20, 1994, the Federal Aviation Administration published another final rule which withdrew previous establishment of controlled airspace for the Buckley ANG Base, Aurora, Colorado, because commissioning of the airport had again been delayed (59 FR 31518). With the impending opening of a new International Airport at Denver, Colorado, there is a simultaneous requirement to amend the airspace adjacent to Class B airspace, including the Buckley ANG Base airspace.

The coordinates are in North American Datum 83. Class D and Class E airspace designations are published in Paragraphs 5000, 6002, and 6004, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

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

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

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations amends Class D airspace and establishes Class E airspace at Aurora, Colorado, to correlate with the amendment and relocation of the Denver Class B airspace.

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

List of Subjects In 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400,9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Aurora, CO [Revised]

Buckley ANG Base, CO
(Lat. 39°42'06" N, long. 104°45'07" W)

That airspace extending upward from the surface to but not including 8,000 feet MSL within a 4.4-mile radius of the Buckley ANG Base, excluding that airspace within the Denver International Airport Class B airspace Areas A and C. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ANM CO E2 Aurora, CO [New]

Buckley ANG Base, CO
(Lat. 39°42'06" N, long. 104°45'07" W)

That airspace extending upward from the surface to but not including 8,000 feet MSL within a 4.4-mile radius of the Buckley ANG Base, excluding that airspace within the Denver International Airport Class B airspace Areas A and C. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area

* * * * *

ANM CO E4 Aurora, CO [New]

Buckley ANG Base, CO
(Lat. 39°42'06" N, long. 104°45'07" W)

That airspace extending upward from the surface within 2 miles each side of the Buckley Runway 32 ILS localizer southeast course extending from the 4.4-mile radius to 7.5 miles southeast of the airport.

* * * * *

Issued in Seattle, Washington, on November 15, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–29813 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AEA–12]

Establishment of Class E Airspace; Kingston, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule establishes additional controlled airspace extending upward from 700 feet above the surface for an existing standard instrument approach procedure (SIAP) at the Kingston-Ulster Airport, Kingston, NY. Additionally, the geographic position for Sky Park Airport, contained in the legal description for Class E airspace at Red Hook, NY, is being updated to reflect the actual location of this airport. This action establishes that amount of controlled airspace deemed necessary by the FAA to contain aircraft within controlled airspace while executing the existing SIAP.

DATES: Effective date: 0901 u.t.c. March 30, 1995. Comment Date: Comments must be received on or before January 20, 1995.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 94–AEA–12, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, at the address listed above. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves establishing additional

controlled airspace extending upwards from 700 feet above the surface of the earth, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes additional controlled airspace extending upward from 700 feet above the surface of the earth deemed necessary by the FAA to contain aircraft within controlled airspace while executing an existing published SIAP at the Kingston-Ulster Airport, Kingston, NY. Additionally, the geographic position for Sky Park Airport, contained in the legal description for Class E airspace at Red Hook, NY, is being updated to reflect the actual location of this airport.

Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Under the circumstances presented, the FAA concludes that there is an immediate need to establish additional Class E airspace at Kingston, NY, in order to promote the safe and efficient handling of air traffic in this area. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA NY E5 Kingston, NY [New]

Kingston-Ulster Airport, Kingston, NY
(Lat. 41°59′07″ N., long. 73°57′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Kingston-Ulster Airport.

* * * * *

AEA NY E5 Red Hook, NY [Revised]

Skypark Airport, Red Hook, NY
(Lat. 41°59′05″ N., long. 73°50′10″ W.)
Kingston VORTAC (Lat. 41°39′56″ N., long. 73°49′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of Skypark Airport and within 2.7 miles each side of the Kingston VORTAC 358° radial extending from the 7.9-mile radius to 9.2 miles north of the Kingston VORTAC.

* * * * *

Issued in Jamaica, New York, on November 7, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–29814 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–ASW–32]

Revision of Class E Airspace; Nacogdoches, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action revises the Class E airspace at Nacogdoches, TX. The development of a new localizer, Runway (RWY) 36, standard instrument approach procedure (SIAP) and a new nondirectional radio beacon (NDB) RWY 18 SIAP has made this action necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing these approaches. This action is intended to provide adequate Class E airspace for IFR operations for aircraft executing the SIAP's at Nacogdoches, TX.

EFFECTIVE DATE: 0901 u.t.c., February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Nacogdoches, TX, was published in the **Federal Register** (58 FR 65947). Two new SIAP's were developed for Nacogdoches, TX. The proposal was to revise the controlled airspace extending upward from 700 feet AGL for instrument flight rules (IFR) operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. However, since publication of the proposal, the FAA has discovered that the proposed minutes in the longitudinal coordinate for the Nacogdoches, ILS Localizer are incorrect: the proposal contained 12 minutes and it should have been 43 minutes. Further, the FAA has determined that the proposed reference to the Lufkin VORTAC and the accompanying description of the airspace stating the radial and distances each side of the radials are unnecessary.

Therefore, the ILS Localizer coordinates have been corrected and the reference to the Lufkin VORTAC and the affected portion of the accompanying airspace description have been removed from this final rule. The FAA has determined that these changes will not increase the scope of the rule.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as airspace extending 700 feet or more above the surface of the earth are in paragraph 6005 of FAA Order 7400.9B, dated June 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace at Nacogdoches, TX, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the SIAP's. This action also corrects the geographic coordinates for the Nacogdoches RBN and corrects the airspace description by deleting reference to the Lufkin VORTAC in the final description.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 Nacogdoches, TX [Revised]

Nacogdoches, A.L. Mangham Jr. Regional Airport, TX
(Latitude 31°34'41" N, longitude 94°42'34" W)
Nacogdoches RBN
(Latitude 31°38'55" N, longitude 94°42'20" W)
Nacogdoches ILS Localizer
(Latitude 31°35'11" N, longitude 94°43'13" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the A.L. Mangham, Jr. Regional Airport and within 2.9 miles each side of the Nacogdoches ILS localizer south course extending from the 6.5-mile radius to 10.2 miles south of the airport and within 2.2 miles each side of the 003° bearing from the Nacogdoches RBN extending from the 6.5-mile radius to 9.3 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on November 18, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–29794 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AEA–14]

Establishment of Class E Airspace; Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Charlottesville, VA. Presently, this area is designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control tower located at this location is closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rules (IFR) operations when the control tower is closed.

EFFECTIVE DATE: 0901 U.T.C. March 30, 1995.

Comment Date: Comments must be received on or before January 20, 1995.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Airspace Docket Number 94–AEA–14, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. This rule will become effective on the date specified in the DATES section. However, after the review of any comments, and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace extending upward from the surface at Charlottesville, VA. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Charlottesville-Albemarle Airport, Charlottesville, VA when the control tower is closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at this airport when the control tower is closed. As noted in the

Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish this Class E surface area in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AEA VA E2 Charlottesville, VA [New]

Charlottesville-Albemarle Airport,
Charlottesville, VA
(lat. 38°08'19" N., long. 78°27'10" W.)

Within a 4-mile radius of Charlottesville-Albemarle Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on November 7, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–29815 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANE–77]

Correction to Amendment of Class E Airspace; Lyndonville, VT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final Rule; correction.

SUMMARY: This action corrects errors in a final rule purporting to establish Class E airspace at Lyndonville, VT, published in the **Federal Register** on August 10, 1994 (59 FR 40800). That action was a result of a review of standard instrument approach procedures (SIAP's) for Caledonia County Airport which showed a need for controlled airspace upward from 700 feet above the surface to contain instrument flight rules (IFR) operations at the airport. This action corrects references in the final rule to show that the final rule revises airspace already designated instead of establishing new controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

SUPPLEMENTARY INFORMATION:

History

On August 10, 1994, the FAA published a final rule (59 FR 40800) to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) purporting to establish Class E airspace at Lyndonville, VT. The proposal was prompted by a review of standard instrument approach procedures (SIAP's) for Caledonia County Airport which showed a need for controlled airspace upward from 700 feet above the surface to contain instrument flight rules (IFR) operations at the airport. The final rule described the action as establishing new controlled airspace. Since Class E airspace already existed at Lyndonville, this action corrects references in the final rule to show that the final rule revises the description of airspace already designated instead of establishing new controlled airspace.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the final rule relating to the Lyndonville, VT Class E airspace as published in the **Federal Register** on August 10, 1994, (59 FR 40800), (**Federal Register** Document 94–19405), is corrected as follows:

On page 40800, middle column, change the title of the action from "Establishment of Class E airspace, Lyndonville, VT" to "Amendment of Class E airspace, Lyndonville, VT."

On page 40800, middle column, Summary section, 1st line, change the word "establishes" to "amends."

On page 40800, middle column, History paragraph, 5th line, change the word "establish" to "amend."

On page 40800, 3rd column, 3rd paragraph, 1st line, change the word "establishment" to "amendment."

On page 40800, 3rd column, The Rule paragraph, 2nd line, change the word "establishes" to "amends."

On page 40801, 1st column, in the amendment to incorporation by reference, change the first line of the description of the airspace from "ANE VT E5 Lyndonville, VT [New]" to "ANE VT E5 Lyndonville, VT [Revised]."

* * * * *

Issued in Burlington, Massachusetts, on November 21, 1994.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 94–29795 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANE–29]

Amendment of Offshore Airspace Area; East Coast Low

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the East Coast Low Control Area by expanding the area in the vicinity of Nantucket, MA, to allow aircraft executing the Localizer Back Course Runway 6 instrument approach procedure at Nantucket Memorial Airport, Nantucket, MA (ACK), to remain in controlled airspace at lower altitudes, and thereby promote the efficient use of that airspace.

EFFECTIVE DATE: 0901, u.t.c., February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, Management System Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone, (617) 238–7530· facsimile, (617) 238–7560.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1994, the FAA published a Notice of Proposed Rulemaking (NPRM) to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the East Coast Low Control Area in the vicinity of Nantucket, MA. The proposal addressed a need to more efficiently use the airspace in the vicinity of Nantucket Island by allowing aircraft executing the Localizer Back Course Runway 6 instrument approach procedure at Nantucket Memorial Airport (ACK) to remain in controlled airspace at lower altitudes.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal of the FAA. No comments on the proposal were received.

Designations for Low Control Areas are published in Paragraph 6007 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The amendment to the Offshore Airspace Area designated in this document will be published subsequently in the Order

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the East Coast Low Control Area in the vicinity of Nantucket, MA. The effect of this action is to allow aircraft executing the Localizer Back Course Runway 6 Instrument Approach at the Nantucket Memorial Airport, Nantucket, MA (ACK) to remain in controlled airspace at lower altitudes. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "Significant Regulatory Action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6007 Offshore Airspace Areas

* * * * *

East Coast Low [Revised]

That airspace extending upward from 2,000 feet MSL bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25'46" N, long. 74°02'34" W, running to lat. 39°02'05" N, long. 73°39'30" W, then to lat. 40°04'20" N, long. 72°30'00" W, then to lat. 40°37'14" N, long. 72°30'00" W; and that airspace bounded on the north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 40°40'59" N, long. 72°17'22" W, running along the northern boundary of Warning Areas W–106B, W–105C–D, and W–105E to lat. 41°00'00" N, long. 70°51'00" W, then to lat. 41°00'00" N, long. 70°00'00" W, then to lat. 41°02'30" N, long. 70°00'00" W; and that airspace bounded on the south, west and north by a line 12 miles from and parallel to the U.S. shoreline and on the east by a line beginning at lat. 41°16'00" N, long. 69°41'15" W, running to lat. 41°43'00" N, long. 69°39'30" W; and that airspace bounded on the south, west, and northwest by a line 12 miles from and parallel to the U.S. shoreline and on the east and southeast by a line beginning at lat. 42°15'31" N, long. 70°00'00" W, running to lat. 43°17'00" N, long. 70°00'00" W, then to lat. 43°33'56" N, long. 69°29'12" W.

* * * * *

Issued in Burlington, Massachusetts, on November 21, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–29796 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the LME Aluminum Alloy Futures Contract traded on the London Metal Exchange ("LME") to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1994), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on August 18, 1992, 57 FR 38437 (August 25, 1992), authorizing certain option products traded on the LME to be offered or sold in the United States.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Francey L. Youngberg, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the LME Aluminum Alloy Futures Contract Traded on the London Metal Exchange To Be Offered or Sold in the United States Thirty Days After Publication of this Notice in the Federal Register Absent Further Notice

By Order issued on August 18, 1992 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the London Metal Exchange to be offered or sold in the United States. 57 FR 38437 (August 25, 1992). Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any London Metal Exchange option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order.

By letter dated October 31, 1994 the London Metal Exchange ("LME) represented that it would be introducing an option contract based on the LME Aluminum Alloy Futures Contract. The LME has requested that the Commission supplement its Initial Order authorizing Option Contracts on High Grade Primary Aluminum, Copper-Grade A, Special High Grade Zinc, Standard Lead, Primary Nickel and Tin futures contracts, 57 FR 38437 (Aug. 25, 1992), by also authorizing the Option Contract on the LME Aluminum Alloy Futures Contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the initial Order, the Commission believes that the request for authorization to offer or sell an option contract on the LME Aluminum Alloy Futures Contract should be granted.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on August 18, 1992, and subject to the terms and conditions specified therein, the Commission hereby authorizes the Option Contract on the LME Aluminum Alloy Futures Contract to be offered or sold to persons located in the United States thirty days after publication of this notice in the **Federal Register**, unless prior to that date the Commission receives any comments which may result in a determination to delay the effective date of the Order pending review of such comments. Under such circumstances, the Commission will provide notice.

LME Aluminum Alloy Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Aluminum Alloy Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 15 months forward, except for DEM and YEN if Delivery day is non-business for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11:10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11:40 a.m. on the Exercise day. Options not exercised automatically expire.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—

USD OPTIONS US 0.01
STG OPTIONS STG 0.01
DEM OPTIONS DEM 0.01
YEN OPTIONS YEN 10

Trading Hours—11:45–11:50, 13:05–13:10, 13:15–13:30, 15:50–15:55, 16:30–16–35 and 16:35–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Aluminum Alloy Futures contract of 20 tonnes with a delivery on the 3rd Wednesdays of the Delivery month at the Exercise Price.

Exercise Price Intervals (Gradations)—
US Dollars
—US$25 gradations for Strikes from US$25 to US$1725
—US$50 gradations for Strikes from US$1725 to US$2950
—US$100 gradations for all Strikes over US$3000
Pounds Sterling—STG25 gradations for all Strikes over STG25
Japanese Yen
—JY10,000 gradations for Strikes from JY10,000 to JY390,000
—JY20,000 gradations for all Strikes over JY400,000
Deutschmarks
—DEM50 gradations for Strikes from DEM50 to DEM4950
—DEM200 gradations for all Strikes over DEM5000.

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR Part 30 is amended as set forth below:

[1] Commission rule 30.3(a), 17 CFR 30.3(a) (1994), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to Part 30 is amended by adding the following entry after the existing entries for the "London Metal Exchange" to read as follows:

Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
* *	*	* *
London Metal Exchange.	Options on the LME Aluminum Alloy Future Contract.	December 5, 1994; 59 FR ____
* *	*	* *

Issued in Washington, D.C. on November 29, 1994.

Jean A. Webb,

Secretary to the Commission.

FR Doc. 94–29853 Filed 12–2–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 90N–0134 and 91N–0162]

RIN 0905–AD08

Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendment.

SUMMARY: The Food and Drug Administration (FDA) is correcting the regulations that require nutrition labeling on most foods that are regulated by FDA. In the **Federal Register** of August 18, 1993 (58 FR 44063), the agency published a document entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label; Technical Amendment." The document was published with an inadvertent error in the amendatory language. This document corrects that error.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5763.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 18, 1993, FDA published a document that amended the regulations that require nutrition labeling on most foods regulated by FDA. The agency intended to revise the introductory text of § 101.9(c)(1)(i) (21 CFR 101.9(c)(1)(i)) to specify that when either specific or general food factors are used in calculating caloric content, the factors should be applied to actual amounts (i. e., before rounding) of food components. The agency inadvertently omitted the words "introductory text" from amendatory statement 2 (58 FR 44076). Consequently, the actual methods for calculating caloric content were removed from the Code of Federal Regulations. Accordingly, this document corrects § 101.9(c)(1)(i) to restore the methods.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is corrected by making the following correcting amendments:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6, of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.9 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(1) * * *

(i) Caloric content may be calculated by the following methods. Where either specific or general food factors are used, the factors shall be applied to the actual amount (i.e., before rounding) of food components (e.g., fat, carbohydrate, protein, or ingredients with specific food factors) present per serving.

(A) Using specific Atwater factors (i. e., the Atwater method) given in Table 13, "Energy Value of Foods—Basis and Derivation," by A. L. Merrill and B. K. Watt, United States Department of Agriculture (USDA) Handbook No. 74 (slightly revised, 1973), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be inspected at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.;

(B) Using the general factors of 4, 4, and 9 calories per gram for protein, total carbohydrate, and total fat, respectively, as described in USDA Handbook No. 74 (slightly revised 1973) pp. 9–11, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (the availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section);

(C) Using the general factors of 4, 4, and 9 calories per gram for protein, total carbohydrate less the amount of insoluble dietary fiber, and total fat, respectively, as described in USDA Handbook No. 74 (slightly revised 1973) pp. 9–11, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (the availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section;

(D) Using data for specific food factors for particular foods or ingredients approved by the Food and Drug Administration (FDA) and provided in parts 172 or 184 of this chapter, or by other means, as appropriate; or

(E) Using bomb calorimetry data subtracting 1.25 calories per gram protein to correct for incomplete digestibility, as described in USDA Handbook No. 74 (slightly revised 1973) p. 10, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (the availability of this incorporation by reference is given in paragraph (c)(1)(i)(A) of this section).

* * * * *

Dated: November 28, 1994.

William K. Hubbard,

Interim Deputy Commisioner for Policy.

[FR Doc. 94–29733 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 177

[Docket No. 91F–0198]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer in blends with polyethylene terephthalate polymers in contact with food. This action is in response to a petition filed by Mitsui Petrochemical Industries, Ltd.

DATES: Effective December 5, 1994; written objections and requests for a hearing by January 4, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, 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: In a notice published in the **Federal Register** of July 23, 1991 (56 FR 33761), FDA announced that a food additive petition (FAP 1B4236) had been filed by Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2–5 Kasumigaseki 3-chome, Chiyoda-ku, Tokyo 100, Japan. The petition proposed that the food additive regulations in § 177.1345 *Ethylene/1, 3-phenylene oxyethylene isophthalate/terephthalate copolymer* (21 CFR 177.1345) be amended to provide for the safe use of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer in blends with polyethylene terephthalate polymers in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that the regulations in § 177.1345 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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 (address above) between 9 a.m. and 4 p.m., Monday through Friday.

. Any person who will be adversely affected by this regulation may at any time on or before January 4, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1345 is amended by revising the introductory text and by adding new paragraph (d) to read as follows:

§ 177.1345 Ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer.

Ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer (CAS Reg. No. 87365–98–8) identified in paragraph (a) of this section may be safely used, subject to the provisions of this section, as the non-food-contact layer of laminate structures subject to the provisions of § 177.1395, and in blends with polyethylene terephthalate polymers complying with § 177.1630.

* * * * *

(d) *Limitations.* Copolymer blends described above shall not exceed 30 percent by weight of ethylene/1,3-phenylene oxyethylene isophthalate/terephthalate copolymer. The finished blend may be used in contact with food only under conditions of use C through G, as described in Table 2 of § 176.170(c) of this chapter, except that with food identified as Type III, IV–A, V, VIII–A, and IX in § 176.170(c), Table 1, the copolymer may be used under condition of use C at temperatures not to exceed 160 °F (71 °C).

* * * * *

Dated: November 18, 1994.

Raymond E. Newberry,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–29854 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 178

[Docket No. 91F–0430]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-methyl-4,6-bis[(octylthio)methyl]phenol as a stabilizer in can-end and side seam cements and in various polymers intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective December 5, 1994; written objections and requests for a hearing by January 4, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 2, 1991 (56 FR 61253), FDA announced that a food additive petition (FAP 1B4283) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2-methyl-4,6-bis[(octylthio)methyl]phenol as a stabilizer in can-end and side seam cements and in various polymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that this use should be listed in § 178.2010, as set forth below. In addition, FDA is correcting the entry for this additive in § 178.2010(b), in the table under the heading "Substances" to capitalize the letter "m" in "methyl." Thus, it will read "2-Methyl-4,6-bis[(octylthio)methyl]phenol."

A review of the petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the committee) that has been formed by FDA's Center for Food Safety and Applied Nutrition. The committee noted that for many years formaldehyde has been known to be a carcinogen by the inhalation route, but it concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The committee reached its conclusion because the route of administration was not relevant to food safety, and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). The agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1) and (2) a negative study by Til, et al. (1989), conducted in The Netherlands (Ref. 2). The committee reviewed both studies and concluded in a "Memorandum of Conference," dated April 24, 1991, and March 4, 1993, "* * * that data concerning the Soffritti study reported were unreliable and could not be used in the assessment of the oral

carcinogenicity of formaldehyde" (Ref. 3). This conclusion is based on a lack of critical details in the study, questionable histopathologic conclusions, and the use of unusual nomenclature to describe the tumors. Thus, the committee concluded that there is no basis to find that formaldehyde is a carcinogen when ingested.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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 (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 4, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biagi, "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, Vol. 5, No. 5:699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, "Two-Year Drinking-Water Study of Formaldehyde in Rats," *Food Chemical Toxicology*, Vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of Conference concerning "Formaldehyde," Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for "2-Methyl-4,6-bis[(octylthio)methyl]phenol" under the heading "Substances," and by revising entry "2," and by numerically adding new entries "5" and "6" under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * * * * *	
2-Methyl-4,6-bis[(octylthio)methyl]phenol (CAS Reg. No. 110553–27–0).	For use only: * * * 2. At levels not to exceed 0.5 percent by weight of can-end cements and side-seam cements complying with § 175.300(b)(3)(xxxi) and (xxxii) of this chapter. * * * 5. At levels not to exceed 0.1 percent by weight of petroleum alicyclic 0hydrocarbon resins complying with § 175.320 of this chapter; rubber-modified polystyrene complying with § 177.1640 of this chapter that contact food only under conditions of use B through H described in Table 2, § 176.170(c) of this chapter; and petroleum hydrocarbon resins and rosins and rosin derivatives complying with § 178.3800 of this chapter. 6. At levels not to exceed 0.2 percent by weight of styrene block polymers complying with § 177.1810 of this chapter that contact food of Types I, II, IV–B, VI, VII–B, and VIII described in Table 1, § 176.170(c) of this chapter, only under conditions of use C through H described in Table 2, § 176.170(c) of this chapter.
* * * * * * * *	

Dated: November 22, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–29732 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Bacitracin Methylene Disalicylate

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 a new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lily and Co. The NADA provides for use of two separately approved Type A medicated articles, one containing monensin sodium and the other containing bacitracin methylene disalicylate, to make combination Type C medicated feeds for the prevention of coccidiosis, for increased rate of weight gain and for improved feed efficiency in growing turkeys.

EFFECTIVE DATE: December 5, 1994.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, has filed NADA 140–937. The NADA provides for use of separately approved 45 and 60 grams per pound (g/lb) monensin and 10, 25, 30, 40, 50, and 60 g/lb bacitracin methylene disalicylate Type A medicated articles to make Type C medicated feeds containing 54 to 90 g per ton (g/t) monensin and 4 to 50 g/t bacitracin methylene disalicylate. The feed is used for the prevention of coccidiosis caused by *Eimeria adenoeides*, *E. meleagrimitis*, and *E. gallopavonis*, for increased rate of weight gain, and for improved feed efficiency in growing turkeys. The NADA is approved as of November 8, 1994, and the regulations are amended in 21 CFR 558.355(f)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Certain limitations currently required on the monensin turkey feed labeling are not in the regulations. At this time, FDA is adding these limitations to the regulations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application 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)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 8, 1994, because the application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) or human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

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

2. Section 558.355 is amended by redesignating paragraphs (f)(2)(ii) and (f)(2)(iii) as paragraphs (f)(2)(i)(*a*) and (f)(2)(i)(*b*), respectively, by revising newly redesignated paragraph (f)(2)(i)(*b*), and by adding new paragraph (f)(2)(ii) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(*b*) *Limitations.* For growing turkeys only; as monensin sodium; feed continuously as sole ration. Do not allow horses, other equines, mature turkeys, or guinea fowl access to feed containing monensin. Ingestion of monensin by horses and guinea fowl has been fatal. Some strains of turkey coccidia may be monensin tolerant or resistant. Monensin may interfere with development of immunity to turkey coccidiosis.

(ii) *Amount per ton.* Monensin, 54 to 90 grams, and bacitracin methylene disalicylate, 4 to 50 grams.

(*a*) *Indications for use.* For prevention of coccidiosis caused by *Eimeria adenoeides*, *E. meleagrimitis*, and *E. gallopavonis*, for increased rate of weight gain, and for improved feed efficiency.

(*b*) *Limitations.* For growing turkeys only; as monensin sodium; feed continuously as sole ration. Do not allow horses, other equines, mature turkeys or guinea fowl access to feed containing monensin. Ingestion of monensin by horses and guinea fowl has been fatal. Some strains of turkey coccidia may be monensin tolerant or resistant. Monensin may interfere with development of immunity to turkey coccidiosis. Bacitracin methylene disalicylate as provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: November 18, 1994.

Richard H. Teske,

Deputy Director, Pre-market Review, Center for Veterinary Medicine.

[FR Doc. 94–29855 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Rates—State or Local Voting Registration Official

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On May 20, 1993, the President signed into law Public Law 103–31, the National Voter Registration Act of 1993, which amends title 39, United States Code, by adding section 3629. The amendment authorizes voting registration officials to mail, effective January 1, 1995, certain third-class matter at the special bulk third-class rates. This notice contains regulations implementing the legislative changes.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: The Postal Service published in the **Federal Register** (59 FR 45652–45653) on

September 2, 1994, a proposal to amend the Domestic Mail Manual to implement certain provisions of Public Law 103–31, the National Voter Registration Act of 1993, which amended title 39, United States Code, by adding section 3629. This section provides that the Postal Service shall make available to a state or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under 39 U.S.C. 3626 for making a mailing that the official certifies is required or authorized by the Act. The mailing provisions of the law apply only to state or local voting registration officials in those states and the District of Columbia that require a voter to register to vote before the date of voting in a general election for public office. This final rule adopts the provisions of the proposed rule.

As information, the procedures that apply to voting registration officials seeking authorization and mailing privileges under the new provisions will be similar to the procedures that apply to nonprofit organizations mailing at the special rates. Voting registration officials will not be permitted to mail at the special rates before receiving an authorization from the Postal Service.

Each state and local voting registration official must submit PS Form 3624, Application to Mail at Special Bulk Third-Class Rates, at each post office where materials will be mailed at the special bulk third-class rates. After submitting an application, the voting registration official may mail qualifying materials under a "pending arrangement" with the postmaster. If the application is approved, the Postal Service will refund to the voting registration official the difference in postage paid between the regular rates and the special bulk third-class rates for mailings made after the effective date of the authorization. The authorization should be requested, and will be issued, by the title of the state or local voting registration official. After receiving authorization to mail at the special rates, the authorized mailer may apply to mail at additional offices following the procedures in the Domestic Mail Manual.

As with all mail authorized at the special rates, only third-class matter, deposited in prescribed minimum quantities and prepared in accordance with postal regulations, is eligible for these rates. In addition to these general requirements, the materials must be required or authorized by the Act. Finally, mailers must complete and deposit with each permit imprint mailing the appropriate mailing statement: PS Form 3602–N, Statement of Mailing With Permit Imprint Third-Class Mail (Nonprofit Rates Only); PS Form 3602–PVN, Plant-Verified Drop Shipment (PVDS) Consolidated Mailing Statement Register Third-Class (Special Rates Only: Permit Imprint); or PS Form 3602–PC, Statement of Mailing With Meter or Precanceled Postage Affixed Bulk Third-Class Mail (Regular or Nonprofit Rates), with each metered or precanceled stamp mailing. The certification sections on the mailing statements will be modified as follows:

> The signature of the mailer certifies * * * 5. the mailing, if made by a voting registration official, is required or authorized by the National Voter Registration Act of 1993 * * * [Current item 5 will be renumbered as item 6.]

Evaluation of Comments Received

A total of 31 written comments were received, 30 from election and voting officials and 1 from a member of Congress.

Of these comments, 11 support the proposed regulations granting preferential rates for voting materials, stating that the proposed changes will be workable for most voter registration officials.

The remaining 20 comments, although supporting the extension of special bulk third-class rates to voting registration officials, seek an expansion of the types of matter that those officials may mail at the special rates. Like other mailers eligible to use the special rates, voting registration officials would be permitted to enter only bulk third-class matter at those rates. The commenters assert that the proposed rule would not result in any real savings for voter registration mailings for these reasons:

(1) The bulk rates are available only if the mailing contains 200 or more items sorted by ZIP Code;

(2) Third-class mail has to be generic only and, therefore, may not contain any references to personal or unique information, as required in most mailings under the National Voter Registration Act (NVRA);

(3) Mailings under the NVRA are either single items of a First-Class nature mailed in response to a registration application or "forwardable" mailings; and

(4) All mailings required under the NVRA must be given First-Class service, and the rates would not apply to any "return if undeliverable" or "forward" action, which is essential to the NVRA mailings.

Accordingly, these 20 commenters urge that the Postal Service, in order to comply with the intent of Congress in the NVRA, do the following:

(1) Amend the Domestic Mail Manual to permit registration materials to be mailed First-Class at the special bulk third-class rates or some other rate that is lower than regular First-Class;

(2) Permit voting registration officials to use special bulk third-class rates for mailings required by the NVRA, regardless of the service requested or the quantity involved; and

(3) Help ensure citizen participation in the election process by providing special third-class rates for all official registration mailings, lowering the number of pieces required for NVRA mailings, and allowing voters to submit ballots and registration cards through the mail at no expense.

At the outset, the Postal Service notes that the eligibility for the special rates is not as restrictive as these commenters appear to believe. It is true that matter considered "actual and personal correspondence" must be entered as First-Class Mail and not as third-class mail. However, this requirement does not mean that matter entered at the special rates must be generic and devoid of any items unique to the addressee. For instance, a mailpiece would not be disqualified ordinarily at the third-class rates for the inclusion of information typically on voting material such as an account number or file number, name and address of the addressee, the polling place, congressional district, legislative district, school board district, councilmanic district, election district, and precinct. (As a related example, library cards are generally eligible for third-class mail.) Additionally, although third-class mail generally must consist entirely of printed matter, rather than handwritten or typewritten matter, the addition of a handwritten or typewritten name and address is permitted. Questions about third-class eligibility of a particular piece may be raised with local postal officials.

The need for forwarding, return, or address correction services also would not preclude the use of third-class mail. Although these services are not automatically provided for third-class mail, they can be obtained by adding the appropriate endorsements to the mail. Extra postage is assessed only for pieces that require such services. Election boards or voter registration commissions can minimize the volume of pieces forwarded or returned either by using the National Change of Address (NCOA) system to maintain current address lists or by obtaining residential change-of-address information from PS Form 3575 as provided by Domestic Mail Manual A910.6.0.

The Postal Service believes that the proposed rule requiring matter of voting

registration officials to meet the requirements that other mailers must meet to qualify for the special bulk third-class rate is consistent with Public Law 103–31. That Act states that the Postal Service shall make available to a state or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under 39 U.S.C. 3626 for making a mailing that the official certifies is required or authorized by the Act. Organizations authorized to mail at the special bulk third-class rates may mail only their bulk third-class matter at those rates. Third-class mail consists of mailable matter that weighs less than 16 ounces, is not mailed or required to be mailed as First-Class Mail, and is not entered as second-class mail (except as permitted or required by standard).

The Postal Service, which believes that special bulk third-class rates are properly chargeable for third-class matter and not other classes of mail, does not have the unilateral authority to establish new postage rates or classes of mail. Classes of mail are specified in the Domestic Mail Classification Schedule (DMCS). Special bulk third-class rates are available only to qualified organizations when their mailings consist of at least 200 pieces or 50 pounds of mail properly presorted. The minimum of 200 pieces or 50 pounds was established because it is cost-effective for the Postal Service to verify, accept, and process such mailings. The minimum-volume requirement is established in section 300.021 of the DMCS, and the Postal Service may not change the requirements of the DMCS or change postage rates except by undertaking the procedures set forth in 39 U.S.C. 3621–3625.

In addition to its consistency with the language of 39 U.S.C. 3629, the determination that the special rates be restricted to bulk third-class matter is also in line with subsequent legislative events. During 1993, the U.S. Senate introduced an amendment to the Treasury and the United States Postal Service Appropriations bill to authorize voting registration officials to mail at "a rate which is one-half the applicable rate for First-Class Mail" instead of mailing at the special bulk third-class rate as provided by the NVRA, 139 Cong. Rec., S10186, August 3, 1993. The conferees deleted the Senate amendment, stating: "The conferees are aware, however, of the concerns of some election officials who believe that the bulk third-class mail rate will not be sufficient to include all of the mailing requirements of the Act." H.R. Rep. 102–256, 103d Cong., 1st Sess., September 24, 1993, at 43.

Suggestions that the Postal Service permit voting materials to be mailed free or adopt a new rate for such mail, such as a percentage of the First-Class rate, are beyond the scope of the Act and outside the authority of the Postal Service. Free or reduced rate mailing privileges may not be adopted unilaterally by the Postal Service; they are effected only by congressional statute. Other than 39 U.S.C. 3406 and 3629, Congress has not enacted such privileges for election-related mailings.

One comment noted that the Postal Service misinterpreted the law regarding applicability of the National Voter Registration Act by stating that the law applies only to states or local voting registration officials in those states and the District of Columbia that require a voter to register to vote before the date of voting in a general election for public office. The commenter stated: "Section 4 of the NVRA exempts states which had enacted a law on or before March 11, 1993, which allows all voters to 'register to vote at the polling place at the time of voting in a general election for Federal office.' Any state that enacts an election-day registration law after March 11, 1993, will be subject to the provisions of the NVRA and, therefore, should be entitled to the preferential postal rates." The comment refers to information in the supplementary information section of the proposed rule, which reads as follows:

> The law (NVRA) applies only to state or local voting registration officials in those states and the District of Columbia that require a voter to register to vote before the date of voting in a general election for public office.

Three commenters expressed strong concerns about the procedures for obtaining authorizations to mail at the special rates. These commenters:

(1) Opposed the requirement that the local voting registration official submit PS Form 3624 at each post office where the official will mail materials at the special bulk third-class rates;

(2) Suggested that PS Form 3624 be changed to indicate that the state or local voting registration official is the applicant, to be consistent with the Act;

(3) Asserted that requiring the agency head to complete the application is an unnecessary step in the application process because it would require Board of Supervisors' action ("head of the agency") and signature of the Chairman;

(4) Argued that voter registration and voter list maintenance are entirely decentralized in many states and controlled by local elected officials, the vast majority of whom have no staff or office resources, and that imposing additional administrative requirements for bulk mail will eliminate the use of special bulk rates in counties and municipalities that are least able to afford the full rates;

(5) Proposed that the "Chief Election Official" designated in accordance with the NVRA of 1993 should be permitted to submit to the Postal Service the names of the registration offices and post offices where special bulk rates would be needed, or that state officials might file a request for all county and local officials to mail under the NVRA; and

(6) Suggested that the application be revised to require the applicant to submit only relevant material to establish eligibility to mail at the special bulk third-class rates.

Postal laws have long required mailers to apply for authorization to mail at special bulk third-class rates before entering mail at the special rates. See former 39 U.S.C. 4452(d). This application process ensures that only qualified mailers enter matter at the special rates and that the matter entered is eligible. The Postal Service has no objections to state and other officials providing advice and assistance to local voting registration officials in qualifying to mail their materials at the special bulk third-class rates. However, the Postal Service will continue to require voting registration officials to obtain an authorization to mail at the special bulk third-class rates at the post office where the officials will present matter for mailing at the special bulk third-class rates.

Some commenters appear to misunderstand the proposed procedure for applying to mail at the special bulk third-class rates. The state or local voting registration official who will be presenting bulk third-class mailings will be required to apply to mail at the special bulk third-class rates and will be considered the "official head of the government agency" (voting registration official).

An organization authorized to mail at the special bulk third-class rates may mail only its matter at those rates. The Postal Service is not requiring state officials to file requests for local voting registration officials to mail at the special bulk third-class rates. However, state officials may assist local voting registration officials in preparing their applications if the applications are submitted to the post office where the local voting registration officials will make mailings at the special bulk third-class rates.

Consistent with the comments received, the Postal Service is also revising the application form to reduce

the burden on voting officials applying to mail at the special rates. PS Form 3624, Application to Mail at Special Bulk Third-Class Rates, will be revised so that election officials will have to supply only minimal information. The revised form will be printed in the Postal Bulletin. The information required will be far less than that required from nonprofit mailers seeking to mail at the special rates.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. In the Domestic Mail Manual, section E370 is amended by revising E370.3.0 and E370.5.0.

The text is as follows:

E—Eligibility

* * * * *

[Change title of 3.0 to:]

QUALIFIED POLITICAL COMMITTEES AND STATE OR LOCAL VOTING REGISTRATION OFFICIAL

* * * * *

3.2 Definitions

For the standards in 3.1

* * * * *

[Add 3.3 as follows:]

3.3 State or Local Voting Registration Official

Voting registration officials in a state or the District of Columbia are authorized to mail certain third-class materials at the special bulk third-class rates under the National Voter Registration Act of 1993 (see E370.5.9).

* * * * *

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

[Add E370.5.9 as follows:]

5.9 Voting Registration Official

The voting registration official may mail, at the special rates, only qualifying third-class matter that is required or authorized to be mailed at those rates by the National Voter Registration Act of 1993.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–29826 Filed 12–2–94; 8:45 am]

BILLING CODE 7710–12–P

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Postal Service regulation which governs the disclosure to the public of information contained in Postal Service Form 1583, "Application for Delivery of Mail Through Agent." The amendment authorizes the disclosure of information from Form 1583 for the purpose of identifying addresses as Commercial Mail Receiving Agencies.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Mitchell J. Benowitz, Ethics and Information Law, (202) 268–2967.

SUPPLEMENTARY INFORMATION: The rule is substantially the same as the interim rule with request for comments published on May 3, 1994. Commercial Mail Receiving Agencies (CMRAs) are private entities which receive mail on behalf of other persons. An address provided by a CMRA often appears to be a typical residential or business address. Both CMRAs and their customers are required to sign Postal Service Form 1583, "Application for Delivery of Mail Through Agent," a copy of which is filed with the postmaster responsible for the delivery address. The Postal Service has prohibited the disclosure to the public of any information contained on Form 1583.

As amended, 39 CFR 265.6(d)(8) authorizes disclosure of information from Form 1583 for the sole purpose of identifying an address as belonging to a Commercial Mail Receiving Agency (CMRA). The regulation does not authorize the disclosure of any other information concerning CMRAs or their customers. Because the regulation does not authorize the disclosure of the identities of CMRA customers, disclosures under the regulation will not invade the legitimate privacy interests of persons who receive mail through CMRAs. The information will be disclosed primarily by means of annotations to the Postal Service's Delivery Sequence File (DSF). DSF data, the use of which is made available to the public through authorized licensees, contains delivery-point addresses, and it does not include the identities of individuals. Although disclosures will be made primarily by means of DSF annotations, the regulation permits disclosures by other means. Regardless of the means of disclosure, all disclosures are limited in scope to the identification of an address as a CMRA address.

Copies of Form 1583 on file with the Postal Service are records protected by the Privacy Act of 1974, 5 U.S.C. 552a, and they are maintained in the Postal Service's Privacy Act system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents. The Postal Service has added a routine use to system of records USPS 010.050 which authorizes the disclosure of the information that may be released pursuant to this rule. See 59 FR 22874 (May 3, 1994).

Analysis of Comments Received

Two written comments were received. One commenter expressed support for the interim rule. The other commenter expressed concern that the interim rule did not define the information which may be disclosed with sufficient specificity, and also recommended that the rule be amended to authorize only disclosures by means of DSF annotations. An editorial change to the interim rule has been made in response to these comments.

In response to the commenter's concern that the information which may be disclosed was not defined with sufficient specificity, the interim rule has been modified to emphasize that the only information which may be disclosed from PS Form 1583 is the fact that an address is a CMRA address. This modification does not alter the substance of the interim rule, which was never intended to authorize the disclosure of any other information.

For the following reasons, the Postal Service has decided not to adopt the commenter's recommendation that disclosures be limited to DSF annotations. First, we think that a rule which limits the means, rather than the scope, of disclosure would not significantly add to the protection of legitimate privacy interests. Once the information has been disclosed through a DSF licensee, the Postal Service cannot prohibit or restrict the further disclosure of the information. A rule limiting disclosures to those made through the DSF might create the appearance that the information will be available only to persons who receive DSF data when, in fact, the information

may be further disseminated by those who receive it.

Second, as we explained in the introductory comments to the interim rule, we have concluded that the identification of CMRA addresses will be an effective tool in combatting credit card fraud and other types of consumer fraud. Limiting disclosures to DSF annotations might impair the effectiveness of this tool by making the information more difficult to obtain for persons, including law enforcement personnel, who may not have ready access to DSF data. Therefore, we are adopting a rule that permits disclosure by means other than the DSF.

List of Subjects in 39 CFR Part 265

Disclosure of Information, Postal Service.

For the reasons set forth in this document, the Postal Service is amending 39 CFR Part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

2. Paragraph (d)(8) of § 265.6 is revised to read as follows:

§ 265.6 Availability of Records.

* * * * *

(d) * * *

(8) Form 1583, Application for Delivery of Mail Through Agent. Except as provided by this paragraph, information contained in Form 1583 may not be disclosed to the public. Information contained in Form 1583 may be disclosed to the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed from Form 1583.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–29601 Filed 12–2–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5116–6]

Clean Air Act Final Disapproval of Operating Permits Program; Commonwealth of Virginia

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final disapproval.

SUMMARY: EPA is taking final action to disapprove the Clean Air Act operating permits program under title V of the Clean Air Act Amendments of 1990 submitted to EPA by the Commonwealth of Virginia. The reasons for this disapproval action were fully described in EPA's notice of proposed disapproval (see the June 17, 1994 **Federal Register**) and can be summarized as follows: (1) Virginia's program submittal does not contain the necessary legal authority to allow persons who have participated in the permit program's public comment process to obtain review of the final permit decision in State court; (2) the program does not contain the necessary legal authority to prevent the default issuance of permits; (3) the submitted regulations expired on June 28, 1994 and cannot be applied or enforced after that date; (4) the regulatory portion of the program submittal does not include the proper universe of sources required to be subject to a State operating permits program; and (5) the program does not ensure that permits contain all applicable Clean Air Act requirements and does not correctly delineate permit provisions enforceable only by the Commonwealth.

DATES: This action will become effective on January 4, 1995.

ADDRESSES: A copy of Virginia's submittal and other supporting information relevant to this action, including all public comment letters, are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region III, Air, Radiation & Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Campbell, Air and Radiation Programs Branch (3AT10), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Telephone: 215 597–9781.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("CAA")) and implementing regulations at 40 CFR part 70 (see 57 FR 32250 (July 21, 1992)) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one (1) year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the CAA and the part 70 regulations, which together outline the criteria for approval or disapproval. If EPA has not approved a program by November 15, 1995 for a State, it must establish and implement a Federal program in that State.

On June 17, 1994, EPA proposed disapproval of the operating permits program for the Commonwealth of Virginia. (See 59 FR 31183.) EPA received public comment on the proposal and will address those comments in this notice. EPA is taking final action to disapprove the operating permits program for the Commonwealth of Virginia. By promulgating this disapproval action within one (1) year of receipt of Virginia's November 12, 1993 operating permits program submittal, EPA has fulfilled its requirements for timely program review under section 502(d).

II. Analysis of State Submittal

On November 12, 1993, as supplemented on January 14, 1994, the Commonwealth of Virginia submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70. EPA reviewed the program against the criteria for approval and disapproval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed disapproval of Virginia's program (see 59 FR 31183 (June 17, 1994)) and the Technical Support Document for this action, that the Commonwealth's operating permits program does not substantially meet the requirements of the CAA or part 70. In summary, the deficiencies of the Commonwealth's program which require disapproval are:

1. Inadequate provisions, pursuant to section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x) and 70.7(h), for public participation in the permit process and the opportunity for judicial review in State court. Specifically, the Commonwealth lacks statutory authority for judicial review of final permit decisions that meets the CAA's

minimum threshold for judicial standing.

2. Lack of authority, pursuant to section 505(b)(3) of the CAA and 40 CFR 70.8(e), to prevent the default issuance of permits by Commonwealth.

3. The regulations to implement the program expired on June 28, 1994 and have not been re-promulgated.

4. The Commonwealth's operating permits program does not require issuance of permits to the proper universe of sources required by 40 CFR part 70.

5. The program does not contain regulations meeting the requirements of 40 CFR part 70 to ensure issuance of permits that contain all applicable Federal requirements and to correctly delineate provisions only enforceable by the Commonwealth.

Pursuant to section 502(d)(1) of the CAA, the Commonwealth of Virginia must correct these deficiencies, as well as those defined in the Technical Support Document by June 7, 1995, in order to receive approval of its operating permits program from EPA.

III. Response to Public Comments

EPA received 32 letters of comment in response to the proposed disapproval of Virginia's operating permits program submittal. As mentioned in the June 17, 1994 notice of proposed disapproval, EPA received a petition from the Environmental Defense Fund, dated December 23, 1993, to disapprove Virginia's operating permits program. That petition is considered in this action. EPA received a total of 26 comment letters supporting the notice of proposed disapproval of Virginia's program. EPA received adverse comment letters from the Virginia Manufacturers Association, Virginia Aggregates Association, Northeast Maryland Waste Disposal Authority, AES, Ogden Martin Systems of Montgomery, Inc., Ogden Martin Systems of Fairfax, Inc., Ogden Martin Systems of Lancaster, Inc., and Ogden Martin Systems of Alexandria/Arlington, Inc. The Attorney General of Virginia submitted specific comments on the judicial standing issue. Additionally, the Commonwealth of Virginia Department of Environmental Quality submitted a separate letter which describes how it intends to address the deficiencies as outlined in the notice of proposed disapproval and the accompanying Technical Support Document, with the notable exception of the judicial standing issues. Finally, one letter of comment was received recommending specific changes to Virginia's operating permits program. The following is in response to comments which do not directly support EPA's disapproval action.

Comment: The Commonwealth of Virginia's judicial review statute is legally sufficient to satisfy the requirements of title V and 40 CFR part 70.

EPA Response: EPA proposed disapproval of Virginia's program because it, in part, fails to meet the minimum requirements for standing for judicial review as required by section 502(b)(6) of the Act and 40 CFR 70.4(b)(3)(x).

Section 502(b)(6) states that every permit program must provide the applicant and "any person who participated in the public comment process" with the opportunity for judicial review of the final permit action in State court. The same opportunity must also be afforded to any other person who could obtain judicial review of the action under any applicable State law.

The Commonwealth and the other contesting commenters assert that a reading of the language of section 502(b)(6) and the legislative history indicates that Congress intended that States be given discretion to determine who should be allowed to obtain judicial review of actions under a State's title V program. EPA does not agree with this interpretation of section 502's judicial review provision.

EPA believes that for a State title V operating permits program to be approved by EPA, that program must provide access to judicial review to any party who participated in the public comment process and who at a minimum meets the threshold standing requirements of Article III of the U.S. Constitution. This interpretation is consistent with the language, structure, and legislative history of the Act which provides affected members of the public an opportunity for judicial review of permit actions to ensure an adequate and meaningful opportunity for public participation in the permit process. The Senate managers of the Clean Air Act Amendments of 1990 stated that:

> Several other provisions [in section 502(b)(6)] are included to ensure fair treatment in the permit process. For example, we make clear that judicial review of final actions by the permitting authority to issue or deny permits shall be available in State court to anyone who could obtain such review under any applicable law. This provision ensures that existing provisions of law governing the availability of review of final actions on permit applications are in no way limited, and that interested parties who arguably are affected by permit decisions are guaranteed their day in court.

Chafee-Baucus Statement of Senate Managers, S.1630, the Clean Air Act Amendments of 1990, *reprinted* in 136 Cong. Rec. S169941 (daily ed. October 27, 1990). This language, together with the expansive language of section 502(b)(6), demonstrates the clear intent of the Congress to provide citizens a broad opportunity for judicial review.

In addition, if EPA were to implement an operating permits program pursuant to section 502(d)(3) of the Act, citizens would have access to judicial review of EPA permitting decisions if they met the minimal standing requirements of Article III. With respect to the nature of the injury that an "interested person" must show to have standing under Article III, the Supreme Court held in *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972), that harm to an economic interest is not required to confer standing. Harm to an aesthetic, environmental, or recreational interest is sufficient, as long as the party seeking judicial review is among the injured. This holding was reaffirmed by the Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. ——, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351, 365–66 (1992). See also, *Middlesex County Sewerage Authority v. National Sea Clammers Ass'n*, 453 U.S. 1, 16–17 (1981) (citizen suit provision of CWA intended by Congress to apply to plaintiffs suffering noneconomic and economic injury).

One commenter observed that in addition to the constitutional requirements for standing, "prudential" standing requirements would apply where a Federal court reviews an EPA-issued permit. The prudential standing inquiry requires that a court ask whether a would-be challenger to Agency action is pursuing an "interest" arguably within the zone of interests Congress intended to either regulate or protect. *Hazardous Waste Treatment Council v. EPA (HWTC IV)*, 885 F.2d 918, 922 (D.C. Cir. 1989). EPA has considered the issue and has determined that it agrees with the commenter that courts should apply traditional prudential standing requirements to parties seeking judicial review pursuant to section 502(b)(6). *Id.* at 921. However, by requiring that States provide an opportunity for judicial review to, *inter alia*, "any person who participated in the public comment process" on a proposed permit, Congress declared that any such person is within the zone of interests addressed by title V. Thus, EPA believes that the Act clearly enables such persons to meet prudential standing requirements. In Virginia, however, all persons who have participated in the public comment process are not considered within the zone of interests protected by title V. Accordingly, the Commonwealth's

standing provision is more restrictive than traditional prudential standing requirements. *Hazardous Waste Treatment Council v. Thomas (HWTC II)*, 861 F.2d 277 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1106 (1989).

Comment: The CAA, specifically section 502(b)(6), may violate the Tenth Amendment of the U.S. Constitution. The commenters believe that Congress cannot preempt a traditional State power with the ambiguous language of section 502(b)(6) and that Congress cannot coerce State legislative action. Additionally, these commenters contend that the sanctions provisions in section 502(d)(2) of the Act unconstitutionally compel the States to enact and enforce the title V permits program.

EPA Response: The Commonwealth and the contesting commenters assert that EPA's interpretation of section 502(b)(6) of the Act is an invasion of State sovereignty in violation of the Tenth Amendment of the U.S. Constitution. They assert that Congress cannot require States to regulate. However, EPA does not believe that the Clean Air Act, and more specifically section 502(b)(6), is an unconstitutional invasion of State sovereignty.

It is fundamental under the Tenth Amendment to the U.S. Constitution that Congress lacks the power directly to compel States to enact and enforce a Federal regulatory program. Equally fundamental, however, is Congress' authority to establish a program of cooperative federalism in which States are encouraged to enact a State regulatory program using Federal standards in a federally preemptible area. When Congress created the operating permits program in title V of the Clean Air Act Amendments of 1990, it could have entirely preempted State regulation by creating a regulatory scheme to be enforced exclusively by EPA. Instead, Congress created a regulatory scheme where States could enact permit programs meeting Federal standards or have EPA promulgate such a program. When Congress chooses to allow the States such a regulatory role in a federally preemptible area, such as it has done in title V, the Supreme Court has found no violation of the Tenth Amendment to the U.S. Constitution and therefore no unconstitutional invasion of State sovereignty. *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 290 (1981); *FERC v. Mississippi*, 456 U.S. 742, 764 (1982). The title V operating permits program does not "commandeer the legislative processes of the States by directly compelling them to enact and enforce a Federal regulatory program." *Hodel, supra*, at 288; *FERC, supra*, at 764–765. Rather, this program is clearly one of cooperative federalism that encourages the States to enact and enforce a State program, incorporating title V's standards, by offering incentives to do so.

Congress can encourage States to regulate in a particular manner by attaching conditions on the receipt of Federal funds and/or offering States the choice of regulating an activity in conformance with Federal standards or having the State law preempted by Federal regulation. *New York v. United States*, 112 S. Ct. 2408 (1992). Congress has provided States with two incentives to encourage them to adopt and implement an operating permits program consistent with Federal regulations. If a State fails to submit an approvable program, it is subject to one or more of the sanctions described under section 179(b) of the Act. Again, it is well established that Congress is empowered to further Federal policy objectives by conditioning the receipt of Federal moneys upon compliance by the recipient State with Federal statutory and administrative directives. *See, e.g., South Dakota v. Dole*, 483 U.S. 203 (1987); *Fullilove v. Klutznick*, 448 U.S. 448 (1980). In addition, under section 502(d)(3), if a State does not submit a title V operating permits program or if the State program does not meet the requirements of title V, EPA is required to promulgate, administer, and enforce an operating permits program in that State. Thus, if the Commonwealth does not submit a permanent program that complies with the Act and 40 CFR part 70, the full regulatory burden will be borne by EPA.

The Commonwealth asserts that EPA's interpretation of section 502(b)(6) is a violation of the Eleventh Amendment of the U.S. Constitution. Virginia's concern is misplaced because section 502(b)(6) provides for judicial review of a State's permitting decisions in State court and therefore does not implicate the Eleventh Amendment.

Comment: The Commonwealth of Virginia should receive interim approval of its operating permits program. Several commenters believe that Virginia's program will meet the minimum requirements to be considered for interim approval as described at 40 CFR 70.4(d) once proposed modifications to the permits program regulations are adopted. It has also been stated that the issue of judicial standing is not a relevant criterion for assessing interim approvability.

EPA Response: Pursuant to § 70.4(d)(1), an operating permits program submittal that is not fully approvable must first substantially meet the requirements of part 70 in order to be considered for interim approval. Once a submittal has been deemed to substantially meet the requirements of part 70, the criteria established at § 70.4(d)(3) are applied as a second test for eligibility for interim approval. On the basis of the five disapproval issues, EPA has determined that Virginia's operating permits program submittal does not substantially meet the requirements of part 70 and, therefore, is not eligible for interim approval. Moreover, the fact that the emergency regulations establishing the permits program have expired sufficiently indicates that the program does not substantially meet the requirements of part 70.

Comment: EPA judged the adequacy of the Commonwealth of Virginia's operating permits program prior to official submittal. Specifically, EPA notified the Commonwealth of Virginia that it lacked adequate statutory provisions for standing for judicial review prior to the receipt of its November 12, 1993 program submittal.

EPA Response: EPA attempted to alert Virginia to potential impediments to the approval of any operating permits program submitted by the Commonwealth prior to the November 15, 1993 program submittal due date. It was EPA's intention to supply constructive comments to Virginia prior to November 15, 1993 in order to provide the Commonwealth with adequate time to seek any statutory or regulatory revisions as needed. EPA has a well-established policy of providing comments on draft and proposed regulations and programs which will later come before it for formal rulemaking action. Notwithstanding EPA's policy of providing timely comment, the Agency's position on the standing for judicial review issue has been consistent throughout its correspondence with the relevant parties in Virginia and that position has been maintained and reflected in the rulemaking actions undertaken in response to the official submittal of Virginia's operating permits program.

Comment: EPA may be applying inconsistent approval standards among the various State and Local jurisdictions seeking approval of operating permits programs to satisfy the requirements of title V of the CAA. The commenter indicated that EPA is not providing a consistent level of review and comment of other States' standing provisions.

EPA Response: EPA has applied consistent standards to other states. EPA has not proposed approval for any State operating permits program that does not

substantially meet the requirements for standing for judicial review as required by section 502(b)(6) of the Act and 40 CFR 70.4(b)(3)(x). EPA will evaluate each program separately to determine if it meets the requirements of 40 CFR part 70.

Comment: The Commonwealth of Virginia Department of Environmental Quality submitted comments to address the regulatory deficiencies cited in EPA's notice of proposed disapproval and the Technical Support Document accompanying that action. The comments specifically exclude discussion of the standing for judicial review issue. The Department of Environmental Quality details the regulatory modifications it plans to make to the previously adopted regulations for its operating permits program.

EPA Response: EPA is encouraged that the Department of Environmental Quality is working to address the regulatory deficiencies of its operating permits program as cited in the proposed disapproval. At such time that EPA receives an official submittal replacing the Commonwealth's November 12, 1993 submittal being considered by this action, the Agency will evaluate the new submittal in an additional rulemaking action. To comment on the adequacy of proposed modifications would not be appropriate in this action.

Comment: One commenter provided EPA with letters it had previously submitted to the Virginia Department of Environmental Quality. The letters discuss the commenter's concerns regarding Virginia's operating permits program. The letters also offer suggested modifications to the program. The commenter suggested that EPA consider these letters when reviewing Virginia's program.

EPA Response: EPA has considered the comments contained in the letters provided by the commenter. EPA's final disapproval of the Virginia operating permits program as submitted on November 12, 1993 sufficiently addresses the concerns of the commenter.

IV. Final Action and Implications

A. Program Modification

EPA is promulgating disapproval of the operating permits program submitted by the Commonwealth of Virginia on November 12, 1993, as supplemented on January 14, 1994. This disapproval constitutes a disapproval under section 502(d) of the CAA (see 57 FR 32253). Pursuant to section 502(d)(1), the Commonwealth has 180 days from the date of EPA's notification of the Governor of Virginia to revise and resubmit the program. EPA will notify the Governor of Virginia by letter that the Commonwealth has 180 days from the effective date of this final disapproval in which to make the necessary modifications to its operating permits program and resubmit it to EPA for review.

Virginia must amend its operating permits program to correct the deficiencies and resubmit the program, including a revised Attorney General's opinion, to EPA for review. The notice of proposed disapproval and the Technical Support Document discuss Virginia's submittal in detail, and contain specific references to revisions and modifications necessary to obtain full approval. Once submitted, Virginia's operating permits program, including revised statutes and regulations, will undergo an additional notice and comment period before EPA takes final action on the program submittal.

B. Sanctions

Based on the disapproval of its operating permits program, the Commonwealth of Virginia may become subject to sanctions under the CAA. Pursuant to section 502(d)(2)(A), EPA may, at its discretion, apply any of the sanctions described in section 179(b) at any time subsequent to the effective date of this disapproval action. Furthermore, EPA is compelled by the CAA to apply one of the sanctions in section 179(b), as selected by the Administrator, on July 5, 1996, unless prior to that date the Commonwealth submits a revised operating permits program for Virginia and EPA determines that the Commonwealth has corrected the deficiencies that prompted this disapproval action. If, six (6) months after EPA applies the first sanction, Virginia has not submitted a revised program and EPA has not determined that the Commonwealth has corrected the deficiencies, a second sanction is required. Finally, if the Commonwealth of Virginia does not have an approved program by November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permits program for Virginia.

Final Action

EPA is disapproving the operating permits program submitted by the Commonwealth of Virginia on November 12, 1993, as supplemented on January 14, 1994. This disapproval constitutes a disapproval under section 502(d) of the CAA (see 57 FR 32253). As provided under section 502(d)(1) of the CAA, the Commonwealth will have up to 180 days from the date of EPA's notification of disapproval for the Governor of Virginia to revise and resubmit the program. EPA is disapproving this program on the basis that Virginia has not met the following five requirements: provision for adequate judicial standing; prevention of default permit issuance; reliance on permanent regulations; issuance of permits to the proper universe of sources; and issuance of permits that contain all applicable Federal requirements and correctly delineate provisions only enforceable by the Commonwealth.

The Office of Management and Budget (OMB) has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the CAA do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because EPA's disapproval of the Commonwealth of Virginia's request under section 502 of the CAA for approval of its operating permits program does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: November 15, 1994.

Peter H. Kostmayer,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Virginia in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Virginia

(a) Department of Environmental Quality: submitted on November 19, 1993; disapproval effective on January 4, 1995.

(b) [Reserved]

* * * * *

[FR Doc. 94–29849 Filed 12–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7606]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region IV				
Tennessee:				
Bartlett, city of, Shelby County	470175	Dec. 28, 1973, Emerg; June 15, 1981, Reg; Dec. 2, 1994, Susp.	12–2–94	Dec. 2, 1994.
Collierville, town of, Shelby County	470263	Sept. 29, 1975 Emerg; Sept. 30, 1981, Reg; Dec. 2, 1994, Susp.	12–2–94	do.
Germantown, city of, Shelby County	470353	Oct. 1, 1975, Emerg; Jan. 20, 1982, Reg; Dec. 2, 1994, Susp.	12–2–94	do.
Region V				
Illinois: Arlington Heights, village of, Cook and Lake Counties.	170056	Jan. 28, 1972, Emerg; May 1, 1978, Reg; Dec. 2, 1994, Susp.	12–2–94	do.
Michigan: Marquette, city of, Marquette County	260716	Apr. 13, 1987, Emerg; Sept. 30, 1988, Reg; Dec. 2, 1994, Susp.	12–2–94	do.
Region V				
Illinois: Grundy County, unincorporated areas	170256	June 11, 1974, Emerg; July 18, 1985, Reg; Dec. 15, 1994, Susp.	12–15–94	Dec. 15, 1994.
Region VI				
Oklahoma: Osage County, unincorporated areas.	400146	Feb. 3, 1987, Emerg; Dec. 1, 1989, Reg; Dec. 15, 1994, Susp.	12–15–94	do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: November 28, 1994.

Frank H. Thomas,

Deputy Associate Director Mitigation Directorate.

[FR Doc. 94–29736 Filed 12–2–94; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL MARITIME COMMISSION

46 CFR Part 501

The Federal Maritime Commission—General Transfer of Office of Information Resources Management

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is transferring the Office of Information Resources Management ("OIRM") and related delegated authorities from the Bureau of Administration ("BOA") to the Office of the Managing Director.

EFFECTIVE DATE: December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Edward P. Walsh, Managing Director, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is amending part 501 of title 46 of the Code of Federal Regulations to reflect the transfer of OIRM from BOA to the Office of the Managing Director. Notice and public procedure are not necessary prior to the issuance of this rule because it deals solely with matters of agency organization. Neither is a delayed effective date required. This action does not affect the substantive duties and functions of OIRM.

List of Subjects in 46 CFR Part 501

Administrative practice and procedure; Authority delegations; Organization and functions; Seals and insignia.

For the reasons set out in the preamble, Title 46, Code of Federal Regulations, Part 501 is amended as set forth below.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub.L. 89–56, 79 Stat. 195; 5 CFR part 2638.

Subpart A—Organization and Functions

2. Section 501.3 is amended by removing paragraph (m)(4) and revising paragraph (h) to read as follows:

§ 501.3 Organizational components of the Federal Maritime Commission.

* * * * *

(h) Office of the Managing Director. (*Chief Operating Officer; Designated Senior IRM Official; Senior Procurement Executive and ATFI Contracting Officer; Audit Followup and Management Controls.*)

(1) Office of Information Resources Management. (*Senior IRM Manager; Computer Security; Forms Control; Records Management.*)

(2) [Reserved].

* * * * *

3. In § 501.5, the heading of paragraph (f) is republished, paragraph (f)(4) is added, the introductory text of paragraph (k) is revised, paragraph (k)(3) is removed, and paragraph (k)(4) is redesignated as (k)(3) as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(f) The *Office of the Managing Director.* * * *

(4) Is responsible for the administration and coordination of the Office of Information Resources Management. The *Office of Information Resources Management,* under the direction and management of the Office Director, provides administrative support with respect to information resources management to the program operations of the Commission. The Office interprets governmental policies and programs for information management and administers these in a manner consistent with Federal guidelines. The Office initiates recommendations, collaborating with

other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Office's major functions include: administration of the information resources management program under the Paperwork Reduction Act; management studies and surveys; data telecommunications/database management and application development; records management; IRM contract administration; development of Paperwork Reduction Act clearances for submission to the Office of Management and Budget; computer security; and forms management. The Director of the Office serves as Senior IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the Committee on Automated Data Processing.

* * * * *

(k) Under the direction and management of the Bureau Director, the *Bureau of Administration* is responsible for the administration and coordination of the Offices of: Administrative Services; Budget and Financial Management; and Personnel. The Bureau provides administrative support to the program operations of the Commission. The Bureau interprets governmental policies and programs and administers these in a manner consistent with Federal guidelines, including those involving procurement, financial management and personnel. The Bureau initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities.

* * * * *

Subpart C—Delegation and Redelegation of Authorities

4. In § 501.25, the section heading and introductory paragraph are revised and new paragraphs (c) and (d) are added as follows:

§ 501.25 Delegation to and redelegation by the Managing Director.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Managing Director.

* * * * *

(c) (1) Authority under part 514 of this chapter, after consultation with the Bureau of Tariffs, Certification and Licensing, to issue letters notifying applicants for certification of ATFI batch filing capability that their applications have or have not been granted.

(2) The authority under this paragraph is redelegated to the Director, Office of Information Resources Management.

(d) (1) Authority under § 514.21(m)(2) of this chapter, after consultation with the Bureau of Tariffs, Certification and Licensing, to evaluate and approve or disapprove by letter the accounting or charging system the applicant intends to use for charging users and remitting to the Commission indirect (subsequent) access user fees under 46 U.S.C. app. 1107a(d)(1)(B)(ii), and by letter to deny access to ATFI data tapes for failure to operate under an approved accounting or charging system or for failure to remit user fees to the Commission.

(2) The authority under this paragraph is redelegated to the Director, Office of Information Resources Management.

§ 501.30 [Amended]

5. In § 501.30, paragraphs (a) and (b) are removed, and paragraphs (c) and (d) are redesignated as (a) and (b) respectively.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–29741 Filed 12–2–94; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 92–259; FCC 94–251]

Cable Act of 1992—Must-Carry and Retransmission Consent Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to petitions for reconsideration, and in order to complete the implementation of the must-carry and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 and to clarify the obligations of cable operators and broadcasters, this Memorandum Opinion and Order amends the Commission's rules regarding must-carry and retransmission consent.

EFFECTIVE DATE: The stay of § 76.62(a) and § 76.64(e) is lifted and the revisions of those paragraphs is effective January 4, 1995. Other rule provisions of Part 76 are effective January 4, 1995. Rule provisions of Part 73 shall be effective upon approval from OMB. We will issue a notice at a later date stating that such approval has been granted.

FOR FURTHER INFORMATION CONTACT: Elizabeth W. Beaty or Meryl S. Icove, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket 92–259, FCC 94–251, adopted September 28, 1994, and released November 4, 1994. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (ITS), at 2100 M St., N.W., Washington, D.C. 20037, (202) 857–3800.

Synopsis of the Memorandum Opinion and Order

I. Introduction

1. This Memorandum Opinion and Order addresses issues raised in petitions for reconsideration of our Report and Order adopted March 11, 1993, 58 FR 17350 (4/2/93) which established rules to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). In a Clarification Order adopted on May 28, 1993, 58 FR 32449 (6/10/93), we addressed specific concerns raised in these petitions relating to signal quality, copyright indemnification and translator ownership. In an Order adopted on July 15, 1993, 58 FR 40366 (7/28/93), we addressed additional concerns relating to carriage rights, to the failure of broadcast stations to elect either must-carry or retransmission consent status, and to the channel position for such stations. On October 5, 1993, we adopted a Stay Order, 58 FR 53429 (10/15/93), which stayed two provisions of the retransmission consent rules, with respect to VHF/UHF antenna ownership and carriage in the entirety of broadcast signals, pending our resolution of those issues in this proceeding. In this Memorandum Opinion and Order we will address all remaining issues raised in the petitions for reconsideration, as well as the outstanding issues from the Stay Order. We will also take this opportunity, on our own motion, to clarify certain other issues raised in the Report and Order.

2. We note that the constitutionality of the must-carry provisions of the 1992 Cable Act were challenged before the Supreme Court. In *Turner Broadcasting Systems, Inc.* v. *FCC*, a special three-

judge panel of the District Court found the must-carry provisions constitutional. On appeal, the Supreme Court vacated the decision and remanded the case back to the three-judge panel for further proceedings. While the case is pending, the must-carry provisions of the 1992 Cable Act remain in effect, as do the Commission's must-carry rules.

II. Must-Carry Regulations

A. Carriage of Local Noncommercial Educational Television Stations

1. Definition of a Qualified Noncommercial Station.

3. Section 615(l)(1) provides that a local noncommercial educational television ("NCE") station qualifies for must-carry rights if it is licensed by the Commission as an NCE station and if it is owned and operated by a public agency, nonprofit foundation, or corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting.[1] An NCE station is also considered qualified if it is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.[2] For purposes of must-carry rights, an NCE station is considered local if its community of license is within 50 miles of, or its signal places a Grade B contour over, the principal headend of the cable system. This definition includes the translator of any NCE station with five watts or higher power serving the franchise area, a full-service station or translator licensed to a channel reserved for noncommercial educational use, and such stations and translators operating on channels not so reserved as the Commission determines are qualified NCE stations.

4. The staff has received informal inquiries requesting clarification as to when a translator is "serving the franchise area" of the cable system. Because the service area of a translator differs from that of a full power broadcast station, we believe that guidance should be provided to assist interested parties in determining whether a translator serves the franchise area of the cable system. We believe it appropriate to adopt a standard based on coverage and contour, which has been used in the past and which should be easily identifiable. Therefore, for purposes of a translator serving the cable system's franchise area, the coverage area of such translator shall be its predicted protected contour as specified in § 74.707 of our rules.

2. Signal Carriage Obligations.

5. In the Report and Order, we indicated that Section 615(b) requires cable systems to carry any qualified local NCE television station requesting carriage. Systems with 12 or fewer activated channels must carry the signal of one qualified local NCE station. Systems with 13 to 36 activated channels must carry at least one qualified local NCE station, but need not carry more than three such stations. Cable systems with more than 36 activated channels are generally required to carry all NCE stations requesting carriage. If a system with fewer than 36 activated channels operates beyond the presence of a qualified local NCE station, it is required to import and carry a qualified NCE station. In addition, cable systems must continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990, regardless of the proximity of those stations to the system's principal headend.

6. First, on our own motion, we clarify the carriage requirements of a system with more than 36 activated channels. The 1992 Cable Act states that systems with more than 36 channels must carry the signal of all NCE stations requesting carriage, with one exception: systems with more than 36 channels are not required to carry an additional local NCE station if the programming of such station substantially duplicates the programming of a qualified local NCE station already being carried. It has come to our attention that § 76.56(a)(1)(iii) of the Commission's rules as adopted in the Report and Order has been interpreted by some cable operators to require that only three stations need be carried. However, with respect to systems with more than 36 channels, we clarify that the reference to the number three is a minimum, not a maximum number. A system with more than 36 channels must carry all NCE stations requesting carriage, but is not required to carry more than three NCE stations if the additional station substantially duplicates the signal of NCE stations already carried by the system. Section 76.56(a)(1)(iii) is being revised accordingly.

7. Second, we emphasize that the requirement in Section 615(c) to continue carriage of stations carried as of March 29, 1990 applies only to qualified local NCE television stations and does not apply to a non-local NCE television station which was being imported as of that date. A cable system which was carrying a non-local NCE station in excess of its mandatory carriage requirements is permitted to drop that station, subject to giving appropriate notice. However, if a cable system which would be required to import a NCE signal pursuant to Section 615 (b)(3)(B) or (b)(2)(B) was importing a non-local qualified NCE station on March 29, 1990, the system is required to continue carriage of such station. Prior carriage of the non-local NCE station generally indicates that a good quality signal is received at the cable system's headend. In addition, where the cable system voluntarily had been importing such signal prior to March 29, 1990, the continued carriage of such station will not result in additional copyright liability for the cable system. In the event a local NCE station subsequently becomes qualified, the cable operator may drop the distant signal (subject to notification requirements) and substitute the qualified local NCE station. Section 76.56(a)(5) is being revised accordingly.

8. Although the Act generally does not require copyright liability to be paid by a cable operator for the carriage of local NCE station signal added after March 29, 1990, in the case of importation, the non-local NCE station has neither must-carry nor retransmission rights. We do not believe it appropriate for a non-local NCE station which is being imported to be required to reimburse the cable operator for copyright costs. The 1992 Cable Act specifically provides that a cable system can recover such costs as part of the basic service tier rate, and we believe that this is the appropriate manner for dealing with such costs.

B. Carriage of Local Commercial Television Stations

1. General Signal Carriage Requirements.

9. *Small System Exception.* Section 614(a) requires carriage of local commercial television stations and qualified low power television stations. Section 614(b) establishes the number of signals which must be carried by cable systems based on their channel capacity. In particular, it provides that a cable system with 12 or fewer usable activated channels must carry the signals of at least three local commercial television stations. Such a system is exempt from any requirements of Section 614, however, if it serves 300 or fewer subscribers, as long as it does not delete from carriage the signal of any broadcast television station. In the

[1] All references to Section 614, Section 615 and Section 325 are references to those sections of the Communications Act of 1934, as amended by the 1992 Cable Act, Sections 4, 5 and 6.

[2] In defining a qualified noncommercial educational television station, § 76.55(a)(2) incorrectly refers to § 73.612 rather than § 73.621. We are revising § 76.55(a)(2) to refer to § 73.621.

Report and Order, the Commission concluded that, under this exception, a system must not delete any station it carried on October 5, 1992.

10. Although the language of the text accurately reflects this intention, the Community Antenna Television Association ("CATA") points out that the related rule is misleading because it implies that the system must have 300 or fewer subscribers as of October 5, 1992. We are revising § 76.56(b)(1) of our rules to reflect that, at any time that a cable system with 12 or fewer activated channels serves 300 or fewer subscribers, it is exempt from the mandatory carriage requirements under Section 614, as long as it does not delete any signal of a broadcast television station which was carried on that system on October 5, 1992.

11. *Definition of Local Commercial Television Station.* Section 614(h)(1)(A) defines a local commercial television station for the purpose of the must-carry rules as "any full power television broadcast station, other than a qualified noncommercial television station within the meaning of Section 615(l)(1), licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system." In the Report and Order, we inadvertently defined local commercial television station as "any full power *commercial* television station * * *", which had the unintended effect of excluding non-qualified noncommercial stations from the definition. A non-qualified NCE station is any NCE station which does not meet the qualification criteria established in Section 615(g). Such a station is not entitled to must-carry rights under that section. We believe that the definition of local commercial television station contained in the 1992 Cable Act clearly includes non-qualified NCE stations; the definition includes all stations other than "qualified NCE stations." Consistent with the language of the 1992 Cable Act, we determine that NCE stations which are not "qualified" NCE stations for must-carry purposes may assert must-carry rights under Section 614 within their local market, just like any other broadcast station.[3]

12. *Availability and Identification of Must-Carry Signals.* Section 614(b)(7) provides that all must-carry signals shall be provided to every subscriber of a cable system and shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which the cable operator provides a connection. In the *Report and Order* we declined to grant a request to provide a special exception for commercial subscribers (e.g., hotels, hospitals) that receive specially designed channel line-ups. We stated our belief that the 1992 Cable Act is clear in its application of Section 614(b)(7) to every subscriber of a cable system, that it grants no authority to exempt a specific class of cable subscribers from the carriage requirements, and that there is no reason to believe that such commercial subscribers are not interested in receiving local broadcast signals.

13. On reconsideration, we note that the must-carry provisions do not distinguish between commercial and residential viewers. Congress made clear its intent that all subscribers have access to local commercial broadcast signals. We do not believe that petitioners have presented sufficient cause to change our earlier interpretation of the 1992 Cable Act. Therefore, we affirm that all subscribers must have access to these signals on all television sets connected by the cable operator or for which the cable operator provides a connection.

14. It is our understanding that the on-channel carriage of some UHF signals has resulted in situations where a converter box supplied by a cable operator does not contain the necessary channel capacity to permit a subscriber to access a UHF must-carry signal through the converter. For example, a converter may supply channels 2–36 while the must-carry station is on channel 55. Where a cable operator chooses to provide subscribers with signals of must-carry stations through the use of converter boxes supplied by the cable operator, the converter boxes must be capable of passing through all of the signals entitled to carriage on the basic service tier of the cable system, not just some of them. In addition, any converter boxes provided for this purpose must be provided at rates in accordance with Section 623(b)(3). Therefore, in a situation where the subscriber's converter is supplied by the cable operator, and is incapable of receiving all signals as required by Section 614(b)(7), the cable operator must make provision for a converter which is capable of providing these signals.[4] If it is necessary to replace the converter, the subscriber must not be required to pay additional sums nor to pay for the installation.[5] As discussed below, we have provided a mechanism for relief for cable systems which cannot meet the on-channel requests of must-carry stations. A decision not to seek such relief may not be used to contravene the directives of the 1992 Cable Act.

2. Definition of a Television Market.

15. *Use of ADI Markets and the Home County Exception.* Under the 1992 Cable Act, a local commercial television station is entitled to must-carry status on all cable systems located in the same television market as the cable system. The 1992 Cable Act states that the television market shall be determined pursuant to § 73.3555(d)(3)(i) of our rules, which in turn defines a television market in terms of the Area of Dominant Influence ("ADI"), as defined by Arbitron.[6] In the Report and Order, the Commission noted that each county in the contiguous United States is assigned by Arbitron exclusively to one ADI, and that each broadcast station licensed to a community located in an ADI is considered local throughout that ADI. The Commission established one exception to that rule, determining that each broadcast station will also be considered a must-carry station in its home county, even if that station is assigned to a different ADI from that of its home county (the "home county exception").

16. *The Administrative Procedure Act ("APA")* requires an agency, when issuing a general notice of proposed rule making, to provide the public with "either the terms or the substance of a proposed rule or a description of the subject and issues involved." The APA, however, "does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule."

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[3] We interpret local commercial television station to include stations operating under a valid construction permit.

[4] *See Memorandum Opinion and Order* (CSR–3903–M) (Complaint of WLIG–TV, Inc. against Cablevision Systems Corporation), DA–93–1365 (released November 10, 1993), in which the Mass Media Bureau noted that converter boxes provided by the cable system must be capable of transmitting all the signals entitled to mandatory carriage on the basic tier, and required Cablevision, because it was in the midst of an upgrade of its system, to switch station WLIG to a channel receivable by all subscribers, without the necessity of an additional converter box, during the rebuilding of its system.

[5] We note that where the cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator must notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and the operator must offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(3).

[6] We note that Arbitron has cancelled its television ratings service. However, the decision will not have an impact on the use of Arbitron-designated ADIs until the next must-carry/retransmission consent election which must take place by October 1, 1996. We will address this issue sufficiently before that date.

17. The Notice, 57 FR 56298 (11/27/92), set forth the 1992 Cable Act's direction that such markets would be determined primarily in the manner provided in § 73.3555(d)(3)(i) of the Commission's rules, (which section uses Arbitron-defined ADIs), and specifically sought comment from the public concerning the Congressionally recognized need for adjustments to or modifications of television markets.[7] The Commission specifically stated that "it may determine that particular communities are part of more than one television market," and further explained that it would act upon written requests to add or delete communities to a station's market "to better reflect market realities and effectuate the purposes of this Act." We believe that it was apparent that the Commission was likely to receive comments and suggestions regarding methods to assure that television stations' must-carry markets, both generally and in individual cases, best reflect market realities and the objective of localism underlying broadcast signal carriage obligations. While the Notice did not specifically seek comment on the home county exception, we believe that the home county exception is a "logical outgrowth" of the Notice.

18. The home county exception does not violate either the spirit or letter of the 1992 Cable Act. Specifically, we disagree with the proposition that although a television station's must-carry rights are defined primarily by Arbitron ADIs, there can be no must-carry rights beyond the ADI to which a station is assigned by Arbitron. Section 614(h)(1)(C)(i) recognizes a potential, but easily corrected, deficiency in the use of Arbitron ADIs to define a station's must-carry market. We find no basis to presume that the Commission may not adjust ADIs generally to ensure that stations have must-carry rights in those areas where their service is appropriately "local." We agree with Granite that adoption of the home county exception is separate and apart from the procedure established to make individual station market adjustments based on particular situations.

19. *Modification of ADI Markets.* As noted in the Report and Order, the 1992 Cable Act permits the Commission to add or subtract communities from a television station's market to better reflect marketplace conditions or to promote the goal of localism underlying the signal carriage provisions. In its petition, INTV requests that the Commission add or subtract a community for all stations in the market, not for an individual station. INTV suggests that upon the addition of a community to a market, every station in the community would attain must-carry rights in that market.

20. The Commission has already addressed this subject in the Report and Order in response to parties' contentions that ADI modification should be made on a community, rather than on a station, basis. Both the 1992 Cable Act and our rules require, for each broadcast station, an evidentiary showing from an interested party, with opportunity for comment. INTV's request would not meet this requirement and therefore must be rejected. We reiterate our statement in the Report and Order that we will accept joint filings by a group of stations or a single request from a cable operator for changes for more than one station licensed to the same community, so long as the submitted information demonstrates that each station is entitled to have its market modified. The relief procedures will ensure that the 1992 Cable Act's objectives of promoting localism and reflecting market realities are achieved.[8]

21. As noted above, Section 614(h)(1)(C) directs the Commission, when considering ADI modification requests, to promote localism by taking into account the four factors listed in that section. Press Broadcasting Company, Inc. ("Press"), the licensee of WKCF (TV), Clermont, Florida, seeks clarification or partial reconsideration of the types of evidence the Commission has indicated that it will consider in assessing proposed changes in a station's must-carry market.

22. We clarify that the two factors mentioned in the *Report and Order* are merely examples of the types of evidence that might be considered in a request to modify an ADI. The Commission purposely did not restrict the types of evidence that may be used to demonstrate that a station's must-carry market should be modified. The Commission declined to prejudge the importance of any of the factors set forth in the statute, noting that each case will be unique. Accordingly, we note that the factors suggested by Press may be employed by parties to show the appropriateness of altering a station's must-carry market, although the importance of such factors may differ from one situation to the next.[9]

23. *Section 76.51 Top 100 Market List.* Section 614(f) of the 1992 Cable Act directs the Commission to issue regulations that include revisions needed to update the list of top 100 television markets and their designated communities contained in § 76.51. Although the *Notice* sought guidance on how to fulfill this requirement, the comments were general in nature and did not offer a mechanism for revising the top 100 market list, including criteria for determining when a city of license should become a designated community in a television market. Accordingly, the Commission concluded in the *Report and Order* that a wholesale revision of § 76.51 was unnecessary and stated that it would only update the existing list by adding those designated communities requested by parties providing specific evidence that a particular market change is warranted. The Commission made three specific market modifications, and stated that further revisions to this list would be made on a case-by-case basis. The Commission stated that requests for modification should demonstrate "commonality" between the proposed community to be added to a market designation and the market as a whole, and that such requests would be made in accordance with the factors in Section 614(h)(1)(C) and the related rules.

24. A number of broadcast television licensees in Columbus, Ohio filed petitions for reconsideration respecting the addition of Chillicothe to the Columbus, Ohio television market. These petitioners allege that the Commission's action was taken without sufficient notice to interested parties and was therefore based on an inadequate factual record.

25. As noted above, the APA requires an agency, when issuing a general notice of proposed rule making, to provide the public with "either the terms or the substance of a proposed rule or a description of the subject and issues involved," but "does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule." In the Notice, the Commission specifically requested that interested parties "comment on what modifications to the television markets specified in § 76.51

[7] Section 614(h)(1)(C)(i) states that a broadcasting station's market shall be determined in the manner provided in § 73.3555(d)(3)(i) of the Commission's rules, except that the Commission may include or exclude additional communities to better effectuate the purposes of Section 614. 47 U.S.C. 534(h)(1)(C)(i).

[8] The same logic applies to a single station requesting the addition of multiple communities.

[9] We note that, in stating that a station may demonstrate that it is located close to the community in terms of mileage, a station may present evidence, as suggested by Press, regarding the distance between the cable community and the station's community of license, transmitter, or other aspect of the station's operation.

of our rules is needed to ensure that it reflects current market realities." In so doing, the Commission observed that this proceeding necessarily overlaps with an ongoing proceeding involving, *inter alia*, the makeup of the § 76.51 market list in relation to the Commission's program exclusivity rules.[10] Therefore, the Commission explicitly stated that Docket 87–24 would be reopened for further comment in the context of this rulemaking in order to facilitate coordination of the overlapping aspects of the two proceedings.[11]

26. In light of the nature of this proceeding, the statutory instruction to amend, as necessary, § 76.51, and the incorporation by reference of the issues in Docket 87–24, we conclude that the Notice amply alerted the public that potential amendments to that rule section could be made in the context of this specific proceeding.[12] The Commission explicitly sought public comment on what modifications to § 76.51 would be necessary to fulfill the directive of Section 614(f), and we believe that specific market change proposals are a natural and logical outgrowth of the range of issues presented in the Notice and discussed in the comments filed in this proceeding. Accordingly, we are not persuaded by the petitioners that the Notice did not provide adequate notice to interested parties that specific amendments to § 76.51 were likely to be considered in this proceeding.

27. We disagree with the petitioners' contentions that amendment of the Columbus market first required the issuance of an independent notice of proposed rulemaking. The fact that we said in the Notice that we may consider further revisions to § 76.51 on an *ad hoc* basis did not preclude the Commission's taking specific action on particular modifications consistent with the guidance provided by the 1992 Cable Act where the record indicated that such changes were warranted.[13]

3. Selection of Signals.

28. *Definition of Substantial Duplication.* Section 614(b)(5) provides that a cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network.[14] In the Report and Order, based on the legislative history of this section of the 1992 Cable Act, we decided that two stations "substantially duplicate" each other "if they simultaneously broadcast identical programming for more than 50 percent of the broadcast week." For purposes of this definition, identical programming means the identical episode of the same program series.[15]

29. We continue to believe that our definition of substantial duplication is appropriate for determining signal carriage obligations. We note that it is consistent with the legislative history that indicates that this term refers to the "simultaneous transmission of identical programming on two stations" and which "constitutes a majority of the programming on each station." While we agree with NCTA that Congress gave the Commission discretion to define substantial duplication, we continue to believe that the most appropriate approach here is to act consistently with the legislative history. Congress did not intend for a single duplicative program, whether subject to blackout or not, to be the determining factor. Finally, we observe that our rules often use different definitions for similar terms based on the purpose of the policy involved. The Commission's exclusivity rules are intended to protect the rights that a broadcaster has bargained for with the supplier of a particular program. The must-carry rules, however, are intended to ensure that local stations are available to cable subscribers. Thus, we reject the proposed modification to our definition of substantial duplication.

4. Low Power Television Stations.

30. *Qualified Low Power Television Station.* Section 614(h)(2) contains the statutory requirements a low power television station (LPTV) must meet before it will be considered "qualified" for must-carry purposes. Section 614(h)(2) provides that an LPTV station must broadcast for at least the minimum number of hours the Commission requires of commercial broadcast stations. The station must adhere to certain Commission requirements regarding non-entertainment programming and employment. The station must address local news and informational needs that full power stations are not adequately serving

[10] Further, the pendency of Triplett's request to modify the Columbus, Ohio television market is referenced in Docket No. 87–24, 3 FCC 2d at 6176 n. 15, which was incorporated into the instant proceeding.

[11] In response to the *Notice* in this proceeding, the proponents of three previously-filed market change petitions for rulemaking filed comments which incorporated by reference their rulemaking petitions and urged the adoption of their § 76.51 market amendment proposals. One of these proponents, Star Cable Associates ("Star"), operator of a cable television system serving the community of Brazoria, Texas, and portions of Brazoria County, Texas, filed a petition for reconsideration based on the concept that although the Commission granted other requests to modify existing television markets, the Commission did not act on Star's request to amend § 76.51 to add the community of Alvin to the Houston, Texas market. Star states that it has had such a request pending before the Commission since January 1991. Star's comments to the *Notice* in this proceeding were incorporated into and filed with Adelphia, *et al.* and included numerous other cable operators. These parties were arguing that the Commission need not revise the § 76.51 market list, stating that "[n]o revision to this list is needed to implement the must-carry rules since the current ADI markets are to be used for determining must-carry rights." It was suggested in those comments that the Commission "might wish to update the list * * * to add new communities to existing markets for stations which have gone on the air since the list was last revised" and, in that context noted the copyright consequences explained in the pending petition regarding the Houston market. However, neither Adelphia nor Star specifically requested action in the must-carry context on Star's pending petition for rulemaking. Under these circumstances, we do not believe that it was erroneous to defer action on the Star petition.

[12] Neither the APA nor the Commission's rules specifically required that the petitioners receive personal service of the particular market change proposals tendered in comments filed in this proceeding. Moreover, we observe that at least one petitioner, Outlet, notes that the filing of Triplett's submission was referenced in a public notice of comments received in this docket. However, we do not agree that the Commission was somehow obligated to indicate the nature of Triplett's comments, and the petitioners offer no support for that particular proposition. To the extent that Triplett incorporated by reference its previous request regarding Chillicothe, which was also noted in Docket 87–24, we do not believe that obviated the responsibility of interested parties to assess the nature of comments received in response to the general rulemaking issues specifically raised in the *Notice*.

[13] We do not agree that the action taken with respect to a proposal to include Athens in the Atlanta market indicates that the Commission could only act in independent and separate rulemaking proceedings. The Georgia Public Television Commission ("GPTC"), licensee of noncommercial educational television station WGTV(TV), Athens, Georgia, sought to include Athens as a designated community in the Atlanta market essentially to increase the station's visibility and fund raising in the market. GPTC's proposal was not submitted in the instant proceeding directly or incorporated by reference, but rather in comments supporting the requested action in MM Docket 92–295, which specifically addressed the Rome proposal. Parties commenting on MM Docket 92–295 had no opportunity to comment upon the Athens proposal in the context of that proceeding. Moreover, GPTC's proposal differs significantly from the competition and carriage issues vis-á-vis commercial stations raised in either the instant proceeding or in MM Docket 92–295 (relating specifically to Rome). In light of the action taken in the *Report and Order*, the Commission appropriately terminated MM Docket 92–295, and invited GPTC to refile its proposal for consideration in an independent proceeding.

[14] Western Broadcasting Corporation of Puerto Rico, licensee of Station WOLE, Aguadilla, requests that the Commission reconsider its rules with respect to their application to WOLE, "given the unique situation in Puerto Rico." We note that such a request is more appropriately made as a petition for special relief rather than as part of a general rulemaking proceeding.

[15] We also consider programming to be duplicative where the stations involved are located in contiguous time zones and the hour of broadcast differs by one hour.

because the full power stations are distant from the LPTV station's community of license. The station must comply with the Commission's LPTV interference regulations. The station must be within 35 miles of the cable headend and deliver a good quality over-the-air signal to the headend. The station's community of license and the cable system's franchise area both must have been located outside of the largest 160 Metropolitan Statistical Areas (MSA's) on June 30, 1990, and the population of the LPTV station's community of license must not have exceeded 35,000 on that date. Lastly, there cannot be any full power television station licensed to any community within the county or other political subdivision served by the cable system. As we stated in the Report and Order, a low power television station must meet all of the statutory requirements to be "qualified" for must-carry status. Cable systems are required to carry a qualified LPTV station only if there are not sufficient full power local commercial television stations to fulfill the cable operator's must-carry obligations under Section 614(b).

31. Moran Communications ("Moran") and the Community Broadcaster Association ("CBA") request a revision to the requirement in Section 614(h)(2)(F) that, in order for an LPTV station to be qualified, there cannot be any full power station licensed to any community within the county or political subdivision served by the cable system. Under this exception, Moran and CBA explain, an LPTV station would qualify for must-carry rights if it meets all the requirements of subsections 614(h)(2), except for subsection F, and if none of the full power stations in the county or political subdivision served by the cable system offers local news or informational programming. They contend that when a satellite station is repeating another station's signal and not broadcasting any local news or informational programming to meet the needs of the local community, the satellite station should not be considered a full power station for the purposes of Section 614(h)(2)(F). CBA also argues that a satellite station is a "passive repeater," and because Section 614(h)(1)(b)(1) specifically excludes passive repeaters from the definition of a local commercial television station, it follows that Congress intentionally gave less to repeaters than to originating stations in terms of must-carry rights. Therefore, argues CBA, "[t]he Congressional recognition of the lesser value of the repeaters must be incorporated into the must-carry rule * * *." In opposition, NCTA argues that the Commission cannot rewrite the statute, which defines qualified LPTV stations and governs the must-carry rights of LPTV stations.

32. We agree with NCTA that the provisions of the 1992 Cable Act may not be amended by the Commission through the rule making process. Further, contrary to CBA's interpretation of Section 614(h), satellite stations meet the definition of a local commercial television station, are full power stations pursuant to Section 614(h)(2)(F), and are generally not simply passive repeaters. We disagree with CBA's contention that Congress intended satellite stations to be treated differently from other full power stations when reviewing the statutory requirements an LPTV station must meet to gain must-carry status. Moran and CBA request that we codify the exception in footnote 217 to the qualification requirements of an LPTV station. While the Report and Order had suggested the possibility of additional circumstances in which LPTV carriage might be warranted, it now appears that this is an area where the specific statutory provisions and the balancing incorporated therein must necessarily guide our enforcement of the mandatory carriage provisions for LPTV stations.

C. Manner of Carriage Provisions Applicable to Commercial and Noncommercial Stations

1. Content To Be Carried.

33. Section 614(b)(3)(A) and Section 615(g)(1) require cable operators to carry the primary video, accompanying audio, and line 21 closed caption transmission, in its entirety, of both qualified local commercial and NCE stations when fulfilling their must-carry obligations. With respect to qualified local commercial stations, cable operators also are required, to the extent technically feasible, to retransmit program-related material carried in the vertical blanking interval (VBI) or on subcarriers. Retransmission of other material in the VBI or other non-program-related material (including teletext and other subscription and advertiser-supported information services) is at the discretion of the operator. With respect to local qualified NCE stations, cable operators are required to transmit, to the extent technically feasible, program-related material carried in the VBI, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the VBI or on subcarriers is at the discretion of the operator. Cable operators may, where technically feasible and appropriate, remove ghost-cancelling information carried in a station's VBI if the cable operator applies an adequate alternative methodology at the headend.

34. In the Report and Order, we decided that the factors enumerated in *WGN Continental Broadcasting, Co.* vs. *United Video Inc. ("WGN")*, provide useful guidance for what constitutes program-related material.[16] We declined to further define "program-related," noting that carriage of information in the VBI is rapidly evolving. As a result of our reliance on the approach followed in WGN for guidance, we rejected a proposal by A.C. Nielsen Company ("Nielsen") to require program identification codes to be carried by a cable system.

35. The WGN case addressed the extent to which the copyright on a television program also included program material in the VBI of the signal. The WGN court set out three factors for making a copyright determination. First, the broadcaster must intend for the information in the VBI to be seen by the same viewers who are watching the video signal. Second, the VBI information must be available during the same interval of time as the video signal. Third, the VBI information must be an integral part of the program. The court accepted WGN's future programming schedules as an "integral part of the program." The court in WGN held that if the information in the VBI is intended to be seen by the viewers who are watching the video signal, during the same interval of time as the video signal, and as an integral part of the program on the video signal, then the VBI and the video signal are one copyrighted expression and must both be carried if one is to be carried. While the court did not define an "integral part of the program," the WGN VBI information not only included local news, but also contained future programming schedules for WGN, and the court upheld the VBI as one copyrightable expression with the video signal.[17]

36. We continue to believe that the factors articulated in *WGN* provide the

[16] In the Report and Order, we used a cite of 685 F.2d 218 (7th Cir. 1982), which was the original citation for the case, prior to rehearing. Upon rehearing, the court affirmed the factors on which we are relying.

[17] In an ex parte presentation, StarSight requested that the Commission determine that its product, which is transmitted in the VBI, meets the WGN test. We believe that such a request should not be resolved in the context of a rulemaking proceeding, but rather should be dealt with separately through the special relief process.

best guidance for determining whether material in the VBI is program-related and, therefore, must be carried by the cable system. Accordingly, material that is intended to be seen by the viewers of the main program, during the same time interval as the main program, and which is an integral part of the main program will be entitled to carriage along with the main signal of the must-carry station. However, on reconsideration, we clarify that the factors set forth in WGN do not necessarily form the exclusive basis for determining program-relatedness. We believe there will be instances where material which does not fit squarely within the factors listed in WGN will be program-related under the statute. For example, on reconsideration, although SID codes may not precisely meet each factor in WGN, we find that they are program-related under the statute because they constitute information intrinsically related to the particular program received by the viewer. Further, SID codes provide important information that is useful to both broadcasters and cable operators. We note that the 1992 Cable Act recognized the importance of the national ratings period and prohibited cable operators from repositioning or deleting stations during that time. This interpretation is consistent with previous Commission decisions in which SID codes were found to be program-related in other contexts. Finally, we reiterate that, in order to be program-related, it is not necessary that the copyright holder in the main program and in the material in the VBI be the same.

2. Channel Positioning.

37. The 1992 Cable Act provides both commercial and NCE television stations which elect must-carry status the additional right to select the channel position on which they will be carried by the cable system, within certain specified options. Section 614(b)(6) provides that the signals of a local commercial television station carried pursuant to the must-carry rules must be carried on either (1) the same channel on which the station is broadcast over-the-air, (2) the cable channel on which it was carried on July 19, 1985, or (3) the cable channel on which it was carried on January 1, 1992. The election, in the absence of conflicts, is left up to the station involved. *See* 47 U.S.C. 534(b)(6). Similarly, Section 615(g)(5) requires that NCE signals carried pursuant to must-carry requirements must appear on the cable system channel number on which the qualified local NCE station is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station. In either case, another channel number that is mutually agreed upon by the station and the cable operator may be selected. Alternatively, the broadcast station and cable operator may agree on a mutually acceptable alternative channel position. We note that, with respect to channel position, a qualified LPTV station enjoys the channel positioning rights of a commercial television station. Section 76.57 is being revised accordingly.

38. Based on comments received in response to the Notice, we declined in the Report and Order to adopt a formal priority structure for resolving conflicting channel positioning claims. We stated that we expected compliance with the channel positioning requests of broadcasters "absent a compelling technical reason for not being able to accommodate such requests," and that "inconvenience, marketing problems, the need to reconfigure the basic tier or the need to employ additional traps or make technical changes" would not be sufficient reasons to deny a channel positioning request. In addition, we determined that "only where placement of a signal on a chosen channel results in interference or degraded signal quality to the must-carry station or an adjacent channel, or causes a substantial technical or signal security problem, will we permit cable operators to carry a broadcast signal on a channel not chosen by the station." We noted that most systems would be able to configure their service to meet this statutory requirement and that a cable system claiming that it cannot meet a channel positioning request for technical reasons will have to provide evidence that clearly demonstrates that inability.

39. In the Order adopted July 15, 1993, we addressed certain issues relating to continued carriage of retransmission consent stations and the channel position for "default" must-carry stations. In that Order, we stated that cable systems which are required to carry the signal of a default station "shall place that signal on one of the statutorily defined positions, at the system's discretion." Although the footnote to that sentence correctly stated that the station licensee makes the election, the text incorrectly stated "at the system's discretion." We clarify that, as required by the 1992 Cable Act, the choice of statutorily defined channel position is made by the station, not the cable system. The Order also determined that, in the event of a conflict, the station making an affirmative election has priority over the default station. Finally, we stated that, where the station making an affirmative election has selected the only statutory channel position available to the default station, the cable system may place the default station on a channel of the cable system's choice, so long as that channel is included on the basic tier. Section 76.57 of our rules was amended to reflect the channel positioning options discussed and adopted in the *Order*.

40. The 1992 Cable Act provides that the channel position of a station which has elected must-carry rights is a decision to be made by the broadcaster from among the listed statutory alternatives. The Act does not distinguish between VHF and UHF stations. We emphasize that our statements in the Report and Order regarding channel positioning apply to UHF, in addition to VHF, stations. As noted there, cable operators must comply with the channel positioning requirements absent a compelling technical reason.[18] Further, in response to a broadcaster's complaint regarding denial of a channel positioning request, a cable system will be required to provide evidence to the Commission clearly demonstrating that the operator cannot meet the request for technical reasons. As part of such a showing, a cable operator may present evidence as to the costs involved in remedying the technical problem.

3. Signal Quality

41. In the Report and Order and the Clarification Order we addressed issues relating to the signal quality of a broadcast station asserting must-carry rights. We noted that Section 614(h) established specific minimum signal levels for a good quality signal of a commercial television station (*i.e.*, −45 dBm for UHF signals and −49 dBm for VHF signals). Neither the 1992 Cable Act nor the Commission's Orders specifically stated what would be considered a "good quality signal" for must-carry purposes with respect to noncommercial stations, educational translator stations, and low power television stations, but Section 615(g)(4) states that the Commission may define a "signal of good quality" for noncommercial stations. We do so now, on our own motion.

42. We note that in a Memorandum Opinion and Order (Independence Public Media of Philadelphia, Inc.

[18] As noted above, inconvenience, marketing problems, the need to reconfigure the basic tier or to employ additional traps or make technical changes are not sufficient reasons for denying the channel positioning request of a must-carry signal. Only where placement of a signal on a chosen channel results in interference or degraded signal quality to the must-carry station or an adjacent channel, or causes a substantial technical or signal security problem will we permit cable operators to carry a broadcast station on a channel not chosen by the station.

against Suburban Cable TV Co., Inc.) CSR–3806–M), 8 FCC Rcd 6319 (1993), the Mass Media Bureau decided to utilize the standards for commercial television stations as *prima facie* tests to initially determine, absent other evidence, whether noncommercial stations place adquate signal levels over a cable system's principal headend. The Mass Media Bureau has relied on this test in processing must-carry complaint cases and we believe that is appropriate. With respect to low power and NCE translator stations, we are adopting the same signal quality standard of −49 dBm for VHF and −45 dBm for UHF signals.

43. With respect to the manner of testing for a good quality signal, we find that the Mass Media Bureau has adopted an appropriate method for measuring signal strength in the Memorandum Opinion and Order. Generally, if a test measuring signal strength results in an initial reading of less than −51 dBm for a UHF station, at least four readings must be taken over a two-hour period. If the initial readings are between −51 dBm and −45 dBm, inclusive, readings must be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results. For a VHF station, if the initial readings are less than −55 dBm, we believe that at least four readings must be taken over a two-hour period. Where the initial readings are between −55 dBm and −49 dBm, inclusive, readings should be taken over a 24-hour period, with measurements no more than four hours apart to establish reliable test results.

44. Cable operators are further expected to employ sound engineering measurement practices. Therefore, signal strength surveys should, at a minimum, include the following: (1) Specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; (2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; (3) height of the antenna above ground level and whether the antenna was properly oriented; and (4) weather conditions and time of day when the tests were done. We believe that adherence to these procedures and requirements will result in fewer disputes over the signal quality of broadcasting stations.

D. Procedural Requirements

1 Compensation for Carriage.

45. *Copyright Liability.*[19] Under the 1992 Cable Act, a cable operator is generally not required to carry a station that would otherwise qualify for must-carry status if the station would be considered distant for copyright purposes, unless the station indemnifies the cable operator for its copyright liability.[20] The Commission required cable operators to notify local commercial and noncommercial stations by May 3, 1993 that they may not be entitled to must-carry status because their carriage may cause an increased copyright liability. In the Report and Order, the Commission stated that it expected cable operators and broadcasters to cooperate with each other to ensure that operators are compensated for the cost of carriage of "distant" must-carry signals and that broadcast licensees pay only their fair share.[21] The Commission stated that each licensee should be responsible for the increased copyright costs specifically associated with carriage of its station as a must-carry signal and that stations should be counted in the order they satisfy all the necessary conditions for attaining must-carry status. The Commission also determined that it would be reasonable for a cable operator to receive a written commitment for such payments from a broadcaster in return for an estimate of the broadcaster's expected copyright liability, based on previous payments and financial information.

46. On May 28, 1993, the Commission adopted a Clarification Order ("Clarification") that, among other things, addressed certain copyright issues. We stated that we would require a cable operator to provide a broadcast station with a good faith estimate of the potential copyright liability for carriage of the station during the next copyright accounting period, as well as a copy of the most recent form filed with the Copyright Office for existing distant signal carriage that details the payments made for carriage of distant signals. The cable operator, however, is not required to make legal judgments pertaining to the amount of indemnity involved. In addition, a cable operator is required to provide such information within three business days of receipt of a written request from a broadcaster.[22] Any cable operator not providing sufficient information to a broadcast station regarding potential copyright liability in the required timely fashion may be subject to Commission sanctions.

47. We concur with INTV and NAB that stations should be able to commit to copyright indemnification for periods shorter than the three years specified in the 1992 Cable Act. In light of the numerous factors that affect the liability payments, we believe that commitments can be for periods as short as one year (two six-month accounting periods). Otherwise, a station may be required to make a commitment that cannot be fulfilled, thereby leading to protracted litigation. However, in fairness to cable operators, we support NAB's proposal that broadcasters notify cable operators 60 days prior to termination of any agreements to indemnify them for copyright liability. In particular, this will provide sufficient time for cable operators to notify subscribers regarding the deletion of the station.[23] Further, we disagree with NCTA that to permit agreements for periods of less than three years essentially allows stations to revert to retransmission consent. A station electing must-carry status remains a must-carry station for the entire three-year period, but, in situations where the station is considered distant for copyright purposes, a cable operator is not obligated to honor that election unless it receives a commitment for copyright reimbursement. Further, we note that where a station does not initially meet the criteria for must-carry status, it subsequently may assert its rights once

[19] We note that the Satellite Home Viewer Act of 1994, P.L. 103–369, 108 Stat. 3477, which was signed into law on October 18, 1994, includes a provision to amend Section 111(f) of title 17, United States Code, specifically with reference to the definition of "local service area of a primary transmitter" by inserting after "April 15, 1976," the following: "or such station's television market as defined in § 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to § 76.55(e) or § 76.59 of title 47 of the Code of Federal Regulations;". We acknowledge that there may be some effect on pending petitions and on our current rules. We will revisit, to the extent necessary, those rules and policies which may be affected.

[20] However, a qualified local noncommercial station that has been carried continuously since March 29, 1990 is not required to reimburse a cable operator for its copyright liability to retain its must-carry status. In addition, a distant noncommercial station that has been imported prior to March 29, 1992, and which continues to be imported to meet the statutory requirements of Section 615, shall not be required to reimburse for copyright liability

[21] We clarify that, in situations where copyright liability is incurred for carriage in some of the communities served by a single cable system, the broadcaster must indemnify the operator for that copyright liability for carriage in any community served by the system, unless the operator is able to provide different channel line-ups to the different communities.

[22] In its opposition, Time Warner argues that cable operators should be given at least seven days, not three, to respond to any requests for information regarding copyright liability. We reject Time Warner's proposal and note that in the Clarification we observed that the information that must be provided to broadcasters should be readily available to the cable operator.

[23] We note that this rule also requires notification of the affected broadcast station, although in such instances the deletion will be at the request of the broadcaster.

it satisfies the conditions for must-carry status.

48. In a related matter, we find it appropriate to require cable operators to notify a broadcaster of any change in service that will have an unexpected change on the amount of copyright reimbursement that will be required to maintain its must-carry status. For example, as petitioners point out, there are some circumstances where a permitted signal subject to a .563% royalty rate may become a penalty station and require a payment of 3.75% of the system's gross revenues. We believe it is reasonable to expect a cable operator to inform a must-carry station when the estimated cost of continued carriage may change. We also agree with NAB that it is inappropriate for broadcasters whose stations do not cause a copyright liability for the cable system to be required to commit to indemnification before such liability is actually incurred. In both cases, a change in a station's potential copyright liability may affect its decision whether to retain its must-carry status by indemnifying the cable operator or to cede its must-carry rights. Accordingly, we will require cable operators to notify broadcast stations at least 60 days prior to any unexpected change on their copyright status. This will allow sufficient time for the station to determine whether it wishes to continue carriage and, if not, it will give the cable operator enough time to send out the required notice of deletion of a signal. However, the broadcast station must indemnify the cable operator for costs incurred during that copyright accounting period, but not for additional costs once the broadcaster has notified the cable operator that it will discontinue must-carry status in light of changes proposed, but not yet effectuated, by the cable operator.

49. *Calculation of station liability.* INTV and NAB request clarification regarding the method for determining the incremental copyright liability attributable to a particular station. We indicated in the Report and Order that increased copyright liability should be specifically associated with the carriage of each station and further that "stations should be counted in the order they satisfy all the necessary conditions for attaining must-carry status." However, this statement does not accurately reflect the reality of copyright liability, nor does it adequately address the concern that cable operators may have the ability to manipulate the liability of stations which have been historically carried on the system, or which are added pursuant to must-carry. We note that NAB is correct in stating that the copyright liability is determined according to the sequence by which the signal is added to the system. Section 111(d) of Title 17 provides the method for calculating copyright royalties to be paid by a cable system. In addition, the copyright rules provide specific information regarding statements of account and methods of computation for the payment of copyright royalties. We agree with NCTA that the copyright rules determine the manner in which the cable operator will have to pay royalties for each station carried.

50. In an effort to eliminate confusion in making the determination of increased liability associated with each station, we believe that stations which were carried prior to the implementation of must-carry should continue to be accounted in the same manner with respect to the sequence of signal carriage. Stations which were or are added by the system should have their copyright liability based on the sequence by which the signal was or is added to the system. In the event multiple signals are added on the same day, the sequence of incremental increase in liability should be based on the order in which the stations met all necessary conditions for attaining must-carry status. We anticipate that providing the station with the statement of account filed with the Copyright Office will ensure the station the opportunity to review how this process is achieved. Therefore, we decline to adopt an alternative system for determining the copyright liability of individual stations' carriage on a cable system.

51. The Commission's must-carry requirements became effective on June 2, 1993, during a Copyright Office accounting period.[24] Prior to the implementation of the must-carry rules, carriage of any station was at the discretion of the cable operator. In such cases, the cable operator carried such a signal even though it incurred a copyright liability for the period ending June 30, 1993. That liability did not increase due to a change in our regulations for stations which had previously been carried, and therefore the liability had already been assumed. We do not believe it appropriate to require the broadcast station to reimburse for that liability, even if carriage became mandatory on June 2, 1993. However, with respect to a broadcast station which was not previously carried by the cable system and which immediately asserted its must-carry rights on June 2, 1993, we believe that such station should reimburse the cable operator for any increased copyright liability incurred as a result of adding that signal between June 2, 1993 and June 30, 1993. Therefore, in the case of a station that agreed to be added on June 2 and committed to indemnification, the station is responsible for the whole semiannual fee. In particular, the station had the opportunity to postpone satisfying the conditions of must-carry status until the first day of the next Copyright Office accounting period.

52. INTV seeks to establish a rebuttable presumption that all stations are significantly viewed throughout their ADIs. We recognize that there may be some merit in considering alternative procedures for addressing significant viewing showings and that there may be both policy and efficiency reasons for attempting to parallel ADI and significant viewing service area decisions. The INTV proposal, however, is in our view sufficiently novel that it is not appropriately considered in the context of this proceeding. This is particularly the case since the significant viewing process has ramifications in terms of other rules, such as the network nonduplication rules, that are not the subject of this proceeding.

2. Remedies

53. Section 615(d)(1) and Section 615(j) provide for the resolution of carriage and channel positioning disputes between a broadcast station and a cable operator. With respect to commercial stations, the 1992 Cable Act requires a local commercial station to notify the cable operator of an alleged violation, and requires the cable operator to respond to such a notice, prior to the station's filing a complaint with the Commission. However, with respect to NCE stations, the 1992 Cable Act permits a NCE station to file a complaint with the Commission prior to notifying the cable operator. In the Report and Order we discussed these provisions and adopted rules for their implementation. Upon review of those rules, we find it necessary to make some adjustments on our own motion, as they relate to the filing of a complaint by a NCE station.

54. As indicated above, a NCE station is not required to notify a cable operator prior to filing a complaint with the Commission. In the Report and Order, we stated that "it is anticipated, though not required, that if there is any question relating to the carriage obligations of the cable system, the NCE station will make inquiries of the cable system prior to filing a complaint." We

[24] The Copyright Office divides the year into two accounting periods—January 1 to June 30 and July 1 to December 31.

also stated that if a NCE station wanted to follow the procedures outlined for complaints filed by a commercial broadcasting station, it could do so as long as it notified the cable system of such intent. In establishing the time frames by which any broadcaster (commercial, noncommercial or LPTV) should file a complaint, we stated that such complaint should be filed within 60 days of an "affirmative action" by a cable operator which directly affects the carriage rights of a broadcast station. We then proceeded to define "affirmative action" as the denial by a cable operator of a request for either carriage or channel position, or the failure of a cable system to respond to such a demand within the required 30-day time frame. It appears that by establishing such a 60-day requirement based upon an "affirmative action," we have made the complaint procedure for NCE stations more rigorous than was intended, either by our rule or the intent of the 1992 Cable Act. Therefore, for the purposes of a NCE station complaint, we are revising § 76.7 to allow a NCE station to file a complaint at any time it determines that its carriage rights have been violated. We believe this better reflects the language of the 1992 Cable Act and will eliminate the possibility that a NCE complaint would be dismissed based solely on a failure to meet the 60-day time frame, prior to having the merits of the complaint considered.

III. Retransmission Consent

A. Definition Issues

1. Multichannel Video Programming Distributors

55. Section 325(b)(1) provides that "no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, * * * "except with express authorization of the station or if carried pursuant to must-carry. Section 602(12) of the Communications Act defines a multichannel video programming distributor as "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service (MMDS), a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming."

56. In the Report and Order we found that "local broadcast signals provided by MATV facilities or by VHF/UHF antennas on individual dwellings situated within the station's broadcast service area are not subject to retransmission consent, provided that these signals are available without charge at the resident's option." We further stated that this exemption applies to MATV–SMATV, MMDS–SMATV and MMDS-individual antenna combinations, so long as there is no charge. The analogy used was that of an individual purchasing and installing a roof top antenna to receive broadcast signals. This exception to retransmission consent was added to the Commission's rules as § 76.64(e). That section states that "[p]rovision of local broadcast signals my master antenna television (MATV) facilities or by VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the resident' option. That is, the antenna facilities must be owned by the individual subscriber or building owner and not under the control of the multichannel video programming distributor." On October 5, 1993, at the request of the Wireless Cable Association ("WCA") and the National Private Cable Association ("NPCA"), we adopted a Stay Order with respect to § 76.64(e), pending our resolution of this issue. The determining factor used in the rule relates to antenna ownership, not the provision of the service free-of-charge.

57. We note that a wireless operator meets the definition of a multichannel video programming distributor ("MVPD") and generally would be responsible for obtaining retransmission consent for all broadcast signals retransmitted over their system. We are cognizant of Congress' desire not to affect a viewer who receives these broadcast signals over an antenna not owned by a MVPD. The application of the retransmission consent requirement to MMDS and SMATV facilities was an effort to create regulatory parity between these types of operations and cable systems. In the Report and Order, the Commission expressed its belief that to the extent the signal reception involved was under the control of the individual subscriber and the signals involved were not being "sold" by the MMDS and SMATV operators, the consent requirement should not apply. In addition, and in recognition of the concerns raised by WCA, we find that retransmission consent is not required if the broadcast signal reception service is received without a separate subscription charge and the antenna is either (1) owned by the subscriber or the building owner; or (2) under the control and available for purchase by the subscriber or building owner upon termination of service. We believe that this interpretation upholds Congressional intent without causing undue disruption to subscribers. We will amend § 76.64(e) of our rules to reflect this change.

B. The Scope of Retransmission Consent

1. Radio

58. In the Report and Order we concluded that Congress intended to provide retransmission consent to all broadcast signals, including those retransmitted by radio. Petitions for reconsideration argue that the retransmission consent provisions of Section 325 and the must-carry provisions of Sections 614 and 615 were intended to work in concert and, therefore, because the must-carry provisions apply only to broadcast television signals, Congress intended retransmission consent to apply only to broadcast television signals. Cable operators argue that most cable systems carry radio stations as an all-band offering, meaning that as with any standard radio receiver, all stations which deliver a signal to the antenna are carried on the system. They contend that the refusal of one radio station to grant consent would preclude all other radio stations from being carried in the all-band method. Several commenters assert that cable operators are more likely to drop the all-band radio offering, rather than attempt to bargain for retransmission consent from all stations carried.

59. We continue to believe that Section 325, as amended by the 1992 Cable Act, applies to radio signals as well as television signals. The statutory language and the legislative history support this conclusion and we have not been presented with a credible argument for reading the statute otherwise. Section 325(b)(2) expressly exempts certain broadcast stations from the consent provision, and radio stations are not included in these exceptions. However, with respect to the difficulty of obtaining consent for all stations carried in an all-band method, we believe that cable system have a legitimate concern. In order to make possible the offering of an "all-band" FM radio service, cable operators need only seek the consent of stations within the usual reception area of a high power FM station. Therefore, cable systems must obtain consent from all stations which are located within 92 km (57 miles) of the cable system's receiving antenna(s). The distance of 92 km was selected as a result of the Commission's allotment policies relating to FM radio stations. Because the predicted service contour of a Class C FM radio station is 92 kilometers, the use of such a distance

will ensure that retransmission consent is obtained from FM radio stations received by the cable system's receiving antenna(s). Other stations, in the absence of specific notice to the contrary, will be presumed to be insufficiently present to be considered carried in the all-band reception mode. This should eliminate concern over obtaining consent from signals which fade in and out of an all-band offering due to atmospheric conditions. We note that although the cable operator is not required to obtain retransmission consent from stations outside the 92 km zone, any such station that is received and retransmitted by the cable system may affirmatively refuse to grant, or negotiate for compensation in return for granting, retransmission consent to the cable operator. Alternatively, a cable system may choose to use a filtering device to eliminate those radio stations from an all-band offering for which the cable operator is unable or unwilling to obtain consent. This change will be reflected in Section 76.64 of our rules, under a new subpart (n).

2. Low Power Television Stations

60. In concluding in the Report and Order that low power television stations are entitled to retransmission consent, we stated that low power television stations are "television broadcast stations." We incorrectly stated, however, that a low power station meets the definition of television broadcast station in § 76.5 of our rules. Section 76.5(b) defines television broadcast station as "any television broadcast station operating on a channel regularly assigned to its community by § 73.606 of this chapter * * *." A low power television station, defined in Section 74.701(f), however, is authorized under subpart G of Part 74 of our rules. However, we continue to believe that the statute was clear that low power television stations are entitled to assert retransmission consent over their signals.

3. Exceptions to the Retransmission Consent Requirement

61. Section 325, as amended by the 1992 Cable Act, provides four exceptions to retransmission consent. Section 325(b)(2) states that retransmission consent shall not apply to the retransmission of NCE stations, retransmission directly to a home satellite antenna, the retransmission of the broadcast signal of a network directly to a home satellite antenna of an unserved household, or the retransmission of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991. Petitions for reconsideration have been filed regarding the interpretation of the fourth exception.

62. On May 26, 1993, the Commission adopted an Order, 58 FR 32452 (6/10/93), denying a Request for Stay submitted by Yankee Microwave, Inc. ("Yankee"). In subsequent pleadings Yankee requested reconsideration of that Order, or alternatively, the immediate grant of its petition for reconsideration. Yankee sought relief, on behalf of its cable system customers, from the provisions of § 76.64(b)(2) regarding the superstation exception. Alternatively, Yankee requested revision of that section of our rules so it would apply to microwave carriers of a superstation signal, as well as to satellite carriers of such a signal. By Order of the Chief, Mass Media Bureau, a temporary waiver was granted to Yankee upon a finding by the Bureau that Yankee would suffer irreparable harm if the provisions of the rule were enforced prior to our decision on the pending petitions for reconsideration. On October 5, 1993, the Mass Media Bureau adopted an Order which denied a similar request filed by EMI, Inc. ("EMI") primarily based on that party's lack of a showing of imminent harm. We now address the requests and oppositions raised by parties to this proceeding.

63. In the Report and Order we rejected arguments that the retransmission consent requirement should not apply to superstation signals delivered via terrestrial means such as microwave. Petitions for reconsideration argue that the effect of the rule is to unfairly discriminate in favor of satellite carriers to the detriment of alternative delivery methods such as microwave. We are persuaded by commenters that the unintended effect of the rule is to unfairly discriminate against alternative methods of delivery of a superstation signal. We believe, consistent with the stated purpose and intent of the 1992 Cable Act, that it is the delivery of satellite signals, not the manner of delivery which should be excepted from the retransmission consent requirement. In other words, if a superstation meets the definition of "superstation" contained in the Copyright Act, then the manner of delivery of such a signal shall not control. However, as discussed more fully below, the exception will only apply to delivery of such a superstation signal outside the local market of the station.

64. *Rights of superstations within the local market.* Section 614 defines a local commercial broadcast station as any full power commercial television broadcast station licensed by the Commission that is located in the same television market as the cable system. As long as the local commercial broadcast station delivers a good quality signal and agrees to indemnify the cable system for any additional copyright liability, the station is entitled to must-carry rights within the local market. Otherwise, that station has the right, pursuant to Section 325(b)(4)–(5), to elect retransmission consent. Section 325 states that the term "superstation" shall be defined according to Section 119(d) of Title 17 of the United States Code. Section 119(d) of Title 17 defines a superstation as "a television broadcast station other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier."

65. We believe that Congress intended for all local commercial broadcast stations to have the option to assert either must-carry or retransmission consent within their individual market. These local commercial broadcast stations do not become superstations until such time as they are retransmitted via satellite outside their market, an activity unrelated to their status as local commercial broadcast stations within their market. Therefore, such local commercial stations retain the right to elect between must-carry and retransmission consent within their market.

C. Must-Carry/Retransmission Consent Election and Implementation

66. Section 325(b)(3)(B) provides that television stations must make an election between must-carry and retransmission consent "within one year after the date of enactment" and every three years thereafter. In the Report and Order we established the implementation of these provisions indicating that the initial election for must-carry or retransmission consent must be made by June 17, 1993. We also provided that subsequent elections must be made by October 1, 1996, October 1, 1999, etc., and would become effective on January 1, 1997, January 1, 2000, etc. We determined that broadcasters were to send copies of their election to the cable operator and were to retain copies of such elections in their public files. We failed, however, to instruct television broadcast stations on the term of retention. Consistent with the requirements of the 1992 Cable Act and other recordkeeping provisions of §§ 73.3526 and 73.3527 of our rules, we will require television broadcast stations to retain election statements in their public files for the term of the three year-election period applicable to such election statements. We will amend

§§ 73.3526 and 73.3527 to indicate not only the need to include such information in the station's public file, but also the three-year retention period for such election statement.

67. In the Report and Order we noted that no party had commented on our proposal to require a new television station to make an initial must-carry/retransmission consent election within 30 days from the date that it commences regular broadcasts. We adopted that proposal, as well as an effective date of ninety (90) days following the election. In considering this provision further, we believe that such an election schedule could have a detrimental effect on a new television station which is entering the market. The Commission's rules provide that a television station which has completed construction may commence program tests prior to filing for a license with the Commission. These stations generally know in advance the date they plan to commence broadcasting. On our own motion, we therefore alter the initial election and effective date with respect to new television broadcast stations. A new television station shall elect between must-carry and retransmission consent sixty (60) days prior to commencing program tests, and shall notify the cable operator of that election. In the event that must-carry status is elected, the new station shall also include its channel position in the election statement to the cable operator. The election statement should be sent to the cable operator by certified mail, return receipt requested. The initial election of the broadcast station shall take effect ninety (90) days after it is made. This will provide the cable operator with sufficient time to notify subscribers of any change which may be required in the channel line-up of the system. The result will be that a new television broadcast station will have the opportunity to be carried on a cable system 30 days after it commences broadcasts over-the-air. We believe that such a result serves the public interest and provides new broadcast stations with appropriate access to enable them to effectively enter a market. Section 76.64(f)(4) of our rules is being revised to reflect this change.

68. In the Report and Order we failed to provide for the introduction of a new cable system in a market. Consistent with the purpose of the 1992 Cable Act, a new cable system will be required to notify all local commercial and noncommercial broadcast stations of its intent to commence service. The cable operator must send such notification, by certified mail, at least 60 days prior to commencing cable service. Commercial broadcast stations must notify the cable system within 30 days of the receipt of such notice of their election of either must-carry or retransmission consent with respect to such new cable system. If the commercial broadcast station elects must-carry, it must also indicate its channel position in its election statement to the cable system. Such election shall remain valid for the remainder of any three-year election interval, as established in § 76.64(f)(2). Noncommercial educational broadcast stations should notify the cable operator of their request for carriage and their channel position. The cable system must determine, in advance of commencing service on the system, whether a station is delivering a good quality signal and/or if a station will be required to indemnify for copyright purposes. The cable system must notify the broadcaster of any signal quality problems or copyright liability and must receive the station's response to such information prior to commencing carriage of the station's signal. These provisions are being added to our rules as § 76.64(l).

D. Retransmission Consent and Section 614

69. In the Report and Order we rejected the tentative conclusion of the Notice that cable operators could negotiate with broadcasters to carry less than the entire program schedule of a retransmission consent station. We interpreted Section 614(b)(3)(B) and the legislative history as not permitting negotiation for carriage or partial broadcast signals. On October 5, 1993, at the request of various parties to this proceeding, we stayed the rule requiring carriage in the entirety for retransmission consent signals. Section 76.62(a) of the rules requires the carriage of the entire program schedule of any television station carried by a cable system. The rule applies to stations carried pursuant to Sections 614, 615 or 325. The only exception to this "carriage in its entirety" requirement is specific programming that is prohibited under § 76.67 (sports blackout rule) or subpart F of Part 76 of our rules (network nonduplication and syndicated exclusivity). In the Stay Order we granted a stay, with respect to stations carried pursuant to Section 325 (retransmission consent stations), of the new § 76.62(a). The stay was issued in response to a request by Media-Com, the licensee of a low power television station located in Akron, Ohio. Media-Com requested a waiver of the provision to permit it to continue part-time carriage on a Warner Cable system under a private agreement. We granted the stay in an effort to avoid an interim loss to the public of its present cable access while we considered petitions for reconsideration with respect to the carriage in the entirety issue. We stated in the Stay Order that we would resolve this issue in this Memorandum Opinion and Order. Petitioners request reconsideration of the requirement for carriage in the entirety with respect to retransmission consent signals.

70. First, we continue to believe that, with respect to stations which have elected must-carry status, Section 614(b)(3) requires cable operators to "carry the entirety of the program schedule of any television station carried on the cable system * * *." As discussed in the Report and Order, the legislative history indicates that carriage in the entirety was intended for those local commercial broadcast signals entitled to must-carry status under Section 614. Indeed, the legislative history is replete with discussions relating to the must-carry provisions, the need for adequate carriage of local broadcast stations on cable systems and the controlling market power of cable systems. Congress was concerned that such market power not overwhelm the ability of local broadcast stations to obtain carriage, and that the terms of carriage not be unreasonable.[25] Congress indicated its strong belief that absent the must-carry provisions, local broadcast stations would not be readily available to cable subscribers. In the Senate Report, Congress stated that "it is for this reason that the legislation incorporates a special provision focusing just on the carriage of local broadcast signals. Moreover, this provision addresses both the primary concern of carriage and the secondary concerns of the terms of carriage. Based on these concerns, we believe that all qualified local commercial broadcast stations should have the minimal protection afforded by Section 614. Further, we also continue to believe that any broadcast station that is eligible for must-carry status, although it may be carried pursuant to a retransmission consent agreement must, therefore, be carried in the entirety, unless carriage of specific programming is prohibited, pursuant to our rules relating to network nonduplication, syndicated exclusivity,

[25] The Conference Report states that "the must-carry and channel positioning provisions in the bill are the only means to protect the federal system of television allocations, and to promote competition in local markets * * *. Given the current economic condition of free, local over-the-air broadcasting, an affirmative must-carry requirement is the only effective mechanism to promote the overall public interest."

sports programming or similar regulations.

71. The Report and Order concluded that Section 614(b)(3) requires carriage in the entirety of any broadcast station carried on the cable system. However, upon reconsideration, we believe that the ability of a broadcaster and cable system to negotiate and agree to carriage of less than the entire signal is permitted only where Section 614 is inapplicable. Specifically, as pointed out by NCTA, Section 614 applies only to qualified local commercial television signals (including qualified LPTV stations), and does not apply to either non-local or non-qualified local commercial broadcast signals. Therefore, where the broadcaster's signal is not eligible for must-carry rights, either by failure to meet the requisite definitions or because the broadcast station is outside the local market (ADI), and where, therefore Section 614 is inapplicable, the broadcaster's rights to freely negotiate for the carriage of that signal pursuant to retransmission consent includes the right to negotiate for partial carriage of the signal.

72. Section 325 states that no cable system or other multichannel video programming distributor shall without consent retransmit "the signal of a broadcasting station, or any part thereof, * * *" In contrast, Section 614(b)(3)(B), the must-carry provision, states that the cable operator shall carry "the entirety of the program schedule * * *." Further, Section 325(b)(4) states that if a station elects retransmission consent, "the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system." While, at first blush, the statutory language appears to permit broadcasters to negotiate with cable operators for retransmission consent for any part of their signal (i.e., any programs), we now believe that a more correct and harmonious reading of Section 614 and 325 together leads to an interpretation that Congress intended cable systems to carry all the programming of must-carry eligible stations regardless of whether the broadcast station opts for must-carry status or not. While it is clear under Section 325 that some negotiated partial carriage is permitted, Section 325 does not mandate the availability of partial carriage in all negotiations. Given this fact, and the congressional emphasis on full carriage for must-carry qualified stations (discussed above), we believe the statutory provisions read in concert suggest that qualified must-carry stations should, as a matter of policy, be carried in their entirety even if they are carried pursuant to retransmission consent.

73. This interpretation is bolstered by Congress' direction to the Commission in Section 325(b)(3)(A) to fashion "regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614." By including this provision in Section 325, we believe that Congress recognized the interplay between the two sections and gave the Commission authority to fill in regulatory gaps. Thus, at the very least, the Commission has the flexibility to require carriage in the entirety for qualified must carry stations carried pursuant to retransmission consent to ensure that the basic underlying objectives of the 1992 Cable Act relating to local broadcast service would be fulfilled. Otherwise, the statutory goals at the heart of Sections 614 and 325—to place local broadcasters on a more even competitive level and thus help preserve local broadcast service to the public—could easily be undermined.

74. The Senate Report confirms this interpretation by stating that the "rights granted to stations under section 325 and under section 614 and 615 can be exercised harmoniously, and it anticipates that the FCC will undertake to promulgate regulations which will permit the fullest applications of whichever rights each television station elects to exercise." We believe that our rules should provide the wildest possible range of opportunity for both broadcast stations and cable operators, where the must-carry provisions are not applicable. Thus, any station which is eligible for must-carry status must be carried, if at all, in its entirety regardless of whether the station elects must-carry or retransmission consent. Similarly, any station which is not eligible for must-carry status under Section 614, because it is not a local commercial broadcast station, or does not qualify under the definitions of Section 614, may negotiate for partial carriage. Thus, we conclude, based upon a reading of both Sections 614 and 325, that broadcast stations whose signals are entitled to must-carry but are instead carried pursuant to retransmission consent are not permitted to negotiate for carriage of less than their entire signal. We note that this interpretation of the statute is supported by the legislative history which notes that the retransmission consent provision was drafted in such a way as to promote the "established relationships between broadcasters and cable systems," and to "minimize unnecessary disruption to broadcasters and cable operators."

75. The 1992 Cable Act was specific in stating that "[c]able systems carrying the signals of broadcast stations, whether pursuant to an agreement with the station or pursuant to the provisions of [must-carry], will continue to have the authority to retransmit the programs carried on those signals under the section 111 compulsory license." The Committee emphasized that nothing in the 1992 Cable Act was "intended to abrogate or alter existing program licensing agreements between broadcaster and program suppliers, or to limit the terms of existing or future licensing agreements."

76. We continue to intepret retransmission consent as a new right given to the broadcaster under the terms of the 1992 Cable Act and as a right separate from the right of the underlying copyright holder and do not believe that our reconsideration decision in any way undermines the separate nature of these rights or creates a conflict between communications and copyright based policies. Congress indicated that it intended "to establish a marketplace for the disposition of the rights to retransmit broadcast signals." As stated in the Report and Order, the right involved is one which may be freely bargained away in future programming contracts. Although NAB and INTV argue that carriage in the entirety is required to ensure the continued validity of both the retransmission consent right and the current compulsory copyright, we do not see how providing broadcasters and cable operators with additional flexibility to negotiate retransmission agreements for signals not eligible for must-carry status algers the nature of the rights granted under Sections 325 and 614 in any way. Indeed, according this additional flexibility is consistent with interpreting the right in question as a new right subject to the control of the station licensee. To the extent these rights have been bargained away, the remaining rights that have not been disposed of still remain under the control of the station involved. As noted in paragraph 99, a contrary interpretation would not only deprive broadcasters and cable operators of the ability to negotiate mutually advantageous arrangements for the carriage of portions of distant signals but would negate the functioning of various portions of Section 111 of the Copyright Act and of the Commission's rules which specifically contemplate the possibility that portions of distant signals may be carried. Accordingly, we interpret Section 325 to provide that broadcasters may bargain with cable operators for the right to carriage of any

part of the broadcast signal provided that such station is not eligible under the provisions of Section 614, either because it is not a local commercial broadcast signal or it does not qualify for mandatory carriage. "Carriage in the entirety" remains a requirement with respect to signals eligible for mandatory carriage under the provisions of Section 614. Sections 76.62(a) and 76.64(k) are being revised to reflect this change.

E. Retransmission Consent Contracts

77. In the Report and Order we specifically prohibited exclusive retransmission consent agreements between television broadcast stations and cable operators. This provision forbids a television station from making an agreement with one MVPD for carriage, exclusive of other MVPDs. After reviewing the comments filed in response to the Notice, we concluded that this prohibition is necessary in light of the concerns that led Congress to regulate program access and cable signal carriage agreements. We then stated that we would revisit the issue in three years. We reject petitioners arguments that prohibiting exclusive retransmission consent agreements is not warranted and is not supported by the 1992 Cable Act. We are adding a new paragraph (m) to § 76.64 of our rules to reflect this decision. As we indicated in the Report and Order, we will consider the need for such a prohibition against exclusive retransmission consent agreements in three years.

F. Other Matters

78. *Retransmission Consent and Network Nonduplication Protection.* In the Report and Order, we concluded that local television stations electing retransmission consent should continue to be entitled to invoke network nonduplication or syndicated exclusivity protection, whether or not they are carried by the cable system. Commenters had sought to eliminate exclusivity rights for stations choosing retransmission consent. We found, however, that the legislative history addressed this matter and that Congress intended for exclusivity protection to apply under its regulatory framework.

79. We affirm our decision to allow stations electing retransmission consent to assert network nonduplication or syndicated exclusivity protection as provided in the rules.[26] We observe that this issue was considered earlier in this proceeding in response to a petition from NCTA, which we denied in the Report and Order. Parties have provided no new arguments nor additional evidence to convince us that our decision conflicts with the intent of Congress. We also do not find that there is a conflict between retransmission consent rights and exclusivity rights. Network nonduplication and syndicated exclusivity rights protect the exclusivity that broadcasters have acquired from their program suppliers, including their network partners, while retransmission consent allows broadcasters to control the redistribution of their signals. Both policies promote the continued availability of the over-the-air television system, a substantial government interest in Congress' view.

80. We also note that cable operators believe that broadcasters have an advantage in the negotiations for retransmission agreements due to their ability to assert their exclusivity rights, while broadcasters believe the reverse. Local broadcast stations are an important part of the service that cable operators offer and broadcasters rely on cable as a means to distribute their signals. Thus, we believe that there are incentives for both parties to come to mutually beneficial arrangements. Moreover, the allegations that local stations electing retransmission consent would not be carried due to their inability to successfully negotiate agreements with cable operators and then assert their exclusivity rights and deprive subscribers of programming was speculative at the time the reconsideration petitions were filed. Now that the retransmission consent provisions are in effect, there is no evidence that subscribers are being deprived of network programming. We note that there are only limited situations where local stations are not carried. Therefore, the dire consequences predicted do not exist and we continue to believe that stations should receive the exclusivity protection to which they are entitled.

IV. Administrative Matters

Regulatory Flexibility Analysis

81. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the Report and Order detailing (i) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substantive changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

Paperwork Reduction Act

82. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

83. Accordingly, *it is ordered*, That pursuant to the authority contained in Sections 4 (i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102–385, Parts 73 and 76 of the Commission Rules, 47 CFR.Parts 73 and 76 are amended as set forth below.

84. *It is further ordered*, That rule provisions of Part 76 of the rules set forth below shall be effective 30 days after publication in the **Federal Register**. Rule provisions of Part 73 of the rules set forth below shall be effective upon approval from OMB.

85. *It is further ordered*, That §§ 76.62 and 76.64 of the Commission's rules which were stayed by Order of the Commission on October 5, 1993 are revised as indicated below and the Stay Order is lifted as of the effective date of these rules.

86. *It is further ordered*, That the petitions for reconsideration are granted in part and denied in part only to the extent indicated in this Memorandum Opinion and Order, except that the Petition for Reconsideration filed by Western Broadcasting of Puerto Rico is dismissed without prejudice.

List of Subjects

47 CFR Part 73

Radio broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 73 of Chapter I of Title 47 of the Code of Federal Regulation is amended as follows:

[26] We note that we also considered whether to modify the geographic zone applicable to exclusivity protection to make it consistent with the definition of a local television market as the ADI, as specified in the 1992 Cable Act. We declined to make such a change.

PART 73—BROADCAST RADIO SERVICES

1. The authority citation for part 73 is revised to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

2. Section 73.3526 is amended by adding paragraph (g) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(g) Statements of a commercial television station's election with respect to either must-carry or retransmission consent as defined in § 76.64 of this chapter shall be retained in the public file of the television station for the duration of the three year election period to which the statement applies.

3. Section 73.3527 is amended by adding paragraph (g) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(g) Noncommercial television stations requesting mandatory carriage on any cable system pursuant to § 76.56 of this chapter shall place a copy of such request in its public file and shall retain both the request and relevant correspondence for the duration of any period to which the statement applies.

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation of part 76 is revised to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. § 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614–615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; Sec. 623, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 535, 543, 552.

2. Section 76.7(c)(4) (i), (ii), and (iii) are revised and a new paragraph (c)(4)(iv) is added to read as follows:

§ 76.7 Special relief and must-carry complaint procedures.

* * * * *

(c) * * *

(4)(i) Must-carry complaints filed pursuant to § 76.61(a) (Complaints regarding carriage of local commercial television stations) shall be accompanied by the notice from the complainant to the cable television system operator (§ 76.61(a)(1)), and the cable television system operator's response (§ 76.61(a)(2)), if any. If no timely response was received, the complaint should so state.

(ii) Must-carry complaints filed pursuant to § 76.61(b) (Complaints regarding carriage of qualified local NCE television stations) should be accompanied by any relevant correspondence between the complainant and the cable television system operator.

(iii) No must-carry complaint filed pursuant to § 76.61(a) (complaints regarding local commercial television stations) will be accepted by the Commission if filed more than sixty (60) days after the date of the specific event described in this paragraph. Must-carry complaints filed pursuant to § 76.61(a) should affirmatively state the specific event upon which the complaint is based, and shall establish that the complaint is being filed within sixty (60) days of such specific event. With respect to such must-carry complaints, the specific event shall be

(A) The denial by a cable television system operator of request for carriage or channel position contained in the notice required by § 76.61(a)(1), or

(B) The failure to respond to such notice within the time period allowed by § 76.61(a)(2).

(iv) With respect to must-carry complaints filed pursuant to § 76.61(b), such complaints may be filed at any time the complainant believes that the cable television system operator has failed to comply with the applicable provisions of subpart D of this part.

* * * * *

3. Section 76.55 is amended by revising paragraph (a)(2), adding a note after paragraph (a)(3)(iii), adding new paragraph (b)(3), a note following paragraph (d)(6), and revising the note following paragraph (e)(3), to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

* * * * *

(a) * * *

(2) Is owned and operated by a municipality and transmits noncommercial programs for educational programs for educational purposes, as defined in § 73.621 of this chapter, for at least 50 percent of its broadcast week.

(3) * * *

(iii) * * *

Note to paragraph (a): For the purposes of § 76.55(a), "serving the franchise area" will be based on the predicted protected contour of the NCE translator.

(b) * * *

(3) Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of § 76.56(a)(5), where such signal would be considered a distant signal for copyright purposes unless such station agrees to indemnify the cable operator for any increased copyright liability resulting from carriage of such signal on the cable system.

* * * * *

(d) * * *

(6) * * *

Note to paragraph (d): For the purposes of this section, a good quality signal shall mean a signal level of either -45 dBm for UHF signals or -49 dBm for VHF signals at the input terminals of the signal processing equipment, or a baseband video signal.

(e) * * *

(3) * * *

Note to paragraph (e): For the 1993 must-carry/retransmission consent election, the ADI assignments specified in the 1991–1992 *Television Market Guide* will apply.

* * * * *

4. Section 76.56 is amended by revising paragraphs (a)(1)(iii), (a)(5) and (b)(1) to read as follows:

§ 76.56 Signal carriage obligations.

(a) * * *

(1) * * *

(iii) Systems with more than 36 usable activated channels shall be required to carry the signals of all qualified local NCE television stations requesting carriage, but in any event at least three such signals; however a cable system with more than 36 channels shall not be required to carry an additional qualified local NCE station whose programming substantially duplicates the programming of another qualified local NCE station being carried on the system.

* * * * *

(5) Notwithstanding the requirements of paragraph (a)(1) of this section, all cable operators shall continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990. In the case of a cable system that is required to import a distance qualified NCE signal, and such system imported the signal of a qualified NCE station as of March 29, 1990, such cable system shall continue to import such signal until such time as a qualified local NCE signal is available to the cable system. This requirements may be waived with respect to a particular cable operator and a particular NCE station, upon the written consent of the cable operator and the station.

(b) * * *

(1) A cable system with 12 or fewer usable activated channels, as defined in § 76.5(oo), shall carry the signals of at least three qualified local commercial television stations, except that if such system serves 300 or fewer subscribers it shall not be subject to these requirements as long as it does not delete from carriage the signal of a broadcast television station which was carried on that system on October 5, 1992.

* * * * *

5. Section 76.57(a) is revised to read as follows:

§ 76.57 Channel positioning.

(a) At the election of the licensee of a local commercial broadcast television station, and for the purpose of this section, a qualified low power television station, carried in fulfillment of the must-carry obligations, a cable operator shall carry such signal on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992.

* * * * *

6. Section 76.60 is amended by adding a new paragraph (c) to read as follows:

§ 76.60 Compensation for carriage.

* * * * *

(c) A cable operator may accept payments from stations pursuant to a retransmission consent agreement, even if such station will be counted towards the must-carry complement, as long as all other applicable rules are adhered to.

7. Section 76.62(a) is revised to read as follows:

§ 76.62 Manner of carriage.

(a) Cable operators shall carry the entirety of the program schedule of any television station (including low power television stations) carried by the system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under § 76.67 or subpart F of part 76, or unless carriage is pursuant to a valid retransmission consent agreement for the entire signal or any portion thereof as provided in § 76.64.

* * * * *

8. Section 76.64 is amended by revising paragraphs (b)(2) (e), (f)(4) and (k) and by adding paragraphs (l), (m) and (n) to read as follows:

§ 76.64 Retransmission consent.

* * * * *

(b) * * *

(2) The multichannel video programming distributor obtains the signal of a superstation that is distributed by a satellite carrier and the originating station was a superstation on May 1, 1991, and the distribution is made only to areas outside the local market of the originating station; or

* * * * *

(e) The retransmission consent requirements of this section are not applicable to broadcast signals received by master antenna television facilities or by direct over-the-air reception in conjunction with the provision of service by a multichannel video program distributor provided that the multichannel video program distributor makes reception of such signals available without charge and at the subscribers option and provided further that the antenna facility used for the reception of such signals is either owned by the subscriber or the building owner; or under the control and available for purchase by the subscriber or the building owner upon termination of service.

(f) * * *

(4) New television stations shall make their initial election any time between 60 days prior to commencing broadcast and 30 days after commencing broadcast; such initial election shall take effect 90 days after they are made.

* * * * *

(k) Retransmission consent agreements between a broadcast station and a multichannel video programming distributor shall be in writing and shall specify the extent of the consent being granted, whether for the entire signal or any portion of the signal.

(l) A cable system commencing new operation is required to notify all local commercial and noncommercial broadcast stations of its intent to commence service. The cable operator must send such notification, by certified mail, at least 60 days prior to commencing cable service. Commercial broadcast stations must notify the cable system within 30 days of the receipt of such notice of their election for either must-carry or retransmission consent with respect to such new cable system. If the commercial broadcast station elects must-carry, it must also indicate its channel position in its election statement to the cable system. Such election shall remain valid for the remainder of any three-year election interval, as established in § 76.64(f)(2). Noncommercial educational broadcast stations should notify the cable operator of their request for carriage and their channel position. The new cable system must notify each station if its signal quality does not meet the standards for carriage and if any copyright liability would be incurred for the carriage of such signal. Pursuant to § 76.57(e), a commercial broadcast station which fails to respond to such a notice shall be deemed to be a must-carry station for the remainder of the current three-year election period.

(m) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make an agreement with one multichannel distributor for carriage, to the exclusion of other multichannel distributors.

(n) A multichannel video programming distributor providing an all-band FM radio broadcast service (a service that does not involve the individual processing of specific broadcast signals) shall obtain retransmission consents from all FM radio broadcast stations that are included on the service that have transmitters located within 92 kilometers (57 miles) of the receiving antenna for such service. Stations outside of this 92 kilometer (57 miles) radius shall be presumed not to be carried in an all-band reception mode but may affirmatively assert retransmission consent rights by providing 30 days advance notice to the distributor.

[FR Doc. 94–29443 Filed 12–2–94; 8:45 am]
BILLING CODE 6712–01–M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Chapter 16

RIN 3206–AG35

Federal Employees Health Benefits Program; Interest Assessment on Audit Findings

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to clarify its intentions concerning the assessment of interest on monies due the Federal Employees Health Benefits (FEHB) Program when a comprehensive medical plan (CMP) submits defective cost or pricing data to support its community rate. This clarification is necessary because a few FEHB Program carriers are misinterpreting OMP's current regulations.

DATES: Interim regulations are effective January 4, 1995. Comments must be received on or before February 3, 1995.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC; or FAXed to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 606–0191.

SUPPLEMENTARY INFORMATION: Recent final audit reports on community-rated plans issued by OPM's Office of Inspector General include monetary findings based on interest income lost to the FEHB Program because of FEHB Program carrier overcharges. A few carriers have questioned the period covered by the interest charges assessed by OPM. Specifically, they question OPM's policy of charging interest on the overcharges from the date the Government pays the inflated rate to the date of the carrier's full repayment to the Government. They believe that, in the absence of a specific contractual provision, OPM should charge interest not from the date of the overpayment by the Government, but from 30 days after its first written demand, as provided in the Federal Acquisition Regulation (FAR) general interest clause at 52.232–17. Because the monetary findings are significant in value, OPM is issuing these regulations to clarify its policy.

In FEHB Program contracts with CMP's using community rates, premiums and subscription income are determined on the basis of community rating. A community rate is deemed the equivalent of the FAR's description of an established catalog or market price. Each CMP certifies to the accouracy of its pricing; or, if granted an exemption by OPM, represents that all the statements made on or attached to its SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, are correct. If, upon audit, it is determined that the rates are not correct and the carrier has overcharged the FEHB Program, OPM assesses an interest charge in accordance with FAR 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications. This provision allows the contracting officer to charge simple interest on the amount of the overpayment computed from the date the overpayment is made to the contractor to the date the Government is repaid by the contractor.

FAR 52.215–23 applies to contract modifications involving a price adjustment exceeding $100,000, but does not apply to modifications for which the price is (1) based on adequate price competition; (2) based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or (3) set by law or regulation. OPM applies this clause as follows: A community rate is deemed the equivalent of an established catalog or market price; however, the defective community rates constitute that part of the quoted rate that does not fall within the catalog or market part of the price. Had the carrier priced the FEHB contract correctly according to the catalog or market price, this clause would not become operative. The defective portion of the rate is not a market or catalog price; that is, the defective portion is a modification to the catalog or market price. Since the carrier did not comply with the terms of its submission, it is responsible for correcting the price so that it is the catalog or market price and for making the government whole by paying interest from the date the government was overcharged.

By restating this interest provision in a specific clause in the FEHB Program acquisition regulations at FEHBAR 1652.215–70, OPM makes it clear that its policy is to charge interest from the date it pays the carrier the higher rate to the date the full repayment is made to OPM.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(A) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the regulations simply interpret rules and clarify OPM's current policy with respect to the assessment of interest on amounts that become payable by the contractor to the FEHB Fund.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it merely reiterates and clarifies OPM's existing policy.

List of Subjects in 48 CFR Part 1652

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending Chapter 16 of Title 48, Code of Federal Regulations, as follows:

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In the clause under section 1652.215–70, the heading is revised and two sentences are added to the end to read as follows:

§ 1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

* * * * *

Rate Reduction for Defective Pricing or Defective Cost or Pricing Data (Oct 1994)

* * * When the Contracting Office determines that the Carrier did not charge a market price and the Government is entitled to a refund, the refund shall bear simple interest from the date the overcharge was paid by the Government to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used.

(End of Clause)

[FR Doc. 94–29810 Filed 12–2–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Endangered Status for Three Hawaiian Plant Species of the Genus Melicope

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) designates endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants in the genus *Melicope* (alani): *M. adscendens, M. balloui,* and *M. ovalis.* All three species are endemic

to the slopes of Haleakala on the island of Maui, Hawaiian Islands. The three plant species and their habitats have been variously affected or are currently threatened by habitat degradation and damage to plants by feral and domestic animals (cattle and/or pigs), and/or by competition for space, light, water, and nutrients by naturalized, introduced vegetation. Due to the small number of existing individuals and their very narrow distributions, these species and their populations are vulnerable to reduced reproductive vigor and/or an increased likelihood of extinction from stochastic events. This final rule implements the Federal protection and recovery provisions provided by the Act.

EFFECTIVE DATE: January 4, 1995.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Melicope adscendens, M. balloui, and *M. ovalis,* members of the citrus family (Rutaceae), are endemic to the slopes of Haleakala on the island of Maui, Hawaiian Islands. The island of Maui comprises remnants of two large shield volcanoes, the older West Maui Volcano on the west and the larger and much younger Haleakala Volcano on the east. These two volcanoes and the connecting isthmus formed by lava flows make up an island 1,888 square kilometers (sq km) (729 sq miles (mi)) in area. Haleakala, on East Maui, erupted just 200 years ago and has an elevation of 3,055 meters (m) (10,023 feet (ft)). Haleakala still retains its classic shield shape and has somewhat less diverse vegetation than the older and more eroded West Maui Mountains. Rainfall on Haleakala averages about 890 centimeters (cm) (350 inches (in)) per year, with the mountain's windward (northeastern) slope receiving the most precipitation. However, Haleakala's inner crater is a dry cinder desert because it is above the level at which precipitation develops and is sheltered from moisture-laden winds (Gagne and Cuddihy 1990).

Melicope adscendens occurs in *Nestegis sandwicensis* (Olopua) Lowland Mesic Forest. This vegetation type, which includes co-dominant *Pleomele auwahiensis* (hala pepe), now exists as scattered patches, much of the original area having been converted to pasture land. This forest occurs between the elevations of 30 and 1,600 m (100 and 5,250 ft). Rain falls mostly from October to March, and substrates are well-drained. *Melicope balloui* and *M. ovalis* occur in *Acacia koa/Metrosideros polymorpha* (Koa/'Ohi'a) Montane Wet Forest. This plant community occurs between the elevations of 1,200 and 2,200 m (3,900 and 7,200 ft). Annual rainfall is over 2,500 millimeters (mm) (98 in) and is evenly distributed throughout the year. The climate is warm, and frequent afternoon fog often results in fog drip. Substrates are volcanic with well developed soil. This is a highly stratified community, comprising, in order of canopy height: koa (up to 40 m tall); 'ohi'a (up to 30 m tall); several native tree species (10 to 20 m tall); *Cibotium* (hapu'u) (understory canopy); and shrubs, herbs, ferns, and mosses (shade-tolerant understory) (Gagne and Cuddihy 1990; Hawaii Heritage Program (HHP) 1992a, 1992c, 1992d, 1992f).

The only known extant population of *Melicope adscendens* and one of two populations of *M. balloui* are located on privately owned land. The only known extant population of *M. ovalis* and the second population of *M. balloui* are in Haleakala National Park, which is owned by the Federal Government (HHP 1992a, 1992c, 1992d, 1992f).

Discussion of the Three Species

Melicope adscendens was first collected by Charles Noyes Forbes at Auwahi on the southwestern slopes of Haleakala in 1920. Harold St. John and Edward P. Hume (St. John 1944) later named and described the species as *Pelea adscendens,* choosing the specific epithet to describe the habit of the plant. Thomas G. Hartley and Benjamin C. Stone (1989, Stone *et al.* 1990, Wagner *et al.* 1990) synonymized the genus *Pelea* with *Melicope,* resulting in *M. adscendens,* the current name for this species.

Melicope adscendens is a sprawling shrub with long, slender branches covered with gray hairs when young and becoming hairless when older. New growth is covered with many fine, yellowish to golden brown hairs. The opposite, widely spaced, leathery to papery, elliptic leaves measure 1.5 to 6.5 cm (0.6 to 2.6 in) long and 1 to 4 cm (0.4 to 1.6 in) wide and have petioles 0.6 to 1.6 cm (0.2 to 0.6 in) long. Both upper and lower surfaces of mature leaves are hairless. Each flower cluster is on a main stalk 13 to 17 mm (0.5 to 0.7 in) long and comprises one to three flowers on individual stalks usually 4 to 8 mm (0.2 to 0.3 in) long. Only female flowers have been observed, and each consists of four sepals about 3.5 mm (0.1 in) long, four petals about 5 mm (0.2 in) long, an eight-lobed nectary disk, eight reduced and nonfunctional stamens, and a hairless four-celled ovary. The 14 to 15 mm (0.6 in) wide fruit is made up of 4 distinct follicles (dry fruits splitting along one side) 7 to 7.5 mm (0.3 in) long. Sepals and petals remain attached to the mature fruit. The endocarp (inner fruit wall) and the wrinkled exocarp (outer fruit wall) are both hairless. *Melicope adscendens* is distinguished from other species of the genus by its habit, the distinct follicles of its fruit, and the persistent (remaining attached) sepals and petals (Stone 1969, Stone *et al.* 1990).

Melicope adscendens has been found only on the island of Maui on the southwestern slope of Haleakala. Two plants, separated by an unspecified distance, were found by Forbes in 1920. Today, one of these plants is still known to exist near Puu Ouli on privately owned land; the other plant has not been relocated. This species typically grows in Olopua Lowland Mesic Forest with hala pepe as a co-dominant at elevations between 914 and 1,200 m (3,000 and 3,900 ft). Associated taxa include *Chamaesyce celastroides* var. *lorifolia* ('akoko), *Dodonaea viscosa* (a'ali'i), *Pouteria sandwicensis* ('ala'a), and *Styphelia tameiameiae* (pukiawe). The plant grows next to a water pipeline on land used as a cattle (*Bos taurus*) ranch. Major threats are habitat damage and trampling by cattle, competition with the alien plant species *Lantana camara* (lantana) and *Pennisetum clandestinum* (Kikuyu grass), and reduced reproductive vigor and/or extinction from stochastic events due to the existence of only one known population with one individual. Potential threats include habitat degradation and damage to plants by feral axis deer (*Axis axis*), goats (*Capra hircus*), feral pigs (*Sus scrofa*), black twig borer (*Xylosandrus compactus*), fire, and ranch activities (such as water pipeline maintenance) (HHP 1992a; Art Medeiros, Haleakala National Park, Robert Hobdy, Hawaii Department of Land and Natural Resources, and Steve Perlman, Hawaii Plant Conservation Center, pers. comms., 1992).

Melicope balloui was first collected by Horace Mann, Jr., and William Tufts Brigham in 1864 or 1865. When Wilhelm Hillebrand (1888) named this plant *Pelea mannii,* he cited this specimen as well as a specimen which is now thought to be *P. peduncularis.* If Mann and Brigham's specimen is

chosen as the type of *P. mannii*, the correct name for the taxon will be *M. mannii*, and *M. balloui* will become a synonym (Stone *et al.* 1990). When naming *P. balloui*, Rock (1913) based his name on a specimen he had collected in 1910. Rock chose the specific epithet to honor Howard M. Ballou, who corrected the proof sheets of his landmark book on Hawaiian indigenous trees (Rock 1913). The specimen St. John cited as the type when he named and described *P. ukuleleensis* actually comprised material of both *P. balloui* and *P. clusiaefolia*, both previously validly published names (Stone 1963). Following the transfer of the genus *Pelea* to *Melicope* (Hartley and Stone 1989, Wagner *et al.* 1990), authors of the current treatment of the Hawaiian members of the genus (Stone *et al.* 1990) now consider *P. balloui* and *P. ukuleleensis* to be synonyms of *M. balloui*.

Melicope balloui is a small tree or shrub, the new growth of which has yellowish brown woolly hairs and waxy scales. Plant parts later become nearly hairless. Leaves are opposite, leathery, inversely ovate to elliptic, 5 to 10 cm (2.0 to 3.9 in) long, 3 to 7 cm (1.2 to 2.8 in) wide, and have petioles 1.0 to 2.6 cm (0.4 to 1.0 in) long. The upper and lower surfaces of mature leaves are hairless except along the midrib of the lower surface. Each flower cluster is on a main stalk 3 to 16 mm (0.1 to 0.6 in) long and comprises five to nine flowers on individual stalks about 5 mm (0.2 in) long. Only female flowers have been observed, and each consists of four sepals about 3 mm (0.1 in) long, four petals about 4 mm (0.2 in) long, an eight-lobed nectary disk, eight reduced and nonfunctional stamens, and a four-celled ovary with many short, fine hairs. The fruit, a four-lobed capsule 2.5 to 2.7 cm (1.0 to 1.1 in) wide, consists of 1.2 to 1.3 cm (0.5 in) long carpels fused about a quarter of their length. Sepals and petals usually remain attached to the mature fruit. One or two glossy black seeds about 7 mm (0.3 in) long are found in each fertile carpel. The exocarp and endocarp are covered with fine, short hairs. *Melicope balloui* is distinguished from other species of the genus by the partially fused carpels of its four-lobed capsule and the usually persistent sepals and petals (Stone *et al.* 1990).

Melicope balloui has been found only on the island of Maui on the northern and southeastern slopes of Haleakala. There are two known extant populations, located approximately 4.0 km (2.5 mi) apart near Puu o Kakae on privately owned land and in Kipahulu Valley on federally owned land within Haleakala National Park. The two populations are comprised of an estimated total of no more than 10 individuals. This species typically grows in koa- and 'ohi'a-dominated Montane Wet Forests at elevations between 760 and 1,520 m (2,500 and 5,000 ft). Associated taxa include *Coprosma* sp. (pilo), *Dicranopteris linearis* (uluhe), *Joinvillea ascendens* ssp. *ascendens* ('ohe), and *Peperomia subpetiolata* ('ala'ala wai nui). Major threats are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals. Potential threats include competition with alien plant taxa, such as *Paspalum conjugatum* (Hilo grass) and *Psidium cattleianum* (strawberry guava), susceptibility to black twig borer, and habitat degradation and damage to plants by feral goats and axis deer (HHP 1992c, 1992d; Linda Cuddihy, Hawaii Volcanoes National Park, and A. Medeiros, pers. comms., 1992).

Based on a specimen collected by Forbes in the mountains above Hana, East Maui, St. John (1944) described and named *Pelea ovalis*, choosing the specific epithet to refer to the shape of the leaves of the species. Hartley and Stone (1989) synonymized the genus *Pelea* with *Melicope*, resulting in the combination *M. ovalis*.

Melicope ovalis is a tree up to 5 m (16 ft) tall. New growth has fine, short, brownish hairs and soon becomes hairless. Leaves are opposite, leathery, broadly elliptic, 8 to 16 cm (3.1 to 6.3 in) long, 4 to 10 cm (1.6 to 3.9 in) wide, and have petioles 3 to 4 cm (1.2 to 1.6 in) long. The upper and lower surfaces of the leaves are hairless, and bruised foliage has an anise odor similar to that of M. *anisata* (mokihana). Each flower cluster is on a main stalk 3 to 12 mm (0.1 to 0.5 in) long and comprises three to seven flowers on individual stalks 10 to 13 mm (0.4 to 0.5 in) long. Further details of the flowers are unknown. The fruit, a capsule about 1 cm (0.4 in) long and 1.2 to 1.4 cm (0.5 to 0.6 in) wide, has carpels that are fused along almost their entire length. Each fertile carpel contains one or two glossy black seeds about 5 mm (0.2 in) long. The exocarp and endocarp are both hairless. *Melicope ovalis* is distinguished from other species of the genus by the almost entirely fused carpels of its capsule, its nonpersistent sepals and petals, and its well-developed petioles (Stone *et al.* 1990).

Melicope ovalis has been found only on the island of Maui on the eastern and southeastern slopes of Haleakala. There is one known extant population, located in Kipahulu Valley in Haleakala National Park. This species typically grows in koa- and 'ohi'a-dominated Montane Wet Forests at elevations between 850 and 1,430 m (2,800 and 4,700 ft). Associated taxa include *Broussaisia arguta* (kanawao), *Cheirodendron trigynum* ('olapa), and *Perrottetia sandwicensis* (olomea). Major threats are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction from stochastic events due to the existence of only one population and one known individual. Competition with alien introduced plants such as Hilo grass and strawberry guava, susceptibility to black twig borer, and habitat degradation and damage to plants by feral goats and axis deer are potential threats (HHP 1992e, 1992f; L. Cuddihy and A. Medeiros, pers. comms., 1992).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Melicope balloui* (as *Pelea balloui*) and *M. ovalis* (as *P. ovalis*) were considered to be endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *M. balloui* (as *P. balloui*) and *M. ovalis* (as *P. ovalis*). The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service

published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), in which *M. balloui* (as *P. balloui*) and *M. ovalis* (as *P. ovalis*) were considered to be Category 1 candidates for Federal listing. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In an updated notice of review published on September 27, 1985 (50 FR 39525), *M. balloui* (as *P. balloui*) was considered to be a Category 1 species, and *M. ovalis* (as *P. ovalis*) a Category 1* species. Category 1* taxa are those that are possibly extinct. In a notice of review published February 21, 1990 (55 FR 6183), *M. adscendens* was treated as a Category 3A species and *M. balloui* and *M. ovalis* as Category 1* species. Category 3A species are those for which the Service has persuasive evidence of extinction. Because specimens collected in the past few years were recently verified as being these three species, they are confirmed extant and are being listed as endangered.

For petitions presenting substantial information that listing may be warranted, section 4(b)(3)(B) of the Act requires the Secretary to make a finding on whether the petitioned action is warranted within 12 months of receipt of the petition. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final one-year finding for these species.

On May 11, 1993, the Service published in the **Federal Register** (58 FR 18073) a proposal to list the plants *Melicope adscendens, M. balloui,* and *M. ovalis* as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program and observations by botanists and naturalists. The Service now determines these three species of *Melicope* to be endangered with the publication of this rule.

Summary of Comments and Recommendations

In the May 11, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended July 12, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in "The Honolulu Advertiser" on June 2, 1993, and "The Maui News" on June 1, 1993. No letters of comment were received.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal endangered and threatened species lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). The threats facing these three species are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals				Insects	Alien plants	Fire	Human impacts	Limited numbers*
	Cattle	Deer	Goats	Pigs					
Melicope adscendens	X	P	P	P	P	X	P	P	X
Melicope balloui		P	P	X	P	P			X
Melicope ovalis		P	P	X	P	P			X

KEY:
X=Immediate and significant threat.
P=Potential threat.
*=No more than 10 known individuals and no more than 2 known populations.

These factors and their application to *Melicope adscendens* (St. John and E. Hume) T. Hartley and B. Stone (alani), *M. balloui* (Rock) T. Hartley and B. Stone (alani), and *M. ovalis* (St. John) T. Hartley and B. Stone (alani) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The native vegetation of East Maui has undergone extreme alterations because of past and present land management practices, including deliberate alien plant and animal introductions and agricultural development (Scott *et al.* 1986). Degradation of habitat by feral animals and competition with alien plants are considered to be the major threats to the three species.

Cattle, introduced to Maui in the early 1800s, were permitted to range freely and subsequently became quite numerous. Cattle have converted large tracts of forest to open pasture on southern and northwestern Haleakala. Feral cattle consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Cuddihy and Stone 1990, Stone 1985). Along with goats, cattle are considered one of the two most damaging alien vertebrates to Hawaii's native ecosystems. The long history of cattle grazing has so altered the southern slope of Haleakala that only pockets of native vegetation remain (Scott *et al.* 1986). The single known individual of *Melicope adscendens* grows in an area used for grazing, and cattle are considered an immediate threat to the species (A. Medeiros, pers. comm., 1992).

Goats were introduced to Maui by the early 1800s and are now a serious threat to the integrity of Maui's forests. The impact of goats on the native vegetation is similar to that described for cattle (Cuddihy and Stone 1990, Stone 1985). Although they have now been removed, feral goats entered Kipahulu Valley in the past and could become a threat to *Melicope balloui* and *M. ovalis* if they return. Goats also occur near *M*

adscendens in Auwahi and are a potential threat to that species as well (A. Medeiros, pers. comm., 1992).

Axis deer cause habitat degradation by trampling, consuming, and overgrazing vegetation. This process removes ground cover and often results in soil erosion. Alien plant taxa are then able to exploit the newly disturbed areas (Cuddihy and Stone 1990). Axis deer have become established at low elevation slopes of western and southern Haleakala and may become a threat to mesic and wet native forests on Haleakala. They are a potential threat to all three endangered species of *Melicope* (R. Hobdy and A. Medeiros, pers. comms., 1992).

In contrast to goats and cattle, pigs typically occupy the wetter regions of Hawaii's forests and are one of the major current modifiers of wet forest habitats. Pigs damage native vegetation by their rooting and trampling activities. This process encourages the ingress of alien plants, which are able to exploit newly disturbed soil better than native taxa. In addition, these animals disseminate alien plant taxa through their feces and on their bodies (Cuddihy and Stone 1990, Stone 1985). Pigs have severely damaged fragile and limited communities, such as that of *Argyroxiphium virescens* (greensword) (Stone 1985). This species of greensword was found at an historic site of *Melicope balloui*, which has not been relocated since 1920, and it is possible that pig damage caused the destruction of the habitat (HHP 1992g). Although *M. balloui* and *M. ovalis* grow in areas of Kipahulu Valley that are fenced to exclude pigs, the areas are not yet pig-free, so trampling of seedlings by pigs remains a threat to these two species (HHP 1992b, 1992d, 1992f; L. Cuddihy and R. Hobdy, pers. comms., 1992). Pigs are also present in Auwahi and constitute a potential threat to *M. adscendens* (S. Perlman, pers. comm., 1992).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all three of the proposed species, none of which has more than a total of two populations or 10 known individuals. Collection of whole plants or reproductive parts of these species could cause an adverse impact on the gene pool and threaten the survival of the species.

C. *Disease or predation.* The black twig borer is a small beetle about 1.6 mm (0.06 in) in length that burrows into branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs. Twigs, branches, and even an entire plant can be killed from such an infestation. In the Hawaiian Islands, black twig borer has many hosts and is widespread. It is known to attack species of *Melicope* and is a potential threat to all three proposed species (Hara and Beardsley 1979).

D. *The inadequacy of existing regulatory mechanisms. Melicope ovalis* occurs exclusively on Federal land (Haleakala National Park) but feral pigs still pose a threat in this area. *Melicope adscendens* is found exclusively on private land. One of the two known extant populations of *M. balloui* occurs on privately owned land within a State conservation district.

Conservation district lands are regarded, among other purposes, as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). However, none of the three species in this rule is presently protected under the State's endangered species act, and, despite provisions for conserving endemic resources, individual rare species may be overlooked during consideration of other land use priorities. Even if all other threats were removed by virtue of occurrence and protection on Federal land or in conservation districts, these species are still in danger of extinction due to their low numbers.

E. *Other natural or manmade factors affecting its continued existence.* The small numbers of individuals and populations of these three species of *Melicope* increase the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or an entire population, potentially causing the extinction of the species. Only one individual of *M. adscendens* is known to exist, the two populations of *M. balloui* contain a total of less than 10 known individuals, and only one individual of *M. ovalis* has been definitely identified.

The only known individual of *Melicope adscendens* is located directly adjacent to a water pipeline used in ranching activities. Maintenance performed on the pipeline in the vicinity of the plant could damage or destroy the plant. In addition, cattle walking along the pipeline could easily trample the plant (A. Medeiros, pers. comm., 1992).

Competition with one or more alien plant taxa threatens one of the endangered *Melicope* species and constitutes a potential threat to the other two species. Lantana, brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub that can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). Lantana threatens *Melicope adscendens* (A. Medeiros, pers. comm., 1992). Kikuyu grass, an aggressive, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and produces thick mats that choke out other plants and prevent their seedlings from establishing. The species has been declared a noxious weed by the U.S. Department of Agriculture (7 CFR 360) and threatens *M. adscendens* (O'Connor 1990; Smith 1985; A. Medeiros, pers. comm., 1992). The perennial Hilo grass, naturalized in moist to wet, disturbed areas on most Hawaiian Islands, produces a dense ground cover, even on poor soil, and is a potential threat to *M. balloui* and *M. ovalis* (O'Connor 1990; L. Cuddihy, pers. comm., 1992). Strawberry guava, widely naturalized in mesic and wet Hawaiian forests, develops into stands in which few other plants grow and physically displaces natural vegetation. Pigs depend on strawberry guava for food and in turn disperse the plant's seeds through the forests (Smith 1985, Wagner *et al.* 1990). Strawberry guava, considered to be the greatest weed problem in Hawaiian wet forests, is invading Kipahulu Valley and is a potential threat to *M. balloui* and *M. ovalis* (L. Cuddihy, pers. comm., 1992).

Stochastic events such as human-set fires and wildfires destroy native Hawaiian vegetation and usually favor fire-resistant alien plants (Cuddihy and Stone 1990). Fire is a potential threat to *Melicope adscendens* (A. Medeiros, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in issuing this rule. Based on this evaluation, the preferred action is to list these three species as endangered. The species consist of only 1 or 2 populations each and 1 to approximately 10 known individual plants. They are threatened by habitat degradation and damage to plants by feral or domestic animals and by competition from alien plants. Small population size and limited distribution make these species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because these three species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being designated for the three species included in this rule for reasons discussed in the "Critical Habitat" section of this final rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered. The Service finds that designation of critical habitat is not presently prudent for these species. All three species have extremely low total populations and face anthropogenic threats. The listing of these species as endangered publicizes the rarity of the plants and, thus, can make the species attractive to researchers, curiosity seekers, or collectors of rare plants. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a designation of critical habitat would increase the species' vulnerability to take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. Protection of the species' habitat will be addressed through the recovery process and through the section 7 consultation process. All involved parties and the landowners have been notified of the importance of protecting the habitat of these species. Two of the three species are found in Haleakala National Park where Federal law protects all plants from damage or removal. It is highly unlikely that Federal activities in the National Park would directly affect the continued existence of these two species. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time because such designation would increase the species' vulnerability to vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of an endangered species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. One species (*Melicope ovalis*) is located only in Haleakala National Park. One population of another species (*M. balloui*) is also found in this park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. There are no Federal activities that are known to occur within the present known habitat of these three plant species.

The Act and implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the three *Melicope* species listed as endangered by this rule, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export such species to/from the United States; transport such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such species in interstate or foreign commerce; remove and reduce to possession such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. Section 10 of the Act and 50 CFR 17.62 provide for the issuance of permits under certain circumstances to carry out activities involving endangered plants that are otherwise prohibited by section 9.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not be likely to constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. Two of the species occur on National Park Service lands. Collection, damage or destruction of these species on Federal lands is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of Hawaii State law or regulations or in violation of a State criminal trespass law (see Hawaii State Law section below). The Service is not aware of any trade in these species or of any activities currently being conducted by the public that will be affected by this listing and result in a violation of section 9. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243). Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Pacific Islands Office (see ADDRESSES section).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species legislation. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land

plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). The State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant, or attempting to engage in any such conduct. State law also encourages conservation by State agencies. Laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Pacific Islands Office, see **ADDRESSES** above.

Author

The authors of this rule are Marie M. Bruegmann and Zella E. Ellshoff, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Melicope (=*Pelea*) *adscendens.*	Alani	U.S.A. (HI)	Rutaceae	E	565	NA	NA
*	*	*	*	*	*		*
Melicope (=*Pelea*) *balloui.*	Alani	U.S.A. (HI)	Rutaceae	E	565	NA	NA
*	*	*	*	*	*		*
Melicope (=*Pelea*) *ovalis.*	Alani	U.S.A. (HI)	Rutaceae	E	565	NA	NA
*	*	*	*	*	*		*

Dated: November 8, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–29729 Filed 12–2–94; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 59, No. 232
Monday, December 5, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 550, 752, 771, 831, and 842

RIN 3206–AG37

Agency Administrative Grievance System

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is proposing to abolish regulations at 5 CFR Part 771 on the agency administrative grievance system (AGS). This change would implement a human resources management recommendation under Vice President Al Gore's National Performance Review (NPR). This change also would be consistent with OPM's initiative under the NPR to sunset the Federal Personnel Manual (FPM), which included abolishing FPM Chapter 771 on the AGS as of December 31, 1993.

DATES: Comments must be received on or before January 4, 1995.

ADDRESSES: Written comments may be sent or delivered to Marjorie A. Marks, Chief, Family Programs and Employee Relations Division, Office of Labor Relations and Workforce Performance, U.S. Office of Personnel Management, Room 7412, 1900 E Street NW, Washington D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert (202) 606–2920.

SUPPLEMENTARY INFORMATION: The National Performance Review was issued on September 7, 1993. Appendix C to the NPR is entitled Major Recommendations Affecting Governmental Systems and includes a number of recommendations concerning reinvention of human resources management. One recommendation, HRM08, stated that agencies should "improve processes and procedures established to provide workplace due process for employees" and elaborated that "[a]ll agencies should establish alternative dispute resolution methods and options for informal disposition of employment disputes." Among other things, the recommendation specifies that "[t]he Director of the Office of Personnel Management (OPM) should eliminate by December 1994, all regulations governing internal agency grievance and appeal procedures, thus freeing agencies to tailor ADR [or alternative dispute resolution] techniques to various situations.".

The proposed abolishment of the AGS regulations does not preclude agencies from continuing their AGS procedures established under Part 771 to resolve workplace disputes. It merely means that the mandatory requirement for such procedures would cease to exist. Thus, agencies would be free to continue their AGS procedures, modify them, or eliminate them depending on the needs of their organizations. As suggested by the NPR, agencies could take the opportunity to use ADR techniques in helping resolve disputes in the workplace. Tried and proven techniques such as mediation and facilitation, to name only two of many possibilities, may be used in this regard. In addition, elimination of the restrictions contained in the current regulations affords agencies even more flexibility to design and operate appropriate workplace dispute resolution procedures. OPM's Office of Labor Relations and Workforce Performance will be available upon request to assist agencies in exercising their new flexibility in this important area of human resources management. In this role, OPM endorses and is guided by the NPR which states that "[w]orkplace problems which are not resolved in a timely and sensitive way impair productivity and morale and impede mission accomplishment."

Conforming Amendments

OPM also proposes to delete references to Part 771 as they appear elsewhere in title 5 of the Code of Federal Regulations. In those cases, the languages would be modified to refer generically to "administrative" grievances or grievance systems to reflect the fact that agencies may have administrative grievance systems even though they would no longer technically be established under Part 771, i.e., 5 CFR 300.104(c)(2), 550.803, 752.203(f), 831.204(e)(2), and 842.106(e)(2). Likewise, other current references to "administrative" grievances in title 5 (and not also referring to Part 771) would remain unchanged, i.e., 5 CFR 511.607(a)(1) and 550.804(b)(1).

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects

5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 752

Administrative practice and procedure, Government employees.

5 CFR Part 771

Administrative practice and procedure, Government employees.

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend title 5 of the Code of Federal Regulations as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The Authority citation for part 300 continues to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

2. In § 300.104, paragraph (c)(2) is revised to read as follows:

§ 300.104 Appeals, grievances and complaints.

* * * * *

(c) * * *

(2) Except as provided in paragraph (c)(1) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in § 300.103. The grievance shall be filed and processed under an agency grievance system, if applicable, or a negotiated grievance system as applicable.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart H—Back Pay

3. The authority citation for subpart H of part 550 continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100–202.

4. In section 550.803, the definition of "grievance" is revised to read as follows:

§ 550.803 Definitions

* * * * *

Grievance has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system, if applicable.

* * * * *

PART 752—ADVERSE ACTIONS

5. The authority citation for part 752 continues to read as follows:

Authority: 5 U.S.C. 7504, 7514, and 7543.

6. In section 752.203, paragraph (f) is revised to read as follows:

§ 752.203 Procedures

* * * * *

(f) *Grievances.* The employee may file a grievance through an agency administrative grievance system (if applicable) or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(3) of title 5 U.S.C., and the terms of any collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

* * * * *

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM [Removed]

7. Part 771, consisting of §§ 771.101 through 771.205, is removed.

PART 831—RETIREMENT

8. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347: § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7201(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of Pub. L. 101–508; 104 Stat. 1388–328.

9. In § 831.204, paragraph (e)(2) is revised to read as follows:

§ 831.204 Elections of retirment coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

* * * * *

(e) * * *

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

10. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Sections 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and the 7701(b)(2); § 842.106 also issued under sec. 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, and 5 U.S.C. 8402(c)(1); Sections 842.604 and 842.611 also issued under 5 U.S.C. 8417; Section 842.607 also issued under 5 U.S.C. 8416 and 8417; section 842.614 also issued under 5 U.S.C. 8419; section 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under sec. 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; section 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; section 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

11. In § 842.106, paragraph (e)(2) is revised to read as follows:

§ 842.106 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

* * * * *

(e) * * *

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code.

* * * * *

[FR Doc. 94–29828 Filed 12–2–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 509

[No. 94–252]

RIN 1550–AA80

Rules of Practice and Procedure in Adjudicatory Proceedings

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing an

amendment to its Rules of Practice and Procedure in Adjudicatory Proceedings. The proposal is intended to clarify that provisions relating to *ex parte* communications conform to the requirements of the Administrative Procedure Act (APA). In particular, the proposed amendment would clarify that the *ex parte* provisions do not apply to intra-agency communications, which are governed by a separate provision of the APA.

DATES: Comments must be received by January 4, 1995.

ADDRESSES: Written comments should be submitted to Director, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 94–252. These submissions may be hand delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 1:00 p.m. until 4:00 p.m., on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Eliot Goldstein, Senior Enforcement Counsel, Division of Enforcement, Chief Counsel's Office (202/906–7162); or Karen Osterloh, Counsel, Banking and Finance, Regulations and Legislation Division, Chief Counsel's Office (202/906–6639), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

In August, 1991, the Office of Thrift Supervision (OTS), the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) adopted Uniform Rules of Practice and Procedure for agency adjudicatory proceedings. (OTS, 56 FR 38302, Aug. 12, 1991; OCC, 56 FR 38024, Aug. 9, 1991; Board of Governors, 56 FR 38048, Aug. 9, 1991; FDIC, 56 FR 37968, Aug. 9, 1991; and NCUA, 56 FR 37762, Aug. 8, 1991). The OTS codified these uniform rules in its Rules of Practice and Procedure in Adjudicatory Proceedings at 12 CFR Part 509, Subpart A.

In this Notice, the OTS is proposing to amend one aspect of its rules relating to *ex parte* communications to clarify that the rules parallel the requirements of the Administrative Procedure Act (APA). The other banking agencies are issuing identical proposals.

Currently, § 509.9 prohibits "a party, his or her counsel, or another interested person" from making an *ex parte* communication to the Director or other decisional official concerning the merits of an adjudicatory proceeding. When the uniform rules were proposed and adopted in 1991, the joint notice of proposed rulemaking (56 FR 27790, 27793, June 17, 1991) explained that the proposed rule regarding *ex parte* communications "adopts the rules and procedures set forth in the APA regarding ex parte communications." There was no intention at that time to impose a rule more restrictive than that imposed by the APA.

The APA contains two provisions relating to communications with agency decision-makers. The APA's *ex parte* communication provision restricts communications between "interested person[s] *outside the agency*" and the agency head, the administrative law judge (ALJ), or the agency decisional employees. 5 U.S.C. 557(d) (emphasis added). *Intra-agency* communications are governed by the APA's separation of functions provision, 5 U.S.C. 554(d). That section prohibits investigative or prosecutorial personnel at an agency from "participat[ing] or advis[ing] in the decision, recommended decision, or agency review" of an adjudicatory matter pursuant to section 557 of the APA except as witness or counsel. The same separation of function provision provides that the ALJ in an adjudicatory matter may not consult any party on a fact in issue unless the other parties have an opportunity to participate. 5 U.S.C. 554(d)(1). The separation of functions provision does not prohibit agency investigatory or prosecutorial staff from seeking the amendment of a notice or the settlement or termination of a proceeding.

The rule as proposed and adopted in 1991, however, neglected to mention the separation of functions concept explicitly, and appeared to apply the *ex parte* communication prohibition to all communications concerning the merits of an adjudicatory proceeding between the Director, ALJ or decisional personnel on the one hand, and any "party, his or her counsel, or another person interested in the proceeding" on the other. The OTS and the other banking agencies do not interpret this provision as limiting agency enforcement staff's ability to seek approval of amendments to or terminations of existing enforcement actions. As drafted, however, the provision could be misinterpreted to expand the *ex parte* communication prohibition beyond the scope of the APA. The OTS and the other banking agencies did not intend this result.

The proposed amendment clarifies that the regulation is intended to conform to the provisions of the APA by limiting the prohibition on *ex parte* communications to communications to or from "interested persons outside the agency," 5 U.S.C. 557(d), and by incorporating explicitly the APA's separation of functions provisions, 5 U.S.C. 554(d). This approach is also consistent with the most recent Model Adjudication Rules prepared by the Administrative Conference of the United States.

II. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS hereby certifies that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The proposed rule makes a minor amendment to a rule of practice already in place, and affects intra-agency procedure exclusively. Thus, it should not result in additional burden for regulated institutions. The purpose of the revised regulation is to conform the provisions of the regulation to those imposed by statute.

III. Executive Order 12866

The OTS has determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866.

List of Subjects in 12 CFR Part 509

Administrative practice and procedures, Penalties.

For the reasons set forth in the preamble, the Office of Thrift Supervision hereby proposes to amend part 509, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 78*l*.

2. Section 509.9 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (e) to read as follows:

§ 509.9 Ex parte communications.

(a) *Definition.* (1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Office (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, the Director, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Director until the date that the Director issues its final decision pursuant to § 509.40(c):

(1) No interested person outside the Office shall make or knowingly cause to be made an *ex parte* communication to the Director, the administrative law judge, or a decisional employee; and

(2) The Director, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the Office any *ex parte* communication.

* * * * *

(e) *Separation of functions.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the Office in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under section 509.40 of this Part, except as witness or counsel in public proceedings.

Dated: November 18, 1994.

By the Office of Thrift Supervision.

Jonathan Fiechter,

Acting Director.

[FR Doc. 94–29762 Filed 12–2–94; 8:45 am]

BILLING CODE 6720–01–P

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12 CFR Part 563

[No. 94–245]

RIN 1550–AA72

Capital Distributions

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its capital distributions regulation to conform to the system of prompt corrective action (PCA) established by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and by implementing regulations adopted by the OTS and the other federal banking agencies. The proposed regulation incorporates the PCA definition of capital distributions. Under the proposal, a savings association that is not held by a savings and loan holding company and that has a composite CAMEL rating of "1" or "2" need not notify the OTS before making a capital distribution. Other savings associations that will remain at least adequately capitalized after making a capital distribution would be required to provide notice to the OTS. "Troubled" associations and undercapitalized associations may make capital distributions only by filing an application and receiving OTS approval. Such applications may be approved only under certain limited conditions.

The proposed regulation defines "troubled condition" as a function of a savings association's composite examination rating, its capital condition, or on the basis of supervisory directives issued, or "troubled condition" designation made, by the OTS.

DATES: Comments must be received on or before February 3, 1995.

ADDRESSES: Send comments to Director, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 94–245. These submissions may be hand delivered to 1700 G Street, NW. from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Submissions must be received by 5:00 P.M. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW., from 1:00 P.M. until 4:00 P.M. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Therese Monahan, Project Manager, (202) 906–5740, Robyn Dennis, Program Manager, (202) 906–5751, Supervision; Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906–7052, Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office; Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OTS is proposing today to simplify its current capital distributions regulation in light of both its implementation of PCA and the improved capital position of the thrift industry. The proposal reduces the regulatory burden and compliance costs associated with capital distributions and, for the healthiest savings associations, removes those costs and burden entirely to the extent permitted by statute. Adequately or well capitalized savings associations that (1) are not held by savings and loan holding companies [1]; (2) have a composite rating of "1" or "2;" (3) are not deemed to be in "troubled condition;" and (4) will remain at least adequately capitalized after the proposed capital distribution are not required to provide notice to the OTS before making capital distributions. Notice is not required because these associations are in the two highest rating categories and the rule requires that savings associations continue to be adequately capitalized after the capital distribution.

In 1990, the OTS adopted a capital distributions regulation, 12 CFR 563.134, 55 FR 17185 (July 2, 1990), designed to apply a uniform regulatory approach to all capital distributions made by savings associations, including dividends, stock repurchases, and cash-out mergers. The OTS adopted this rule during a period when the thrift industry was considered generally undercapitalized. The rule established a "tiered" approach under which an association's ability to make capital distributions varied according to its level of capitalization. Associations that met their fully phased-in capital requirements had greater flexibility to make capital distributions than associations that did not. All associations were required either to provide notice to the OTS or to apply for approval before making any capital distribution. At that time, thrifts were under pressure to increase capital in order to meet rapidly rising standards and the regulation was intended to restrict capital distributions by

[1] Section 10(f) of the Home Owners Loan Act of 1933, as amended, requires that every subsidiary savings association of a savings and loan holding company give the Director of the OTS no less than 30 days advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. *See* 12 U.S.C. 1467a(f).

associations that were not expected to meet the FIRREA capital requirements.

In September 1992, the OTS promulgated its Prompt Corrective Action Final Rule (PCA Rule). 57 FR 44866 (September 29, 1992). The PCA Rule implemented section 131 of FDICIA,[2] which created a new statutory framework that applies to all insured depository institutions a system of supervisory actions indexed to capital levels. Well-capitalized and adequately capitalized institutions are generally not subject to PCA restrictions;[3] institutions falling into the undercapitalized, significantly undercapitalized, and critically undercapitalized categories are subject to increasing levels of supervisory restrictions. Under the PCA Rule, the ratio of total capital to risk-weighted assets, the ratio of core capital to risk-weighted assets, and the ratio of core capital to total average assets (the leverage ratio)[4] are used to determine a thrift's PCA category.

In the preamble to the PCA Rule, the OTS indicated "that the permissibility of capital distributions will be determined by the prompt corrective action regulations."[5] Moreover, specific regulatory incentives are now in place to encourage associations to maintain high capital levels, which was the original goal of the capital distributions regulation. Additionally, the capital tier thresholds in the current regulation have become partially obsolete as associations have met targets for the fully phased-in capital requirements under part 567.

II. Description of Proposal

This proposal simplifies the current capital distribution regulation by replacing the "tiered" approach to allowing savings associations to make capital distributions with one that allows associations to make only capital distributions that would not cause capital to drop below the level required to remain adequately capitalized. The OTS believes that the proposed rule, which is revised to conform with the PCA, is, on balance, as stringent as the Office of the Comptroller of the Currency (OCC) treatment of capital distributions. Each agency provides guidance and standards relating to limitations on the amount of capital distributions permissible although the OCC has another statutorily imposed standard in addition to the PCA standard and the OTS does not.[6] In addition, each agency requires prior notification if capital distributions exceed these standards.

Conformity with PCA

The proposed regulation incorporates the standards established in the PCA Rule into 12 CFR 563.134 by defining "capital distributions" to reflect the language of section 38(b)(2)(B).

Pursuant to the regulatory standards set forth in the PCA Rule, a savings association is "adequately capitalized" if it has a total risk-based capital ratio of 8.0 percent or greater; a core risk-based capital ratio of 4.0 percent or greater; and a leverage ratio of 4.0 percent or greater (or of 3.0 percent or greater, if it was rated composite 1 after its most recent examination).

Associations may not make capital distributions that would cause capital to drop below the level required to remain adequately capitalized. The OTS believes that distinguishing among savings associations on this basis, rather than the current multi-tiered structure, is more appropriate for an industry that is generally not capital deficient.

Notices and Applications

Under the proposal, a savings association may make a capital distribution using one of three procedures: (1) without notice or application, if the association is not held by a savings and loan holding company and received a composite rating of "1" or "2;" (2) by providing notice to the OTS if, after the capital distribution, the association would remain at least adequately capitalized; or (3) by submitting an application to the OTS.

The OTS notes that the first procedure—distribution without notice or application in certain circumstances—could permit a savings association to reduce its capital significantly and quickly so long as it remained at, or just above, the adequately capitalized threshold. OTS has proposed this procedure because it wishes to allow maximum flexibility to the best institutions consistent with its overall goal of reducing regulatory burden where possible and where consistent with safety and soundness. The OTS, however, specifically solicits comment on whether the broad flexibility that this procedure allows to the institutions that qualify to use it poses safety and soundness concerns. Commenters addressing this issue are also invited to suggest alternative procedures and/or additional conditions that would strike the appropriate balance between reducing regulatory burden and ensuring prompt and effective regulatory oversight. For instance, should notice be required if the dividend will cause the capital level to fall below "well capitalized" or, as the discussion below describes, if it exceeds an established threshold amount?

The second procedure—distribution upon notice to OTS—would be available to institutions that do not qualify for the first, that is, to institutions with a composite CAMEL rating of lower than 2 or to those in a holding company structure.

The third procedure—distribution upon application to and approval by the OTS—is available in two circumstances: first, if under PCA criteria the applicant institution is undercapitalized or would be undercapitalized after the capital distribution; second, if the applicant institution is not undercapitalized under the PCA standards but is nonetheless in "troubled condition."

The Prompt Corrective Action statute and the OTS's implementing PCA Rule prohibit savings associations from declaring any dividend or making any other capital distribution if, following the distribution, the institution would fall within any of the three undercapitalized categories. A limited exception to this prohibition permits the OTS to approve the repurchase, redemption, retirement or acquisition of shares or ownership interests by an undercapitalized institution in connection with the issuance of additional shares in at least an equivalent amount if that distribution will reduce the institution's financial obligations or otherwise improve the institution's financial condition.

The OTS proposes to incorporate this limited exception into its capital distribution rule and to add the requirement that the distribution be consistent with an institution's capital restoration plan. Thus, with respect to a savings association that is, or post-distribution would be, undercapitalized, the OTS will approve an application to make a capital distribution only if the distribution meets the criteria for the limited statutory and regulatory exception described above and is consistent with the association's capital restoration plan. When considered in the context of the capital restoration plan, the proposed distribution must be

[2] Section 131 of FDICIA added a new section 38 to the Federal Deposit Insurance Act. The provision is codified at 12 U.S.C. 1831o. The OTS's implementing regulations appear at 12 CFR Part 565.

[3] Under certain circumstances, an institution may be reclassified to a lower capital category or treated as if it were in a lower capital category. *See* 12 CFR 565.4(c).

[4] Core capital, which is defined in part 567 of the OTS's regulations, is the thrift capital measure comparable to Tier 1 capital for banks. 12 CFR Part 567.

[5] *See* 57 FR at 44868.

[6] *See* 12 U.S.C. 60.

consistent with safe and sound operation and must not hinder the association from achieving any increased levels of capital required to meet the OTS's capital standards as certain statutory "phase-in" schedules take effect.[7] The OTS notes that, since enactment of the PCA statute, it has authorized use of the limited exception principally to provide incentives to private investors in recapitalization transactions where, at the conclusion of the entire transaction, the institution was adequately capitalized or better.

The OTS will use the same application procedure and will apply the same approval standards with respect to savings associations in "troubled condition." "Troubled condition" would be defined in the rule to mean the condition of any savings association that: (1) has a composite rating of 4 or 5 under the OTS's examination rating system; (2) is subject to a capital directive, a cease and desist order, a consent order, a formal written agreement, or a PCA directive relating to the safety and soundness or financial viability of the association, unless otherwise informed in writing by the OTS; or (3) is informed in writing by the OTS that it has been designated in "troubled condition" based on its current financial statements, report of examination, or limited scope review.

The OTS intends to continue to use net income to date during the calendar year plus 50 percent of surplus capital above the adequately capitalized level as the general rule of thumb for determining the permissible amount of a capital distribution. Under the proposal, however, this limit would no longer be prescribed by regulation. The effect of its removal from regulatory language would be that institutions not in a holding company structure with composite ratings of 1 or 2 could make capital distributions that exceeded the limit without any notice to the OTS. The OTS invites comment on whether it would be preferable to retain a notice requirement for all capital distributions above the amount described by the general rule of thumb regardless of an institution's CAMEL rating. Commenters are also invited to address and suggest alternatives to the computation that OTS uses to determine the permissible amount of a capital distribution.

Finally, the proposal would explicitly reserve the OTS's authority to prohibit any capital distribution that it determines would constitute an unsafe or unsound practice.

Comment Solicitation

In addition to the specific requests for comment that appear above, the OTS solicits comment on all aspects of the proposal.

Executive Order 12866

The Director of the OTS has determined that this regulation does not constitute a significant regulatory action for purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Office certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation merely conforms the capital distribution regulation to standards already in place for all institutions as a result of PCA.

Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

The reporting requirements in this proposed rule are found in 12 CFR 563.134. The information to be collected will provide the OTS with the opportunity to preserve and enhance capital levels of all associations. The likely respondents are Federal savings associations.

Estimated number of respondents: 610.

Estimated average annual burden per respondent: .275 hour.

Estimated annual frequency of responses: Once.

Estimated total annual reporting burden: 168 hours.

List of Subjects in 12 CFR Part 563

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

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 563, subchapter D, chapter V, title 12 of the Code of Federal Regulations as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

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

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

2. Section 563.134 is revised to read as follows:

§ 563.134 Capital distributions.

(a) *Definitions.* For purposes of this part—(1) *Capital distribution* means:

(i) A distribution of cash or other property by any savings association to its owners made on account of that ownership, but not including—

(A) Any dividend consisting only of shares of the institution or rights to purchase such shares; or

(B) Any amount paid on the deposits of a mutual or cooperative institution that the OTS determines is not a distribution for purposes of this section;

(ii) A payment by a savings association to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance an affiliated company's acquisition of those shares or interests; or

(iii) A transaction that the OTS or the Corporation determines, by order or regulation, to be in substance a distribution of capital of the savings associations.

(2) *Undercapitalized association* means an association in one of the three undercapitalized categories set forth in part 565 of this subchapter.

(3) *Shares* means common or preferred stock; or any options, warrants, or other rights for the acquisition of such stock. This term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution. The term "share" does include:

(i) Convertible securities upon their conversion into common or preferred stock; and

(ii) Securities structured for the purpose of evading the restrictions on capital distributions in this section.

(4) *Troubled condition* means any savings association that:

(i) Has a composite rating of 4 or 5 under the examination rating system;

(ii) Is subject to a capital directive, a cease and desist order, a consent order,

[7] The statutory authority for certain savings associations to include "qualifying supervisory goodwill" in core capital expires on December 31, 1994. 12 U.S.C. 1464(t)(3)(A). After June 30, 1996, savings associations will not be permitted to include in capital any portion of their investments in and extensions of credit to subsidiaries engaged in activities not permissible for a national bank. *Id.* at 1464(t)(5)(D).

a formal written agreement, or a prompt corrective action directive, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(iii) Is informed in writing by the OTS that it has been designated in *troubled condition* based on the current financial statements, report of examination, or limited scope review of the savings association.

(b) *Capital Distribution Restrictions.* (1) An undercapitalized association is not authorized to make any capital distributions except in accordance with the provisions of this paragraph.

(2) Subject to the concurrence of the Corporation, applications to repurchase, redeem, retire or otherwise acquire shares or ownership interests may be approved in the case of:

(i) An association operating in compliance with an approved capital restoration plan under § 565.5 of this subchapter; or

(ii) An association that is well or adequately capitalized and that wishes to make a capital distribution that would result in the association being undercapitalized; *Provided,* that the association has filed with the OTS, and obtained approval for, a capital restoration plan under § 565.5 of this subchapter.

(3) The proposed repurchase, redemption, retirement or other acquisition of shares or ownership interests must:

(i) Be consistent with the association's capital restoration plan;

(ii) Be made in connection with the issuance of additional shares or obligations of the institution in at least an equivalent amount; and

(iii) Reduce the financial obligations or otherwise improve the association's financial condition.

(c) *Notices and applications.* (1) *Notices.* A savings association that:

(i) Is at least adequately capitalized, as defined in part 565 of this subchapter;

(ii) Is not deemed to be in troubled condition, as defined herein; and

(iii) Will remain at least adequately capitalized following the proposed capital distribution must notify the OTS pursuant to § 516.3(a) of this chapter of its intent to make a capital distribution; *Provided,* That a savings association meeting the requirements of paragraphs (c)(1) (i) through (iii) of this section that is not held by a savings and loan holding company and that received a composite rating of "1" or "2" is exempt from the notice requirement.

(2) *Applications.* An association that proposes to make a capital distribution must submit a written application to the OTS pursuant to § 516.2 of this chapter if it is:

(i) An association that is deemed to be in "troubled condition;"

(ii) A well or adequately capitalized association that wishes to make a capital distribution that would result in the association being undercapitalized; or

(iii) An undercapitalized association.

(3) *Multi-purpose notices or applications.* A separate notice or application for making a capital distribution is not necessary if a notice or application providing sufficient information is required under other OTS regulations. In such a case, the standards of this section shall govern whether the capital distribution is approved or disapproved or whether, under a notice, the OTS will object to the capital distribution. The association has the burden of stating clearly that the notice or application submitted for other purposes is also serving as its notice or application for purposes of this section. Associations may seek approval or provide notice of prospective capital distributions by submitting schedules of such prospective capital distributions in accordance with supervisory guidance on such procedures.

(d) *Prohibition of otherwise permitted capital distributions.* The OTS may prohibit any capital distribution otherwise permitted under this section upon a determination that the making of a capital distribution would constitute an unsafe or unsound practice. The circumstances posing such risk include, but are not limited to, a capital distribution by an adequately capitalized association whose capital is or may be impaired as a result of substantial losses.

(e) *Corporate reorganizations.* The limits set forth in paragraph (c) of this section shall be applicable to any direct or indirect distributions of capital to affiliates, including those in connection with corporate reorganizations.

(f) *Less stringent prior provisions or conditions.* The requirements of this section shall supersede the provisions of agreements or conditions to approved applications controlling an association's prospective capital distributions that were less stringent than the restrictions imposed under this rule.

(g) *More stringent prior provisions or conditions.* An association may substitute the requirements of this rule for more stringent requirements imposed upon it by a previous written agreement or application condition after obtaining the written approval of the OTS.

Dated: November 16, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–29761 Filed 12–2–94; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

14 CFR Ch. III

[Docket Nos. 49815 (Licensing Commercial Space Launch Activities) and 43098 (Financial Responsibility Requirements)]; Notice 94–21]

Public Meeting; Extension of Comment Period

AGENCY: Office of the Secretary, Office of Commercial Space Transportation, DOT.

ACTION: Extension of comment period.

SUMMARY: The Department of Transportation's Office of Commercial Space Transportation (OCST) announced a public meeting and solicited comments in a notice published in the **Federal Register** on October 13, 1994. The notice requested comments from all interested and/or affected parties to assist OCST in developing notices of proposed rulemaking addressing implementation of regulations governing the licensing of commercial space launch activities and regarding financial responsibility requirements. OCST requested that all written comments be submitted by November 14, 1994. OCST has received requests for additional time in submitting comments. Because of the significance of OCST's proposed rulemaking activities, OCST has extended the comment period until December 16, 1994.

DATES: Comments must be received on or before December 16, 1994.

ADDRESSES: OCST would appreciate receiving each submission in triplicate with an indication of the Docket Number (listed above) to which it refers. One submission may be used to address both the licensing and financial responsibility dockets. Submissions should be sent to Docket Clerk, Department of Transportation, 400 7th Street S.W., Room 4107, Washington, DC 20590. Comments will be available for public inspection at this address from 9:00 a.m. to 5:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Montgomery, Office of the General Counsel, (202) 366–9305,

Department of Transportation, 400 7th Street, SW, Washington, DC 20590.

Issued in Washington, DC, November 23, 1994.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 94–29668 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–62–U

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ANM–48]

Proposed Amendment to Class E Airspace; Lamar, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Lamar, Colorado, Class E airspace. This action would provide controlled airspace for a new instrument approach procedure at the Lamar Municipal Airport, Colorado. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing the approach.

DATES: Comments must be received on or before December 30, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–48, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

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

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–48, 1601 Lind Avenue SW, Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Please refer to Docket 94–ANM–48 when responding. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–48." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify Docket 94–ANM–48. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Lamar, Colorado, to provide controlled airspace for a new instrument approach procedure at the Lamar Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed for aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM CO E5 Lamar, CO [Revised]

Lamar Municipal Airport, CO
(Lat. 38°04′12″ N, long. 102°41′19″ W)
Lamar VORTAC
(Lat. 38°11′50″ N, long. 102°41′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Lamar Municipal Airport, and within 3.1 miles each side of the Lamar VORTAC 001° radial extending from the 6.8 mile radius to 8.7 miles north of the VORTAC; that airspace extending upward from 1,200 feet above the surface beginning on the Colorado/Kansas state boundary at lat 38°34′00″ N; thence along the Colorado/Kansas state boundary to lat. 37°11′00″ N; to lat. 37°11′00″ N, long. 103°24′00″ W; to lat.

38°34'00" N, long. 103°24'00" W; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on November 17, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–29816 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–1]

Amendment to Class E Airspace; North Bend, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace at North Bend, Oregon, to accommodate a new Standard Instrument Approach Procedure (SIAP) at the North Bend Municipal Airport, Oregon. Controlled airspace extending upward from the surface is needed for aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 30, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–1, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

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

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–1, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Some are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for our comments. A report summarizing each substantiative public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at North Bend, Oregon, to provide controlled airspace for a new SIAP at the North Bend Municipal Airport. Controlled airspace extending upward from the surface is needed for aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from the surface of the earth and from 700 feet or more above the surface of the earth are published in Paragraphs 6002 and 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ANM OR E2 North Bend, OR [Revised]

North Bend Municipal Airport, OR
(Lat. 43°25'02" N, long. 124°14'46" W)
North Bend VORTAC
(Lat. 43°24'36" N, long. 124°10'06" W)
Empire, LOM/NDB
(Lat. 43°23'41" N, long. 124°18'37" W)

Within a 4.2-mile radius of the North Bend Municipal Airport, and within 1.8 miles each side of the North Bend VORTAC 044° radial extending from the 4.2-mile radius to 5.7 miles northeast of the VORTAC, and within 3.7 miles each side of the North Bend VORTAC 09° radius extending from the 4.2-mile radius to 7.5 miles east of the VORTAC,

and within 2.7 miles each side of the 241° bearing from the Empire LOM/NDB extending from the 4.2-mile radius to 6.1 miles southwest of the LOM/NDB.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM OR E5 North Bend, OR [Revised]

North Bend VORTAC
(Lat. 43°24'56" N, long. 124°10'06" W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the North Bend VORTAC from the 142° radial CW to the 352° radial, an within a 14-mile radius of the VORTAC from the 352° radial CW to the 142° radial, and within 2.7 miles north of the North Bend VORTAC 268° radial extending from the 8-mile radius to 11 miles west of the VORTAC, and within 1.8 miles south and 5.7 miles north of the VORTAC 241° radial extending from the 8-mile radius to 14.8 miles southwest; that airspace extending upward from 1,200 feet above the surface within a 19.2-mile radius of the North Bend VORTAC extending clockwise from the west edge of V–27 south of the VORTAC, to the west edge of V–287 north of the VORTAC, and within 2.2 miles southeast and 10.1 miles northwest of the North Bend VORTAC 241° radial, extending from the VORTAC to 22.2 miles southwest.

* * * * *

Issued in Seattle, Washington, on November 15, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–29817 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–34]

Proposed Revision of Class E Airspace; Hondo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: This document revises an earlier proposed airspace rule that would have amended the airspace at Hondo, TX. That proposal was preempted by the development of a new very high frequency omni-directional range (VOR) standard instrument approach procedure (SIAP) to Runway (RWY) 17. The legal description of the proposed airspace in the notice of proposed rulemaking was incomplete. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the recently established VOR RWY 17 SIAP at Hondo, TX.

DATES: Comments must be received on or before January 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 92–ASW–34, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–34." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of SNPRM

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this SNPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

On December 17, 1993, the FAA proposed to revise the Class E airspace at Hondo, TX (58 FR 65948). That action proposed to revise the 700 feet AGL Class E airspace to provide adequate controlled airspace for aircraft executing the recently established VOR SIAP to RWY 17. The comment period for that action ended February 19, 1994. Since the issuance of that Notice of Proposed Rulemaking (NPRM), the FAA has discovered that the legal description contained in that proposal did not include the airspace required from the airport to 16 miles south of RBN. Therefore, this SNPRM proposes a correction to that legal description. Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide an additional opportunity for public comment.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points,* dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 Hondo, TX [Revised]

Hondo Municipal Airport, TX
(Lat. 29°21′35″ N., long. 99°10′36″ W.)
Hondo RBN
(Lat. 29°22′24″ N., long. 99°10′19″ W.)
Hondo VOR
(Lat. 29°21′16″ N., long. 99°10′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Hondo Municipal Airport and within 8 miles west and 4 miles east of the 180° bearing from the Hondo RBN extending from the airport to 16 miles south of the RBN and within 2.3 miles each side of the 352° radial of the Hondo VOR extending from the 6.7-mile radius to 6.9 miles north of the airport.

* * * * *

Issued in Forth Worth, TX on November 18, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 94–29798 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASW–17]

Proposed Establishment of Class E Airspace: La Grange, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL), at Fayette Regional Air Center, La Grange, TX. The development of a Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) standard instrument approach procedure (SIAP) to Runway (RWY) 16–34 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR/DME SIAP to RWY 16–34 at Fayette Regional Air Center, La Grange, Texas.

DATES: Comments must be received on or before January 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 94–ASW–17, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 94–ASW–17." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL at Fayettee Regional Air Center, La Grange, TX. The development of a Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) SIAP has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR/DME SIAP at Fayette Regional Air Center, La Grange, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace

areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 La Grange, TX [New]

Fayette Regional Air Center, TX
(Lat. 29°54'31" N., long. 096°56'59" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fayette Regional Air Center.

* * * * *

Issued in Fort Worth, TX on November 18, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 94–29799 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASW–16]

Proposed Establishment of Class E Airspace; Ozona, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Ozona Municipal Airport, Ozona, TX. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 16 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ozona Municipal Airport, Ozona, TX.

DATES: Comments must be received on or before January 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 94–ASW–16, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 94–ASW–16." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL, at Ozona Municipal Airport, Ozona, TX. The development of a GPS RWY 16 SIAP has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 16 SIAP at Ozona Municipal Airport, Ozona, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 Ozona, TX [New]

Ozona, Ozona Municipal Airport, TX
(Lat. 30°44'06" N., long. 101°12'10" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ozona Municipal Airport.

* * * * *

Issued in Fort Worth, TX on November 18, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–29797 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–23]

Proposed Amendment to Class E Airspace; Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Wenatchee, Washington, Class E airspace. This action would provided controlled airspace for a new instrument approach procedure at the Wenatchee, Pangborn Memorial Airport, Washington. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing the approach. The area would be depicted on aeronautical charts to provide a reference for pilots operating under Visual Flight Rules (VFR).

DATES: Comments must be received on or before December 30, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–23, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

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

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–23, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested is being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Wenatchee, Washington, to provide controlled airspace for a new instrument approach procedure at the Pangborn Memorial Airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accodingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM WA E5 Wenatchee, WA [Revised]

Wenatchee, Pangborn Memorial Airport, WA
(Lat. 47°23'55" N, long. 120°12'24" W)
Wenatchee, VOR/DME
(Lat. 47°23'58" N, long. 120°12'39" W)

That airspace extending upward from 700 feet above the surface within 4.3 miles each side of the 299° radial from the Wenatchee VOR/DME to 13.4 miles northwest of the VOR/DME to 21 miles southeast of the VOR/DME, excluding that portion within the Moses Lake, Grant County, and Quincy Airport, WA, Class E airspace areas; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at:

Lat. 47°36'00" N, long. 120°43'00" W;
To lat. 47°36'00" N, long. 119°39'30"W;
To lat. 47°07'00" N, long. 119°39'30"W;
To lat. 47°07'00" N, long. 120°43'00"W;
To the point of beginning. Excluding that portion within the Moses Lake, Grant County Airport, WA, Class E airspace area.

* * * * *

Issued in Seattle, Washington, November 16, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–29818 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 83G–0277]

α-Amylase Enzyme Preparation; Affirmation of GRAS Status as Direct Human Food Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is tentatively affirming that α-amylase enzyme preparation derived from *Bacillus stearothermophilus* is generally recognized as safe (GRAS) for use in the processing of starch to make maltodextrins and nutritive carbohydrate sweeteners.

DATES: Written comments by February 3, 1995.

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: Vincent E. Zenger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3105.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), CPC International Inc., International Plaza, Englewood Cliffs, NJ 07632, submitted a petition (GRASP 3G0284) requesting that α-amylase enzyme from *B. stearothermophilus* used in the production of nutritive saccharides from starch be affirmed as GRAS as a direct human food ingredient. The petition includes information about the identity of, and manufacturing processes for, α-amylase enzyme preparations derived from *B. stearothermophilus*; information about the history of human food use of α-amylase derived from *B. stearothermophilus*; final reports and published articles of safety studies with α-amylase enzyme preparation derived from *B. stearothermophilus*; and published literature with respect to α-amylase and bacterial α-amylase preparations.FDA published a notice of the filing of this petition in the **Federal Register** of September 21, 1983 (48 FR 43096). FDA gave interested persons an opportunity to submit comments to the Dockets Management Branch (address above). FDA did not receive any comments in response to that notice.

In the filing notice the agency gave notice that the petition had requested that α-amylase enzyme derived from B. stearothermophilus be affirmed as GRAS for use in production of sweeteners from starch. However, the petition requested, and the agency evaluated, the use of this enzyme preparation in the production of nutritive saccharides (which includes maltodextrins as well as nutritive carbohydrate sweeteners). The end products of the α-amylase hydrolysis of starch are maltodextrins, which are not sweet and are not used as sweeteners in food, as well as nutritive carbohydrate sweeteners. Maltodextrins may be used as a food ingredient or used as a raw material in the manufacture of nutritive carbohydrate sweeteners, for example, glucose syrups. Therefore, FDA finds that the phrase "production of maltodextrins and nutritive carbohydrate sweeteners from starch" is a more accurate description of the petitioned food use of α-amylase enzyme preparation. FDA is publishing this document as a tentative final rule to afford interested persons the opportunity to comment on this change. To avoid confusion between α-amylase, the enzyme, and α-amylase, the enzyme preparation (in which α-amylase is the principal active component, but which also contains other components derived from the production organism or the fermentation media), this document will use the term "α-amylase" to refer to the former and "α-amylase enzyme preparation" to refer to the latter.

II. Standards for GRAS Affirmation

Pursuant to § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of

substances. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation but ordinarily is to be based upon generally available data and information concerning its pre-1958 use (§ 170.30(c)).

III. Safety Evaluation

A. IntroductionStarch produced in plants exists in two main forms. The linear form is composed of α-D-glucose sugar residues bonded together with a type of linkage termed α-1,4 (Ref. 1). This linear form is commonly termed amylose. The other form of starch, termed amylopectin, is composed of amylose molecules linked together at branch points. In this form, resembling a tree-like structure, the branch points are formed by a different kind of linkage termed α-1,6. An α-amylase enzyme (1,4-α-D glucan glucanohydrolase (International Union of Biochemistry Enzyme Commission (E.C.) 3.2.1.1)) can hydrolyze, i.e., break, the α-1,4 linkages found in amylose and amylopectin (Ref. 2). Treatment with α-amylase enzyme lowers the molecular weight of the starch molecules to form molecules collectively called maltodextrins.

Certain maltodextrins may be subjected to subsequent processing. For instance, corn maltodextrins may be further hydrolyzed by another enzyme, glucoamylase, to produce glucose (also known as dextrose) which may in turn be isomerized to form high fructose corn syrups. These corn sweeteners are refined with ion exchange resins to remove impurities and are then concentrated. The processed corn sweeteners are then used in a wide variety of products in the food industry. Current technology sometimes requires the α-amylase enzyme to function at high temperatures, up to 110° C (Refs. 1 and 3). Therefore, much effort has gone into research on α-amylases from thermophilic microorganisms such as *B. stearothermophilus* (Ref. 3).

In evaluating this petition to affirm as GRAS the use of α-amylase enzyme preparation from *B. stearothermophilus* as a food ingredient, the agency considered six aspects of its manufacture and use: (1) The identity of the α-amylase enzyme component; (2) the identity and safety of the source (production) organism for the α-amylase enzyme preparation; (3) the manufacturing process of the α-amylase enzyme preparation; (4) the intended uses for the α-amylase enzyme preparation in food and exposure to residual levels of the α-amylase enzyme preparation; (5) the specifications for the formulation of the enzyme preparation; and (6) toxicological studies of the enzyme preparation.

B. The Enzyme Component

The α-amylase enzyme from *B. stearothermophilus* is extracellular (Ref. 2). That is, the enzyme is secreted by the bacteria into the surrounding media. Data and published information in the petition confirm that the petitioner's enzyme preparation from *B. stearothermophilus* functions in the hydrolysis of starch as an α-amylase (1,4-α-D glucan glucanohydrolase (E.C. 3.2.1.1)) (Refs. 4 through 7).

Published data show that the α-amylase enzyme functions at an optimum temperature of 80° C and at pH values below 6 (Ref. 7), which is consistent with previous published reports characterizing α-amylase from *B. stearothermophilus* and other thermophilic Bacillus species (Refs. 2 and 3).

The published data further show that the petitioner's enzyme has a molecular weight of 58 kilodaltons (kd) (Ref. 7) which is consistent with the 58 kd mass reported by Sen (Ref. 8) and within experimental error of the predicted 61 kd mass based on deoxyribonucleic acid (DNA) sequence analysis (Ref. 9).

The α-amylases are functionally divided into two categories, saccharifying α-amylases, which break approximately 40 to 60 percent of the α-1,4 linkages in a starch, and liquefying α-amylases, which break only 30 to 40 percent of the linkages in the starch (Ref. 3). The α-amylase from *B. stearothermophilus* is of the liquefying type and is very similar in protein sequence to liquefying α-amylases from other Bacillus species that have been commonly used in food processing (Refs. 1, 3, and 9 through 12), for example, *Bacillus amyloliquefaciens* (Ref. 1) and *Bacillus licheniformis* (see 21 CFR 184.1027).

C. The Production Organism

The source organism for this enzyme preparation is the bacterium *B. stearothermophilus*. The petition includes data to show that the strain used by the petitioner, *B. stearothermophilus* (AS–154), conforms to the description of *B. stearothermophilus* in "Bergey's Manual of Determinative Bacteriology," 8th ed. (Ref. 13), which is a standard compendium for the taxonomy of bacteria. The petition also contains data to show that this strain of *B. stearothermophilus* is an asporogenic variant and does not produce antibiotics or toxins.

Published scientific literature as well as standard textbooks on food microbiology demonstrate that *B. stearothermophilus* and its spores are widely distributed in nature and they are commonly found in fresh foods (Refs. 13 and 14). *B. stearothermophilus* is also reported to be the typical organism causing nontoxic sour spoilage in low acid foods (Ref. 14).

The petition contains one published pathogenicity study that demonstrated that *B. stearothermophilus* is not pathogenic (Ref. 15). The petition also contains an extensive search of the published literature from 1917 to 1992 involving over 1,700 references and citations relating to *B. stearothermophilus* concerning pathogenicity, pathogen formation, toxicology and toxins, and disease or infection. The search failed to disclose a single report that implicated *B. stearothermophilus* as the etiologic agent of a disease state in man or animals. There were no reports of any toxicity or pathogenicity associated with the presence of this organism in food.

D. The Manufacturing Process

The α-amylase enzymes of Bacillus are extracellular enzymes (Ref. 10). Therefore, the manufacturing procedures follow those generally used in the enzyme industry to separate and concentrate extracellular enzymes (Ref. 16). Under the method of manufacture of α-amylase enzyme preparation described in the petition, *B. stearothermophilus* is maintained as a pure culture under conditions that minimize any genetic changes and is grown in a pure culture fermentation. When fermentation is complete, the broth is clarified by treating it with calcium hydroxide, and cells are removed from the broth by filtration using a diatomaceous earth filter aid (Ref. 17). The filtered, clarified broth containing the soluble enzyme is then ultrafiltered to remove all particulate

matter. The filtrate, containing the α-amylase enzyme, is then evaporated to a concentrate of the desired enzyme potency, usually about a three-fold concentration. Sodium chloride is added to the concentrate so that the final salt concentration is 20 percent by weight of the enzyme preparation. Data submitted in the petition show that the enzyme preparation produced by this method of manufacture does not contain any viable bacterial cells.

FDA finds that the manufacturing method does not require the use of any processing materials that are not GRAS or approved food additives. Therefore, the agency concludes that the manufacturing steps will not introduce impurities into the enzyme preparation that will adversely affect the safety of the preparation.

E. Estimated Exposure Levels

The amount of the enzyme preparation used will vary based on the catalytic activity of the enzyme in any particular batch of enzyme preparation. Estimates of enzyme use level and intake are usually based on the total organic solids (TOS) content of the enzyme preparation (Ref. 18). TOS is the sum of all organic compounds present in the final enzyme preparation, excluding diluents or carriers, if added. TOS is calculated as follows: TOS percent=100-(A+W+D) where A is the percent of ash, W is the percent of water, and D is the percent of diluents or carriers.

FDA's estimate of exposure to α-amylase enzyme preparation from *B. stearothermophilus* is based on the food use of maltodextrins and nutritive carbohydrate sweeteners, data for general usage of α-amylase preparations, and the relative enzymatic potency of this particular enzyme preparation compared to typical preparations. FDA calculates that the intake of typical α-amylase enzyme preparations reported as TOS is 25 milligrams (mg) TOS per person per day (TOS/person/day). The subject preparation has an enzymatic potency about six-fold higher than typical preparations; therefore, the estimated daily intake (EDI) is one-sixth of 25 mg or about 4 mg/TOS/person/day, or 67 micrograms (μg)/kilograms (kg) body weight/day for a 60 kg person.

F. Enzyme Preparation Specifications

The petition contains data showing that the α-amylase enzyme preparation from *B. stearothermophilus* produced in this manner meets the general and additional requirements for enzyme preparations in the "Food Chemicals Codex," 3d ed. (Ref. 19).

G. Safety of Enzyme Preparation

The petition contains published animal feeding studies to support the safety of the enzyme preparation. These include a 90-day subchronic oral toxicity study in dogs and a 90-day subchronic oral toxicity study in F1 rats exposed in utero. No adverse treatment-related effects were identified in the 90-day studies (Ref. 20).

The petition also contained several unpublished, corroborative safety studies. These animal feeding studies of the α-amylase enzyme preparation included an acute oral toxicity study in rats and 14-day palatability studies in both rats and dogs. None of these studies demonstrated any adverse treatment-related effects.

Based upon the 90-day dog study, FDA estimated an acceptable daily intake (ADI) of 377 μg/kg body weight, which is 1/1000 of the highest no-effect level (377 mg/kg body weight, which was the highest dose tested). These studies show that the ADI for the enzyme preparation (377 μg/kg body weight/day) exceeds the EDI for uses of this enzyme preparation (67 μg/kg body weight/day).

IV. Conclusions

The petition requested affirmation of GRAS status of α-amylase preparation from *B. stearothermophilus* based on its similarity to other α-amylase enzyme preparations that have a history of common use in food prior to 1958. The petition cites data that report that α-amylase enzyme preparation from B. subtilis has been used commercially since 1929, when it was used in the manufacture of chocolate syrup to reduce its viscosity (Ref. 21). The petition stated that bacterial α-amylase enzyme preparations were first described in the preparation of corn sweeteners in 1962, but that common use of these enzymes by major food processors did not occur until some time later. The petition also stated that today, corn sweeteners prepared with bacterial amylase enzyme preparations are used in nearly all commercially prepared foods.

The agency evaluated the petition using the criteria of § 170.30(c) and concluded that although α-amylase enzyme preparations have had a long history of use before 1958, the data provided no evidence for history of use of α-amylase enzyme preparation from *B. stearothermophilus*, and that based on the data in the petition, this preparation is not eligible for GRAS affirmation based on history of common use in food. However, the agency has also evaluated the petition using the criteria of § 170.30(b) and concludes that α-amylase enzyme preparation from *B. stearothermophilus* is eligible for GRAS affirmation based on scientific procedures.

The agency has evaluated the information in the petition along with other available information and concludes, based on evaluation of published information, corroborated by unpublished data and information, that use of the α-amylase enzyme preparation derived by fermentation from *B. stearothermophilus* to hydrolyze starch to produce maltodextrins and nutritive carbohydrate sweeteners is GRAS. Furthermore, the data show no basis for a potential risk from any use of this α-amylase preparation that can be anticipated. Therefore, the agency is tentatively affirming that the use of the enzyme is GRAS with no limits other than current good manufacturing conditions in accordance with 21 CFR 184.1(b)(1).

The agency further finds that because the principal active ingredient of the α-amylase enzyme preparation is safe and because expected impurities in the α-amylase enzyme preparation do not provide any basis for a safety concern that the general and additional requirements given for enzyme preparations in the "Food Chemicals Codex," 3d ed. (1981), pp. 107-110, are adequate for defining minimum criteria for a food-grade α-amylase enzyme preparation derived from *B. stearothermophilus*.

V. Environmental Effects

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the tentative final rule under Executive Order 12866, and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this tentative final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the tentative final rule is not a significant

regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because no current activity is prohibited by this tentative final rule, the compliance cost to firms is zero. Because no increase in the health risks faced by consumers will result from this tentative final rule, total costs are also zero. Potential benefits include the wider use of this enzyme because of reduced uncertainty concerning its GRAS status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this enzyme for this use. The agency certifies, therefore, that the tentative final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. MacAllister, R. V., "Manufacture of High Fructose Corn Syrup Using Immobilized Glucose Isomerase," in "Immobilized Enzymes for Food Processing," W. H. Pitcher, Jr., editor, CRC Press, Inc., Boca Raton, FL, pp. 81–111, 1980.

2. Vihinen, M. and P. Mantsala, "Microbial Amylolytic Enzymes," *CRC Critical Reviews in Biochemistry and Molecular Biology*, 24:329–418, 1989.

3. Tomazic, S. J. and A. M. Klibanov, "Mechanisms of Irreversible Thermal Inactivation of Bacillus α-Amylases," *Journal of Biological Chemistry*, 263:3086–3091, 1988.

4. Tamuri, M. et al., "Heat and Acid Stable α-Amylase Enzymes and Processes for Producing the Same," U.S. Patent No. 4,284,722, 1981.

5. Brumm, P. J. and W. M. Teague, "Effect of Additives on the Thermostability of *Bacillus stearothermophilus* α-Amylase," Biotechnology Letters, 11:541–544, 1989.

6. Henderson, W. E. and W. M. Teague, "A Kinetic Model of *Bacillus stearothermophilus* α-Amylase under Process Conditions," *Starch/Starke*, 40:412–418, 1988.

7. Brumm, P. J. et al., "Purification and Properties of a New Commercial, Thermostable *Bacillus stearothermophilus* α-Amylase," *Food Biotechnology*, 2:67–80, 1988.

8. Sen, S. and P. Oriel, "Multiple Amylase Genes in Two Strains of *Bacillus stearothermophilus*," *Gene*, 76:137–144, 1989.

9. Ihara, H. et al., "Complete Nucleotide Sequence of a Thermophilic α-Amylase Gene: Homology between Prokaryotic and Eukaryotic α-Amylases at the Active Sites," *Journal of Biochemistry*, 98:95–103, 1985.

10. Suominen, I. et al., "Extracellular Production of Cloned α-Amylase by Escherichia coli," *Gene*, 61:165–176, 1987.

11. Tsukamoto, A. et al., "Nucleotide Sequence of the Maltohexaose-Producing Amylase Gene from an Alkalophilic Bacillus sp. No. 707 and Structural Similarity to Liquefying Type α-Amylases," *Biochemical and Biophysical Research Communications*, 151:25–31, 1988.

12. Satoh, H. et al., "Evidence for Movement of the α-Amylase Gene into Two Phylogenetically Distant *Bacillus stearothermophilus* Strains," *Journal of Bacteriology*, 170:1034–1040, 1988.

13. "Bergey's Manual of Determinative Bacteriology," 8th ed., Williams and Wilkins Co., Baltimore, p. 1135, 1975.

14. Ito, K. A., "Thermophilic Organisms in Food Spoilage: Flat-Sour Aerobes," *Journal of Food Protection*, 44:157–163, 1981.

15. Sattar, S. A. et al., "Hazard Inherent in Microbial Tracers: Reduction of Risk by the Use of *Bacillus stearothermophilus* Spores in Aerobiology," *Applied Microbiology*, 23:1053–1059, 1972.

16. Frost, G. M. and D. A. Moss, "Production of Enzymes by Fermentation," in "Biotechnology, Vol. 7A, Enzyme Technology," H. J. Rehm and G. Reed, editors, J. F. Kennedy, Vol. editor, VCH, New York, pp.72–76, 1987.

17. Brummer, W. and G. Gunzer, "Laboratory Techniques of Enzyme Recovery," in "Biotechnology, Vol. 7A, Enzyme Technology," H. J. Rehm and G. Reed, editors, J. F. Kennedy, Vol. editor, VCH, New York, pp. 217–219 and 273, 1987.

18. "The 1978 Enzyme Survey Summarized Data," National Research Council/National Academy of Sciences, Washington, DC; U.S. Department of Commerce, National Technical Information Service PB81-216897, 1981, pp. i-iii.

19. Monograph on Enzyme Preparations, in "Food Chemicals Codex," 3d ed., National Academy Press, Washington, DC, pp. 107–110, 1981.

20. MacKenzie, K. M. and S. R. W. Petsel, "Subchronic Toxicity Studies in Dogs and In Utero Rats Fed Diets Containing *Bacillus stearothermophilus* α-Amylase from a Natural or Recombinant DNA Host," *Food and Chemical Toxicology*, 27:599–606, 1989.

21. Reed, T., "Enzymes in Food Processing," Academic Press, New York, p. 406, 1966.

VIII. Comments

FDA is publishing this document as a tentative final rule to afford interested persons the opportunity to comment on the use of the enzyme preparations in the production of maltodextrins, which was not discussed in the filing notice.

Interested persons may, on or before February 3, 1995, submit to the Dockets Management Branch (address above) written comments regarding this tentative final rule. 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.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 184 be amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE1.

The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1012 is added to subpart B to read as follows:

§ 184.1012 α-Amylase enzyme preparation from *Bacillus stearothermophilus*.

(a) α-Amylase enzyme preparation is obtained from the culture filtrate that results from a pure culture fermentation of a nonpathogenic and nontoxicogenic strain of *Bacillus stearothermophilus*. Its characterizing enzyme activity is α-amylase (1,4-α-D glucan glucanohydrolase (E. C. 3.2.1.1)).

(b) The ingredient meets the general and additional requirements for enzyme preparations in the "Food Chemicals Codex," 3d ed. (1981), pp. 107–110, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the **Federal Register**, 800 North Capitol St. NW., Suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practices. The affirmation of this ingredient as GRAS as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme, as defined in § 170.3(o)(9) of this chapter, in the hydrolysis of edible starch to produce maltodextrins and nutritive carbohydrate sweeteners.

(2) The ingredient is used at levels not to exceed current good manufacturing practices.

Dated: November 22, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–29731 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–81–88]

RIN 1545–AN55

Deductions for Transfers of Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of hearing.

SUMMARY: This document contains proposed amendments to the regulations to eliminate the special rule that requires an employer to deduct and withhold income tax as a prerequisite for claiming a deduction for property transferred to an employee in connection with the performance of services. Under the existing regulation, employers have been denied a deduction for failure to withhold even where the employee has reported the income and paid the tax. The proposed amendments will provide guidance on substantiating deductions for property transferred in connection with the performance of services. The proposed amendments will affect employers and other service recipients who transfer property for services.

DATES: Written comments and requests for a public hearing must be received by February 3, 1995.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, POB 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (EE–81–88), room 5228, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–81–88), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles T. Deliee, telephone 202–622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in §§ 1.6041–1 and 1.6041–2 of the Regulations. This information is required by the IRS to ensure the proper matching of income recognized by service providers with deductions claimed by service recipients. The likely respondents are individuals, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The burden for the reporting requirement contained in §§ 1.6041–1 and 1.6041–2 is reflected in the burden for Forms W–2 and 1099.

Overview

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 83(h) of the Internal Revenue Code of 1986 (Code). The proposed regulations eliminate the requirement to deduct and withhold income tax as a prerequisite for claiming a deduction.

Under section 83(h) of the Code, in the case of a transfer of property to which section 83(a) applies, the person for whom services were provided may deduct an amount equal to the amount included in the service provider's gross income. In light of the difficulty that a service recipient may have in demonstrating that an amount has actually been included in the service provider's gross income, the general rule in existing § 1.83–6(a)(1) permits the deduction for the amount "includible" in the service provider's gross income. Thus, the deduction may be allowed to the service recipient even if the service provider does not properly report the includible amount. Where the service provider is an employee of the service recipient, however, the special rule in § 1.83–6(a)(2) provides that a deduction may be claimed only if the service recipient (employer) deducts and withholds income tax in accordance with section 3402. The special rule was designed to ensure that the service recipient's deduction is in fact offset by a corresponding inclusion in the service provider's gross income. The special rule is limited to employer-employee situations because in other situations there is no underlying withholding requirement upon which the deduction could be conditioned.

Taxpayers have expressed concern that it is often difficult to satisfy the prerequisite that employers must deduct and withhold income tax from payments in kind as a condition for claiming a deduction. The proposed amendments to the section 83 regulations would address this concern by eliminating this prerequisite, while still ensuring consistent treatment between service recipients and service providers as required by the statute. In addition, because the deduction no longer would be conditioned on withholding, there no longer would be a need to have different rules for those who receive services from employees and those who receive services from others.

Under the proposed amendments, the existing general rule and special rule would be replaced by a revised general rule that more closely follows the statutory language of section 83(h). The service recipient would be allowed a deduction for the amount "included" in the service provider's gross income. For this purpose, the amount included means the amount reported on an original or amended return or included in gross income as a result of an IRS audit of the service provider.

Because of the potential difficulty of demonstrating actual inclusion by the service provider, a special rule would provide that, if the service recipient timely complies with applicable Form W–2 or 1099 reporting requirements under section 6041 (or 6041A), as appropriate, with respect to the amount includible in income by the service provider, the service provider will be deemed to have included the amount in gross income for this purpose. Thus, the proposed amendments would allow the deduction without requiring the service recipient to demonstrate actual inclusion by the service provider. If a transfer met the requirements for exemption from reporting for payments aggregating less than $600 in any taxable year, or was eligible for any other reporting exemption, no reporting would be required in order for the service recipient to rely on the deemed inclusion rule.

In order to allow service recipients to take advantage of the deemed inclusion rule with respect to property transfers to all service providers, the proposed amendments would permit service recipients to use the special rule also in the case of transfers to corporate service providers. To that end, service recipients would be permitted, solely for purposes of this rule, to treat the

Form 1099 reporting requirements as applicable to transfers to corporate service providers in the same manner as those requirements would apply to transfers to noncorporate service providers. Thus, if a service recipient who transferred property to a corporate service provider timely reported that income on Form 1099 (to both the service provider and the federal government), the service recipient would be entitled to rely on the deemed inclusion rule in claiming a deduction for the amount of that income. If the transfer met the requirements for exemption from reporting for payments aggregating less than $600 in any taxable year, or was eligible for any other reporting exemption applicable to a service provider that is not a corporation, no reporting would be required in order for the service recipient to rely on the deemed inclusion rule.

The deemed inclusion rule could be used only by a service recipient whose compliance with applicable Form W–2 or 1099 reporting requirements was timely. Thus, for example, under the current reporting requirements, if amounts attributable to one or more section 83 transfers of property are includible in an employee's income in year 1 (and are not eligible for any reporting exemption), the employer generally would be required to furnish the employee a Form W–2 reflecting that amount by January 31 of year 2 and generally would be required to file a copy of the Form W–2 with the federal government by the last day of February of year 2. If the employer did report to the employee and the government in a timely manner, the employer would be able to rely on the deemed inclusion rule to claim a deduction for the amount in year 1. If the employee's Form W–2 were not furnished until after January 31 of year 2 or the government's copy of Form W–2 were not filed until after the last day of February of year 2, the employer generally would be required to demonstrate that the employee actually included the amount in income in order to support its deduction of such amount.

Under the proposed amendments, a special rule would apply with respect to an amount includible in an employee's or former employee's income by reason of a disqualifying disposition of stock that had been acquired pursuant to a statutory stock option. In the case of such a disposition, a Form W–2 or W–2c (as appropriate) would have to be furnished to the employee or former employee, and filed with the federal government, only by the date on which the employer files its tax return (including an amended return) claiming a deduction for that amount.

With respect to disqualifying dispositions, the proposed amendments would modify the conditions for an employer's deduction under section 83(h) in a manner that is not inconsistent with the guidance provided by Notice 87–49 (Changes to Incentive Stock Option Requirements by Section 321 of the Tax Reform Act of 1986), 1987–2 C.B. 355. The proposed amendments are not intended to have any effect on the application of Notice 87–49 or the analysis contained therein, and therefore should not be viewed as constituting a reconsideration of Revenue Ruling 71–52, 1971–1 C.B. 278, within the meaning of Notice 87–49.

Although the withholding requirement would be eliminated as a prerequisite for claiming a deduction, the proposed amendments would not relieve the service recipient from any applicable withholding requirements of subtitle C or from the statutorily prescribed penalties or additions to tax for noncompliance with those requirements. Thus, for example, if an employer transferred to an employee property to which section 83 applies and failed to withhold income tax on the payment, the employer would be liable for the tax under section 3403. However, under section 3402(d), any tax liability assessed against the employer would be offset by any tax paid by the employee. In addition, nothing in this proposed regulation would relieve the service recipient from penalties or additions to tax for noncompliance with the requirements of section 6041 or 6041A (relating to information reporting) to the extent they otherwise apply.

The proposed regulation that was published in the Federal Register on November 16, 1983 (48 FR 52079), proposing to amend the special rule in § 1.83–6(a)(2), is hereby withdrawn.

These amendments are proposed to be effective for deductions allowable for taxable years beginning on or after January 1, 1995. However, taxpayers may apply these proposed amendments when claiming a deduction for any year not closed by the statute of limitations. For example, if substantially vested (within the meaning of § 1.83–3(b)) stock was transferred to an employee in 1992 upon the exercise of a nonstatutory stock option, and if the calendar year employer furnished a Form W–2 to the employee by January 31, 1993, reflecting the income generated by such transfer, and filed the appropriate Form W–2 with the federal government by February 28, 1993, then the employer could apply these proposed amendments to claim a deduction for 1992 for the amount of the income, even if the employer failed to withhold in accordance with section 3402 and could not demonstrate actual inclusion in income by the employee. If that employer did not claim a deduction for the amount of the income on its 1992 tax return, it could file an amended return for 1992 claiming such a deduction pursuant to the proposed amendments, provided that 1992 is still an open year.

Reliance on These Proposed Regulations

Taxpayers may rely on these proposed amendments for guidance pending their issuance as final regulations. If future amendments are more restrictive than these proposed amendments, the future amendments will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Charles T. Deliee, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and

Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61–1 through 1.281–4

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.83–6, is amended as follows:

1. Paragraphs (a)(1) and (2) are revised.
2. Paragraph (a)(5) is added.
3. The revisions and addition read as follows:

§ 1.83–6 Deduction by employer.

(a) *Allowance of deduction*—(1) *General Rule.* In the case of a transfer of property in connection with the performance of services, or a compensatory cancellation of a nonlapse restriction described in section 83(d) and § 1.83–5, a deduction is allowable under section 162 or 212 to the person for whom the services were performed. The amount of the deduction is equal to the amount included as compensation in the gross income of the service provider under section 83(a), (b), or (d)(2), but only to the extent the amount meets the requirements of section 162 or 212 and the regulations thereunder. The deduction is allowed only for the taxable year of that person in which or with which ends the taxable year of the service provider in which the amount is included as compensation. For purposes of this paragraph, any amount excluded from gross income under section 79 or section 101(b) or subchapter N is considered to have been included in gross income.

(2) *Special Rule.* For purposes of paragraph (a)(1) of this section, the service provider is deemed to have included the amount as compensation in gross income if the person for whom the services were performed satisfies in a timely manner all requirements of section 6041 or section 6041A, and the regulations thereunder, with respect to that amount of compensation. For purposes of the preceding sentence, whether a person for whom services were performed satisfies all requirements of section 6041 or section 6041A, and the regulations thereunder, is determined without regard to § 1.6041–3(c) (exception for payments to corporations). In the case of a disqualifying disposition of stock described in section 421(b), an employer that otherwise satisfies all requirements of section 6041 and the regulations thereunder will be considered to have done so timely if Form W–2 or Form W–2c, as appropriate, is furnished to the employee or former employee, and is filed with the Federal Government, on or before the date on which the employer files the tax return claiming the deduction relating to the disqualifying disposition.

* * * * *

(5) *Effective Date.* Paragraphs (a)(1) and (a)(2) of this section apply to deductions for taxable years beginning on or after January 1, 1995. However, taxpayers may also apply paragraphs (a)(1) and (a)(2) of this section when claiming deductions for taxable years beginning before that date if the claims are not barred by the statute of limitations. Paragraphs (a)(3) and (a)(4) of this section are effective as set forth in § 1.83–8(b).

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–29701 Filed 12–2–94; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 94–07]

Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rule; Enlargement of Time.

SUMMARY: The Commission is extending the time for reply comments in regard to its proposed rule on financial reporting requirements and rate of return methodology in the domestic offshore trades. The Commission also is permitting NPR, Inc., a new participant in the domestic offshore trades, to comment generally on the proposed rule.

DATES: Comments due January 6, 1995.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Richard R. Speigel, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5845

C. Douglass Miller, Office of the General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5740

SUPPLEMENTARY INFORMATION: The Commission, by notice published November 4, 1994, 59 FR 55232, invited reply comments on four specific issues raised in this proceeding.

Counsel for NPR, Inc. now seeks an extension of time in this proceeding from December 5, 1994, to January 27, 1995, to submit reply comments and "such further comments on the issues as the Commission is required to consider under the terms of the Administrative Procedures Act." The upshot of this request is that NPR seeks to comment on any issue raised by the proposed rule, not just the issues on which the Commission specifically sought replies. The basis for the request is that NPR has only recently purchased the assets of Puerto Rico Maritime Shipping Authority, a major participant in a domestic offshore trade, and has not had a prior opportunity to comment on the proposed rules.

The Commission has determined to grant the request in part, extending the reply comment date to January 6, 1995. Additionally, since NPR, Inc. has not had a prior opportunity to comment on the proposed rule, its comments will not be required to be limited to the specific issues on which replies are sought.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–29759 Filed 12–2–94; 8:45 am]

BILLING CODE 6730–01–M

46 CFR Part 572

[Docket No. 94–31]

Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the information submission requirements for agreements among ocean common carriers subject to the Shipping Act of 1984. The Commission proposes to replace the current information form that accompanies newly filed agreements

with a new form applicable to certain kinds of agreements, which requires the submission of specific data on the agreement member lines' cargo carryings, revenue results and port service patterns before they entered into the agreement. In addition, the Commission proposes regulations that require the member lines of certain kinds of effective agreements to submit reports on their operations on a regular and ongoing basis, which would reflect the lines' cargo carryings, revenue results and port service patterns after they entered into the agreement. The application of the proposed rule to a particular agreement depends primarily on whether the agreement authorizes its carrier members to engage in certain activities, and secondarily on the carrier members' combined market share. An agreement that does not authorize any of the activities specified by the proposed rule would still be filed with the Commission, unless it qualifies for one of the Commission's existing filing exemptions, but would not have any information form or reporting obligations. The intent of the proposed rule is to provide the Commission with improved information on the impact of concerted carrier practices on the foreign commerce of the United States, and to facilitate the processing and monitoring of ocean carrier agreements under the standards of the Shipping Act of 1984.

DATES: Comments due February 3, 1995.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission. 800 North Capitol Street NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5740

Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5787

SUPPLEMENTARY INFORMATION:

A. Background

The jurisdiction of the Federal Maritime Commission ("FMC" or "Commission") over ocean carrier agreements in the foreign commerce of the United States extends under section 4(a) of the Shipping Act of 1984 ("1984 Act") to all agreements to:

(1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) Pool or apportion traffic, revenues, earnings, or losses;

(3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) Engage in exclusive, preferential, or cooperative working arrangements * * *;

(6) Control, regulate, or prevent competition in international ocean transportation; and

(7) Regulate or prohibit * * * use of service contracts.

46 U.S.C. app. 1703(a).

The reforms in 1984 to the Shipping Act were intended in large part to facilitate the swift effectiveness, with immunity from the antitrust laws, of such agreements. Section 15 of the former Shipping Act, 1916 ("1916 Act"), had required carriers to secure Commission approval for any agreement governing rates, conditions of service, or similar matters, before such an agreement could become effective. Under standards set forth in section 15, the Commission was permitted to disapprove, cancel, or modify any agreement that it found to be unjustly discriminatory or unfair, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of the 1916 Act. 46 U.S.C. 814 (1982).

The Commission, with Supreme Court approval, had taken the position that agreements to set rates, pool revenues, restrict capacity, or to engage in other activities that normally would be contrary to the antitrust laws were presumed to be contrary to the public interest, and would be approved only if they were shown to be "required by a serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose of the Shipping Act." *FMC* v. *Svenska Amerika Linien*, 390 U.S. 238, 243 (1968). The burden of making this showing was placed upon the carrier proponents of an agreement, on the ground that information regarding the operation and probable future impact of an agreement "[a]lmost uniformly * * * is in the hands of those seeking approval * * * and it is incumbent upon those in possession of such information to come forward with it." *Mediterranean Pools Investigation*, 9 F.M.C. 264, 290 (1966). Under these procedures, the implementation of agreements had often been delayed for considerable amounts of time, especially if formal protests were made. *See Marine Space Enclosures, Inc.* v. *FMC*, 420 F.2d 577 (D.C. Cir. 1969) (requiring that the Commission hold a hearing when a protest raising substantial issues had been filed). In many cases, protests were filed by other carriers, who effectively delayed or blocked their competitors' business plans.

The 1984 Act did away with the requirement that an agreement had to be approved by the Commission before it could lawfully operate. Instead, agreements now generally become effective forty-five days after they are filed. As a partial counterbalance to this liberalized approach, conference agreements [1] are required by section 5(b) of the Act, 46 U.S.C. app. 1704(b), to include a number of procompetitive provisions, and the Commission may reject a conference agreement that does not meet this standard. Especially noteworthy is the requirement that all conference agreements must clearly state that any member line may take "independent action" on any rate or service item required to be filed in a tariff with the Commission; this empowers any member line to set an individual rate below (or above) the conference rate, without having to obtain approval of the rate from the other member lines. The conference is then required to publish the independent action rate in its conference tariff upon no more than ten days' notice.

The Commission may also prescribe the "form and manner" in which agreements of any kind must be filed, and may reject an improperly drafted agreement. In addition, the Commission may request information and documents in connection with a newly filed agreement and, if its demand is not "substantially" met, may seek a delay in the agreement's effective date or other relief from the United States District Court for the District of Columbia.[2]

The 1984 Act sets forth an extensive list of prohibited acts, barring many anticompetitive practices that previously had been outlawed under the broad "public interest" standard of section 15 of the 1916 Act. For example, section 10(b)(6) of the 1984 Act, 46 U.S.C. app. 1709(b)(6), carries forward section 15's prohibition of agreements that are unfair or unjustly discriminatory between shippers or ports. Sections 10(c)(1)–(3) and (5) of

[1] Under the 1984 Act, a conference is an association of ocean common carriers which engage in concerted activities and utilize a common tariff. Section 3(7), 46 U.S.C. app. 1702(7).

[2] Sections 6 (d) and (i) of the 1984 Act, 46 U.S.C. app. 1705 (d) and (i).

the 1984 Act, *id.* app. 1709(c)(1)–(3) and (5), prohibit boycotts, restrictions on technological innovations, predatory practices and the denial of reasonable freight forwarder compensation, all of which the Commission previously had found violated section 15.[3]

If the Commission has indications that an agreement may be operating in violation of the 1984 Act, it may institute an investigation of the agreement and its member lines. In addition, the Commission may ask any U.S. district court to temporarily enjoin the agreement while the investigation proceeds.[4] If the court should find that continued operation of the agreement would be inequitable, it can issue an order barring further effectiveness of the agreement until ten days after issuance of the Commission's final decision. If the Commission should find in its final decision that violations of the 1984 Act in fact occurred, it may "disapprove, cancel or modify" the agreement,[5] which would in effect supersede the existing court injunction. In addition, the Commission may assess fines against the agreement member lines.[6]

The other procedure provided by the 1984 Act by which the Commission can prevent an agreement from going into effect, or prevent further operation of an existing agreement, is set forth in section 6(g). This provision authorizes the Commission to seek an injunction in the U.S. District Court for the District of Columbia against an agreement that is "likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost." 46 U.S.C. app. 1705(g). A proceeding under section 6(g) does not involve questions of discrimination or unfairness, which are covered by the section 10 prohibited acts, nor does it involve questions of statutory violations or fines against the carriers. Section 6(g) was meant to provide a way of dealing with "unusual or severe cases not addressed by other prohibitions in the Act,"[7] and the only remedy available under the provision is an injunction against the agreement itself.

B. The Commission's Agreement Program

The Commission's procedures for evaluating and monitoring carrier agreements reflect the new responsibilities and limitations imposed by the 1984 Act. When an agreement is first filed, its provisions are immediately reviewed to ensure that they contain the 1984 Act's mandatory provisions and do not run afoul of the prohibited acts sections. In the ordinary case, that is a one-time process and does not entail ongoing periodic review.

An agreement's effect on shippers, ports and maritime commerce is a different matter. An agreement of significant anticompetitive dimensions—for example, a large market share combined with authority to fix rates and control service contracts—poses potential dangers of unlawful activities and unreasonable rate increases or service reductions both when it is first filed and for as long as it remains in effect. Thus, under the new regulatory framework established by the 1984 Act, the role of the Commission as a monitoring and surveillance agency was greatly enhanced. In discharging that responsibility, the Commission cannot merely examine an agreement's provisions; rather, it must continually gather, review and interpret data on the impact of the agreement on U.S. foreign commerce. As for the source of such information, the 1984 Act removed the burden of proof in agreement investigations from the carriers, but did not alter the accuracy of the Commission's 1966 observation in *Mediterranean Pools Investigation* that the primary source for information on the operation of an agreement is the carriers that are the parties to the agreement.

At present, the Commission has regulations in place that obtain information from carriers about their agreements in two principal ways. All new agreements, unless specifically exempted,[8] and all "significant modifications" to existing agreements[9] must submit an information form[10] which, at a minimum, requires the parties to state the full name of the agreement (Part I); whether the agreement authorizes collective rate fixing (Part II(A)), cargo or revenue pooling (Part II(B)), or the establishment of a "joint service/consortium" arrangement (Part II(C)); whether the agreement was entered into as a response to any law or other official action by a foreign government (*e.g.*, cargo reservation laws) (Part VI); and persons who can be contacted by the Commission's staff for further information if necessary (Part IX). If an agreement does authorize collective rate fixing, cargo or revenue pooling, or the establishment of a "joint service/consortium" arrangement, the parties are required additionally to provide market share and cargo carryings information for the previous year (Part III), to identify the nature and extent of any competition on the trade (Part IV), and to identify any reports, studies or other research on competitive conditions in the trade (Part VIII). Agreements that authorize service rationalization are required to provide information on any changes in port calls or reductions in service that will result from the agreement within the next twelve months (Part V). In addition, filing parties may voluntarily describe the benefits that they anticipate will accrue from the agreement to themselves (such as improved operational efficiencies) or to shippers and U.S. commerce (such as improved service) (Part VII).

The data and information shown on an agreement's information form are the basis for pre-implementation review of an agreement under section 10 and section 6(g) of the 1984 Act, unless additional information is obtained as a result of a formal request issued under section 6(d),[11] in which case the agreement's effective date is delayed until the 45th day after the Commission receives the information requested, so that pre-implementation review can include the additional material.

In addition, parties to effective agreements are required to file minutes of meetings of the carriers or other persons authorized to take action on behalf of the carriers, which include reports on shippers' requests and complaints and reports on consultations with shippers and shippers' associations.[12]

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[3] *See* S. Rep. No. 3, 98th Cong., 1st Sess. 35–37 (1984).

[4] Section 11(h)(1) of the 1984 Act, 46 U.S.C. app. 1710(h)(1).

[5] Section 11(c) of the 1984 Act, 46 U.S.C. 1710(c).

[6] Section 13(a) of the 1984 Act, 46 U.S.C. 1712(a).

[7] H.R. Rep. No. 600, 98th Cong., 2d Sess. 37 (1984).

[8] *See* 46 CFR 572.302–11.

[9] "Significant modifications" are presently defined at 46 CFR 572.403(a)(3) to include * * * * * * significant changes in the geographic scope of conference or pooling agreements which expand the scope to cover additional foreign countries or U.S. port ranges, including initial conference intermodal authority, or the extension of the scope of a joint service agreement to ports outside the scope of the existing joint service agreement currently served by two or more of the parties; additions to the number of parties in pooling or joint service agreements; significant reductions in service levels; significant changes in pool penalty provisions or carrying charges; and changes in cargo categories or descriptions that result in a significant increase in the amount of cargo subject to the pool, or changes in the allocation of cargo or revenue that significantly change the cargo or revenue shares of national or non-national flag lines.

[10] The current information form is published as appendix A to part 572 of the Commission's regulations, following 46 CFR 572.991.

[11] N. 2, *supra*, and accompanying text.

[12] 46 CFR 572.702–703.

C. Areas of Needed Improvement

While the information-gathering processes for agreements established by the Commission immediately after passage of the 1984 Act have served their purpose adequately, the increasingly comprehensive and complex agreements filed in recent years indicate a need for updating and augmentation. Agreements with multi-country geographic ranges are now common. New devices and arrangements for dealing with excess capacity have appeared. Rate discussion agreements between conference and nonconference lines have become more prevalent, and such arrangements have not been required to include the procompetitive provisions applicable to conferences. Networks of vessel and space charter agreements covering a multitude of trade lanes have been established, and some of those agreements operate within larger conference agreements.

In addition, some of the provisions of the current information form have not produced much useful information. It appears that these provisions either have become outdated or, with the benefit of hindsight, were not sufficiently relevant to the Commission's pre-implementation review of a new agreement under the standards of the 1984 Act. This is particularly true of Part VI, which concerns whether the agreement was entered into as a response to a law or other action by a foreign government, and Part VII, which allows the carriers to describe the expected benefits of the agreement if they wish. Further, the activity queries in Part II of the current form which, if answered in the affirmative, trigger the further requirements of Parts III, IV and VIII, do not reach rate discussion agreements between independent lines or between conference lines and independents, nor do they reach agreements to discuss costs or exchange cost information. These types of agreements do not directly authorize rate setting but nonetheless have a direct and substantial impact on rate competition, as discussed further below.

Due to the limitations of the current post-implementation reporting requirements, monitoring of effective agreements at present depends primarily on other reports that are not required by regulation, but rather must be negotiated as to content and frequency by the Commission's staff with the carrier parties during the initial review period. Such reports produce data bearing on the carriers' concerted practices and operating results, such as percentage of capacity being utilized by shippers and average gross revenue per twenty-foot-equivalent container unit ("TEU") of cargo. Major agreements that currently are subject to negotiated reporting requirements include the Trans Atlantic Conference Agreement, the Transpacific Stabilization Agreement and the Inter-American Discussion Agreement.

Obtaining data about the economic impact of effective agreements through *ad hoc* negotiations during the initial review period has been a flawed procedure. Carrier representatives have shown good will and substantial cooperation, but both they and the Commission's staff are inevitably hampered by the 1984 Act's strict time limits for agreement processing. Once an agreement has gone into effect, the Commission can always issue an order under section 15 of the 1984 Act to obtain information from the member carriers,[13] but that power is better suited for special circumstances than for day-to-day regulation. In sum, neither the current practice of negotiating *ad hoc* reports nor the authority set forth in section 15 is an efficacious method of achieving consistent and predictable oversight of significant carrier agreements after they have gone into effect.

D. The Proposed Rule

The Commission addresses the concerns discussed above by proposing new regulations that are designed to elicit more detailed and specific information on ocean carrier agreements in a more structured and comprehensive manner. The proposed rule formulates a sliding scale of information demands for three classes of agreements, "Class A," "Class B" and "Class C." Where an agreement fits on the scale depends on the activities it authorizes and the parties' combined market share. These criteria are discussed further below. An agreement that does not authorize any of the specified activities would still be required by law to be filed with the Commission (unless it qualifies for one of the existing exemptions), but would not have any information form or reporting obligations.

[13] Section 15(a) states:

The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memorandum shall be made under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission.

46 U.S.C. app. 1714(a).

For an agreement fitting into one of the three covered classes, the proposed rule has the following important features:

- A revised information form that would accompany the agreement when it is first filed, requiring the submission of specific data on the agreement member lines' cargo carryings, revenue results and port service patterns before they entered into the agreement.
- If the agreement goes into effect, additional provisions requiring the member lines to submit reports on their operations on a regular and ongoing basis. Thus, the proposed rule would establish reporting requirements as Commission regulations that would have the status of agency public policy and could be enforced by Commission or court sanctions if necessary.
- Linkage between the information form and the subsequent reports. Aside from some activities that are relevant only to effective agreements (such as independent rate actions), the reporting requirements track the subject areas of the information form. This would enable the Commission to compare the carriers' operations and economic results before and after their agreement went into effect.

1. Classification of Agreements: The Six "Class A/B" Activities

"Class A" and "Class B" agreements permit the same kinds of activities; the difference between them is market share. An agreement is a "Class A/B" agreement if it authorizes *any one* of the following six activities:

- Ratemaking. This specifically includes not only traditional conference agreements, under which a group of lines agree upon fixed rates and practices and are bound to them under a common tariff, but also agreements under which non-conference lines meet among themselves or with a conference to discuss rates, or to discuss and agree upon rates on a "non-binding" basis. The latter types of agreements have become increasingly common, and their presence in a trade raises serious concerns about the true level of competition since they involve discussions and agreements about rates between non-conference lines or between a conference and its non-conference competitors. These concerns are not necessarily lessened by the fact that any agreement reached with regard to a particular rate would not bind the carriers to adhere to the rate; a shipper in the trade seeking to negotiate a rate with a carrier would still be faced with an arrangement that unilaterally brings outside carriers into the rate negotiation process and potentially limits the

shipper's ability to negotiate the best possible rates for its cargo.

The "ratemaking" criterion is met if the agreement authorizes its carrier members to (1) agree on a binding basis under a common tariff, (2) agree on a non-binding basis, or (3) discuss any kind of basic linehaul rate—including port-to-port rates, independent action rates, overland rates, minilandbridge rates, interior point intermodal rates, proportional rates, through rates, joint rates, minimum rates, volume rates, joint time/volume rates, project rates, freight-all-kinds rates, volume incentive programs, service contract rates, loyalty contract rates, rates on commodities exempt from tariff filing, and so forth—or any kind of ancillary charge or allowance that affects the total transportation cost to the shipper. Those include surcharges, arbitraries, currency adjustment factors, terminal handling charges, pickup and delivery charges, demurrage, absorption and equalization allowances, and so forth.

On the other hand, in the interest of balance and restraint, the proposed rule does not treat as "ratemaking" agreements those agreements that concern how rates are collected from shippers—for example, credit conditions and the handling of delinquent accounts—but do not concern the level of the rates themselves, or those agreements that concern charges or payments to persons other than shippers, *e.g.*, inland divisions of through rates, brokerage, freight forwarder compensation, employment of neutral bodies for self-policing purposes, or development of electronic cargo information systems.

- Discussion or exchange of vessel-operating cost data. The Commission has received a number of agreements that do not authorize rate discussions or agreements of any kind, but do authorize discussion of or exchange of cost data among the member carriers. The antitrust laws have been applied against such arrangements in other industries, on the theory that the sharing of pricing information can have a significant impact on price competition.[14] The most significant costs for ocean common carriers are vessel-operating costs, which the proposed rule defines to include wages of officers and crew, fringe benefits, consumable stores, supplies and equipment, maintenance and repair, insurance, vessel fuel, and bareboat charter hire.[15] The 1984 Act allows carriers to enter into agreements to discuss and exchange information about these costs, but the Commission believes that they should be subjected to the same degree of scrutiny as their close cousins, rate discussion agreements. On the other hand, again in the interest of balance and restraint, the "costs" criterion does not apply to discussion of other types of expense that are less important for setting rates (for example, terminal costs). In order to make this distinction effective, agreements seeking to authorize discussion or exchange of cost data must specify whether that authority includes any of the vessel-operating costs.

- Joint service, which is defined by the Commission's regulations as * * *

> * * * an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur and there is no competition between members for traffic in the agreement trade; but they otherwise maintain their separate identities.

46 CFR 572.104(n). While the introduction of a joint service into a trade by outside lines may increase the level of competition and the range of services available for shippers, there can be negative effects on competition and service if the joint service is formed by lines that up to that point had been competing in the trade, and especially if the new entity would have substantial market power.

- "Capacity management" or "capacity regulation". This relatively new technique for dealing with overtonnaging and depressed rates limits the availability of vessel space to shippers but does not reduce the real capacity of the carriers. Therefore, such programs have the potential to perpetuate economic inefficiencies and unnecessary costs for shippers, particularly if they remain in place beyond short-term cargo declines or surges in capacity. Agreements authorizing such programs have sufficiently serious ramifications under the 1984 Act to warrant thorough monitoring.

- Regulation or discussion of service contracts. Most agreements engaging in this activity are conference agreements, which would already be covered by the "ratemaking" criterion discussed above. However, agreements among non-conference lines may include authority to confer and to reach "non-binding" agreements on service contract terms, and such authority may well diminish price and service competition.

- Pooling, which is defined by the Commission's regulations as * * *

> * * * an agreement between ocean common carriers which provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

46 CFR 572.104(w). While such agreements are not as common as they once were, they are severely anticompetitive by nature and must be closely regulated when they do appear.

2. Classification of Agreements: the Importance of Market Share

The proposed rule requires any agreement that authorizes one or more of the six "Class A/B" activities to be accompanied, upon its initial filing, with an information form showing its parties' market shares both for the entire agreement and also in each of the sub-trades within the overall scope of the agreement, during the most recent calendar quarter for which complete data are available. "Sub-trade" is defined as all liner movements between each U.S. port range (Atlantic, Gulf and Pacific) and each foreign country within the overall scope of the agreement. For example, an agreement with an overall scope of U.S. Pacific Coast to the Far East would have sub-trades of U.S. Pacific Coast to Japan, U.S. Pacific Coast to Taiwan, and so forth.

An agreement that authorizes at least one of the six "Class A/B" activities and holds market shares of 50 percent or more in half or more of its sub-trades is classified as a "Class A" agreement under the proposed rule.[16] The parties to such an agreement are required to submit extensive historical data on the initial information form and, if the agreement goes into effect, to submit detailed quarterly reports on their operations under the agreement. These requirements are discussed in detail below. An agreement that authorizes at least one of the six activities, but did not hold market shares of 50 percent or more in at least half of its sub-trades, is

[14] *E.g.*, *Sugar Institute, Inc.* v. *United States*, 297 U.S. 553 (1936); *American Column & Lumber Co. v. United States*, 257 U.S. 377 (1921).

[15] *See* 46 CFR 232.5(E)(1)(ii).

[16] For example, if an agreement with ten sub-trades reported that it had market shares of 50 percent or more in five or more sub-trades, it would be a "Class A" agreement. By using that methodology rather than average market share, the proposed rule seeks to focus on those agreements with significant market power spread through at least half of their total geographic scope.

classified as a "Class B" agreement. It would file the same information form as a "Class A" agreement but, if it went into effect, would have significantly lighter reporting obligations, as also discussed below. It should be noted that the classification of an agreement as "Class A" would not be permanent; the agreement's ongoing reporting obligations would include market share data, and at the beginning of each calendar year, the agreement's sub-trade market shares during the most recent calendar quarter for which complete data are available would determine whether it would remain under "Class A" reporting obligations for the upcoming year.

Market share measures an agreement's potential for abuse of economic power and unreasonable or discriminatory price and service practices. The break point of 50 percent in at least half of the sub-trades was chosen in the belief that an agreement that is a relatively minor presence in a majority of its sub-trades—that is, a "Class B" agreement—is unlikely to be able to impose unreasonable or unfair rates or practices regardless of what it authorizes its parties to do, and does not require extensive gathering of information about its operation. While commenters on the proposed rule are free to argue for a different break point, it should be noted that an important feature of the proposed rule is that the market share calculation for rate discussion agreements and "non-binding" rate agreements adds the market shares held by the non-conference lines to those held by the conference lines for purposes of determining whether such an agreement should be classified as "Class A" or "Class B".

The new focus on sub-trades results from the Commission's belief, resulting from the agency's experience over the ten years since passage of the 1984 Act, that economic analysis of an agreement is facilitated and acquires depth of understanding if it is done according to the agreement's smaller components. This is particularly true since, as noted above, the Commission is now seeing more and more agreements that have multi-coast or even multi-continent geographic ranges. Further, in some of the more geographically fragmented parts of the world, such as the Far East and the South Pacific, sub-trades can constitute separate and cloistered markets. Agreements that serve a comparatively unified landmass, such as Europe, might still implement practices that differ from area to area within the general market. These factors all argue for information-gathering systems that acquire data relevant to an agreement's sub-trades, rather than only the market defined by the agreement's total scope.[17] Accordingly, the information (besides market share) sought by the proposed rule for "Class A" and "Class B" agreements is, for the most part, concerned with the agreements' sub-trades.

It should be stated at this juncture that the proposed rule includes a procedure whereby the Commission may grant a waiver from full compliance with the rule's requirements, if a group of carriers applies for and justifies such relief. A waiver could apply to any part of the rule, including the requirement that data be reported by individual country sub-trades. For example, an agreement might be permitted to report by a multi-country region rather than by individual countries, if it could show that the major moving commodities moving into or out of a particular group of countries did not vary much country by country, and so regional data would provide a reasonably accurate and complete description of the trades with those countries. The waiver procedure could also be used to allow conferences made up of relatively small carriers serving a relatively small trade to submit post-implementation monitoring reports at wider intervals (for example, once a year). The waiver provisions specifically state that the Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver.

3. "Class A" Agreements Under the Proposed Rule

The *information form* for a "Class A" agreement begins by requiring a listing of all effective agreements covering all or part of the geographic scope of the proposed agreement, whose parties include one or more of the parties to the proposed agreement. This provision is designed to ensure that the Commission has accurate information regarding the recent trend toward networks of agreements connected by common parties. Next, the form requires an identification of all "Class A/B" activities that the agreement seeks to authorize.

After obtaining the market share data discussed above, the information form then inquires into the recent agreement-wide cargo carryings and revenue results of each of the carriers that would now join together into the agreement. Otherwise, the information form focuses primarily on the state of affairs in each of the agreement's sub-trades before the agreement was filed. This is done by reference to the major commodities moving to and from the United States in each sub-trade.

Using the actual commodities moving under an agreement as the chief frame of regulatory reference is an important feature of the proposed rule, and represents a significant departure from current practice. At present, the information obtained by the Commission on carrier rate and service practices via the monitoring reports submitted for certain major agreements does not describe the cargo being transported, and is stated in the aggregate (for example, total number of service contracts executed) or as broad averages (for example, average revenue per TEU of all cargoes). In contrast, the proposed information form, while continuing to require the submission of aggregate data in certain areas, mainly requires carriers to identify the commodities that have made up the bulk of their cargo in each sub-trade and then to submit data on the price and service practices they have applied to each of those commodities. With this information in hand, the Commission will have a reasonably comprehensive summary of pre-agreement rate and service practices in each sub-trade covered by the new agreement, as well as in the agreement's entire geographic scope. If the agreement is permitted to go into effect, that summary will serve as a baseline for analyzing the corresponding information later obtained through the post-implementation reports.

In sum, the proposed rule both changes the orientation of agreement review to that of the cargo being affected, and also calls for more refined and differentiated data from the carriers. These reforms should provide the Commission with improved and more useful indicators of the potential or actual impact of an agreement on the needs of shippers for good service at reasonable rates, and in particular whether the agreement might cause or has caused unfair or unreasonable conditions for specific commodities, classes of shippers, or geographic areas. It should be noted that, while the proposed rule is constructed around the major moving commodities in each sub-trade, nothing prevents the Commission from taking appropriate action if it receives information that an agreement is harming the fair and reasonable transportation of a relatively minor commodity.

The information form also inquires into the effect of the agreement on ports within its geographic range; it should be

[17] This approach also allows for the possibility that Commission or court sanctions against an agreement could prevent an agreement only from operating in a particular sub-trade, rather than from operating at all.

noted that it is unnecessary to segregate data on port calls by sub- trades. In addition, the information form imposes special requirements on any "Class A" agreement that authorizes "capacity management" or "capacity regulation." Because such programs are designed to address problems of excess capacity, the information form inquires into each agreement member line's recent capacity utilization experience within the geographic service area to be covered by the proposed program and its initial capacity level under the program. These data are to be provided within a "geographic service area" because a capacity management or regulation program that is part of a larger agreement can be designed to cover less than the entire geographic scope of the agreement. This section of the form also requires the submission of any reports or studies dealing with capacity utilization and related topics, but only to the extent that such documents were both recently prepared and shared among the agreement lines, and thus may have influenced the formation of the capacity management program.

If the new agreement were permitted to go into effect, then the reporting requirements for "Class A" agreements would become applicable. Changes in membership in other agreements would be reported, and the parties' market shares would continue to be tracked by entire agreement geographic scope and by sub-trade. Otherwise, the reporting requirements would mirror the information form in order to provide "before and after" depictions of the trade, with some additional provisions that can apply only to an effective agreement. For example, the special provisions of the information form applicable to a capacity management program would be expanded to carefully monitor the actual operation of the program. In addition, a new section entitled "Independent Rate Actions" would apply to "Class A" conference agreements and would require:

> For each sub-trade within the scope of the agreement, and for each of the leading commodities * * *, and for each party, state the number of independent rate actions taken during the calendar quarter that were applicable to that commodity moving in that sub-trade, and the total number of TEUs of that commodity covered by the independent actions. Also, state the name of each shipper for whom an independent rate was taken on that commodity during the calendar quarter, and state whether the shipper was a beneficial cargo owner, a non-vessel-operating common carrier, or a shippers' association.

This provision would allow the Commission to monitor the level of independent rate activity (or the lack of such activity) on specific commodities, and to take appropriate action immediately if it appears that certain commodities or types of shipper are receiving more rigid rate treatment than others.

4. "Class B" agreements under the proposed rule

As already stated, the proposed rule prescribes the same information form for "Class B" agreements as for "Class A" agreements. This establishes the same pre-agreement baseline as is done for "Class A" agreements. However, assuming the "Class B" agreement were allowed to go into effect, the reporting requirements are limited to quarterly updates on market share, agreement-wide cargo and revenue results, membership in other agreements, and changes in port service. The agreement would be monitored by the Commission, particularly the sub-trades where the agreement holds more than 50 percent of the market, and if there were indications of possible rate or service problems in a sub- trade, further information would be obtained—by either informal negotiation or a section 15 order—and compared against the original baseline data to determine whether further action was necessary.

5. "Class C" Agreements Under the Proposed Rule

An agreement that authorizes service rationalization, such as space charters, coordination of service frequency and port rotations, and coordination of the size and capacity of vessels to be deployed by the parties, but does not authorize "capacity management" or "capacity regulation" (or any of the other five "Class A/B" activities), is a "Class C" agreement. Although such agreements have rarely presented serious regulatory concerns, some oversight is necessitated by section 6(g)'s admonition against agreements that cause unreasonable reductions in service. For a "Class C" agreement, the proposed rule provides for information form and reporting requirements limited to membership in other agreements and the level of service at the ports within the agreement's overall scope. Those provisions should provide the Commission with adequate warnings in case service rationalization reaches the point where a port, and the shippers which use that port, begin to suffer.

6. Other Amendments

The proposed rule contains a number of other amendments to the Commission's existing regulations in 46 CFR part 572. For the most part, these amendments are not substantive and are designed to make the existing regulations consistent with the proposed rule, to eliminate certain outdated regulations, or to reorganize certain subparts of the existing regulations. They include the following:

- In § 572.104, new definitions are added for such terms as "capacity management or capacity regulation agreements," "monitoring report," "rate" and "vessel-operating costs." In addition, the present definition of a joint service is revised to eliminate the reference to "consortium," which is a term not defined by the 1984 Act and could include a number of commercial relationships besides joint services.
- In subpart C, the exemptions of certain kinds of agreements are revised to eliminate unnecessary references to "Information Form" requirements. These changes have no effect on the exemptions themselves.
- Subpart D is revised to include existing subpart E, so that all regulations governing the content and organization of filed agreements will be contained within one subpart. Also, proposed § 572.401(a)(2) states that five copies of the new Information Form must be filed along with a new agreement; this is the minimum number of copies that will be needed by the Commission in order to review and process an agreement. Subparagraph (h) of present § 572.402 is deleted as no longer necessary. Also, the proposed rule eliminates the requirements in current § 572.403(a)(2)–(3) that Information Forms must accompany "significant modifications" to effective agreements; they will not longer be necessary since the agreements addressed by those regulations will in all likelihood be subject to ongoing reporting requirements. Also, the standards presently set forth in § 572.404 for granting a waiver are revised to remove the requirement that the applicant show that "beneficial results" will occur if the waiver is granted, and instead to require that the applicant show that granting the waiver will not impair effective regulation by the Commission, consistent with the language of section 16 of the 1984 Act, 46 U.S.C. app. 1715. Similar language is used in the proposed rule's other waiver provisions in revised subparts E and G.
- Section 572.608(b)(2), which sets forth an exception to the confidentiality of submitted material, is revised to more closely reflect the language of section 6(j) of the 1984 Act, 46 U.S.C. app. 1705(j). Similar language is used in the

proposed rule's provision on confidentiality in revised subpart G.

7. Carrier Costs and Profits

The Commission's obligation under section 6(g) of the 1984 Act to police against agreements that may cause, or have caused, unreasonable increases in transportation rates, and the 1984 Act's purpose of providing an efficient and economic transportation system in the ocean commerce of the United States, 46 U.S.C. app. 1701(2), raise the question whether these policies can or should be pursued by monitoring the costs and/or profitability of the carriers to a particular agreement. The proposed rule does not include provisions on carrier costs or profitability, but the Commission wishes to solicit comments on the lawfulness and feasibility of such provisions. Commenters should address whether such provisions would be inconsistent with Congress's directive that "[t]he determination whether an agreement is likely to produce an 'unreasonable increase in the price of transportation' does not authorize the FMC to engage in the type of ratemaking analysis undertaken by regulators of public utilities or as applied in the domestic offshore trades." H.R. Rep. No. 600, 98th Cong., 2d Sess. 35 (1984). That aside, commenters should also address how such provisions might be structured, particularly given the proposed rule's focus on individual country sub-trades; whether costs and/or profitability under a particular agreement can be measured accurately, particularly if the carriers to the agreement have other operations elsewhere; and whether arguments that an agreement is necessary to control costs or to improve profits are better explored in the context of an investigation of a particular agreement, rather than made the subject of regulations applicable to broad classes of agreements.

8. Effective Agreements Under the Proposed Rule

The Commission's present intentions regarding the treatment of effective agreements under the regulations proposed in this proceeding are as follows. Upon publication of a final rule, the regulations would become effective immediately for new agreements, which thus would be required to comply with the revised Information Form provisions. However, the proper application of the new regulations to agreements already in effect could not be determined immediately, because the market share data necessary to separate Class A/B agreements into Class A and Class B will not be readily available.

Accordingly, the Commission intends to stay application of the final rule to effective agreements. The Commission then will direct all existing Class A/B agreements to submit reports under section 15 of the 1984 Act that would include all the information demanded of new Class A/B agreements under the Information Form regulations, including market share data. Upon review of these reports, those agreements will be appropriately classified into Class A or Class B, the stay of the final rule will be lifted, and the orderly filing of the regular monitoring reports (including those applicable to Class C agreements) will begin. The initial section 15 reports will provide baselines (albeit not pre-implementation baselines) against which the subsequent reports will be compared as part of the continuous monitoring of each agreement. For those agreements already in effect that are subject to reporting requirements negotiated by the Commission's staff, those requirements will be superseded by the final rule.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The ocean carriers affected by the rule are not "small organizations" or "small governmental jurisdictions" as defined by 5 U.S.C. 601 and, as large and predominantly foreign-based enterprises, are not "small business concerns" as defined by 15 U.S.C. 632 and regulations issued thereunder.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511), as amended. The incremental public reporting burden for this collection of information is estimated to range from an average of 46 hours to 144 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Part 572

Administrative practice and procedure; maritime carriers; reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 4, 5, 6, 10, 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1703, 1704, 1705, 1709, 1714 and 1716, Part 572 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

2. In section 572.103, the first sentence of paragraph (a), the first two sentences of paragraph (b), the first sentence of paragraph (c), and the second sentence of paragraph (d) are revised; in paragraph (e), the third sentence is revised, the last sentence is revised, and a new sentence is added as follows:

§ 572.103 Policies.

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. * * *

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those classes of agreements which must be accompanied by information submissions when they are first filed, and sets forth the kind of information for each class of agreement which the Commission believes relevant to that review. * * *

(c) In order to further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. * * *

(d) * * * In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing requirements of this part.

(e) * * * This, however, requires greater monitoring of agreements after they have become effective, to assure continued compliance with all

applicable provisions of the Act. * * * Only that information which is necessary to assure that Commission monitoring responsibilities will be fulfilled is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

* * * * *

3. In section 572.104, paragraphs (e) through (r) are redesignated (f) through (s); (s) through (x) are redesignated (u) through (z); (y) is redesignated (cc); (z) through (cc) are redesignated (dd) through (gg); (dd) is redesignated (hh); and (ee) and (ff) are redesignated (ii) and (jj); new paragraphs (e), (t), (aa), (bb), and (kk) are added; in newly redesignated (g), the last sentence is revised; newly redesignated (j) is revised; the heading of newly redesignated (o) is revised; newly redesignated (cc) is revised; and in newly redesignated (hh), the last sentence is revised to read as follows:

§ 572.104 Definitions.

* * * * *

(e) *Capacity management or capacity regulation agreement* means an agreement between two or more ocean common carriers which authorizes withholding some part of the capacity of the parties' vessels from a specified transportation market, without reducing the real capacity of those vessels. The term does not include sailing agreements or space charter agreements.

* * * * *

(g) *Conference agreement* * * * The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

* * * * *

(j) *Effective agreement* means an agreement approved pursuant to the Shipping Act, 1916, or effective pursuant to an exemption under that act, or effective under the Act.

* * * * *

(o) *Joint service agreement* * * *

* * * * *

(t) *Monitoring report* means the report containing economic information which must be filed at defined intervals with regard to certain kinds of agreements that are effective under the Act.

* * * * *

(aa) *Rate,* for purposes of this part, includes both the basic price paid by a shipper to an ocean common carrier for a specified level of transportation service for a stated quantity of a particular commodity, from origin to destination, on or after a stated effective date or within a defined time frame, and also any accessorial charges or allowances that increase or decrease the total transportation cost to the shipper.

(bb) *Rate agreement* means an agreement between ocean common carriers which authorizes agreement upon, on either a binding basis under a common tariff or on a non-binding basis, or discussion of, any kind of rate.

(cc) *Sailing agreement* means an agreement between ocean common carriers which provides for the rationalization of service by establishing a schedule of ports which each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity management or capacity regulation agreements.

* * * * *

(hh) *Space charter agreement* * * * The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo, but may not include capacity management or capacity regulation as used in this subpart.

* * * * *

(kk) *Vessel-operating costs* means any of the following expenses incurred by an ocean common carrier: Salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and bareboat charter hire expenses.

§ 572.30 [Amended]

4. In section 572.301, paragraph (b) is amended by removing the words "Information Form" and the comma immediately thereafter.

§ 572.302 [Amended]

5. In section 572.302, paragraph (b) is amended by removing the words "Information Form" and the comma immediately thereafter.

§ 572.303 [Amended]

6. In section 572.303, paragraph (b) is amended by removing the words "and Information Form."

§ 572.304 [Amended]

7. In section 572.304, paragraph (b) is amended by removing the words "and Information Form."

§ 572.305 [Amended]

8. In section 572.305, paragraph (b) is amended by removing the words "and Information Form."

§ 572.306 [Amended]

9. In section 572.306, paragraph (b) is amended by removing the words "and Information Form."

§ 572.308 [Amended]

10. In section 572.308, paragraph (b) is amended by removing the words "and Information Form."

§ 572.309 [Amended]

11. In section 572.309, paragraph (a) introductory text, is amended by removing the words "Information Form" and the comma immediately thereafter.

12. In subpart D, the heading thereof is revised, as follows:

Subpart D—Filing of Agreements

13. In section 572.401, the heading thereof and paragraphs (a)(2), (c), (d) and (e) are revised to read as follows:

§ 572.401 General requirements.

(a) * * *

(2) Where required by this part, an original and five copies of the completed Information Form referenced at subpart E of this part; and

* * * * *

(c) Any agreement which does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with § 572.601.

(d) Assessment agreements shall be filed and shall be effective upon filing.

(e) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the waiting period required under the Act.

14. In section 572.402, paragraph (e)(2) is amended by changing the references to "§§ 572.501 and 572.502" to "§§ 572.403 and 572.404," paragraph (f) is amended by changing the references to "§§ 572.501(b)(3), 572.501(b)(6) and 572.502(a)(1)" to "§§ 572.403(b)(3), 572.403(b)(6) and 572.404(a)(1)," and paragraph (h) is removed.

15. Section 572.405 is removed and section 572.403 is redesignated 572.405 with paragraphs (a) and (g)(3) revised as follows, and section 572.501 of subpart E is redesignated 572.403 with paragraphs (a) and (b) amended by changing the references to "§ 572.502" to "§ 572.404":

§ 572.405 Modifications of agreements.

* * * * *

(a) Agreement modifications shall be: filed in accordance with the provisions of 572.401 and in the format specified in 572.402; with the content and organization specified in 572.403 and 572.404 and in accordance with this section.

* * * * *

(g) * * *

* * * * *

(3) The filing of a republished agreement, as described in paragraph (g)(2) of this section, may be accomplished by filing only an executed original true copy. No Information Form requirements apply to the filing of a republished agreement.

16. Section 572.406 is redesignated 572.407 and section 572.404 is redesignated 572.406 and revised as follows, and section 572.502 of subpart E is redesignated 572.404 with paragraphs (a) and (b)(1) amended by changing the reference to "572.501" to "572.403":

§ 572.406 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive the requirements of §§ 572.401, 572.402, 572.403, 572.404 and 572.405.

(b) Requests for such a waiver shall be submitted in advance of the filing of the agreement to which the requested waiver would apply and shall state: (1) the specific provisions from which relief is sought; (2) the special circumstances requiring the requested relief; and (3) why granting the requested waiver will not substantially impair effective regulation of the agreement.

17. The heading of subpart E is removed and new subpart E is added, as follows:

Subpart E—Information Form Requirements

§ 572.501 General requirements.

(a) Certain agreements must be accompanied, upon their initial filing, with an Information Form setting forth information and data on the agreement member lines' prior cargo carryings, revenue results and port service patterns.

(b) The filing parties to an agreement subject to this subpart shall complete and submit an original and five copies of the applicable Information Form at the time the agreement is filed. Copies of the applicable Form may be obtained at the Office of the Secretary or by writing to the Secretary of the Commission.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. Whenever the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(d) The Information Form for a particular agreement may be supplemented with any other information or documentary material.

(e) The Information Form and any additional information submitted in conjunction with the filing of a particular agreement shall not be disclosed except as provided in § 572.608.

§ 572.502 Subject agreements.

Agreements subject to this subpart are divided into two classes, Class A/B and Class C. When used in this subpart:

(a) Class A/B agreement means an agreement that is one or more of the following:

(1) A rate agreement as defined in § 572.104(aa) and § 572.104(bb);

(2) A joint service agreement as defined in § 572.104(o);

(3) A pooling agreement as defined in § 572.104(y);

(4) A capacity management or capacity regulation agreement as defined in § 572.104(e);

(5) An agreement authorizing discussion or exchange of data on vessel-operating costs as defined in § 572.104(kk); or

(6) An agreement authorizing regulation or discussion of service contracts as defined in § 572.104(dd).

(b) Class C agreement means an agreement that is one or more of the following:

(1) A sailing agreement as defined in § 572.104(cc); or

(2) A space charter agreement as defined in § 572.104(hh).

§ 572.503 Information form for Class A/B agreements.

This section sets forth the Information Form for Class A/B agreements, with accompanying instructions that are intended to facilitate the completion of the Form. The instructions should be read in conjunction with the Shipping Act of 1984 and with this part 572.

Information Form for Class A/B Agreements

Instructions

All agreements between ocean common carriers that are Class A/B agreements as defined in 46 CFR 572.502(a) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to each part of the Form. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part I

Part I requires the filing party to state the full name of the agreement as also provided under 46 CFR 572.403.

Part II

Part II requires the filing party to list all effective agreements covering all or part of the geographic scope of the filed agreement, whose parties include one or more of the parties to the filed agreement.

Part III(A)

Part III(A) requires the filing party to indicate whether the agreement authorizes the parties to collectively fix rates under a common tariff, to agree upon rates on a non-binding basis, or to discuss rates. Such rate activities may be authorized by a conference agreement, an interconference agreement, an agreement among one or more conferences and one or more non-conference ocean common carriers, or an agreement among two or more non-conference ocean common carriers.

Part III(B)

Part III(B) requires the filing party to indicate whether the agreement authorizes the parties to establish a joint service.

Part III(C)

Part III(C) requires the filing party to indicate whether the agreement authorizes the parties to pool cargo or revenues.

Part III(D)

Part III(D) requires the filing party to indicate whether the agreement authorizes the parties to establish capacity management or capacity regulation programs, whereby some part of the capacity of the parties' vessels is withheld from a specified transportation market.

Part III(E)

Part III(E) requires the filing party to indicate whether the agreement authorizes the parties to discuss or exchange data on vessel-operating costs, which include wages of officers and crew; fringe benefits; consumable stores; supplies and equipment; maintenance and repair; insurance; vessel fuel; and charter hire.

Part III(F)

Part III(F) requires the filing party to indicate whether the agreement authorizes the parties to regulate or discuss service contracts.

Part IV

Part IV requires the filing party to provide the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement, during the most recent calendar quarter for which complete data are available. *Sub-trade* is defined as the scope of all liner movements between each U.S.

port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa and Saipan.

The *formula for calculating market share* (in either the entire agreement scope or in a sub-trade) is as follows:

The total amount of cargo carried on each liner operator's liner vessels (in either the entire agreement scope or in the particular sub-trade) during the most recent calendar quarter for which complete data are available, divided by the total amount of cargo carried on all liner vessels (in either the entire agreement scope or in the particular sub-trade) during the same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

The *amount of cargo* is to be measured in TEUs. *Liner movements* is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Information Form.

Part V

Part V requires the filing party to state, for each agreement member line that served all or any part of the geographic area covered by the agreement during all or any part of the most recent 12-month period for which complete data are available, each line's total cargo carryings (measured in TEUs) within the geographic area, total revenues within the geographic area, and average revenue per TEU. The Information Form specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part VI

Part VI requires the filing party to identify, for each sub-trade within the scope of the agreement, the top 10 commodities by cumulative TEUs carried by all the parties during the same 12-month period used in responding to Part V, or the commodities accounting for 50 percent of the cumulative TEUs carried by all the parties during the 12-month period, whichever is greater. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

Part VII

Part VII addresses how each of the parties to the proposed agreement has carried each major commodity in each sub-trade, and the revenue results experienced by each party from its carriage of each commodity. The Information Form specifies the format in which the information is to be reported.

Part VIII

Part VIII is concerned with the levels of service at each port within the entire geographic scope of the agreement. The filing party is required to provide the number of calls at each port by each of the agreement lines over the 12-month period used in responding to Parts V, VI and VII, and also to indicate any change in the nature or type of service to be effected immediately by the agreement.

Part IX

Part IX is required to be completed only where the agreement authorizes capacity management or capacity regulation as defined by 46 CFR 572.104(e). The filing party is required to state the total TEU capacity provided by each party in the geographic service area covered by the capacity management or capacity regulation program during the same 12-month period used in responding to Parts V, VI, VII and VIII, the number of those TEUs that were utilized, and each party's initial capacity commitment or allocation under the program. Where the capacity management or capacity regulation program covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately. Copies of specified kinds of reports must also be provided.

Part X(A)

Part X(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part X(B)

Part X(B) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding a request for additional information or documents.

Part X(C)

Part X(C) requires that the filing party sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Information Form For Certain Agreements By Or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)

Part I Agreement Name: _____

Part II Other Agreements

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part III Agreement Type

(A) Rate Agreements

Does the agreement authorize the parties to collectively fix rates on a binding basis under a common tariff, or to agree upon rates on a non-binding basis, or to discuss rates?

Yes ☐ No ☐

(B) Joint Service Agreements

Does the agreement authorize the parties to establish a joint service?

Yes ☐ No ☐

(C) Pooling Agreements

Does the agreement authorize the parties to pool cargoes or revenues?

Yes ☐ No ☐

(D) Capacity Management or Capacity Regulation

Does the agreement authorize the parties to establish capacity management or capacity regulation programs?

Yes ☐ No ☐

(E) Vessel-Operating Costs

Does the agreement authorize the parties to discuss or exchange data on vessel-operating costs?

Yes ☐ No ☐

(F) Service Contracts

Does the agreement authorize the parties to discuss or agree on service contract terms and conditions, on either a binding or non-binding basis?

Yes ☐ No ☐

Parts IV, V, VI, VII, VIII and X must be completed for all agreements. If Part III(D) is answered "Yes," complete Part IX as well.

Part IV Market Share Information

Provide the market shares of all liner operators within the entire scope of the agreement and within each agreement sub-trade during the most recent calendar quarter for which complete data are available. The information should be provided in the format below:

MARKET SHARE REPORT FOR (INDICATE EITHER ENTIRE AGREEMENT SCOPE, OR SUB-TRADE NAME) TIME PERIOD

	TEUs	Percent
Agreement Market Share		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share	X,XXX	XX

MARKET SHARE REPORT FOR (INDICATE EITHER ENTIRE AGREEMENT SCOPE, OR SUB-TRADE NAME) TIME PERIOD—Continued

	TEUs	Percent
Non-Agreement Market Share		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX
Total Market	X,XXX	100

Part V Cargo and Revenue Results Agreement-Wide

For each party that served all or any part of the geographic area covered by the entire agreement during all or any part of the most recent 12-month period for which complete data are available, state total cargo carryings in TEUs within the entire geographic area, total revenues within the geographic area, and average revenue per TEU. The same 12-month period must be used for each party. The information should be provided in the format below:

TIME PERIOD

Carrier	Total TEUs	Total revenues	Avg. revenue per TEU
A		$	$
B		$	$
C		$	$
Etc.		$	$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities by cumulative TEUs carried by all the parties during the same time period used in responding to Part V, or list the commodities accounting for 50 percent of the cumulative TEUs carried by all the parties during the same 12-month period, whichever list is longer. The same 12-month period must be used in reporting for each sub-trade. The information should be provided in the format below:

Time Period (Same as That Used in Responding to Part V)

I. Sub-trade
A. First leading commodity
B. Second leading commodity
C. Third leading commodity etc.
II. Sub-trade
A. First leading commodity etc.

Part VII Cargo and Revenue Results by Sub-Trade

For the same time period used in responding to Parts V and VI, and for each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, provide the following information:

(1) Total TEUs carried port-to-port under tariff rates, and average gross revenue per TEU.

(2) Total TEUs carried port-to-port under service contracts, and average gross revenue per TEU.

(3) Total TEUs carried by intermodal service under tariff rates, and average gross revenue per TEU.

(4) Total TEUs carried by intermodal service under service contracts, and average gross revenue per TEU.

The information should be provided in the format below:

Time Period (Same as That Used in Responding to Part V)

I. Sub-trade A
A. First leading commodity
1.Carrier A
(a) Port-to-port service under tariff rates
(1) Total TEUs of first leading commodity carried
(2)Average gross revenue per TEU
(b) Port-to-port service under service contracts
(1) Total TEUs of first leading commodity carried
(2) Average gross revenue per TEU
(c) Intermodal service under tariff rates
(1) Total TEUs of first leading commodity carried
(2) Average gross revenue per TEU
(d) Intermodal service under service contracts
(1) Total TEUs of first leading commodity carried
(2) Average gross revenue per TEU
2. Carrier B
(a) etc.
3. etc.
B. Second leading commodity
1. Carrier A
(a) etc.
II. Sub-trade B
A. First leading commodity
1. etc.

Part VIII Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the same time period used in responding to Parts V, VI and VII. The information should be provided in the format below:

TIME PERIOD

[Same as that used in responding to Part V]

	Port	Port	Port	Port	Port
Carrier A					
Carrier B					
Carrier C					
Etc.					

Also, for each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service to be effected immediately by the agreement, including base port designation and frequency of vessel calls.

Part IX Capacity Management or Regulation (if Applicable)

For each party that served the geographic service area to be covered by the capacity management or capacity regulation program during all or any part of the 12-month period used in responding to Parts V, VI, VII and VIII, provide the information indicated in the format below:

TIME PERIOD

[Same as that used in responding to Part V]

	Total TEU capacity provided in the geographic service area	Total TEUs utilized	Initial TEU capacity commitment/allocation
Carrier A			
Carrier B			
Carrier C			
Etc.			

In addition, provide copies of any reports or analyses dealing with cargo space utilization, cargo level forecasts or new ship buildings, which were prepared during the 12 months prior to the filing of the agreement and circulated among at least two parties.

Part X

(A) Identification of Person(s) to Contact Regarding the Information Form

(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Cable Address _____

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).

(1) Name _____
(2) Title _____
(3) Address _____
(4) Telephone _____
(5) Cable Address _____

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____
Title _____
Relationship with parties to agreement _____
_____
Signature _____
Date _____

§ 572.504 Information form for Class C agreements.

This section sets forth the Information Form for Class C agreements, with

accompanying instructions that are intended to facilitate the completion of the Form. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 572.

Information Form for Class C Agreements

Instructions

All agreements between or among ocean common carriers that are Class C agreements as defined in 46 CFR 572.502(b) must be accompanied by a completed Information Form for such agreements. A complete response must be supplied to the Form. Where the filing party is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part I

Part I requires the filing party to state the full name of the agreement as also provided under 46 CFR 572.403.

Part II

Part II requires the filing party to list all effective agreements covering all or part of the geographic scope of the filed agreement, whose parties include one or more of the parties to the filed agreement.

Part III

Part III is concerned with the level of service at each port within the entire geographic scope of the agreement. The filing party is required to state the number of calls at each port by each of the parties over the most recent 12-month period for which complete data are available, and also to indicate any change in the nature or type of service to be effected immediately by the agreement.

Part IV(A)

Part IV(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IV(B)

Part IV(B) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding a request for additional information or documents.

Part IV(C)

Part IV(C) requires that the filing party sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Information Form For Certain Agreements By or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)
Part I Agreement Name: _____

Part II Other Agreements

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part III Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the parties over the most recent 12-month period for which complete data are available. The information should be provided in the format below.

TIME PERIOD

	Port	Port	Port	Port	Port
Carrier A					
Carrier B					
Carrier C					
Etc.					

Also, for each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service to be effected immediately by the agreement, including base port designation and frequency of vessel calls.

Part IV

(A) Identification of Person(s) to Contact Regarding the Information Form
(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Cable Address _____

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).
(1) Name _____
(2) Title _____
(3) Address _____
(4) Telephone _____
(5) Cable Address _____

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.
Name (please print or type) _____
Title _____
Relationship with parties to agreement _____
Signature _____
Date _____

§ 572.505 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the information form requirements of §§ 572.503 or 572.504.

(b) Requests for such a waiver shall be submitted in advance of the filing of the information form to which the requested waiver would apply and shall state (1) the specific requirements from which relief is sought; (2) the special circumstances requiring the requested relief; and (3) why granting the requested waiver will not substantially impair effective regulation of the agreement, either during pre-implementation review or during post-implementation monitoring. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver.

18. In section 572.601, paragraph (a) and the first sentence of paragraph (b)(1) are revised, as follows:

§ 572.601 Preliminary review—rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the filing requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under § 572.505.

(b)(1) The Commission shall reject any agreement that otherwise fails to comply with the filing and Information Form requirements of the Act and this part.

* * * * *

19. In section 572.608, paragraph (b)(2) is revised, as follows:

§ 572.608 Confidentiality of submitted materials.

* * * * *

(b) * * *

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

* * * * *

20. In section 572.701, paragraphs (b), (c) and (d) are removed, paragraph (a)(1) is redesignated (b) and is revised, paragraph (a)(2) is redesignated (c), a new paragraph (a) is added, paragraph (e) is redesignated (d) and is revised, a new paragraph (e) is added, paragraph (f) is redesignated (g) and is revised, and a new paragraph (f) is added, as follows:

§ 572.701 General requirements.

(a) Certain agreements are required to submit quarterly Monitoring Reports on an ongoing basis for as long as they remain in effect, setting forth information and data on the agreement member lines' cargo carryings, revenue results and port service patterns under the agreement. In addition, certain

agreements are required to submit minutes of their meetings.

(b) *Address.* Monitoring Reports and minutes required by this subpart should be addressed to the Commission as follows: Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, Washington, D.C. 20573–0001. Copies of the applicable Monitoring Report form may be obtained from the Bureau of Trade Monitoring and Analysis. The lower, left-hand corner of the envelope in which each Monitoring Report or set of minutes is forwarded should indicate the nature of its contents and the related agreement number. For example: "Monitoring Report, Agreement 5000" or "Minutes, Agreement 5000."

* * * * *

(d) *Time for filing.* Monitoring Reports shall be filed within 30 days of the end of each calendar quarter. Minutes filed on an annual (calendar) year basis shall be filed by February 15 of the following year. Other documents shall be filed within 30 days of the end of a quarter-year, a meeting, or the receipt of a request for documents.

(e) A complete response in accordance with the instructions on the applicable Monitoring Report shall be supplied to each item. Whenever the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information.

(f) A Monitoring Report for a particular agreement may be supplemented with any other information or documentary material.

(g) *Confidentiality.* The Monitoring Reports, minutes, and any other additional information submitted for a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

Parties may voluntarily disclose or make Monitoring Reports, minutes or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

21. Section 572.702 is redesignated 572.706, the heading thereof is revised, and a new paragraph (d) is added, as follows:

§ 572.706 Filing of minutes—including shippers' requests and complaints, and consultations

* * * * *

(d) *Serial numbers.* (1) Each set of minutes filed with the Commission should be assigned a number. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign *Meeting No. 1* to its minutes, the next meeting will be assigned *Meeting No. 2*, and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its minutes in a manner which differs from that set forth in paragraph (d)(1) of this section may continue to utilize its own system thereof.

572.703 [Redesignated]

22. Section 572.703 is redesignated 572.707, and the reference to "§ 572.702" in the introductory text is changed to "§ 572.706," as follows:

§ 572.707 Other documents.

Each agreement required to file minutes pursuant to § 572.706 * * *.

* * * * *

23. Section 572.704 is redesignated 572.709 and is revised, as follows:

§ 572.709 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) Requests for such a waiver shall be submitted in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply and shall state (1) the specific requirements from which relief is sought; (2) the special circumstances requiring the requested relief; and (3) why granting the requested waiver will not substantially impair effective regulation of the agreement. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver.

24. A new section 572.702 is added, as follows:

§ 572.702 Agreements subject to Monitoring Report requirements.

Agreements subject to the Monitoring Report requirements of this subpart are divided into three classes, Class A, Class B and Class C. When used in this subpart:

(a) *Class A agreement* means an agreement that is subject to the definition set forth in § 572.502(a) and has market shares of 50 percent or more in half or more of its sub-trades.

(b) *Class B agreement* means an agreement that is subject to the definition set forth in § 572.502(a) but does not have market shares of 50 percent or more in half or more of its sub-trades.

Classification of an agreement as "Class A" or "Class B" for purposes of its reporting obligations under this subpart shall be done by the Bureau of Trade Monitoring and Analysis, based in the first instance on the market share data reported on the agreement's Information Form pursuant to § 572.503, or on similar data otherwise obtained. Thereafter, at the beginning of each calendar year, the Bureau of Trade Monitoring and Analysis shall determine whether the agreement should be classified as "Class A" or "Class B" for that year, based on the market share data reported on the agreement's most recent quarterly Monitoring Report.

(c) *Class C agreement* means an agreement that is subject to the definition set forth in § 572.502(b).

25. A new section 572.703 is added, as follows:

§ 572.703 Monitoring report for Class A agreements.

This section sets forth the Monitoring Report form for Class A agreements, with accompanying instructions that are intended to facilitate the completion of the Report. The instructions should be read in conjunction with the Shipping Act of 1984 and with this part 572.

Monitoring Report for Class A Agreements

Instructions

A complete response must be supplied to each part of the Report. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part by Part Explanation

Part I

Part I requires the filing party to state the full name of the agreement, and the assigned FMC number.

Part II

Part II requires the filing party to indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III(A)

Part III(A) requires the filing party to indicate whether the agreement authorizes the parties to operate as a conference.

Part III(B)

Part III(B) requires the filing party to indicate whether the agreement authorizes the parties to establish capacity management or capacity regulation programs, as defined

in § 572.104(e), whereby some part of the capacity of the parties' vessels is withheld from a specified transportation market.

Part IV

Part IV requires the filing party to provide the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the most recent calendar quarter. Sub-trade is defined as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa and Saipan.

The *formula for calculating market share* (in either the entire agreement scope or in a sub-trade) is as follows:

The total amount of cargo carried on each liner operator's liner vessels (in either the entire agreement scope or in the particular sub-trade) during the calendar quarter, divided by the total amount of cargo carried on all liner vessels (in either the entire agreement scope or in the particular sub-trade) during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

The *amount of cargo* is to be measured in TEUs. *Liner movements* is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part V

Part V requires the filing party to state each agreement member line's total cargo carryings (measured in TEUs) during the calendar quarter within the entire geographic area covered by the agreement, each line's total revenues within the geographic area during the calendar quarter, and average revenue per TEU. The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part VI

Part VI requires the filing party to identify, for each sub-trade within the scope of the agreement, the top 10 commodities by cumulative TEUs carried by all the parties during the calendar quarter, or the commodities accounting for 50 percent of the cumulative TEUs carried by all the parties during the calendar quarter, whichever is greater. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades should be stated separately.

Part VII

Part VII addresses how each of the parties has carried each major commodity in each sub-trade, and the revenue results experienced by each party from its carriage of each commodity. The Monitoring Report specifies the format in which the information is to be reported.

Part VIII

Part VIII is required to be completed if Part III(A) is answered "YES." The filing party is required to indicate the extent to which each party has taken independent rate actions on each of the leading commodities in each of the sub-trades. Part VIII also inquires into the type of shipper—beneficial cargo owner, non-vessel-operating common carrier, or shippers' association—for whom independent rate actions have been taken. The Monitoring Report specifies the format in which the information is to be reported.

Part IX

Part IX is concerned with the level of service at each port within the entire geographic scope of the agreement. The filing party is required to provide the number of calls at each port by each of the parties during the calendar quarter, and also to indicate any change in the nature or type of service effected during the calendar quarter.

Part X

Part X is required to be completed if part III(B) is answered "YES." The filing party is required to submit responses to a number of inquiries into the operation of the capacity management or capacity regulation program during the calendar quarter. Where the program covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately. Copies of specified kinds of documents must also be provided.

Part XI(A)

Part XI(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part XI(B)

Part XI(B) requires that the filing party sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Monitoring Report For Class A Agreements Between or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)
Part I Agreement Name: _____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Agreement Type

(A) Conferences

Does the agreement authorize the parties to operate as a conference?
Yes ☐ No ☐

(B) Capacity Management or Regulation

Does the agreement authorize the parties to establish capacity management or capacity regulation programs?
Yes ☐ No ☐

Part IV Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR CALENDAR QUARTER

[Indicate either entire agreement scope, or sub-trade name]

	TEUs	Percent
Agreement market share:		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share	X,XXX	XX

MARKET SHARE REPORT FOR CALENDAR QUARTER—Continued

[Indicate either entire agreement scope, or sub-trade name]

	TEUs	Percent
Non-Agreement Market Share:		
Line X	X,XXXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX
Total Market	X,XXX	100

Part V Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs	Total revenues	Avg. revenue per TEU
A		$	$
B		$	$
C		$	$
Etc.		$	$

Part VI Leading Commodities

For each sub-trade within the scope of the agreement, list the top 10 commodities by cumulative TEUs carried by all the parties during the calendar quarter, or list the commodities accounting for 50 percent of the cumulative TEUs carried by all the parties during the calendar quarter, whichever list is longer. The information should be provided in the format below:

Calendar Quarter

I. Sub-trade
A. First leading commodity
B. Second leading commodity
C. Third leading commodity
etc.
II. Sub-trade
A. First leading commodity
etc.

Part VII Cargo and Revenue Results by Sub-Trade

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party provide the following information:

(1) Total TEUs carried port-to-port under tariff rates, and average gross revenue per TEU.

(2) Total TEUs carried port-to-port under service contracts, and average gross revenue per TEU

(3) Total TEUs carried by intermodal service under tariff rates, and average gross revenue per TEU.

(4) Total TEUs carried by intermodal service under service contracts, and average gross revenue per TEU.

The information should be provided in the format below:

Calendar Quarter

I. Sub-trade A
A. First leading commodity
1. Carrier A
(a) Port-to-port service under tariff rates
(1) Total TEUs of first leading commodity carried
(2) Average gross revenue per TEU
(b) Port-to-port service under service contracts
(1) Total TEUs of first leading commodity carried
(2) Average gross revenue per TEU
(c) Intermodal service under tariff rates
(1) Total TEUs of first leading commodity carried
(2) Average gross revenue per TEU
(d) Intermodal service under service contracts
(1) Total TEUs of first leading commodity carried
(2) Average gross revenue per TEU
2. Carrier B
(a) etc.
3. etc.
B. Second leading commodity
1. Carrier A
(a) etc.
II. Sub-trade B
A. First leading commodity
1. etc.

Part VIII Independent Rate Actions (if applicable)

For each sub-trade within the scope of the agreement, and for each of the leading commodities listed for each sub-trade in the response to Part VI, and for each party, state the number of independent rate actions taken during the calendar quarter applicable to that commodity moving in that sub-trade, and the total number of TEUs of that commodity covered by the independent actions. Also, state the name of each shipper for whom an independent rate action was taken on that commodity during the calendar quarter, and state whether the shipper was a beneficial cargo owner, a non-vessel-operating common carrier, or a shippers' association. The information should be provided in the format below:

Calendar Quarter

I. Sub-trade A
A. First leading commodity
1. Carrier A
(a) Number of IA rate actions
(b) Number of TEUs
(c) Shippers affected
(1) Shipper A—name and type
(2) Shipper B—name and type
etc.
2. Carrier B
(a) etc.
B. Second leading commodity
1. Carrier A
(a) etc.
II. Sub-trade B
A. First leading commodity
1. etc.

Part IX Port Service

For each port within the entire geographic scope of the agreement, state the number of port calls by each of the agreement member lines during the calendar quarter. The information should be provided in the format below:

CALENDAR QUARTER

	Port	Port	Port	Port	Port
Carrier A					
Carrier B					
Carrier C					
Etc.					

Also, for each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service effected during the calendar quarter, including base port designation and frequency of vessel calls.

Part X Capacity Management or Regulation (if applicable)

For each party that served during the calendar quarter the geographic service area covered by the capacity management or capacity regulation program, provide the information indicated in the format below

CALENDAR QUARTER

	TEU capacity commitment or allocation	Total TEU capacity provided in the geographic service area	TEUs of program cargo carried	TEUs of non-program cargo carried	Total TEUs utilized in the geographic service area
Carrier A					
Carrier B					
Carrier C					
Etc.					

Also, identify all member lines who declined to carry cargo on the basis of their capacity commitments or allocations, and describe the circumstance of each instance and the amounts of cargo involved.

Also, provide copies of any reports or analyses dealing with cargo space utilization, cargo level forecasts or new ship buildings, which were prepared during the calendar quarter and circulated among at least two agreement members.

Part XI

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Cable Address _____

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____
Title _____
Relationship with parties to agreement ____
_____
Signature _____
Date _____

26. A new section 572.704 is added, as follows:

§ 572.704 Monitoring report for Class B agreements.

This section sets forth the Monitoring Report form for Class B agreements, with accompanying instructions that are intended to facilitate the completion of the Report. The instructions should be read in conjunction with the Shipping Act of 1984 and with this part 572.

MONITORING REPORT FOR CLASS B AGREEMENTS

Instructions

A complete response must be supplied to each part of the Report. Where the party answering a particular part is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part by Part Explanation

Part I

Part I requires the filing party to state the full name of the agreement, and the assigned FMC number.

Part II

Part II requires the filing party to indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires the filing party to provide the market shares of all liner operators within the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement during the most recent calendar quarter. Sub-trade is defined as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares should be shown separately.

U.S. port ranges are defined as follows:

Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to, but not including, Key West, Florida. Also includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida, to Brownsville, Texas, inclusive. Also includes all ports in Puerto Rico and the U.S. Virgin Islands.

Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon and Washington. Also includes all ports in Guam, American Samoa and Saipan.

The *formula for calculating market share* (in either the entire agreement scope or in a sub-trade) is as follows:

The total amount of cargo carried on each liner operator's liner vessels (in either the entire agreement scope or in the particular sub-trade) during the calendar quarter, divided by the total amount of cargo carried on all liner vessels (in either the entire agreement scope or in the particular sub-trade) during the calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

The *amount of cargo* is to be measured in TEUs. *Liner movements* is the carriage of liner cargo by liner operators. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel-operating common carrier engaged in liner service. *Liner vessels* are those vessels used in a liner service. *Liner service* refers to a definite, advertised schedule of sailings at regular intervals. All these definitions, terms and descriptions apply only for purposes of the Monitoring Report.

Part IV

Part IV requires the filing party to state each agreement member line's total cargo carryings (measured in TEUs) during the calendar quarter within the entire geographic area covered by the agreement, each line's total revenues within the geographic area during the calendar quarter, and average revenue per TEU. The Monitoring Report specifies the format in which the information is to be reported. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data should be stated separately.

Part V

Part V requires the filing party to identify any change in the nature or type of service at any of the ports within the entire geographic scope of the agreement.

Part VI(A)

Part VI(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part VI(B)

Part VI(B) requires generally that the filing party sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Monitoring Report For Class B Agreements Between or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)
Part I Agreement Name: _____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Market Share Information

Provide the market shares of all liner operators within the entire geographic scope of the agreement and within each sub-trade during the calendar quarter. The information should be provided in the format below:

MARKET SHARE REPORT FOR CALENDAR QUARTER

[indicate either entire agreement scope, or sub-trade name]

	TEUs	Percent
Agreement Market Share:		
Line A	X,XXX	XX
Line B	X,XXX	XX
Line C	X,XXX	XX
Total Agreement Market Share	X,XXX	XX
Non-Agreement market share:.		
Line X	X,XXX	XX
Line Y	X,XXX	XX
Line Z	X,XXX	XX
Total Non-Agreement Market Share	X,XXX	XX
Total Market	X,XXX	100

Part IV Cargo and Revenue Results Agreement-Wide

For each agreement member line, provide total cargo carryings (measured in TEUs) during the calendar quarter within the entire geographic area covered by the agreement, total revenues within the geographic area during the calendar quarter, and average revenue per TEU. The information should be provided in the format below:

CALENDAR QUARTER

Carrier	Total TEUs	Total revenues	Avg. revenue per TEU
A		$	$
B		$	$
C		$	$

Part V Port Service

For each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service effected during the calendar quarter, including base port designation and frequency of vessel calls.

Part VI

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Cable Address _____

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.Q

Name (please print or type) _____
Title _____
Relationship with parties to agreement _____
_____
Signature _____
Date _____

27. A new section 572.705 is added, as follows:

§ 572.705 Monitoring report for Class C agreements.

This section sets forth the Monitoring Report form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Report. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and this part 572.

Monitoring Report for Class C Agreements

Instructions

A complete response must be supplied to the Report. Where the filing party is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. All sources must be identified.

Part by Part Explanation

Part I

Part I requires the filing party to state the full name of the agreement, and the assigned FMC number.

Part II

Part II requires the filing party to indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III

Part III requires the filing party to identify any change in the nature or type of service at any of the ports within the entire geographic scope of the agreement.

Part IV(A)

Part IV(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part IV(B)

Part IV(B) requires generally that the filing party sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or her relationship with the parties to the agreement.

Federal Maritime Commission

Monitoring Report For Class C Agreements Between or Among Ocean Common Carriers

Agreement Number _____
(Assigned by FMC)
Part I Agreement Name: _____

Part II Other Agreements

Indicate any change occurring during the calendar quarter to the list of other agreements set forth in Part II of the Information Form.

Part III Port Service

For each port within the entire geographic scope of the agreement, indicate any change in the nature or type of service effected during the calendar quarter, including base port designation and frequency of vessel calls.

Part IV

(A) Identification of Person(s) to Contact Regarding the Monitoring Report

(1) Name _____
(2) Title _____
(3) Firm Name and Business _____
(4) Business Telephone Number _____
(5) Cable Address _____

(B) Certification

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) _____

Title _____
Relationship with parties to agreement ____

Signature _____
Date _____

28. A new section 572.708 is added, as follows:

§ 572.708 Retention of records.

Each agreement required to file minutes pursuant to this subpart shall retain a copy of each document listed in said minutes for a minimum period of 3 years after the date the document is distributed to the members. Such documents may be requested by the Director, Bureau of Trade Monitoring, in writing by reference to a specific minute, and shall indicate that the documents will be received in confidence. Requested documents shall be furnished by the parties within the time specified.

29. Section 572.902 is revised, as follows:

§ 572.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable Information Form or Monitoring Report, is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

Appendix A [Removed]

30. Appendix A to Part 572 is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–29760 Filed 12–2–94; 8:45 am]

BILLING CODE 6730–01–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–138, RM–8542]

Radio Broadcasting Services; Ketchikan, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of TLP Communications, Inc. proposing the allotment of FM Channel 260A to Ketchikan, Alaska, as that community's third local FM broadcast service. Coordinates for Channel 260A are 55–20–30 and 131–38–48. Ketchikan is located with 320 kilometers (199 miles) of the United States-Canadian border, and therefore, the Commission must obtain concurrence of the Canadian government to this proposal.

DATES: Comments must be filed on or before January 19, 1995, and reply comments on or before February 3, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lewis H. Goldman, P.C., 1850 M Street, NW, Suite 1080, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94–138, adopted November 18, 1994, and released November 29, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, 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.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–29865 Filed 12–2–94; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94-137; RM–8532]

Radio Broadcasting Services; Romney, West Virginia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by The West Virginia Schools for the Deaf and the Blind proposing the substitution of Channel 281A for Channel 201A at Romney, West Virginia, its reservation for noncommercial educational use, and the modification of Station WJGF(FM)'s license accordingly. Channel 281A can be allotted to Romney in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) north at petitioner's requested site. The coordinates for Channel 281A at Romney are North Latitude 39–22–00 and West Longitude 78–44–50.

DATES: Comments must be filed on or before January 19, 1995 and reply comments on or before February 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Max D. Carpenter, Superintendent, The West Virginia Schools for the Deaf and the Blind, 301 East Main Street, Romney, West Virginia 26757 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94-137, adopted November 21, 1994, and released November 29, 1994. 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, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, 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.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–29866 Filed 12–2–94; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 678

[I.D. 091494B]

Atlantic Tuna and Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings and scoping meetings; extension of comment period.

SUMMARY: NMFS announced 18 combination public hearings and scoping meetings in the **Federal Register** on September 23, 1994, and October 17, 1994, to receive comments from fishery participants and other members of the public on bluefin tuna, yellowfin and other tuna, and Atlantic shark management issues. NMFS is extending the comment period for Atlantic bluefin tuna, including comments on the Environmental Impact Statement (DEIS), and yellowfin tuna.

DATES: Written comments must be received on or before December 19, 1994.

ADDRESSES: Written comments for Atlantic bluefin, yellowfin and other tunas, including the DEIS, should be sent to Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), Division of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION: As a result of the hearings and scoping meetings held in October and November 1994, NMFS determined that it is important for commenters to have additional time to submit their comments. Therefore, NMFS is extending the comment period on Atlantic tuna from November 22, 1994, to December 19, 1994. The comment period for Atlantic shark is not being extended.

Dated: November 29, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–29744 Filed 12–2–94; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 232
Monday, December 5, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Clarks Fork (Wyoming) Wild and Scenic River Boundary Establishment

AGENCY: Forest Service, Agriculture.

ACTION: Notice of Availability.

SUMMARY: The boundary of the Clarks Fork Wild and Scenic River has been established. The classification of the river is wild. The boundary description of the river is available at the following Forest Service locations: Office of the Chief of the Forest Service, Auditors Building, 14th & Independence, SW., Washington, DC 20250; Shoshone National Forest Headquarters, 808 Meado Lane, Cody, Wyoming 82414–4516; Rocky Mountain Regional Office, 740 Simms Street, Golden, Colorado, 80401.

FOR FURTHER INFORMATION CONTACT:

Steve Dietemeyer, Director, Recreation and Public Service Team, (303) 275–5135.

Dated: November 28, 1994.

Tom L. Thompson,

Deputy Regional Forester.

[FR Doc. 94–29642 Filed 12–2–94; 8:45 am]

BILLING CODE 3410–11–M

Request for nominations to three Advisory Committees serving the Klamath, Northwest Sacramento, and California Coast Provinces

AGENCY: Forest Service.

ACTION: Request for nominations of people to serve on one of three PIEC Advisory Committees for the Klamath, Northwest Sacramento, or California Coast Provinces.

SUMMARY: The interagency groups responsible for implementing the President's Forest Plan in the Klamath, Northwest Sacramento and California Coast Provinces are forming three advisory committees to obtain advice and recommendations from agencies and interested publics.

DATES: The due date for receipt of nominations is December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Individuals with questions about the process or wishing to submit nominations for one of the provincial advisory committees should contact one of the following for a nomination packet:

Northwest Sacramento Province: Duane Lyon, Shasta Trinity National Forests, (916) 246–5499. Nominations can be submitted by FAX to (916) 246–5045.

Klamath Province: Virginia Bracken, Klamath National Forest, (916) 842–6131. Nominations can be submitted by FAX to (916) 842–6327.

California Coast: Dan Chisholm, Forest Supervisor, Mendocino National Forest, (916) 934–3316. Nominations can be submitted by FAX to (916) 934–7384.

SUPPLEMENTARY INFORMATION: There will be a total of 12 province advisory committees in northern California, Oregon and Washington working with federal agencies to implement the President's Forest Plan on federal lands in the Pacific Northwest. "These advisory committees will help us work with the people as we move forward with ecosystem management," said Pacific Northwest Regional Forester John Lowe who is coordinating the effort for national forests in northern California, Oregon and Washington. "These committees will supplement our regular public involvement efforts to help us make decisions that serve people and care for the land. We're eager to begin the dialogue."

Each advisory committee will provide advice to the respective Province Interagency Executive Committee (PIEC) regarding implementation of a comprehensive ecosystem management strategy for federal lands within the province. While boundaries of the provinces include whole river drainages for broad ecosystem planning, the purpose of the advisory committees is to assist in implementing the President's Forest Plan, which is limited to federal lands within the range of the northern spotted owl. Therefore, preference for positions on the committees will likely be to individuals, agencies and groups most directly associated with those federal lands involved with the northern spotted owl. Map for geographic boundaries of each province included in nomination packet information.

Each advisory committee will consist of no more than 29 members from the following entities.

State, local and tribal governments.

Public interest groups: to include representatives of environmental interests; different sectors of the forest products industry; and the recreation and tourism sectors.

The committees may also include representatives of the following interests: fish, wildlife, forestry conservation organizations, special forest products, mining, grazing, and commercial fishing or charter fishing boat industry.

All advisory committee meetings will be open to the public. Interested citizens may request time on the agenda to address the committee. All papers and documents used by the committee, including meeting minutes, will be available to the public.

Applicants must be United States citizens, at least 18 years old, and will be recommended for appointment based on their personal knowledge of local and regional resource issues, and understanding of public land uses and activities; willingness to work toward mutually beneficial solutions to complex issues; respect and credibility in local communities; and commitment to attending advisory committee meetings held for the province.

Advisory committee members must be willing to travel to meetings held throughout the provinces. Members will serve without pay, but reimbursement of travel and per diem is allowed for attendance at meetings called by the Chairperson of the advisory committee.

Regional Forester John Lowe will consult with other agency leaders to decide who will be on the 12 province advisory committees. The first meetings of the advisory committees will be held early in 1995 and the frequency thereafter will be determined by each committee.

Advisory committee recommendations are not legally binding and will not supersede the

legally established decision authority granted to the federal agencies involved.

Dated: November 22, 1994.

Stephen Fitch,

Forest Supervisor.

[FR Doc. 94–29605 Filed 12–2–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

The University of Georgia, 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 part 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: 94–092. *Applicant:* The University of Georgia, Athens, GA 30602. *Instrument:* Motion Analysis System, Model ELITEPLUS. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* See notice at 59 FR 46963, September 13, 1994. *Reasons:* The foreign instrument provides: (1) accuracy of 0.1 mm at 280 mm field of view and (2) compatibility with the 100 Hz data collection rate of Salira proprietary software. *Advice Received From:* National Institutes of Health, September 29, 1994.

Docket Number: 94–095. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Palisades, NY 10964. *Instrument:* High Temperature Resistivity Logging Tool. *Manufacturer:* CSM Associates Limited, United Kingdom. *Intended Use:* See notice at 59 FR 48420, September 21, 1994. *Reasons:* The foreign instrument provides measurement of: (1) sediment resistivity, (2) fluid conductivity and (3) temperative in ocean borehole environments to 350° C at pressures to 100 Mpa. *Advice Received From:* Los Alamos National Laboratory, October 26, 1994.

Docket Number: 94–097. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* Cardiac Monitor, Model Leycom Sigma 5-DF. *Manufacturer:* Cardio Dynamics, The Netherlands. *Intended Use:* See notice at 59 FR 49644, September 29, 1994. *Reasons:* The foreign instrument provides: (1) continuous measurement of ventricular blood volume by means of a conductance catheter and (3) a new 12-electrode dual field operating mode. *Advice Received From:* National Institutes of Health, September 29, 1994

Docket Number: 94–101. *Applicant:* Stanford University, Stanford, CA 94306. *Instrument:* Reflection High Energy Electron Diffraction System, Model EK-2035-R. *Manufacturer:* Staib Instrumente, Germany. *Intended Use:* See notice at 59 FR 49645, September 29, 1994. *Reasons:* The foreign instrument provides: (1) high beam energy (35 kev), (2) differential pumping for operation at pressures as high as 10^{-2} mbar and (3) beam blanking at 200 Hz to minimize damage to grown materials. *Advice Received From:* National Institute of Standards and Technology, June 7, 1994 (Comparable Case).

National Institutes of Health, Los Alamos National Laboratory 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 any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–29856 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–DS–F

Patent and Trademark Office

Grant of Certificate of Interim Extension of the Term of U.S. Patent No. 4,066,772; Motilium

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The Patent and Trademark Office has issued a certificate under 35 U.S.C. § 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,066,772 that claims the human drug product known as Motilium.

FOR FURTHER INFORMATION CONTACT: Gerald A. Dost by telephone at (703) 305–9282; or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, Office of Special Programs, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to 5 years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. Under section 156, a patent is eligible for term extension only if regulatory review of the claimed product was completed before the original patent term expired.

On December 3, 1993, section 156 was amended by Pub. L. No. 103–179 to provide that if the owner of record of the patent or its agent reasonably expects the applicable regulatory review period to extend beyond the expiration of the patent, the owner or its agent may submit an application to the Commissioner of Patents and Trademarks for an interim extension of the patent term. If the Commissioner determines that, except for permission to market or use the product commercially, the patent would be eligible for a statutory extension of the patent term, the Commissioner shall issue to the applicant a certificate of interim extension for a period of not more than one year.

On November 18, 1994, the patent owner Janssen Pharmaceutica N.V. filed an application under 35 U.S.C. § 156(d)(5) for interim extension of the term of U.S. Patent No. 4,066,772. The application states that the patent claims the active ingredient domperidone in the human drug product Motilium. The application indicates that the product is currently undergoing a regulatory review before the Food and Drug Administration for permission to market or use the product commercially. The original term of the patent is set to expire on January 3, 1995. Applicant requests an interim extension of the term of the patent for a period of one year.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. § 156. Since it is apparent that the regulatory review period may extend beyond the expiration of the original patent term, an interim extension of the

patent term under 35 U.S.C. § 156(d)(5) is appropriate. Accordingly, an interim extension under 35 U.S.C. § 156(d)(5) of the term of U.S. Patent No. 4,066,772 has been granted for a period of one year from the original expiration date of the patent.

Dated: November 29, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–29807 Filed 12–2–94; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Hong Kong

November 30, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: November 30, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa requirements for textile products, produced or manufactured in Hong Kong and exported from Hong Kong to the United States are being amended to permit entry of made-to-measure suits in Categories 443, 444, 643, 644, 843 and 844 which are visaed as merged Categories 443/643/843 and 444/644/844 or 443/643/843(1) and 444/644/844(1). In other words, made-to-measure suits in Categories 443, 444, 643, 644, 843 and 844 may be visaed with or without the (1) suffix.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 48 FR 2400, published on January 19, 1983; and 51 FR 27235, published on July 30, 1986.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1994.

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 January 14, 1983, as amend, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong for which the Government of Hong Kong has not issued an appropriate visa.

Effective on November 30, 1994, you are directed to permit entry of made-to-measure suits in Categories 443, 444, 643, 644, 843 and 844 which are visaed as merged Categories 443/643/843 and 444/644/844 or 443/643/843(1) and 444/644/844(1) or the correct category corresponding to the actual shipment. Made-to-measure suits in Categories 443, 444, 643, 644, 843 and 844 may be visaed with or without the (1) suffix. Merchandise in Categories 443, 444, 643, 644, 843 and 844 which has been exported prior to November 30, 1994 shall not be denied entry if visaed without the (1) suffix.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

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. 94–29850 Filed 12–2–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Subparts 209.1, "Responsible Prospective Contractors," and 252.2, "Texts of Provisions and Clauses;" OMB Control Number 0704–0372.

Type of Request: Expedited Processing—Approval date requested: 30 days following publication in the **Federal Register.**

Number of Respondents: 496.

Responses Per Respondent: 1.

Annual Responses: 496.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 496.

Needs and Uses: Section 843 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) requires offerors and contractors under DoD solicitations and contracts exceeding $5,000,000 to report commercial transactions conducted with the government of a terrorist country. The guidance of DFARS 209.104–1(g)(iii), the solicitation provisions at DFARS 252.209–7003, and the contract clause at DFARS 252.209–7004 implement these requirements. The collected information will be used in annual reports to Congress, additionally required by Section 843(c) of the Act.

Affected Public: Businesses or other for-profit, Non-profit instituti9ns, and Small businesses or organizations.

Frequency: On occasion and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officers: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 20, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–29805 Filed 12–2–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Department of Defense Base Closure Communities Customer Service Survey.
Type of Request: Expedited Processing—Approval date requested: 30 days following publication in the Federal Register.
Number of Respondents: 300.
Responses Per Respondent: 2.
Annual Responses: 600.
Average Burden Per Response: 6 minutes.
Annual Burden Hours: 60.
Needs and Uses: This survey will gather information regarding the quality of service delivered by the Department of Defense to base closure communities. Relevant portions of the information will be shared with appropriate offices within the Office of the Secretary of Defense complex, as well as the Military Departments. The survey implements part of the Assistant Secretary of Defense (Economic Security) customer service plan, and will enable the targeting of resources to improve service.
Affected Public: State or local governments.
Frequency: Semiannually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 30, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–29806 Filed 12–2–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Women in the Services Defense Advisory Committee; Meeting

AGENCY: Defense Advisory Committee on Women in the Services BG (DACOWITS) Meeting.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the cancellation of the meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The Executive Committee meeting scheduled for 5 December 1994 and the meeting tentatively scheduled for 13 February 1995 have been canceled. The next Executive Committee meeting has been scheduled for 23 January 1995. Business will be transition, overview organizational briefings for the new Executive Committee and discussion about internal reorganization of the Committee.

All meeting sessions will be open to the public.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Martha C. Gillette, USN, Office of DACOWITS and Military Women Matters, OUSD (Personnel and Readiness), The Pentagon, room 3D769, Washington, DC 20301–4000, telephone (703) 697–2122.

Dated: November 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–29734 Filed 12–2–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Motor Challenge Showcase Demonstration Projects

AGENCY: Department of Energy.

ACTION: Notice of extension for submitting Showcase Demonstration project proposals.

SUMMARY: On Friday, October 7, 1994, the U.S. Department of Energy (DOE) published a notice inviting participation in Motor Challenge Showcase Demonstration Projects (59 FR 51186). DOE is interested in obtaining proposals from industrial electric motor system end users for projects that are intended to demonstrate and "showcase" electric motor system energy efficiency, productivity, and environmental improvement in varied industrial or municipal facilities and settings. Projects selected by DOE will become "Showcase Demonstrations" and are part of a larger, Federally-sponsored (DOE) program that is an industry-driven collaborative effort called MOTOR CHALLENGE. The experiences and successful results to be gained from the Showcase Demonstrations will be used to encourage other U.S. industrial companies with similar applications to adopt efficient electric motor systems, and therefore, to increase the market penetration of efficient electric motor systems on a widespread basis within the U.S. Todays notice announces an extension for the submission of Motor Challenge Showcase Demonstration Project proposals.

DATES: The extended dates to guarantee consideration are: preliminary proposals must be received by March 1, 1995. Preliminary-proposals shall be considered as meeting the deadline if they are either: (1) received on or before the deadline date or, (2) postmarked on or before the deadline date. Preliminary-proposals which do not meet the deadline will be considered late applications and may not be considered. The preliminarily-accepted Showcase Demonstrations are projected to be announced by approximately April, 1995 and will be asked by DOE to provide final-proposals. The final proposals scheduled due date is approximately May, 1995. DOE is expected to finalize Showcase Demonstration project selection by approximately June, 1995. The initial Showcase Demonstration Workshop is scheduled to take place in June, 1995. It is envisioned that selected projects will have a duration of no more than 18 months, and therefore, projects are expected to be completed (the project's costs and benefits defined and validated) by November, 1996.

ADDRESSES: Preliminary-proposals and MOTOR CHALLENGE Partnership applications should be submitted to the MOTOR CHALLENGE Information Clearinghouse: MOTOR CHALLENGE Information Clearinghouse, P.O. Box 43171, Olympia, Washington 98504–3171

FOR FURTHER INFORMATION CONTACT: To receive further information on the MOTOR CHALLENGE Partnership, to obtain application forms for the Partnership, or to make inquiries related to the Showcase Demonstration projects, call the MOTOR CHALLENGE Hotline at 1–800–862–2086.

Issued in Washington, DC this 22nd day of November, 1994.

William P. Parks,

Acting Director, Industrial Energy Efficiency Division, Office of Industrial Technologies.

[FR Doc. 94–29829 Filed 12–2–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG88–2–006]

Algonquin Gas Transmission Co.; Notice of Filing

November 29, 1994.

Take notice that on November 23, 1994, Algonquin Gas Transmission Company (Algonquin) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 and 566–A.[2] Algonquin states that it is revising its standards of conduct to incorporate the changes required by Order No. 566–A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1993)). All such motions to intervene or protest should be filed on or before December 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29751 Filed 12–2–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[Docket No. CP95–100–000]

Florida Gas Transmission Co.; Notice of Request Under Blanket Authorization

November 29, 1994.

Take notice that on November 23, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP95–100–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade an existing meter station under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to upgrade the meter station located near milepost 92.6 on FGT's Sarasota Lateral in Sarasota County, Florida. FGT uses the meter station as a point of deliver for transportation gas to Peoples Gas System, Inc. (Peoples). Peoples requested that FGT perform this upgrade and will reimburse FGT for all costs directly and indirectly incurred which is estimated by FGT to be $75,926, including tax gross-up. FGT says that the upgrade will not affect the transportation agreements with Peoples regarding maximum daily transportation quantities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29750 Filed 12–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–47–013]

National Fuel Gas Supply Corp.; Notice of Tariff Filing

November 29, 1994.

Take notice that on November 23, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, proposed Second Substitute Original Sheet No. 216B and Substitute Original Sheet No. 216C.

National states that these tariff sheets are filed in an effort to address the concerns of Algonquin Gas Transmission Company and the Algonquin Customer Group related to the flowthrough of upstream pipeline take-or-pay costs charged to National by its former upstream pipeline suppliers. National states that it is proposing additional revisions to General Terms and Conditions Sections 20.2(f) and (g) to further clarify the refund and true-up provisions under Section 20 of its tariff. These provisions were previously revised by National in its November 10, 1994 filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29754 Filed 12–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–54–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 29, 1994.

Take notice that on November 23, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 253 and Original Sheet No. 253A with a proposed effective date of December 23, 1994.

Natural states that the purpose of the filing is to provide two pooling points in Natural's Midwest and Midcontinent

rate zones, one for volumes received on the Amarillo Line and one for volumes received on the Gulf Coast Line. Shippers would nominate volumes to and from the appropriate pooling points, thereby improving the accuracy and speed of the confirmation and scheduling process.

Natural requested whatever waivers may be necessary to permit the tariff sheets to become effective December 23, 1994.

Natural states that a copy of this filing was mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29755 Filed 12–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–53–000]

NorAm Gas Transmission Co.; Notice of Filing

November 29, 1994.

Take notice that on November 23, 1994, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets attached to the filing, to become effective December 1, 1994.

NGT states that the tariff sheets implement an interruptible imbalance resolution service. The service will consist of the short-term advance delivery of gas by NGT for a shipper's account at its delivery points and the subsequent return of the advanced gas by the shipper, and the short-term advance receipt of gas by NGT at a shipper's receipt points and the subsequent delivery of the gas for shippers' account at its delivery points.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before December 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29753 Filed 12–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–55–000]

Paiute Pipeline Co., Notice of Proposed Change in FERC Gas Tariff

November 29, 1994.

Take notice that on November 25, 1994, Paiute Pipeline Company (Paiute) tendered for filing to be a part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets:

First Revised Sheet No. 62
First Revised Sheet No. 63
First Revised Sheet No. 65
Original Sheet No. 65A

Paiute indicates that the purpose of said filing is to revise Sections 4.2(d) and 4.3(b)(7) of its General Terms and Conditions in order to modify the method by which the flowing gas receipt point capacity into its system from Northwest Pipeline Corporation is allocated to shippers on its system.

Paiute requests that the Commission accept the proposed tariff sheets effective without suspension at the earliest possible date so that the changes will be in effect during the current winter heating season.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29756 Filed 12–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–2–000]

Southeastern Natural Gas Co.; Notice of Petition for Rate Approval

November 29, 1994.

Take notice that on November 22, 1994, Southeastern Natural Gas Company (Southeastern) filed pursuant to section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable rates for firm transportation service consisting of a demand charge of $4.15 per MMBtu and a commodity charge of 0.006¢ per MMBtu and a rate of $0.143 per MMBtu for interruptible transportation performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Southeastern also proposes to impose a shrinkage charge of 1.0% for section 311 services.

Southeastern states that it is an interstate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Ohio. Southeastern proposes an effective date of November 23, 1994.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 13, 1994. The petition for rate approval is on file with

the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29752 Filed 12–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–667–000]

Texas Gas Transmission Corp.; Notice of Technical Conference

November 29, 1994.

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10:00 a.m. on December 7, 1994, in Room 3400 D, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

The purpose of the conference is to discuss matters of interest and concern relating to Texas Gas Transmission Corporation's proposal to expand the utilization of the CIPS/Marathon Delivery Point in order to make direct deliveries of gas to Marathon Oil Company's oil refinery in Robinson, Illinois.

All interested parties are invited to attend. For additional information, interested parties may call Philip J. Veres at (202) 208–0049.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29749 Filed 12–2–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5114–5]

Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Administrative Settlement and Opportunity for Public Comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of one party for costs incurred by EPA at the MKY Corporation Mycalex Facility Site.

DATES: Comments must be provided on or before January 4, 1994.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278 and should refer to: In the Matter of: MKY Corporation Mycalex Facility Site, U.S. EPA Index No. II–CERCLA–94–0116.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel; New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278, (212) 264–9196, Attention: Denise F. Finn, Esq.

SUPPLEMENTARY INFORMATION:

In accordance with Section 122(i)(1) CERCLA, notice is hereby given of a proposed administrative settlement concerning thy MKY Corporation Mycalex Facility Site which is located in Andover, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The MKY Corporation is committed to participate in this settlement. The Settling Party will pay a total of $180,000 under this agreement to reimburse EPA for response costs incurred at the MKY Corporation Mycalex Facility Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278.

Dated: October 27, 1994.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 94–29848 Filed 12–2–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2043]

Petition for Reconsideration of Actions in Rulemaking Proceedings

December 1, 1994.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed by December 20, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz frequency Bands (CC Docket No. 92–166).

Petitions Filed: 5.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–29864 Filed 12–2–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1041–DR]

Texas; 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 Texas (FEMA–1041–DR), dated October 18, 1994, and related determinations.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 8, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–29737 Filed 12–2–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1037–DR]

Washington; 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 Washington, (FEMA–1037–DR), dated August 2, 1994, and related determinations.

EFFECTIVE DATE: November 23, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington dated August 2, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 2, 1994:

Disaster Unemployment Assistance only to Whatcom County.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–29738 Filed 12–2–94; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research, and Evaluation: Request for Nominations for Public Members

AGENCY: Agency for Health Care Policy and Research.

ACTION: Request for Nominations for Public Members.

SUMMARY: 42 U.S.C. 299c, section 921 of the Public Health Service (PHS) Act, as amended by section 6103(c) of the Omnibus Budget Reconciliation Act of 1989, established a National Advisory Council for Health Care Policy, Research, and Evaluation (the Council). The Council is to advise the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the enhancement of quality, appropriateness, and effectiveness of health care services, and access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. Seventeen members with staggered terms were appointed in 1990. Six current members' terms will expire in May 1995. Nominations to fill these vacancies should be received on or before January 20, 1995. Current members whose terms expire in 1995 will be considered for reappointment should they so desire.

ADDRESSES: All nominations for membership should be submitted to Deborah L. Queenan, Executive Secretary, National Advisory Council for Health Care Policy, Research, and Evaluation, Suite 603, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary at (301) 594–1459.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c, section 921 of the PHS Act, provides that the National Advisory Council for Health Care Policy, Research, and Evaluation shall consist of 17 appropriately qualified representatives of the public appointed by the Secretary. Of the 17 public members, 8 are to be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; 3 are to be individuals distinguished in the practice of medicine; 2 are to be individuals distinguished in the health professions; 2 are to be individuals distinguished in the fields of business, law, ethics, economics, and public policy; and 2 are to be individuals representing the interests of consumers of health care.

The six members whose terms will expire May 31, 1995, represent expertise in health services research (2 members), health professions (one member), the practice of medicine (one member), public policy (one member), and the interests of health care consumers (one member). (Each of these individuals with expiring terms will be considered for reappointment should they so desire.) A Council member's term of office is 3 years, except that appointments are staggered to permit an orderly rotation of membership.

The Council advises the Secretary, through the Administrator, regarding priorities for a national agenda and strategy for:

(1) conduct of research, demonstration projects, and evaluations with respect to health care, including clinical practice and primary care;

(2) development and application of appropriate health care technology assessments;

(3) development and periodic review and update of guidelines for clinical practice, standards of quality, performance measures, and medical review criteria with respect to health care;

(4) conduct of research on outcomes of health care services and procedures. In addition, the Council performs second level review of grant applications which exceed $50,000 or more in total direct costs.

Interested persons may nominate one or more qualified persons for membership on the Council. Nominations shall state that the nominee is willing to serve as a member of the Council and appears to have no conflict of interest that would preclude Council membership. Potential candidates will be asked to provide detailed information concerning such matters as financial interests, consultancies, and research grants or contracts, to permit evaluation of possible sources of conflict of interest.

The Department is seeking a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and/or physically handicapped candidates.

Dated: November 25, 1994.

Clifton R. Gaus,

Administrator.

[FR Doc. 94–29852 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–90–P

Food and Drug Administration

[Docket No. 93N–0252]

Atul Shah; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) denying Dr. Atul Shah's request for a hearing and is issuing a final order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Dr. Atul Shah, 20 Hampton Hollow Dr., Millstone Township, NJ 08535, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Shah was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: December 5, 1994.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Atul Shah, the former Director of Analytical Research and Development at Par Pharmaceutical, Inc. (Par), pled guilty and was sentenced on March 5, 1993, for making a false declaration to a grand jury, a felony offense under 18 U.S.C. 1623. The basis for this conviction was Dr. Shah's false claim during his testimony before the Special Grand Jury for the United States District Court for the District of Maryland that he could not remember that the pilot batch for one of Par's generic drug products had been taken off accelerated stability testing and then put back on stability testing. In fact, Dr. Shah did remember during this testimony that the initial pilot batch had failed accelerated stability testing, and that a new formulation of that product had been put back on accelerated stability testing. This testimony was material to the grand jury's investigation because Par had filed a false abbreviated new drug application that failed to disclose that the pilot batch had failed stability testing.

In a certified letter received by Dr. Shah on August 11, 1993, the Deputy Commissioner for Operations offered Dr. Shah an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Dr. Shah from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar Dr. Shah on its finding that he had been convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of Par's drug products.

The certified letter also informed Dr. Shah that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also notified Dr. Shah that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated August 25, 1993, Dr. Shah requested a hearing, and in a letter dated October 8, 1993, Dr. Shah submitted arguments and information in support of his hearing request. In his request for a hearing, Dr. Shah acknowledges that he was convicted of a felony under Federal law as alleged by FDA. However, Dr. Shah argues that FDA's findings based on that conviction are incorrect and that the agency's proposal to debar him is unconstitutional.

The Interim Deputy Commissioner for Operations has considered Dr. Shah's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. Moreover, the legal arguments that Dr. Shah offers do not create a basis for a hearing (see 21 CFR 12.24(b)(1)). Dr. Shah's arguments are discussed below.

II. Dr. Shah's Arguments in Support of a Hearing

A. Mandatory Versus Permissive Debarment

Dr. Shah first argues that mandatory debarment is inapplicable to his case. He states that his false testimony subjects him to permissive rather than mandatory debarment because his conduct underlying his conviction does not relate to the development, approval, or regulation of a drug product. Dr. Shah claims that his testimony "pertained" to stability testing, but did not "relate" to stability testing.

This argument is unconvincing and fails to raise a genuine and substantial issue of fact. Section 306(a)(2)(A) of the act (21 U.S.C. 335a(a)(2)(A)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product. The statutory language, "relating to the development or approval * * *," by definition, encompasses all things that are logically connected with the development or approval of a drug product (see Webster's Collegiate Dictionary, Merriam-Webster Inc., Springfield, MA, 1990, "relate").

Dr. Shah's act of falsely testifying before the grand jury concerning his knowledge about the stability testing used to support approval of a Par drug product is clearly connected to the development or approval of a drug product. Stability testing is an essential step in the development and approval of a generic drug product.

Dr. Shah argues that he left Par long before his grand jury testimony and, thus, this testimony could not have interfered with the drug development and approval process. Whether or not Dr. Shah was employed by Par at the time of his testimony is irrelevant. Dr. Shah's testimony concerned, or was related to, FDA's approval of a Par drug product, because it pertained to stability testing used to support approval of that drug product.

Section 306(a)(2)(B) of the act requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the act. Dr. Shah's conviction is related to the regulation of a drug product in that it concerns matters that affect FDA's regulatory decisions about drug products. Dr. Shaw's testimony concerns information related to the stability of a drug product. FDA uses such information to determine, among other things, whether to approve a drug, whether to remove a drug from the market, whether labeling changes are necessary, and whether approved marketing conditions need to be altered. The act does not require that Dr. Shah's testimony regarding stability testing directly affect FDA's regulatory decisions. Rather, it *need* only relate to FDA's regulation of a drug product.

Dr. Shah contends that grand jury investigations have nothing to do with the development and approval of a drug product. He additionally states that the grand jury process is not a means by which FDA regulates a company's drug products. To the contrary, FDA often requests grand jury investigations to explore criminal activity involving matters under the jurisdiction of FDA. Dr. Shah's crime of lying before a grand jury relates to FDA's regulatory powers because it interferes with the inquiry into criminal activity concerning drug applications. Because his false declarations concerned matters relating to the development, approval, and regulation of a drug product, Dr. Shah's mandatory debarment is appropriate.

Dr. Shah also argues that the legislative history of the act indicates that mandatory debarment is inapplicable in this case because his crime did not "corrupt" or "directly involve" the approval process. As mentioned above, Dr. Shah's crime is one that does corrupt or perpetuate corruption of the FDA approval process because it interfered with an investigation into criminal activity

concerning information used by FDA in deciding drug approval and other drug regulatory issues. Whether the crime "directly involves" the approval process is not the standard set forth in the statute for mandatory debarment; "directly involves" does not have the same meaning as "relates to."

B. The Ex Post Facto Clause

Dr. Shah also argues that the ex post facto clause of the U.S. Constitution prohibits application of section 306(a)(2) of the act to him because this section was not in effect at the time of Dr. Shah's criminal conduct. With the enactment of the Generic Drug Enforcement Act (GDEA) on May 13, 1992, Congress amended the Federal Food, Drug, and Cosmetic Act to include section 306(a)(2).

An ex post facto law is one that reaches back to punish acts that occurred before enactment of the law or that adds a new punishment to one that was in effect when the crime was committed. (*Ex Parte Garland*, 4 Wall. 333, 377, 18 L. Ed. 366 (1866); *Collins* v. *Youngblood*, 110 S.Ct. 2715 (1990).)

Dr. Shah's claim that application of the mandatory debarment provisions of the act is prohibited by the ex post facto clause is unpersuasive. Because the intent behind debarment under section 306(a)(2) of the act is remedial rather than punitive, this section does not violate the ex post facto clause.

The congressional intent with respect to actions under section 306(a)(2) of the act is clearly remedial. Congress created the GDEA in response to findings of fraud and corruption in the generic drug industry. Both the language of the GDEA itself and its legislative history reveal that the purpose of the debarment provisions set forth in the GDEA is "to restore and ensure the integrity of the ANDA approval process and to protect the public health." (See section 1, Pub. L. 102–282, The Generic Drug Enforcement Act of 1992.) This is a remedial rather than punitive goal. (See *Manocchio* v. *Kusserow*, 961 F.2d 1539, 1542 (11th Cir. 1992) (exclusion of physician from participation in medicare programs because of criminal conviction is remedial, not punitive).) Supporting the remedial character of debarment is a statement by Senator Hatch in the Congressional Record of April 10, 1992, at S 5616, "* * * [t]he legislation * * * provides a much-needed remedy for the blatant fraud and corruption uncovered in the generic drug industry * * * during the last 3 years."

The Supreme Court has long held that statutes that deny future privileges to convicted offenders because of their previous criminal activities in order to insure against corruption in specified areas do not impose penalties for past conduct and, therefore, do not violate the ex post facto prohibitions. (See, e.g., *Hawker* v. *New York*, 170 U.S. 189, 190 (1898) (physician barred from practicing medicine for a prior felony conviction); *DeVeau* v. *Braisted*, 373 U.S. 154 (1960) (convicted felon's exclusion from employment as officer of waterfront union is not a violation of the ex post facto clause).)

In *DeVeau*, the court upheld a law that prohibited a convicted felon from employment as an officer in a waterfront union. The purpose of the law was to remedy the past corruption and to insure against future corruption in the waterfront unions. The court in *DeVeau*, 363 U.S. at 160, stated:

> The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession * * * .

As in *DeVeau*, the legislative purpose of the relevant statute is to ensure that fraud and corruption are eliminated from the drug industry. The restrictions placed on individuals convicted of a felony under Federal law are not intended as punishment but are "incident to a regulation of a present situation" (*DeVeau*, 363 U.S. at 160) and necessary in order to remedy the past fraud and corruption in the industry.

C. The Double Jeopardy Clause

In another argument, Dr. Shah claims that the proposal to debar him under section 306(a)(2) of the act violates the double jeopardy clause of the Fifth Amendment to the U.S. Constitution. The double jeopardy clause states that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." Dr. Shah relies on *U.S.* v. *Halper*, 490 U.S. 435 (1989), to argue that the Fifth Amendment double jeopardy clause should prevent his debarment because "jeopardy" can attach even in a purely civil proceeding, so long as the civil sanction is punitive, not remedial. He further argues that his proposed permanent debarment is punitive because (1) it is permanent and without regard to whether Dr. Shah represents a continuing threat to the integrity of the drug testing, approval, or regulatory processes; (2) it precludes his providing services in any capacity to a company whose products are subject to FDA approval, regardless of whether or not the service relates to drug testing, approval, or regulation; (3) it can be terminated only for substantial assistance to prosecutors and not when the threat to public safety is eliminated; and (4) it arises out of the mere fact of conviction and precludes factfinding into whether a risk to the public exists.

Dr. Shah's arguments are unpersuasive. First, "jeopardy" cannot attach because the effect of section 306(a)(2) of the act is remedial, not punitive. As discussed above, the legislative goal of this section is to restore and ensure the integrity of the drug approval process and to protect the public health by eradicating fraud and corruption from the drug industry. This is plainly a remedial rather than punitive goal. (*Manocchio* v. *Kusserow*, 961 F.2d at 1542.)

The fact that Dr. Shah's debarment is permanent rather than temporary does not signify that the legislation is nonremedial or punitive. The Supreme Court has upheld laws which, for remedial purposes, permanently bar a class or group of individuals from certain occupations due to a prior criminal conviction. (See *Hawker* v. *New York*, 170 U.S. 189, 190 (1898); *DeVeau* v. *Braisted*, 373 U.S. 154 (1960).) Additionally, these cases support the fact that Dr. Shah's debarment can arise only because of his conviction, which Dr. Shah argues is punitive.

Dr. Shah's conduct, which has been shown to relate to the development, approval, and regulation of a drug product, establishes the potential for future violations by Dr. Shah that undermine the integrity of the drug approval and regulatory process. The act precludes Dr. Shah's providing any type of service to holders of drug product applications because of this possibility of future violations. Congress proscribed all services in order to avoid the serious administrative difficulties involved in distinguishing between those positions clearly related to drug regulation from those not clearly related. Such a proscription for this reason is permissible. *Siegel* v. *Lyng*, 851 F.2d 412, 416 (D.C. Cir. 1988.)

Dr. Shah's assertion that the special termination provision is punitive is unpersuasive. In fact, the provision advances the remedial objective of ensuring the safety and efficacy of the country's drug supply. The cooperation fostered by this special termination provision enables FDA to eliminate from the drug industry many actors who are corrupting the industry, endangering the public health, and destroying consumers' confidence in the Nation's drug supply. Convictions based on debarred persons' assistance can form

the basis for other debarments if the terms of the act are satisfied, which further serves the act's remedial objectives.

An individual's debarment will not be terminated if FDA finds that the remedial intent of the act will be undermined by such termination. The act does not guarantee termination of debarment to those who are debarred. The power to terminate debarment is discretionary with FDA, and the agency is bound by the provision's terms to exercise this authority in a manner consistent with the interest of justice and protection of the integrity of the drug approval process (21 U.S.C. 335a(d)(4)(D)).

Due to the potentially serious consequences to the public health of fraud and corruption in the drug industry, the permanent debarment of convicted felons like Dr. Shah is not an excessive means to eliminate fraud from the industry. The legislative history of the GDEA is replete with statements, some cited above, that the act provides a reasonable means of ridding the drug industry of widespread corruption and to restore consumer confidence in generic drugs.

D. Due Process

In his final argument, Dr. Shah claims that his debarment violates the due process clause of the U.S. Constitution because it bears no rational relationship to any legitimate purpose. He asserts that his conduct does not automatically demonstrate a likelihood of future violations under the act. He also contends that debarment precludes providing services regardless of whether such service bears any relationship to the development, approval, or regulation of a drug product.

Dr. Shah's claims are unpersuasive. Dr. Shah fails to demonstrate that this debarment is unrelated to any legitimate purpose. Although his conduct does not automatically establish a likelihood of future violations, it does reveal the possibility of future violations. Debarment guards against future violations by prohibiting individuals "from providing services in any capacity to a person that has an approved or pending drug product application" in order to meet the legitimate regulatory purpose of restoring the integrity of the drug approval and regulatory process and protecting the public health. Dr. Shah acknowledges that protecting the public health is a legitimate purpose. As mentioned above, Congress can appropriately achieve this purpose by proscribing "all services" due to the serious administrative difficulties involved in distinguishing between those positions clearly related to drug regulation from those not clearly related. These difficulties would include the problem of ascertaining the exact nature of the employee's relationship with the employer as well as defining what constitutes a sufficient nexus with the regulatory scheme under all circumstances.

Dr. Shah's claim that FDA's refusal to grant a hearing in his case would violate procedural due process is inaccurate. Dr. Shah acknowledges that he was convicted as alleged by FDA and has raised no genuine and substantial issue of fact regarding his conviction. The facts underlying Dr. Shah's conviction have been established by his conviction, and, therefore, are not at issue. While Dr. Shah's legal arguments do not create a basis for a hearing, FDA has considered these arguments before taking final action and has found them unpersuasive. Accordingly, the Interim Deputy Commissioner for Operations denies Dr. Shah's request for a hearing.

III. Findings and Order

Therefore, the Interim Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20) finds that Dr. Atul Shah has been convicted of a felony under Federal law for conduct: (1) relating to the development or approval, including the process for development or approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Dr. Atul Shah is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective December 5, 1994. (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)).

Any person with an approved or pending drug product application who knowingly uses the services of Dr. Shah in any capacity, during his period of debarment, will be subject to civil money penalties (21 U.S.C. 335b(a)(6)). If Dr. Shah, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with Dr. Shah's assistance during his period of debarment.

Dr. Shah may file an application to attempt to terminate his debarment pursuant to section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 93N–0252 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 21, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–29768 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Special Project Grants; Maternal and Child Health (MCH) Services; Community Integrated Service Systems (CISS) Set-Aside Program

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The Health Resource and Services Administration is announcing the availability of fiscal year 1995 funds for a limited competition for Community Integrated Service Systems (CISS) Home Visiting for At-Risk Families (HVAF) grants. The purpose of the CISS/HVAF is to assist State Maternal and Child Health (MCH) programs to support development and expansion of successful community integrated service strategies. Projects funded under this initiative are expected to emphasize the home visiting model as an important component of care. The CISS/HVAF grants will be used to support the development of enhanced health components in States' Administration for Children and Families' (ACF) Five-Year State Plans for Family Preservation and Family Support (FP/FS) Services. These Five-Year Plans, being developed under Title IV–B of the Social Security Act, are part of the Family Preservation and Family Support (FP/FS) Services programs authorized under the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66). The CISS/HVAF

grants will complement planning activities supported by the HRSA and the ACF to promote State efforts to develop comprehensive systems of services which meet both the health and welfare needs of families. Awards will be made under the program authority of section 502(b)(1)(A) of the Social Security Act, the Maternal and Child Health Services Block Grant CISS Set-Aside Program.

Competition is limited to the eleven States and jurisdictions currently without CISS/HVAF grants. In FY 1994, 50 of the 56 eligible States and Jurisdictions applied for CISS/HVAF grants and 45 were funded. With this notice, HRSA is offering the remainder the opportunity to participate in this initiative. They constitute the universe of remaining eligible applicants that were either disapproved last year or did not apply. The eleven States and jurisdictions are: New Jersey; Virgin Islands; West Virginia; Tennessee; Mississippi; North Carolina; Texas; California; American Samoa; Guam; and the Northern Mariana Islands.

Grants/Amounts: Up to $550,000 will be available to support up to eleven new projects in an amount up to $50,000 per award for the project period. Project periods are for nine months, beginning January 1, 1995.

Eligibility: Eligibility for funding is limited to a single application from each of eleven specified States and Jurisdictions which has been approved to receive FY 1994 funding under Title IV–B, Subpart 2 of the Social Security Act: Family Preservation and Support Services, and which has not been approved to receive funds under the CISS/HVAF grant program. State Title V/Title IV–B agency partnerships are especially encouraged, with State Child Welfare and Maternal and Child Health agencies acting either as co-applicants or collaborating in the identification of the applicant. The application must be jointly developed and the project must be jointly implemented by both programs.

ADDRESSES: Grant applications must be submitted to: Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440. Applicants for these projects will use application Form PHS 5161–1, with revised facesheet DHHS Form 424, approved by OMB under control number 0937–0189.

DATES: The application deadline date is December 1, 1994. Eligible applicants have been notified as of October 31, 1994. This notice will inform the public of this grant award competition.

Competing applications will be considered to be on time if they are either:

(1) received on or before the deadline date, or

(2) postmarked on or before the deadline date and received in time for orderly processing. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late competing applications not accepted for processing or those sent to an address other than indicated in the ADDRESSES section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For programmatic or technical information on MCH issues, contact Mr. Stuart Swayze, 5600 Fishers Lane, Room 18A–39, telephone: 301 443–4026. For information concerning business management issues, contact Ms. Arlethia Dawson, Grants Management Branch, Maternal and Child Health Bureau, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, telephone: 301 443–1440.

Provision of Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The MCH Block Grant has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: November 29, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–29769 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–15–P

Part I, Title III Of The Public Health Service Act, as Amended; Delegation of Authority

Notice is hereby given that in furtherance of the delegation to the Administrator, Health Resources and Services Administration, on November 14, 1994, by the Assistant Secretary for Health, the Administrator, Health Resources and Services Administration, delegated all the authorities under Part I, Title III of the Public Health Service Act (42 U.S.C. 274k), to the Director, Bureau of Health Resources Development, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees or councils.

Redelegation

Provision was made for all authorities to be redelegated.

Prior Delegations

All previous delegations and redelegations within the Health Resources and Services Administration under Title III, of the Public Health Service Act, as amended, were continued in effect.

Effective Date

This delegation was effective November 21, 1994

Dated: November 21, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–29770 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Leopold J. Luberecki, Jr., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext. 223; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Recombinant Vaccinia Virus Encoding Cytochromes P–450

Gelboin, H.V., Battula, N., Gonzalez, F.J., Moss, B. (NCI, NIAID)
Serial No. 07/787,777 filed 6 Nov 91
U.S. Patent 5,164,313 issued 17 Nov 92
Serial No. 08/166,287
Filed 13 Dec 93 [FWC of 07/930,781 (Aban), which is DIV of 07/787,777]

This invention describes the construction and uses of recombinant vaccinia viruses containing DNA sequences that express enzymatically active cytochromes P1–450 and P3–450 in mammalian cells without requiring the extraneous addition of NADPH cytochrome P450 reductase or cell fractions for catalytic activity. This novel recombinant virus can be used to evaluate the cytochrome P–450-mediated metabolism and mutagenicity of xenobiotic or endobiotic compounds and chemical agents. The invention represents the first expression of cytochrome P–450 in a variety of mammalian systems using infectious viruses.

Chemotherapeutic Agent Evaluation Using Cells Grown In Hollow Fibers In Vivo

Hollingshead, M.G. (NCI)
Filed 5 May 93
Serial No. 08/058,154

A novel method has been developed to quickly evaluate and screen potential anti-cancer and anti-viral drugs in vivo. The desire for effective treatments for tumors and viral infections has created a need in the research and medical communities for a quick, reliable way to test chemotherapeutic agents. Although several teams of investigators have attempted in recent years to develop in vivo methods for screening such drugs, these methods have had limited value because they usually permit only the agent to be tested against one type of tumor cell or cell line per experiment and/or have been labor intensive and expensive. This new method for screening chemotherapeutic agents involves encapsulating the target (i.e., tumor) cells in a biocompatible, semipermeable membrane—which is made of unique hollow fibers or dialysis tubing—and transplanting the encapsulated cells into a laboratory animal. Each laboratory animal can receive an implant at a single site or multiple sites, making it possible to test a chemotherapeutic agent against several types of tumor cells simultaneously. The membrane, which does not generate an autoimmune response or release any toxic chemicals, allows for the target cells to be reharvested after the treatment.

Sensitive Method For Locating Chromosomal Breakpoints

Magrath, I.T., Shiramizu, B. (NCI)
Filed 2 Dec 93
Serial No. 08/160,547 (CON of 07/698,233, CON of 07/441,516)

A new technique for localizing chromosomal breakpoints offers a significant advancement in detecting genetic translocations such as those found in Burkitt's lymphoma. Present techniques for detecting chromosomal breakpoints require large amounts of tumor sample, are often insensitive, or are cumbersome and time consuming. This new technique utilizes sequence-specific primers for rapid, efficient PCR amplification of a fragment containing a breakpoint. This technique is so sensitive it can be used to sub-divide Burkitt's lymphomas into subtypes based on the location of chromosomal breakpoints.

Method For Estimating mRNA Content By Filter Hybridization To A Polythymidylate Probe

Hollander, M.C., Fornace, A.J. (NCI)
Filed 21 Feb 94
Serial No. 08/183,911 (CON of 07/908,814, CON of 07/501,774)

A method for the quantitation of relative mRNA samples which entails hybridization of a polythymidylate (polyT) probe with RNA bound to an insoluble substrate. This method is especially applicable for normalizing numerous RNA samples which are to be analyzed by dot blot hybridization. The relative hybridization of polyT probe to RNA is proportional to the polyA RNA content of the RNA samples. Since the hybridization of polyT probe to RNA does not appear to be dependent on any cell treatment or growth condition and experimental variation is minimized, this method is a better method for standardizing the amount of mRNA in RNA samples than is relative hybridization to cDNA probes such as actin or β_2-microglobulin, the transcript levels of which may vary according to cell treatment.

Sphingoid Bases And Methods For Their Preparation And Use

Boumendjel, A., Miller, S.P.F. (NINDS)
Filed 14 Feb 94
Serial No. 08/195,815

This is a new method for synthesizing a group of novel analogs of sphingosine-1-phosphate (S–1–P) that offer improved methods of studying cell growth as well as other cell regulatory processes. Sphingolipids compromise a large class of biologically significant compounds, some of which act upon enzymes that control cell growth or have potent mitogen activity. Previously, it has been difficult to study this class of compounds because there was no economically feasible method of producing large-scale amounts; however, a method has been developed for synthesizing S–1–P and other related analogs with greater yields and quantities in a shorter period of time compared to previous methods, allowing for large-scale production of these compounds at much lower costs.

A Novel Chaperone Protein

Kaye, F.J., Otterson, G.A. (NCI)
Filed 28 Feb 94
Serial No. 08/203,905

The gene sequences for the rat and human Stch chaperone protein, which belongs to the heat shock protein (HSP) family, have been isolated and characterized. HSP products have been localized to specific cellular fractions, such as cytosol, nucleus, endoplasmic

reticulum, and mitochondria, and recent experimental models have implicated these "chaperones" in facilitating protein transport across these specialized compartments. The Stch protein has significant differences from previously identified heat shock proteins and is expressed in tumor origin cells. These novel gene sequences and probes derived from the gene sequences are useful for quantitating the amount of Stch gene transcript in tissues, and antibodies are useful for detecting the presence of protein in cells.

Genes Coding For Melanoma Tumor Antigens

Kawakami, Y., Rosenberg, S.A. (NCI)
Filed 22 Apr 94
Serial No. 08/231,565

Genes have been isolated that code for melanoma tumor antigens, which may provide an important new method for the prevention or treatment of this deadly form of cancer. Melanomas are aggressive, frequently metastatic tumors, and even when the melanoma is apparently localized to the skin, up to 30 percent of patients eventually will have the tumor spread to other organs and tissues of the body. The majority of these individuals will die. Recent studies have shown that many melanoma patients mount cellular and humoral responses against these tumors and that melanomas express both MHC antigens and tumor-associated antigens. These newly discovered melanoma antigen genes may be used in gene therapy protocols, or peptides derived from the gene product may be used in vaccines to help the recipient mount a T-cell-mediated immune response against the melanoma.

Dated: November 16, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–29746 Filed 12–2–94; 8:45 am]

BILLING CODE 4140–01–P

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications

Name of SEP: Clinical Sciences
Date: December 9, 1994
Time: 8:30 a.m.
Place: Johns Hopkins University, Baltimore, MD
Contact Person: Dr. H. Mac Stiles, Scientific Review Administrator, 5333 Westbard Ave., room 203B, Bethesda, MD 20892, (301) 594–7194.

Name of SEP: Microbiological and Immunological Sciences
Date: December 14, 1995
Time: 11:00 a.m.
Place: NIH, Westwood Building, room 238, Telephone Conference
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 5333 Westbard Ave., room 235, Bethesda, MD 20892, (301) 594–7078.

Name of SEP: Microbiological and Immunological Sciences
Date: December 15, 1994
Time: 3:00 p.m.
Place: NIH, Westwood Building, room 238, Telephone Conference
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 5333 Westbard Ave., room 238, (301) 594–7078.

Name of SEP: Biological and Physiological Sciences
Date: December 16, 1994
Time: 1:00 p.m.
Place: NIH, Westwood Building, room 234, Telephone Conference
Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 5333 Westbard Ave., room 234, Bethesda, MD 20892, (301) 594–7051.

Name of SEP: Clinical Sciences
Date: December 16, 1994
Time: 11:00 a.m.
Place: NIH, Westwood Building, room 219C, Telephone Conference
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 5333 Westbard Ave., room 219C, Bethesda, MD 20892, (301) 594–7130.

Name of SEP: Microbiological and Immunological Sciences
Date: December 16, 1994
Time: 1:00 p.m.
Place: NIH, Westwood Building, room 238, Telephone Conference
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 5333 Westbard Ave., room 238, Bethesda, MD 20892, (301) 594–7078.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 25, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–29747 Filed 12–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications

Name of SEP: Chemistry and Related Sciences
Date: December 16, 1994
Time: 1:30 p.m.
Place: NIH, Westwood Building, room 207, Telephone Conference
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 5333 Westbard Ave., room 207, Bethesda, MD 20892, (301) 594–7336.

Name of SEP: Chemistry and Related Sciences
Date: December 21, 1994
Time: 2:00 p.m.
Place: NIH, Westwood Building, room 207, Telephone Conference
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 5333 Westbard Ave., room 207, Bethesda, MD 20892, (301) 594–7336.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878,

93.892, 93.893, National Institutes of Health, HHS)

Dated: November 25, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–29748 Filed 12–2–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 59 FR 47146, dated September 14, 1994) is amended to establish the Health Effects Laboratory Division, National Institute for Occupational Safety and Health at Morgantown, West Virginia.

Section HC–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Office of Extramural Coordination and Special Projects (HCC13),* insert the following:

Health Effects Laboratory Division (HCC3)

(1) Provides new focused research capabilities in mechanisms of occupational disease and identifies causative substances and early indicators (biomarkers) of response to chemical, biological, and physical substances which will be directed at prevention and control of occupational disease and integrated into the filed research and services programs in NIOSH; (2) develops new state-of-the-art research techniques in physiology, human and animal cellular and molecular pathology; (3) develops new state-of-the-art research techniques in the areas of biochemistry, immunotoxicology, pharmacology, molecular and cellular biology, genetic toxicology, and imaging; (4) provides new research to develop and improve methods for environmental measurement of aerosols; (5) develops and evaluates (including development of performance criteria) intelligent, real-time personal and area direct reading instruments for chemical, biological and physical agents; (6) develops and improves techniques for measuring exposures and human responses to workplace exposures; (7) develops new research techniques in the areas of aeromicrobiology, particle characterization, molecular characterization, micro-sensors, advanced sampling and instrumentation, electronic monitoring, electrical and mechanical engineering; (8) develops new methodologies for exposure modeling of current and past exposures for use in applied research; (9) provides new research capabilities for developing and establishing engineering solutions for the control of occupational diseases and for utilizing engineering techniques to solve problems; (10) develops new research techniques in the areas of computerized workplace simulations and mathematical models; (11) provides environmental and biological laboratory services for all field and laboratory programs in NIOSH; (12) develops and evaluates effective communication strategies for promoting health education to communicate risk and prevention recommendations to those at risk and form coalitions to advocate prevention activities.

Toxicology and Molecular Biology Branch (HCC32)

(1) Provides focused research in workplace exposure and identifies causative substances and biomarkers of response to chemical, biological, and physical substances; (2) develops laboratory techniques or modifications that could be useful for population-based or large environmental testing; (3) develops molecular programs to examine the toxic effects of workplace exposures/agents on human, animal, and cellular systems; (4) defines the levels and circumstances of exposures that lead to development of pre- and post-toxic biomarkers, toxic responses, repair of damage or alleviation of damage, mechanisms of toxicity, and recommendations for prevention and control of toxic exposures; (5) develops integrated research programs in areas including cell to cell communication, cellular interaction, genome activations, responses to and production/release of cellular signals; and mechanisms of control, blockage, and homeostasis of cellular systems, broadly interpreted with respect to environmental and occupational agents; (6) studies microbial cellular components and production and release of exotoxins and mycotoxins in context with the holistic human and animal response, including targets such as the lung, skin, and nervous system; (7) provides support to the Division on state-of-the-art research in the areas of toxicology, molecular and cellular biology.

Pathology and Physiological Research Branch (HCC33)

(1) Provides research into new ways to identify disease mechanisms, develops pre-disease early warning systems, identifies methods for repair or resolution of disease, and develops and applies new imaging techniques; (2) examines in an applied and preventive research mode the effects of workplace exposures on human and animal body functions and cellular response-receptors in the development of disease/disfunction, mechanism of action, early functional markers of detection, and recommendations for prevention and control/intervention; (3) provides advice and collaborative service for NIOSH investigators interested in physiological/pharmacological effects of workplace exposures on field-based and animal/cellular systems; (4) examines the alteration of function based on pre-existing disease, induced-disease, or cellular/organ structural impairment in the context of responses to occupational exposures, both actual and laboratory-generated; (5) assists HELD and other NIOSH divisions by providing animal exposure and pathological support in the development, use, and evaluation of exposure systems that mimic the occupational situation, reach the target organ, and results in sensitive models of change, structural or functional; (6) provides animal pathology support to researchers through the development of sensitive animal-specific tools, molecular probes, or recognition techniques that can be modified or used for animal models of occupational disease/exposure.

Exposure Assessment Branch (HCC34)

(1) Provides research methods for the Division to develop and improve methods for environmental measurement of aerosols; (2) develops and evaluates real-time personal and area direct reading instruments for chemical, biological, and physical agents; (3) develops techniques for measuring human responses to workplace exposures; (4) provides new research techniques in the areas of aeromicrobiology, particle characterization, molecular characterization, micro sensors, advanced sampling and instrumentation, electronic monitoring, and electrical and mechanical engineering; (5) coordinates with other NIOSH laboratory-based research (particularly the toxicology and molecular biology research), as well as NIOSH field studies and health hazard

evaluations to advance exposure assessment methods; (6) develops new methodologies for exposure modeling of current and past exposure for use in applied research (epidemological and molecular epidemiological studies).

Engineering and Control Technology Branch (HCC35)

(1) Provides research capabilities for developing and establishing engineering solutions for the control of occupational disease; (2) coordinates with the Exposure Assessment Branch to develop engineering techniques to solve problems in measuring and monitoring programs; (3) develops and utilizes techniques in computerized workplace simulations and mathematical models; (4) develops passive protection devices and systems for preventing or minimizing worker exposure to hazardous chemical, biological, and physical substances; (5) develops sophisticated personal protective equipment to provide workers with information about their working environment.

Analytical Services Branch (HCC36)

(1) Provides environmental and biological analytical laboratory services such as immunotoxical, pharmacological, molecular and cellular biological analysis, identification, qualification, and other requested characterizations for all NIOSH research and service programs; (2) provides analytical services such as multi-chemical mixture analysis, particle size analysis, component identification, quantification, and other requested characterization; (3) develops state-of-the-art analytical methods for the evaluation and control of newly identified workplace hazards and exposures that could lead to occupational disease.

Biostatistics Branch (HCC37)

(1) Provides experimental design and support of laboratory-based research to address the statistical aspects of projects in the Division and throughout the Institute; (2) verifies the statistical quality, both in the design and analysis phase of all experimental research in the Institute; (3) develops and directs the application of new statistical methods as well as the design and analysis of field research projects for the Institute; (4) develops computerized methods for independent research initiatives in statistical methods to advance basic research in experimental and observational studies; (5) collaborates in the design of laboratory and field research studies, providing consultation through the course of the research on computerized methods of data collection and interpretation of results.

Health Communication Research Branch (HCC38)

(1) Designs, implements, and evaluations effective communication strategies for the Division using expertise in health education, and communication; (2) develops messages, materials, and methods to clearly and effectively communicate risks and prevention recommendation to those at risk and those that can most effectively implement or promote prevention activities; (3) evaluates the effectiveness of the Division's health communication to determine the impact and contribution to prevention of workplace injury and disease; (4) coordinates with others in the field of health communication to form coalitions to advocate prevention activities.

Effective Date: November 18, 1994.

David Satcher,

Director, Centers for Disease Control and Prevention.

[FR Doc. 94–29765 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–18–M

Social Security Administration

Privacy Act of 1974; Report of Revised System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Revision to a system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to revise the description of a system of records entitled "Earnings Recording and Self-Employment Income System" (HHS/SSA/OSR, 09–60–0059) (last published at 58 FR 48525, September 16, 1993).

DATE: The proposed changes will become effective as proposed, without further notice, on January 13, 1995, unless we receive comments on or before that date which would warrant our preventing the changes from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Hanna, Social Insurance Specialist, Confidentiality and Disclosure Branch, Office of Disclosure Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–966–7077.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Revision

We are adding information to the description of the system of records to indicate that it includes information about individuals affected by the Coal Industry Retiree Health Benefit Act of 1992, and that the information is obtained from the United Mine Workers of America (UMWA) Combined Benefit Fund. We are also revising two routine use statements.

To comply with the Coal Industry Retiree Health Benefit Act of 1992 (Pub. L. 102–486, 106 Stat. 2776), we published new routine uses to this system of records on September 16, 1993 (at 58 FR 48525). At that time we did not believe that any further change to the system was necessary. However, as the Social Security Administration (SSA) has gained some experience with developing cases in connection with this law, we have found that we need to revise our description of the records which are included in the system and to make other changes in the system's notice.

We therefore propose to add the following phrase to the paragraph entitled "Categories of individuals covered by the system": "any person affected by the Coal Industry Retiree Health Benefit Act of 1992."

We propose to add the following phrase to the paragraph entitled "Categories of records in the system": "information about miners and their families needed to administer the Coal Industry Retiree Health Benefit Act of 1992."

We propose to add the following to the list of "Purposes": "To make assignments of responsibility for paying premiums and to perform other functions under the Coal Industry Retiree Health Benefit Act of 1992."

We propose to expand the explanation of information which may be disclosed to the coal industry assigned operator (in Routine Use #29) to include: "work history and other detailed information as to the basis for the assignment of that individual."

We propose to add the following phrase to the paragraph entitled "Record source categories": "the United Mine Workers of America Combined Benefit Fund."

We are proposing the changes to Routine Use #29 in accordance with the

Privacy Act (5 U.S.C. 552a(a)(7), (b)(3), and (e)(11)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consents for a routine use, i.e., where the information will be used for a purpose that is compatible with the purpose for which we collected the information. The disclosure of information on individuals obtained from the UMWA Combined Benefit Fund to the coal industry operators to whom they were assigned under 26 U.S.C. 9706, as described in Routine Use #29, for use by those operators in pursuing their remedies regarding those assignments, is required by statute, 26 U.S.C. 9706(f). Thus, we believe that this disclosure meets the compatibility criterion discussed above because it serves the purposes for which it was collected and because it is required by law.

The proposed changes will make it clear that the earnings record system now includes information which SSA has received from the UMWA Combined Benefit Fund regarding miners and their families who are affected by the Coal Industry Retiree Health Benefit Act of 1992, and that this information will be used and disclosed for the purpose of performing those functions assigned to us under that statute.

We are also making a minor wording change to Routine Use #13 so that the language will be consistent with the routine use statements in systems notices of other SSA systems of records which deal with disclosure to the Department of Justice.

II. Effect of the Proposed Changes on Individual Rights

The proposed changes will:

- Add another category of individuals and category of records covered by this system of records,
- Clarify the kind of information which SSA maintains and the routine use statement on disclosures of this information, and
- Show the sources from which the information is obtained.

The proposed changes will have no unwarranted effect on individual's rights.

Dated: November 8, 1994.

Shirley S. Chater,

Commissioner of Social Security.

09–60–0059

SYSTEM NAME:

Earnings Recording and Self-Employment Income System, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Systems Requirements, 6401 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 North Greene Street, Baltimore, MD 21201

Records also may be located at contractor sites (contact the system manager at the address below for contractor addresses), and in the program service centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been issued a Social Security number (SSN) and who may or may not have earnings under Social Security; or any person requesting, reporting, changing and/or inquiring about earnings information; or any person affected by the Coal Industry Retiree Health Benefit Act of 1992; or any person having a vested interest in a private pension fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of every SSN holder, his/her name, date of birth, sex, and race/ethnic data and a summary of his/her yearly earnings and quarters of coverage; special employment codes (i.e., self-employment, military, agriculture, and railroad); benefit status information; employer identification (i.e., employer identification numbers and pension plan numbers); minister waiver forms (i.e., forms filed by the clergy for the election or waiver of coverage under the Social Security Act (the Act)); correspondence received from individuals pertaining to the above-mentioned items; the replies to such correspondence; information about miners and their families needed to administer the Coal Industry Retiree Health Benefit Act of 1992 and pension plan information (i.e., nature, form, and amount of vested benefits).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Act, the Federal Records Act of 1950 (64 Stat. 583), the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406), and the Coal Industry Retiree Health Benefit Act of 1992 (Pub. L. 102–486, 106 Stat. 2776).

PURPOSE(S):

This system is used for the following purposes:

- As a primary working record file of all SSN holders;
- As a quarterly record detail file to provide full data in wage investigation cases;
- To provide information for determining amount of benefits;
- To record all incorrect or incomplete earnings items;
- To reinstate incorrectly or incompletely reported earnings items;
- To record the latest employer of a wage earner;
- For statistical studies;
- For identification of possible overpayments of benefits;
- For identification of individuals entitled to additional benefits;
- To provide information to employers/former employers for correcting or reconstructing earnings records and for Social Security tax purposes;
- To provide workers and self-employed individuals with earnings statements or quarters of coverage statements;
- To provide information to Health and Human Services (HHS) Office of Inspector General for auditing benefit payments under Social Security programs;
- To provide information to the National Institute for Occupational Safety and Health for epidemiological research studies required by the Occupational Health and Safety Act of 1974;
- To assist the Social Security Administration (SSA) in responding to general inquiries about Social Security, including earnings or adjustments to earnings, and in preparing responses to subsequent inquiries;
- To store minister waivers, thus preventing erroneous payment of Social Security benefits; and
- To make assignments of responsibility for paying premiums and to perform other functions under the Coal Industry Retiree Health Benefit Act of 1992.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To employers or former employers, including State Social Security administrators, for correcting and reconstructing State employee earnings records and for Social Security purposes.

2. To the Department of the Treasury for:

(a) Investigating the alleged forgery, or unlawful negotiation of Social Security checks; and

(b) Tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code (IRC).

3. To the Railroad Retirement Board (RRB) for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

4. To the Department of Justice (DOJ) (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Act.

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when the SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Department of Energy for its study of low-level radiation exposure.

7. To a congressional office in response to an inquiry from the congressional office made at the request of the subject of a record.

8. To the Department of State for administering the Act in foreign countries through services and facilities of that agency.

9. To the American Institute of Taiwan for administering the Act in Taiwan through services and facilities of that agency.

10. To the Department of Veterans Affairs (DVA) Regional Office for administering the Act in the Philippines through services and facilities of that agency.

11. To the Department of Interior for administering the Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

13. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records DOJ, the court or other tribunal or other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information that is subject to the disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

14. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Act.

15. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Act may be disclosed to a foreign country that is a party to that agreement.

16. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Act).

17. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income that has been disclosed to SSA and business and employment address) may be disclosed, upon written request, to officers and employees of a Federal, State or local agency for purposes of, and to the extent necessary in, determining an individual's eligibility for, or the correct amount of, benefits under certain programs listed in section 6103(*l*)(7) of the Internal Revenue Code (IRC). These programs are:

(a) Aid to families with dependent children provided under a State plan approved under part A of title IV of the Act;

(b) Medical assistance provided under a State plan approved under title XIX of the Act;

(c) Supplemental security income benefits provided under title XVI of the Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law (Pub. L.) 93–66);

(d) Any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Act (as those titles apply to Puerto Rico, Guam and the Virgin Islands);

(e) Unemployment compensation provided under a State law described in section 3304 of the IRC;

(f) Assistance provided under the Food Stamp Act of 1977; and

(g) State-administered supplementary payments of the type described in section 1616(a) of the Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66).

18. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income that has been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to appropriate officers and employees of a State or local child support enforcement agency in accordance with 26 U.S.C. 6103(*l*)(8) for purposes of, and to the extent necessary in

(a) Establishing and collecting child support obligations from individuals who owe such obligations, and

(b) Locating those individuals

under a program established under title IVD of the Act (42 U.S.C. 651ff).

19. The fact that a veteran is or is not eligible for retirement insurance benefits under the Social Security program may be disclosed to the Office of Personnel Management (OPM) for its use in determining a veteran's eligibility for a civil service retirement annuity and the amount of such annuity.

20. Employee and employer name and address information may be disclosed to DOJ (Immigration and Naturalization Service) for the purpose of informing that agency of the identities and locations of aliens who appear to be illegally employed.

21. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

22. Information derived from this system may be disclosed to OPM for the purpose of computing civil service annuity offsets of civil service annuitants with military service or the survivors of such individuals pursuant to provisions of section 307 of Pub. L. 97–253.

23. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records

Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

24. Disclosure of tax return information will be made to OPM, upon OPM's written request, for the purpose of administering the Civil Service and Federal Employees Retirement Systems in accordance with Chapters 83 and 84 of Title 5, United States Code.

25. To the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs. These are programs to which applicants or beneficiaries under titles II and/or VI of the Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

26. Upon written request, SSA will disclose tax return information to the VA for propose of Administration for the purposes of, and to the extent necessary for determining eligibility for, or the amount of, benefits under the following programs:

(a) Any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(b) Parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(c) Health-care services furnished under sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B) of title 38, United States Code; and

(d) Compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

The tax return information which may be disclosed under this paragraph includes wages, net earnings from self-employment, payments of retirement income which have been disclosed to SSA and business and employment addresses, except that information on payments of retirement income will not be disclosed for use with respect to programs described in subparagraph (d).

27. The identity of each coal industry assigned operator determined to be responsible for annual premiums, and the names and Social Security numbers of eligible beneficiaries with respect to whom the operator is identified, may be disclosed to the trustees of the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(e)(1) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat; 2776 (codified at 26 U.S.C. 9701–9721 (1992)).

28. The names and Social Security numbers of eligible beneficiaries who have been assigned to a coal industry assigned operator and a brief summary of the facts related to the basis for such assignments may be disclosed to the coal industry assigned operator determined to be responsible for that individual's annual premiums payable to the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(e)(2) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (codified at 26 U.S.C. 9701–9721 (1992)).

29. Detailed information from an individual's work history and other detailed information as to the basis for the assignment of that individual may be disclosed to the coal industry assigned operator determined to be responsible for that individual's annual premiums payable to the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(f)(1) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (codified at 26 U.S.C. 9701–9721 (1992)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as paper forms, correspondence in manila folders on open shelving, paper lists, punchcards, microfilm, magnetic tapes, and discs with online access files.

RETRIEVABILITY:

Records in this system are indexed by SSN, name, and employer identification number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. This includes maintaining the magnetic tapes and discs within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements, safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms and cards are retained until they are filmed or are entered on tape and their accuracy is verified. Then they are destroyed by shredding. All tapes, discs, and microfilm files are updated periodically. The out-of-date magnetic tapes and discs are erased. The out-of-date microfilm is shredded.

SSA retains correspondence for 1 year when it concerns documents returned to an individual, denials of confidential information, release of confidential information to an authorized third party and undeliverable material, for 4 years when it concerns information and evidence pertaining to coverage, wage, and self-employment determinations or when the statute of limitations is involved, and permanently when it affects future claims development, especially coverage, wage, and self-employment determinations. Correspondence is destroyed, when appropriate, by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Pre-Claims Requirements, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard; Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature and SSN or, if the SSN is not known, name, signature, date and place of birth, mother's maiden name and father's name to the address shown under system manager and by referring to this system. (Furnishing the SSN is voluntary, but it will make searching for an individuals's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity.

Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth, and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

SSN applicants, employers and self-employed individuals; DOJ (including the Immigration and Naturalization Service); the Department of Treasury (Internal Revenue Service); the United Mine Workers of America Combined Benefit Fund; an existing system of records maintained by SSA, the Master Beneficiary Record (09–60–0090); correspondence, replies to correspondence, and earnings modifications resulting from SSA internal processes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–29739 Filed 12–2–94; 8:45 am]

BILLING CODE 4190–29–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU–LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.)

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Center for Laboratory Services, a Division of LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535 (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert St., Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609 (moved 6/16/93)
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)
HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, Inside MI: 800–328–4142/Outside MI: 800–225–9414 (formerly: HealthCare/Preferred Laboratories)
Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051
Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835
Med-Chek/Damon, 4900 Perry Hwy., Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath, Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000
Metropolitan Reference Laboratories, Inc., 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293
National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)
National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th St., Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986
Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory)
Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263 (Formerly: CompuChem Laboratories, Inc.—Special Division)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 32748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory withdrew from the Program on November 28, 1994:

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–29907 Filed 12–2–94; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Brown Tree Snake Control Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Brown Tree Snake Control Committee, a Committee of the Aquatic Nuisance Species Task Force. The Committee will meet to continue discussion and accept comments on the draft control program for the Brown Tree Snake. The discussion will focus on Section VI of the draft, including the tasks, tools, strategies, and research objectives. The development of priorities and funding strategies as well as future direction for the program will be topics.

DATES: The Brown Tree Control Committee will meet from 8:30 a.m. to 4:30 p.m. on Tuesday, December 13, 1994, and 8:30 a.m. to 4:30 p.m. on Wednesday, December 14, 1994.

ADDRESSES: The meeting will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii. Minutes will be maintained by Robert Smith, Chairperson, Brown Tree Snake Control Committee, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 6307, Box 50167, Honolulu, Hawaii, 96850. The unites will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Smith, Brown Tree Snake Control Committee Chairperson, telephone (808) 541–2749 or Jay Troxel Coordinator, Aquatic Nuisance Species Task Force, telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S. C. App. I), this notice announces a meeting of the Brown Tree Snake Control Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Species Task Force established under the authority of Nonindigenous Aquatic Nuisance Prevention and Control of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990).

Dated: November 29, 1994.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director, Fisheries.

[FR Doc. 94–29766 Filed 12–2–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Mississippi River Coordinating Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Thursday, January 12, 1995; 6:30 p.m. until 9:30 p.m, Holiday Inn Metrodome, 1500 Washington Avenue South, Minneapolis, Minnesota.The agenda for the meeting consists of status reports on the approval of the comprehensive management plan for the Mississippi National River and Recreation Area, and early implementation initiatives. Public statements about matters related to the Mississippi National River and Recreation Area will be taken at the meeting.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101, (612) 290–4160.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

Dated: November 21, 1994.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 94–29858 Filed 12–2–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32544 (Sub-No. 1)]

Consolidated Rail Corporation, Trackage Rights Exemption, CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) on a portion of its Indiana Subdivision in Indiana and Jefferson Counties, PA, from its connection with the Ridge Subdivision at Ridge Branch Junction (milepost 26.6) near Creekside to a connection to be established at a point to be mutually agreed upon between milepost 41.5 and milepost 44.7 near Josephine. The trackage rights agreement provides for a 30-year term and a 30-year renewal option and is limited to the movement of limestone, limestone substitutes, ammonia, rail materials, transformers, and coal terminating at the Keystone Generating Station (Keystone) at Shelocta, PA.

The trackage rights qualify under the class exemption procedures of 49 CFR 1180.2(d)(7) and ordinarily would have become effective 50 days after filing. However, they are related to two other transactions that applicants simultaneously seek approval for as one integral transaction.[1] Accordingly, at applicants'

[1] In Finance Docket No. 32544, Conrail proposes to lease from CSXT, for a 30-year term with an option to renew for an additional 30 years, a portion of the Indiana Subdivision from the connection with Buffalo & Pittsburgh Railroad, Inc. (B&PR), at DC Tower (milepost 0.0 at Cloe) to the connection with the Ridge Subdivision at Ridge Branch Junction (milepost 26.74). Conrail also proposes to purchase from CSXT a portion of the Ridge Subdivision, from its connection with the Indiana Subdivision at milepost 0.0 to the rail switch into the Keystone electric generating plant at milepost 5.83 at Shelocta

Continued

request all three proceedings were considered together and the effective date of this notice of exemption necessarily was delayed. This notice of exemption will become effective on December 5, 1994, as will the related decision in Finance Docket No. 32544 and the related notice of exemption in Finance Docket No. 32544 (Sub-No. 2).

This notice is filed under 49 CFR 1180.2(d)(7). 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. Pleadings must be filed with the Commission and served on: John J. Paylor, 2001 Market Street—16A, Philadelphia, PA 19101–1416.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 23, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–29780 Filed 12–2–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32544 (Sub-No. 2)]

CSX Transportation, Inc.; Trackage Rights Exemption; Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant back to CSX Transportation, Inc. (CSXT), trackage rights in Indiana and Jefferson Counties, PA, over the portions of the Indiana and Ridge Subdivisions that it is acquiring and leasing for a coextensive period of time. The trackage rights on the Indiana Subdivision are overhead. The trackage rights on the Ridge Subdivision are both overhead and local, but the local trackage rights are restricted to limestone, limestone substitutes, ammonia, transformers and coal terminating at the Keystone Generating Station at Shelocta, PA. The limestone and coal transportation will be further restricted to commodities originating at quarries or mines served by CSXT or short line railroads connecting solely with CSXT, or originating or transloading on The Three Rivers Railway, Buffalo & Pittsburgh Railroad, Inc. (B&PR), Allegheny Railroad, Beech Mountain Railroad, West Virginia Northern Railroad, Elk River Railroad, or Strouds Creek & Muddlety Railroad. No traffic originating on lines owned or leased by Conrail may be transported by CSXT in local service under these trackage rights. The overhead trackage rights are restricted to movements to the portion of the Ridge Subdivision between Shelocta and Clarksburg and will terminate if CSXT abandons that portion of track.

The trackage rights qualify under the class exemption procedures of 49 CFR 1180.2(d)(7), and ordinarily would have become effective 50 days after filing. However, they are related to two other transactions that applicants simultaneously seek approval for as one integral transaction.[1] Accordingly, at applicants' request all three proceedings were considered together and the effective date of this notice of exemption was necessarily delayed. This notice of exemption will become effective on December 5, 1994, as will the related decision in Finance Docket No. 32544 and the related notice of exemption in Finance Docket No. 32544 (Sub-No. 1).

This notice is filed under 49 CFR 1180.2(d)(7). 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. Pleadings must be filed with the Commission and served on: John J. Paylor, 2001 Market Street—16A, Philadelphia, PA 19101–1416.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 23, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–29781 Filed 12–2–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32618]

Fulton County Railroad Inc.; Operation Exemption; Line in Rochester, IN

Fulton County Railroad Inc. (Fulton) filed a notice of exemption to operate its approximately 2-mile rail line between the loading facilities of Wilson Fertilizer & Grain Company and the switch connection with Indiana Hi-Rail Corporation (IHR) at Rochester, IN.[1] The exemption was scheduled to become effective November 21, 1994.

Any comments must be filed with the Commission and served on: Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

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: November 28, 1994.

In Finance Docket No. 32544 (Sub-No. 2), Conrail will grant back to CSXT, for a coextensive period of time, trackage rights over the Indiana and Ridge Subdivisions that it is acquiring and leasing in Finance Docket No. 32544. The trackage rights on the Indiana Subdivision are overhead. The trackage rights on the Ridge Subdivision are both overhead and local, but the local trackage rights are restricted to limestone, limestone substitutes, ammonia, transformers and coal terminating at Keystone. The limestone and coal transportation will be further restricted to commodities originating at quarries or mines served by CSXT or short line railroads connecting solely with CSXT, or originating or transloading on The Three Rivers Railway, B&PR, Allegheny Railroad, Beech Mountain Railroad, West Virginia Northern Railroad, Elk River Railroad, or Strouds Creek & Muddlety Railroad. No traffic originating on lines owned or leased by Conrail may be transported by CSXT in local service under these trackage rights. The overhead trackage rights are restricted to movements to the portion of the Ridge Subdivision between Shelocta and Clarksburg and will terminate if CSXT abandons that portion of track.

[1] In Finance Docket No. 32544, Conrail proposes to lease from CSXT, for a 30-year term with an option to renew for an additional 30 years, a portion of the Indiana Subdivision from the connection with B&PR, at DC Tower (milepost 0.0 at Cloe) to the connection with the Ridge Subdivision at Ridge Branch Junction (milepost 26.74). Conrail also proposes to purchase from CSXT a portion of the Ridge Subdivision, from its connection with the Indiana Subdivision at milepost 0.0 to the rail switch into the Keystone electric generating plant at milepost 5.83 near Shelocta.

In Finance Docket No. 32544 (Sub-No. 1) Conrail will acquire overhead trackage rights from CSXT on the portion of its Indiana Subdivision from its connection with the Ridge Subdivision at Ridge Branch Junction (milepost 26.6) near Creekside to a connection to be established at a point to be mutually agreed upon between milepost 41.5 and milepost 44.7 near Josephine. The trackage rights will be for a 30-year term with an option to renew for an additional 30 years and are limited to the movement of limestone, limestone substitutes, ammonia, rail materials, transformers, and coal terminating at Shelocta.

[1] Fulton, an Indiana corporation formed by Mr. Tom Wilson, previously operated as a private plant railroad and had not held itself out to provide common carrier rail service to the public. Upon receiving exemption authority, Fulton plans to enter into an interchange arrangement with IHR.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–29779 Filed 12–2–94; 8:45 am]

BILLING CODE 7035–01–P

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6246.

Comments on the following assessment are due 15 days after the date of availability:

AB–No. 385 (Sub-No. 1X), Georgia Southwestern Division, South Carolina Central Railroad—Exempt Abandonment in Dodge and Wilcox Counties, Georgia. EA available 11/23/94.

AB–430 (Sub-No. 1X), Warren and Saline River Railroad Company —Abandonment Exemption—In Bradley County, AR. EA available 11/3/94.

AB–290 (Sub-No. 161X), Norfolk and Western Railway Company—Abandonment Exemption—at Buzzards Creek Junction, WV. EA available 11/23/94.

Comments on the following assessment are due 30 days after the date of availability:

None.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–29779 Filed 12–2–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–099)]

NASA Advisory Council, NASA Laboratory Review Task Force; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Laboratory Review Task Force of the NASA Advisory Council.

DATES: December 14, 1994, 8 a.m. to 6 p.m.; and December 15, 1994, 8 a.m. to noon.

ADDRESSES: Goddard Space Flight Center, Visitors Center Auditorium, Building 88, Greenbelt, Maryland 20771.

FOR FURTHER INFORMATION CONTACT: Richard L. Kline, Code AE, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:.

—NLR Summary Status Report
—NLR Subcommittee Reports by Enterprise
—NASA Headquarters and NASA Laboratory Interfaces
—Preliminary DoD Federal Laboratory Findings
—Appropriateness of NASA Laboratory Systems for Current Missions
—Laboratory Evaluation Mechanism
—Special R&D Laboratory Capabilities
—Laboratory Redundancies and Overlaps
—Alternative R&D Management and Funding Options
—Methods Utilized in Selecting NASA vs. Other Laboratory Systems
—NLR Preliminary Reports and Discussions with Program Offices

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 28, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–29735 Filed 12–2–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Northern States Power Company; Prairie Island Nuclear Generating Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License Nos. DPR–42 and DPR–60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of the Proposed Action

By letter dated May 2, 1994, the licensee requested an exemption from 10 CFR Part 50, Appendix R, Section III.G.1, to the extent that it requires that one train of systems needed for hot shutdown be free of fire damage. Specifically, the licensee requested an exemption from the Section III.G.1 requirement for performing proposed hot shutdown repairs which will allow the licensee to remove fuses from the power operated relief valves (PORV) control circuit as a means of ensuring the reactor coolant system (RCS) inventory in the event of a control room fire.

The Need for the Proposed Action

The licensee has stated that satisfying Appendix R criteria in this circumstance would require plant hardware modifications; for example, installation of switches outside of the control room to de-energize the circuit in this scenario. The licensee states that the current operator actions provide an adequate substitute response, and that expending the resources to perform the hardware changes are not justified. Therefore, the licensee requests an exemption from the Appendix R criteria in order to allow removal of the fuses in the power operated relief valve (PORV) control circuit as a means of ensuring that proper reactor coolant system inventory is maintained.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action and determined that the granting of this exemption will not present an undue risk to the public health and safety. The licensee's proposal to isolate the PORVs by removing the subject control circuit fuses provides reasonable assurance that safe shutdown can be achieved in the event of a control room fire. Furthermore, the modifications required to meet 10 CFR Part 50, Appendix R, Section III.G.1 would not enhance fire protection safety levels above that currently provided by the licensee. Therefore, post-accident radiological releases are not expected to exceed previously determined values as a result of the proposed action. Further, the exemption is not expected to have an impact on plant radiological effluent releases.

The change will not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not enhance the protection of the environment and would result in unjustified cost to the licensee.

Alternative Use of Resources

This action does not involve the use of any resource not previously considered in the Final Environmental Statement for the Prairie Island Nuclear Generating Plant dated May 1973.

Agencies and Persons Consulted

The NRC staff consulted with the Minnesota State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 2, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 25th day of November 1994.

For the Nuclear Regulatory Commission.

Sheri R. Peterson,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–29775 Filed 12–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–368]

Arkansas Nuclear One, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–6 issued to Entergy Operations, Inc. for operation of Arkansas Nuclear One, Unit 2 (ANO–2) located in Pope County, Arkansas.

The proposed amendment would delete requirements to perform the full complement of steam generator surveillances as outlined in the Technical Specifications (TSs) when the steam generators are subjected to special inspections that are in addition to inspections that are required by the TSs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This change has no actual impact on any previously analyzed accident in the final safety analysis report (FSAR). A double-ended break of one steam generator tube is postulated as part of the ANO–2 design basis accident evaluation. The change permits Entergy Operations to determine the appropriate scope and expansion criteria for special steam generator tube inspections that are beyond the scope of the augmented inservice inspection program included in the TSs. The augmented inservice inspection program contained in the TSs is not being modified.

General Design Criterion 14 of Appendix A of 10 CFR 50 states: "The reactor coolant pressure boundary shall be * * * tested so as to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture." The proper scope and expansion criteria for special steam generator tube inspections are determined such that the requirement of the general design criterion will be met. Additionally, special inspections utilize calculations of minimum acceptable wall thickness per the guidance of Regulatory Guide 1.121, "Basis for Plugging Degraded Steam Generator Tubes."

This change does not modify any parameter that will increase radioactivity in the primary system or increase the amount of radioactive steam released from the secondary safety valves or atmospheric dump valves in the event of a tube rupture.

The administrative corrections made to correct inconsistencies introduced in previous TS amendments do not affect reactor operations or accident analyses and have no radiological consequences.

Therefore, this change does *not* involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The scope of this change does not establish a potential new accident precursor. The design basis accident analyses for ANO–2 include the consequences of a double-ended break of one steam generator tube which bounds other postulated failure mechanisms. The proposed change would permit determination of alternate inspection criteria for special inspections which are in addition to the inservice inspections required by the TSs. The equipment used in special inspections would not affect any plant components differently than those used for TS required inspections.

The corrections made to remove inconsistencies introduced in previous TS amendments are administrative and

do not change the design, configuration, or method of operation of the plant.

Therefore, this change does *not* create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

As previously stated, a double-ended rupture of one steam generator tube is accounted for in the ANO–2 design basis accident analysis. Safety margins to detect and repair tube defects prior to rupture are reflected by the 0.5 GPM primary to secondary leakage limit stated in the ANO–2 TSs and the minimum acceptable wall thickness criteria included in Regulatory Guide 1.121. As stated in the ANO–2 TS Bases, cracks having a primary to secondary leakage less than the 0.5 GPM limit during operation will have an adequate margin of safety to withstand the loads imposed during normal operation and by postulated accidents. Considering that special inspections are in addition to the inservice inspection program defined in the ANO–2 TSs, that the scope of special inspections are determined taking into consideration General Design Criteria 14, and that leakage detection capability is not being modified, the exemption of special inspections from the requirements of the augmented inservice inspection program does not significantly reduce the margin of safety.

The other administrative changes do not reduce TS operability and surveillance requirements, and, therefore, do not reduce any margin of safety.

Therefore, this change does *not* involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 4, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. William D. Beckner: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Nicholas S. Reynolds, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 29, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 29th day of November 1994.

For the Nuclear Regulatory Commission.

George Kalman,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects–III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–29776 Filed 12–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. IA–94–017; ASLBP No. 95–705–03–EA]

In the Matter of Daniel J. McCool; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

This Board is being established pursuant to the request of Daniel J. McCool in response to an immediately effective order. On August 26, 1994, the Director of the Office of Enforcement issued IA 94–017 to Mr. McCool, entitled "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)." 59 Fed Reg. 46676, September 9, 1994. The Order alleges that Mr. McCool, in his capacity as President of the American Inspection Company, Inc. (AMSPEC), conspired with other AMSPEC officials to deceive the NRC regarding training of employees and deliberately provided false sworn testimony to NRC officials. The Order prohibits Mr. McCool from being named on any NRC license in any capacity and from otherwise performing licensed activities for a period of five years from the date of this order. For an additional five years, Mr. McCool is required to notify the NRC of any involvement in licensed activities.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 C.F.R. § 2.701. The Board consists of the following Administrative Judges:

G. Paul Bollwerk, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 29th day of November 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–29777 Filed 12–2–94; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–09847, et al.]

Proposed Exemptions; Erick M. Jansson, IRA (the IRA) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Erick M. Jansson, IRA (the IRA) Located in Fayetteville, Arkansas; Proposed Exemption

[Application No. D–09847]

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of an overriding royalty interest in oil and gas (the Interest) by the IRA to Mr. Erick M. Jansson (Mr. Jansson), a disqualified person with respect to the IRA, for $95,000 in cash, provided:

(a) the IRA pays no commissions or other expenses in connection with the sale;

(b) the fair market value of the Interest is determined by a qualified independent appraiser; and

(c) the IRA receives no less than the fair market value of the Interest on the date of the sale.[1]

Summary of Facts and Representations

1. The IRA is a self-directed IRA described in section 408(a) of the Code. Arkansas Trust Management, Inc. of Fayettevillle, Arkansas, is the custodian of the IRA. As of September 6, 1994, the IRA had approximately $169,150 in total assets.

2. On April 20, 1993, the IRA purchased the Interest, which consists of an overriding royalty interest of one-quarter of one percent of 8/8ths of all oil and gas produced from Block Q/13(a), a proposed offshore oil and gas drilling operation to be located on property near the Netherlands. The IRA purchased the Interest from the Van Dyke Energy Company (VDE) for a consideration of $95,000. VDE is unrelated to Mr. Jansson and the IRA. Mr. Jansson, who had worked for over 25 years in the field of oil and gas drilling management, had determined that the Interest was a suitable investment for his IRA.

3. At the time the Interest was purchased by the IRA, the parties were unaware that the Dutch government would impose a 35% foreign income tax on the oil and gas proceeds produced by the Interest (the Foreign Tax). The parties learned of the Foreign Tax after the Interest was acquired when VDE announced it had been advised by the Dutch government that any proceeds from the asset were subject to Dutch income tax and the Foreign Tax would be withheld from the proceeds before payments to the IRA. In addition, Mr. Jansson has determined that he wishes to invest the IRA's assets in a more liquid and less speculative investment. Accordingly, he proposes to purchase the Interest from the IRA for cash at its appraised fair market value. No commissions or other expenses will be paid by the IRA in connection with the sale.

4. Mr. John R. Gorman, financial consultant for VDE, has stated that as of August 22, 1994, no development plan has been filed for Block Q/13(a), nor has there been any oil or gas production on the Block. Accordingly, Mr. Gorman has appraised the Interest as still having a fair market value of $95,000 as of August 22, 1994.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975(c)(2) of the Code because: a) the sale is a one-time transaction for cash; b) the IRA will pay no commissions or other expenses in connection with the sale; c) the sales price has been determined by a qualified, independent appraiser; and d) Mr. Jansson is the only participant in the IRA, and he has determined that the transaction is appropriate for and in the best interest of the IRA and desires that the transaction be consummated.

NOTICE TO INTERESTED PERSONS: Because Mr. Jansson is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Stratus Computer, Inc. Employees' Capital Accumulation Plan (the Plan) Located in Marlboro, Massachusetts; Proposed Exemption

[Application No. D–9823]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed extension of credit by Stratus Computer, Inc. (Stratus) to the Plan in the form of a loan (the Loan) with respect to Guaranteed Investment Contract, Number 62456 (the GIC) issued by Confederated Life Insurance Company of Canada (CL); and (2) the Plan's

[1] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

potential repayment of the Loan (the Repayments), provided:

(a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(b) no interest and/or expenses are paid by the Plan;

(c) the amount of the Loan is no less than the accumulated book value of the GIC as of August 12, 1994;

(d) the Repayments are restricted to the amounts, if any, paid to the Plan after August 12, 1994, by CL or other responsible third parties with respect to the GIC (the GIC Proceeds);

(e) the Repayments do not exceed the total amount of the Loan; and

(f) the Repayments are waived to the extent the Loan exceeds the GIC Proceeds.

Summary of Facts and Representations

1. Stratus manufactures and sells fault-tolerant superminicomputer hardware, develops and licenses computer software, and provides computer consulting services. Stratus is a public company, traded on the New York Stock Exchange, and had revenues of approximately $525 million for 1993. Stratus currently sponsors the Plan for the benefit of all its United States employees and employees of its United States subsidiaries. The Plan is a defined contribution plan with an employer matching feature. The Plan has approximately 1,200 participants and beneficiaries, and as of June 30, 1994, the approximate aggregate fair market value of the Plan's assets was $68,679,205.

2. Under the Plan, participants are able to self-direct their savings contributions as well as Stratus matching contributions into seven diversified investment funds, which are a Money Market Fund, a Fixed Income Fund, a Balanced Fund, a Growth and Income Fund, two Growth Funds and an International Fund, all of which are managed by Fidelity Investments (Fidelity) of Boston, Massachusetts. The investment options under the Plan are all mutual funds. The Plan no longer acquires individual guaranteed investment contracts, but rather participates through Fidelity in a GIC "Fund", which is the Fixed Income Fund. As of January 1, 1994, contributions and/or transfers into the Fixed Income Fund are invested in Fidelity's GIC Fund.

3. The Fixed Income Fund contains five Investment Contracts which are issued by various insurance companies. These five Investment Contracts were purchased prior to the Plan's participation in and offering of Fidelity's GIC Fund. One of these five Contracts is the GIC, which was issued by CL. The GIC was issued on April 1, 1991 and is due to mature on March 31, 1996. The stated interest rate on the GIC is 8.52%. The total contributions made to the GIC have been $5,031,214. Withdrawals have been made in the amount of $2,001,214. As of August 11, 1994, the GIC had a balance of $3,119,540.

4. However, on August 12, 1994, CL was seized by Canadian governmental authorities, and all CL assets were frozen. To ensure the financial viability of CL commitments in the United States, the State of Michigan froze all assets of CL in the U.S. until a Rehabilitation Plan (the Rehab Plan) can be secured.[2] At the time CL was seized, a segregated fund (the Segregated Fund) was established within the Fixed Income Fund of the Plan. Participants with assets in the Fixed Income Fund had approximately 13.5% of that amount allocated to the Segregated Fund, which represents the percentage of assets attributable to the GIC in the Fixed Income Fund.

5. The applicant represents that the Segregated Fund component of the Plan poses various administrative problems, including the fact that investment transfers, loans and hardship withdrawals, as well as distributions for terminated and retired participants are precluded. Approximately 54% of the Plan participants are affected.

6. Stratus has accordingly requested an exemption to permit it to make the Loan to the Plan. The Loan will be made pursuant to a written agreement, in which all Loan terms will be stated. The Loan will be an interest-free, unsecured loan in an amount equal to the Segregated Fund balance (i.e., the accumulated book value of the GIC—deposits, plus interest at the contract rate, minus withdrawals) as of August 12, 1994. Any future interest credited in accordance with the Rehab Plan will be allocated to Plan participants. The purpose of the Loan is to facilitate distributions, participant loans, hardship withdrawals and investment transfers from the portion of the participants' account balances that are allocated to the Segregated Fund. Such distributions would otherwise be at best delayed due to the uncertainty of the terms of the Rehab Plan. The applicant represents that the Plan's Repayments of the Loan will be limited to the GIC Proceeds, will be waived to the extent the Loan exceeds the GIC proceeds, and in no event will exceed the amount of the Loan.

7. In summary, the applicant represents that the proposed transactions will satisfy the criteria contained in section 408(a) of the Act because:

(a) all terms of the transactions will be no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) no interest and/or expenses will be paid by the Plan;

(c) the Loan will be no less than the accumulated book value of the GIC as of August 12, 1994;

(d) the Repayments are restricted to the GIC Proceeds;

(e) the Repayments will not exceed the total amount of the Loan; and

(f) the Repayments are waived to the extent the Loan exceeds the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Mid-Hudson Medical Group, P.C. Money Purchase Pension Trust (the Plan) Located in Fishkill, New York; Proposed Exemption

[Application No. D–9721]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the acquisition by the Plan of certain improved real property (the Property) from unrelated parties for a sales price of $562,500; and (2) the leasing (the Lease) of the Property by the Plan to Mid-Hudson Medical Group, P.C. (the Employer), a party in interest with respect to the Plan, provided the following conditions are satisfied:

(a) the Plan pays no more than the fair market value of the Property;

(b) the Property represents no more than 25% of the value of the Plan's assets;

(c) the terms of the Lease are, and will remain, at least as favorable to the Plan

[2] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

as those obtainable in an arm's-length transaction with an unrelated party;

(d) the fair market rental value has been, and will continue to be determined on an annual basis by a qualified, independent appraiser;

(e) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and

(f) the Plan's independent fiduciary will continue to monitor the transaction and the conditions of the exemption and take whatever action is necessary to enforce the Plan's rights under the Lease.

Summary of Facts and Representations

1. The Employer is a professional corporation engaged in the practice of medicine. The Plan is a defined contribution money purchase plan with 108 participants. As of June 30, 1993, the Plan had total assets with a value of $7,265,571.

2. The Plan proposes to purchase the Property from two unrelated parties, Martin Koloski and Durgadevi Soma. The purchase price for the Property will be $562,500. The Property consists of land and a building located at 30 Columbia Street, Poughkeepsie, New York. The sellers previously used the building for offices for a medical practice.

3. Following the acquisition of the Property by the Plan, it will be leased by the Plan to the Employer for its medical practice. A portion of the Property will be subleased by the Employer to other unrelated tenants. The initial annual rental for the Property is to be $62,458. The Lease is to be on a triple-net basis; thus, all expenses, including real estate taxes, will be paid by the Employer. The Lease will be for an initial term of ten years, and will be automatically renewed at the end of the term for an additional five year period, subject to the approval of the Plan's independent fiduciary (see rep. 5, below).

4. The annual rental for the Property has been established by an independent appraisal performed by Messrs. Kenneth Golub, MAI, and Harvey Cohen (the Appraisers) of American Property Counselors of Armonk, New York, as of April 30, 1994. The Appraisers have also determined that the Property had a fair market value of $565,000 as of that date. The applicant represents that the Property will be personally inspected every year by a qualified, independent appraiser chosen by the Plan's independent fiduciary (see rep. 5, below) who will provide the Plan with an annual fair market rental value update. The applicant represents that the rental payment will be adjusted annually in accordance with the fair market rental value stated by the independent appraiser. The adjusted rent will either stay the same or be adjusted upward, but will never be decreased from the prior year's rent paid.

5. The applicant represents that Mr. Joseph J. Berger of Joseph J. Berger Management Associates in White Plains, New York, has been appointed to serve as the Plan's independent fiduciary with respect to the subject transactions. Mr. Berger represents that he has been a CPA for over 35 years, and that he is knowledgeable in the area of real estate and experienced in working with qualified retirement plans. The applicant represents that Mr. Berger has no relationship to the Plan or the Employer other than serving as the independent fiduciary to the Plan.[3] Mr. Berger represents that he is aware of his duties, liabilities and responsibilities as a fiduciary under the Act, and he has accepted them.

6. Mr. Berger represents that he has undertaken the following duties as independent fiduciary to the Plan with respect to the Lease:

(a) to review the Plan's proposed purchase of the Property, and in that connection to determine whether the purchase will be at fair market value as determined by an independent real estate appraiser and based upon arm's-length negotiations, and whether the purchase will be in the best interest of the Plan and its participants, taking into account the diversity of Plan assets and the Plan's need for liquidity;

(b) to review the Lease (and any proposed renewals thereof) covering the Property to confirm in each case that the Lease (or renewal) is in the best interest of the Plan and its participants;

(c) to confirm that the Lease (or renewal thereof) reflects the current fair market rental rate as determined by an independent real estate appraiser;

(d) to review all financial statements and other documents to be filed by the Plan in connection with the Lease (or the renewal thereof);

(e) to monitor the Lease to ensure that all actions are taken that are necessary or proper to safeguard the interests of the Plan; and

(f) to review the Plan's assets periodically to determine whether the value of the Property remains less than 25% of the total value of Plan assets.

[3] Mr. Berger also serves as the independent fiduciary for the profit sharing plan sponsored by the Employer with respect to the transaction which was exempted by Prohibited Transaction Exemption 93–27, 58 FR 25673, April 27, 1993.

7. Mr. Berger represents that he completed his analysis of the transactions and, based upon his review and analysis, it is his opinion that the Property is an appropriate investment for the Plan and the acquisition and Lease thereof is in the best interests of the Plan's participants and beneficiaries. Mr. Berger represents that he has reviewed the Plan's investment portfolio and determined that while it is prudently diversified among its various securities, less than 20% of the total corpus is invested in intermediate and long-term securities. Mr Berger believes that it would be appropriate to further diversify the portfolio with a long-term investment such as the Property and the subject Lease.

8. Mr. Berger represents that after having examined the purchase contract, the proposed Lease, the appraisal report, the physical Property and the Plan's assets, he considers the purchase of the Property to be a sound and secure investment which will earn a fair market return for the Plan and will enhance the diversification of the Plan's assets and provide a more consistent and level flow of current income. Mr. Berger represents that he will continue to monitor the Lease throughout its duration and take whatever action is necessary to protect the Plan's rights under the Lease.

9. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act for the following reasons:

(a) the Property represents approximately 7.7% of the Plan's total assets;

(b) the rental for the Property has been, and will continue to be, established by a qualified, independent appraiser;

(c) the Plan's independent fiduciary, Mr. Berger, has determined that the transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and

(d) Mr. Berger will continue to monitor the Lease and take whatever action is necessary to protect the Plan's rights under the Lease.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of

disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of November, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–29833 Filed 12–2–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–82; Exemption Application No. D–9257, et al.]

Grant of Individual Exemptions; Marshall & Ilsley Trust Company et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Marshall & Ilsley Trust Company Located in Milwaukee, Wisconsin

[Prohibited Transaction Exemption 94–82; Application No. D–9257]

Section I—Exemption for In-Kind Transfer of CIF Assets

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, as of November 20, 1992, to the in-kind transfer of assets of plans for which Marshall & Ilsley Trust Company or an affiliate (collectively, M&I) serves as a fiduciary (the Client Plans), other than plans established and maintained by M&I, that are held in certain collective investment funds maintained by M&I (the CIFs), in exchange for shares of the Marshall Funds, Inc. (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for which M&I acts as investment adviser, custodian, and/or shareholder servicing agent, in connection with the termination of such CIFs, provided that the following conditions and the general conditions of Section III below are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with Rule 17a-7(b) of the Securities and Exchange Commission under the 1940 Act and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of M&I.

(c) A second fiduciary who is independent of and unrelated to M&I (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) and, on the basis of such information,

authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a corresponding Fund in exchange for shares of the Fund.

(d) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, M&I sends by regular mail to each affected Client Plan a written confirmation, not later than 30 days after completion of the transaction, containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4);

(2) The price of each such security involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such securities.

(e) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, M&I sends by regular mail to the Second Fiduciary no later than 90 days after completion of each transfer a written confirmation that contains the following information:

(1) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(2) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(f) The conditions set forth in paragraphs (e), (f) and (l) of Section II below are satisfied.

Section II—Exemption for Receipt of Fees

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of November 20, 1992, to: (1) the receipt of fees by M&I from the Funds for acting as an investment adviser to the Funds in connection with the investment by the Client Plans in shares of the Funds; and (2) the receipt and proposed retention of fees by M&I from the Funds for acting as custodian and shareholder servicing agent to the Funds as well as for any other services to the Funds which are not investment advisory services (i.e. "secondary services") in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the general conditions of Section III are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section IV(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither M&I nor an affiliate, including any officer or director of M&I, purchases or sells shares of the Funds from or to any Client Plan.

(d) Each Client Plan receives a credit, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the Client Plan, of such Plan's proportionate share of all fees charged to the Funds by M&I for investment advisory services, including any investment advisory fees paid by M&I to third party sub-advisers, within no more than one business day of the receipt of such fees by M&I.

(e) The combined total of all fees received by M&I for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(f) M&I does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by M&I.

(h) The Second Fiduciary receives full and detailed written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and statement describing the fee structure) in advance of any investment by the Client Plan in a Fund.

(i) On the basis of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Funds to M&I, and, if applicable, the purchase of additional shares of a Fund by the Client Plan with the fees credited to the Client Plan by M&I.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to M&I are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by M&I of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by M&I of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of M&I to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by M&I to the Funds for secondary services (as defined in Section IV(h) below) at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by M&I to the Funds for investment advisory services even though such fees will be credited as required by paragraph (d) above.

(l) In the event that M&I provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to M&I for any secondary services resulting from a decrease in the number or kind of services performed by M&I for such fees in connection with a previously authorized secondary service, M&I will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section IV(i) below.

(m) On an annual basis, M&I provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to M&I;

(2) A copy of the annual financial disclosure report prepared by M&I

which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section III—General Conditions

(a) M&I maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of M&I, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than M&I shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of M&I, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(a) The term "M&I" means the Marshall & Ilsley Trust Company and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" shall include the Marshall Funds, Inc., or any other diversified open-end investment company or companies registered under the 1940 Act for which M&I serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other "secondary service" (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a Client Plan who is independent of and unrelated to M&I. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to M&I if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with M&I;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, employee, or affiliate of M&I (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, affiliate or employee of M&I (or relative of such persons), is a director of such Second Fiduciary, and if her or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this section shall not apply.

(h) The term "secondary service" means a service other than an investment management, investment advisory, or similar service, which is provided by M&I to the Funds. However, for purposes of this exemption, the term "secondary service" will not include any brokerage services provided to the Funds by M&I for the execution of securities transactions engaged in by the Funds.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify M&I in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by M&I of the form; provided that if, due to circumstances beyond the control of M&I, the sale cannot be executed within one business day, M&I shall have one additional business day to complete such sale.

EFFECTIVE DATE: The exemption is effective as of November 20, 1992.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 17, 1994, at 59 FR 42300.

Notice to Interested Persons: The applicant represents that it was unable to notify interested persons within the time period specified in the **Federal Register** notice published on August 17, 1994. The applicant states that interested persons were notified, in the manner agreed upon between the applicant and the Department, by September 16, 1994. Interested persons were advised that they had until October 17, 1994 to comment on the proposed exemption.

Written Comments and Modifications: The applicant submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

In response to a question raised by the Department regarding the reference in Section I(b) of the Proposal, describing the valuation method to be used for the in-kind transfer of CIF assets, to "* * * procedures established by the Funds for the valuation of such assets", the applicant states that such "procedures" are adopted by the board of directors of the Funds to provide for compliance with Securities and Exchange Commission (SEC) Rule 17a–7 for transactions effected under that Rule. The applicant represents that it does not intend for the reference to these "procedures" to refer to any non-Rule 17a–7 valuation procedures for the Funds.

Therefore, in response to this comment, the Department has amended Section I(b) of the Proposal by changing the clause to read as follows (the new language being underlined):

"* * * and the procedures established by the Funds *pursuant to Rule 17a-7* for the valuation of such assets."

The applicant states further that the valuation procedures used by a mutual fund for determining the net asset value of its shares may differ slightly from the valuation procedures used for Rule 17a–7 transactions. For example, the applicant notes that although the rules and procedures for determining net asset value parallel the valuation rules of Rule 17a–7(b) for securities for which market quotations are readily available, the net asset value rules permit the amortized cost method to be used for valuing certain types of securities, such as short-term fixed-income securities, and permit the use of one, rather than three, independent brokers or pricing services to value securities which are not exchanged-traded.

However, the applicant represents that the net asset value determinations by the Funds are made on an objective and consistent basis, in accordance with the applicable SEC rules and internal procedures established by the board of directors of the Funds (the Board). The applicant states that all the members of the Board are independent of M&I, the investment adviser of the Funds. The procedures established by the Board are described in the Statement of Additional Information issued to Fund investors. These procedures include the time of day at which net asset value will be determined and the specific independent pricing services that will be used by the Funds.

Accordingly, the Department has determined that no further modifications to Section I(b) of the Proposal are necessary.

In response to a question raised by the Department regarding the utilization of sub-advisers, the applicant states that M&I currently uses a third party sub-adviser for one of the Funds but otherwise is the sole investment adviser to the Funds' existing portfolios and presently contemplates no change with respect to such existing portfolios. M&I states that in the event that other, particularly more specialized, portfolios are started, third party sub-advisers may be utilized to enhance the investment alternatives and the investment advisory services available to the Funds for such portfolios. M&I represents that each Client Plan's credit of all investment advisory fees charged by M&I to the Funds will include any investment advisory fees paid by M&I to third party sub-advisers.

In response to the applicant's comment, the Department has amended Section II(d) of the Proposal as follows (new language being underlined):

"* * * Each Client Plan receives a credit, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the Client Plan, of such Plan's proportionate share of all fees charged to the Funds by M&I for investment advisory services, *including any investment advisory fees paid by M&I to third party sub-advisers*, within no more than one business day of the receipt of such fees by M&I."

In response to a further question raised by the Department regarding changes in fees received by M&I for secondary services, the applicant has agreed to add a new condition to Section II of the Proposal which requires prior disclosure of the addition of a secondary service for which a fee is charged or an increase in fees as a result of a decrease in the number or kind of services performed for an existing secondary service fee. This condition, as discussed in paragraph (l) of Section II, requires M&I to provide written notice to the Second Fiduciary, at least thirty days in advance of the implementation of such additional service or fee increase, explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice must be accompanied by a Termination Form.

With respect to purchases and sales of Fund shares, Section II(c) of the Proposal states that neither M&I nor an affiliate, including any officer or director of M&I, may purchase or sell shares of the Funds from or to any Client Plan. The applicant states that while purchases or redemptions of Fund shares by the Client Plans are made with the Funds' distributor, which is independent of M&I, purchase and redemption orders may be placed through the Client Plan's account representative at M&I. The applicant requests that the Department clarify that the language of Section II(c) of the Proposal does not affect the ability of Client Plans to place orders through M&I personnel.

In response to the applicant's comment, the Department notes that Section II(c) was not intended to limit the ability of Client Plans to deal with M&I account representatives on Fund matters and is not meant to prohibit purchases or sales of Fund shares that are placed through M&I personnel when such personnel are acting as agents for the Client Plans.

With respect to 12b–1 fees, Section II(f) of the Proposal provides that M&I may not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act. The applicant states that this condition is consistent with the representations made by M&I. However, the applicant notes that Paragraphs 3 and 4 of the Summary of Facts and Representations in the Proposal (the Summary) overstate the representations made by M&I with regard to 12b–1 fees and require minor clarification.

Paragraph 3 indicates that the Client Plans will invest only in "Trust Shares" of the Funds. The applicant states that at the current time only the Marshall Money Market Fund has established a category of "Trust Shares", as distinguished from "Investment Shares" that are charged with 12b–1 fees. The applicant notes that the remaining Funds, while capable of establishing 12b–1 plans, have not done so, and currently use only a single class of shares. The applicant represents that if any of these Funds does establish a 12b–1 plan, it will create a separate class of shares analogous to the Marshall Money Market Funds' "Trust Shares" that will not be charged 12b–1 fees, and investments by Client Plans will be limited to the class of shares not subject to 12b–1 fees.

In Paragraph 4 of the Summary, the third sentence reads, "* * * In addition, M&I does not and will not receive fees payable pursuant to Rule 12b–1 in connection with transactions involving any shares of the Funds." The applicant states that this statement should be clarified to limit it to transactions described under the exemption, because M&I may receive 12b–1 fees in connection with transactions outside the exemption involving separate classes of Fund shares. The Department notes the applicant's clarification.

With respect to the authorization of credits in the form of Fund shares, the applicant states that the Second Fiduciary's authorization of the fee credits may not necessarily include an authorization to purchase additional shares with the credited fees. Therefore, Section II(i) of the Proposal should include the phrase "if applicable" as part of the clause "* * * and the purchase of additional shares of a Fund by the Client Plan with the fees credited to the Client Plan by M&I". The Department has amended Section II(i) to include this phrase. In addition, Paragraph 8 of the Summary states, in the middle of the first paragraph, that "* * * Such authorization *will* include in the future an election for the Second Fiduciary to purchase additional shares of the Fund with the fees credited to the Client Plan by M&I." The applicant states that this should be clarified to provide that such authorizations *may*, rather than will, be included in the future. The Department also notes this additional clarification.

With respect to the use of broker quotations and pricing services for valuing the securities transferred to a Fund, the applicant states that the reference in Section I(b) of the Proposal to the use of "* * * at least three sources that are broker-dealers or pricing services independent of M&I * * *" for securities described under Rule 17a–7(b)(4) is consistent with M&I's representations. However, the applicant notes that the third paragraph of Paragraph 6 of the Summary indicates that unlisted securities were valued based on quotations obtained from three brokers independent of M&I, without referring to the use of a fourth quotation in the event of an aberration in the three quotations obtained or the use in some cases of independent pricing services in place of brokers. The applicant requests that this matter be clarified for the record. In this regard, the Department notes the applicant's clarification regarding M&I's use of broker quotations and pricing services for valuing unlisted securities involved in the in-kind transfers to the Funds and also notes that such procedures were consistent with Section I(b) of the Proposal.

With respect to the frequency of reports made to the Client Plans on Fund transactions, the applicant states that Paragraph 8 of the Summary should be clarified to state that such reports are provided to Second Fiduciaries monthly or quarterly, rather than just monthly. The Department also notes this clarification. In addition, the Department has added as a condition of the exemption (see Section II(m) above) a requirement that M&I provide the Second Fiduciaries of Client Plans investing in the Funds the following:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to M&I;

(2) A copy of the annual financial disclosure report prepared by M&I which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Xerox Corporation Profit Sharing and Savings Plan; Xerox Corporation Retirement Income Guarantee Plan; Profit Sharing Plan of Xerox Corporation and the Xerographic Division, A.C.T.W.U, AFL–CIO; and the Retirement Income Guarantee Plan of Xerox Corporation and the Xerographic Division, A.C.T.W.U, AFL-CIO (collectively, the Plans) Located in Stamford, Connecticut; Exemption

[Prohibited Transaction Exemption 94–83; Exemption Application Nos. D–9778 through D–9781]

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the guarantees (the Guarantees) by the Xerox Corporation, the sponsor of the Plans, of amounts payable to the Plans by the Aurora National Life Assurance Company with respect to five group annuity contracts (the GACs) originally issued by Executive Life Insurance Company of California (Executive Life); provided that the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) The Guarantees are made solely with respect to the amounts which are due the Plans, but unpaid, with respect to the GACs; and

(C) The Settlement Agreement described within the Summary of Facts and Representations, in the notice of proposed exemption, is approved by the U.S. District Court, District of Connecticut.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 30, 1994 at 59 FR 50011.

Written Comments: The Department received 16 written comments and no requests for a hearing. Two of the comments requested additional information, which was provided by telephone by a representative of the Department. Twelve of the comments did not address substantively the transactions addressed by the proposed exemption. The remaining two comments addressed substantive issues relating to the proposed exemption:

1. One comment raised issues which are summarized as follows: (a) The Plans continue to lose earning opportunities on the assets invested in the GACs until 1999; (b) The Plans' participants have incurred administrative and litigation expenses related to the proposed transaction; (c) The Employer's profitability is affected by the subject transactions; (d) The proposed transaction represents an estimated loss of 15 percent of the Plans' principal investment in the GACs; and (e) The Plans will have earned no income on their investments in the GACs.

In a written response, the Xerox Corporation (the Applicant) notes that the comment raises questions, and appears to constitute an objection, with respect to the Applicant's entire two-part remedy proposed for the problems resulting from the conservatorship of Executive Life. This two-part remedy consists of (1) an up-front cash payment, and (2) the proposed Guarantees pursuant to the Settlement Agreement. The Applicant emphasizes that the proposed exemption relates solely to the proposed Guarantees, and not to the entire two-part remedy. Since the comment addresses the entire remedy as a whole, the Applicant maintains that the comment is not relevant to the proposed exemption, which involves only the Guarantees. The Applicant states that prior to the Settlement Agreement's approval by the Federal District Court for the District of Connecticut (the Court), affected Plan participants were duly notified and afforded ample opportunity to comment on the proposed Settlement Agreement. In response to approximately 32,000 notices mailed to affected Plan participants publicizing the settlement's terms, in addition to newspaper reports,

the Applicant states that only three objections were received. The Applicant represents that in its hearing on September 8, 1994, the Court determined that the Settlement Agreement was "fair, reasonable and adequate". In conclusion, the Applicant states that the comment is neither timely, nor relevant to the exemption request, nor in keeping with the judgment of the Court which has considered this matter.

In specific response to the comment's point relating to litigation expenses, the Applicant states that fees and administrative costs with respect to the lawsuit resulting in the Settlement Agreement will be paid out of funds transferred by the Applicant to an escrow account. In specific response to the comment's point relating to loss of principal, the Applicant states that the comment is wrong factually: The Applicant represents that the proposed two-part remedy will protect 100 percent of the face value of the GACs as of April 1, 1991, consisting of all principal investments plus interest accrued at the rates guaranteed by the GACs, less previous withdrawals.

2. The other comment objected to the proposed transaction because of the commenter's opinion that it would wrongfully permit Xerox Corporation to reinstate the principal investments in the GACs by 1999 while depriving the Plans' participants of any interest on such funds. The commenter maintained that the proposed transaction rewards Xerox Corporation for faulty investment strategy and violations of its fiduciary duties.

In a written response to this comment, the Applicant notes that, like the previous comment, it raises questions about the Applicant's entire two-part remedy as a whole, rather than the proposed exemption, which relates solely to the proposed Guarantees pursuant to the Settlement Agreement. The Applicant maintains that since the comment addresses the entire proposed remedy, the comment is not relevant to the proposed exemption. As in response to the prior comment, the Applicant states that before the Settlement Agreement was approved by the Court, affected Plan participants were duly notified and afforded ample opportunity to comment on the proposed Settlement Agreement. The Applicant again notes that in its hearing on September 8, 1994, the Court determined that the Settlement Agreement was "fair, reasonable and adequate". The Applicant maintains in conclusion that the comment is neither timely, nor relevant to the exemption request, nor in keeping with the judgment of the Court which has considered this matter.

3. The Department notes that, although all aspects of the Settlement Agreement were disclosed in the Applicant's exemption application, the exemption request was specifically limited to the provision of the Guarantees by the Xerox Corporation. Accordingly, the Department considered the request in the context of a settlement agreement that had been agreed to by the parties to the litigation and approved by the U.S. District Court. In this regard, the Department noted in the proposal that it was not proposing any relief for any violation of Part 4 which may have arisen as a result of the acquisition and holding of the GACs.

Accordingly, after consideration of the entire record, including the comments and the Applicant's responses, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 30th day of November, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–29834 Filed 12–2–94; 8:45 am]

BILLING CODE 4510–29–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1995, shall be at the rate of 33 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1995, 35.6 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 64.4 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: November 23, 1994.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–29740 Filed 12–2–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35016; File No. SR–Amex–94–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Revising Qualification Examinations Administered by the Exchange.

November 29, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on October 25, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing this proposed rule change pursuant to a Commission request that all qualification examinations administered by the Exchange be filed with the Commission.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission takes the position that self-regulatory organizations must file for Commission review all actions imposing qualification standards.[1] The Exchange has gone through an extensive process to update and revise its examinations to conform them to new rules and procedures. Accordingly, the Amex is submitting the contents of its qualification examinations and related materials as a proposed rule change.

The Amex administers six qualification examinations: the Qualification Examination for Regular Members, the Qualification Examination for Options Principal Members ("OPMs"), the Put and Call Stock Option Examination, the Put and Call Option Questionnaire for Listed Personnel, the Specialist Examination and the Registered Equity Trader and Registered Equity Market Maker Examination.

Pursuant to Exchange Rule 50(a) very applicant for regular and options principal membership shall pass a qualifying examination prior to undertaking any active duties on the Floor. As a result, regular members who may trade stocks and options take both the Qualifying Examination for Regular Floor Members and the Put and Call Stock Option Examination. OPMs, who are prohibited from trading equities, take the Qualifying Examination for OPMs and the Put and Call Stock Option Examination. Limited Trading Permit Holders take the Qualifying Examination for OPMs and the Put and Call Stock Option Examination.

Commentary .01 to Exchange Rule 50(a) requires that a regular member who applies to register as a specialist and a regular or OPM member who applies to register as a registered floor trader must also pass an examination. Specialists take the Specialist Examination. Registered floor traders take the Registered Equity Trader and Registered Equity Trader and Registered Equity Market Maker Examination.

Any member who was registered and approved by the Exchange prior to 1977, the date when the Series 7 exam began to cover standardized options, must successfully complete an examination before being registered to do public options business.[2] These individuals must take the Listed Put and Call Options Questionnaire for Registered Personnel.

The Qualification Examinations for Regular Members and OPMS, and the Put and Call Examination are administered by the Director of Membership Services.

The Specialist and Registered Traders Examinations are administered by the Assistant Director of Trading Analysis.

The Put and Call Options Questionnaire for Registered Personnel is administered by the broker-dealer firms who certify to the Exchange that the applicant has satisfactorily completed the examination.

All six examinations are specifically designed for Amex membership applicants in order to test the applicant's knowledge in a variety of areas, including general trading principles and procedures as well as specific Amex rules and policies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5), and 6(c)(3)(A) in particular in that the rule change is designed to examine the training, experience and competence of applicants for Amex membership and verify such applicant qualifications for Exchange membership. In addition, the proposed rule change serves to protect investors and the public interest by helping to assure member competence.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

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[1] *See* Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906. *See also* letter from Brandon Becker, SEC, to Gordon L. Nash, Amex, dated March 5, 1991.

[2] *See* Amex Rule 920.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–46 and should be submitted by December 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29787 Filed 12–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35014; File No. SR–CBOE–94–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Amendments to the Minor Rule Violation Fine Plan

November 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE Rule 17.50, "Imposition of Fines for Minor Rule Violations," authorizes the Exchange to impose a fine of up to $5,000 for minor violations of certain CBOE rules in lieu of commencing a disciplinary proceeding. The CBOE proposes to amend CBOE Rule 17.50 to extend the "lookback period" for determining certain sanctions, clarify appeal procedures, and limit the number of times a member may request verification of certain fines. Specifically, the Exchange proposes to amend CBOE Rule 17.50 to: (1) extend from nine to 18 months the "lookback period" for failure to submit accurate trade information pursuant to CBOE Rule 6.51, "Reporting Duties;" and (2) create an 18-month "lookback period" for failure to submit trade information to the price reporter pursuant to CBOE Rule 6.51.

The CBOE also proposes to amend CBOE Rule 17.50(g)(6) to provide that the maximum fine authorized under the Exchange's trading and decorum policies may be imposed for a first or second offense if warranted under the circumstances in the view of the Floor Officials Committee. In addition, the CBOE proposes to amend Interpretation and Policy .03 to Exchange Rule 17.50 to impose a cap on the number of transactions during a particular month for which a member fined more than twice in a 18-month period for failure to submit accurate trade information or failure to submit trade information to the price reporter may request verification of the fine. Under the amended interpretation, a member fined more than twice in an 18-month period may request verification of the greater of 50 transactions during a month or 10% of the number of transactions deemed not to be in compliance with CBOE Rule 6.51.

Moreover, the CBOE proposes to amend CBOE Rule 17.50 to (1) clarify the appeal procedures for fines imposed for trading conduct and decorum violations; (2) allow waiver of the forum fee for appeals of fines imposed pursuant to CBOE Rule 17.50 if a fine is reduced on appeal; and (3) make the procedures applicable to requests by the Exchange's Board of Directors ("Board") for review by the Board of determinations rendered under CBOE Rule 17.50 consistent with the procedures applicable to similar Board requests for review under CBOE Rule 19.5, "Review." Finally, the proposal makes certain nonsubstantive editorial changes to clarify CBOE Rule 17.50.

The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 17.50 authorizes the Exchange to impose a fine, not to exceed $5,000, for minor violations of certain CBOE rules in lieu of commencing a disciplinary proceeding. The purpose of the proposal is to revise CBOE Rule 17.50 to (1) extend from nine to 18 months the "lookback period" for failure to submit accurate trade information; (2) establish an 18-month "lookback period" for failure to submit trade information to the price reporter; (3) impose a cap on the number of transactions during a particular month for which a member fined more than twice in an 18-month period for failure to submit accurate trade information or failure to submit trade information to the price reporter may request verification; (4) clarify the appeal procedures for fines imposed for trading conduct and decorum violations; (5) allow waiver of the forum fee for appeals of fines imposed pursuant to CBOE Rule 17.50 if a fine is reduced on appeal; and (6) make the procedures applicable to requests by the Exchange's Board for review by the Board of determinations rendered under CBOE Rule 17.50 consistent with the procedures applicable to similar Board requests for review under CBOE Rule 19.5. In addition, the proposal makes certain editorial changes to clarify CBOE Rule 17.50 without affecting its substance.

Currently, CBOE Rule 17.50(g)(4) provides for a nine month "lookback period" for failure to submit accurate trade information. Specifically, the sanction schedule applicable with respect to such violations is graduated so that the sanctions imposed start to increase with the third violation committed during a nine month period and continue to increase with each subsequent violation committed during such nine month period. Under the proposal, the sanction schedule for failure to submit accurate trade information will retain its current structure except that the current nine month "lookback period" will be

replaced with an eighteen month "lookback period."

Similarly, the Exchange proposes to amend CBOE Rule 17.50(g)(5), which currently contains no "lookback period" for failure to submit trade information to the price reporter, to also provide for an eighteen month "lookback period." As amended, the structure of the "lookback period" for failure to submit trade information to the price reporter will be the same as the amended "lookback period" for failure to submit accurate trade information.

The Exchange believes that the proposed increased "lookback periods" will help to sanction recidivists more effectively by increasing the sanctions for repeat violators. In addition, the Division of Market Regulation ("Division") of the Commission recommended to the Exchange in connection with the Division's 1993 inspection of the Exchange's surveillance, investigative, and enforcement programs that the "lookback periods" under CBOE Rule 17.50 be increased,[1] and the proposed "lookback period" increases are in accordance with the Exchange's response to the Division concerning the implementation of this recommendation.[2]

The CBOE also proposed to amend Interpretation and Policy .03 to CBOE Rule 17.50 to limit the number of transactions during a particular month for which a member fined more than twice during an 18-month period under CBOE Rule 17.50(g)(4) or (g)(5) may request verification of the fine. Currently, there is no limitation on the number of transactions for which a member may request verification under Interpretation and Policy .03. Under the proposal, if during an 18-month period a member receives three or more fines pursuant to CBOE Rules 17.50(g)(4) or 17.50(g)(5), a limitation would be imposed on the member's ability to request verification of the fines. Specifically, in requesting verification of such fines, the maximum number of transactions during a particular month with respect to which a member could request verification would be limited to the greater of (1) 50 transactions or (2) 10% of the number of transactions deemed not to be in compliance with CBOE Rule 17.50(g)(4) or 17.50(g)(5). The proposed cap would apply separately to fines imposed under CBOE Rules 17.50(g)(4) and 17.50(g)(5).

The CBOE states that in most instances a request for verification involves the review by the Exchange of the hard copies of a member's trading tickets in order to determine whether keypunch errors have occurred in the inputting of the data contained on the tickets. The majority of the requests involve the review of between 30 and 150 transactions, and the number of transactions with respect to which review has been requested by a member has ranged in scope from as little as three transactions to as many as 700 transactions. Since the end of the third quarter of 1993, contemporaneous with an increase in trading volume on the Exchange, the number of fines imposed pursuant to CBOE Rules 17.50(g)(4) and (g)(5) has risen, resulting in a higher number of requests for verification. Consequently, the Exchange has had to devote an increasing amount of staff time and resources to handling these requests.

The Exchange believes that the proposed cap is necessary to reduce the amount of staff time and resources which are currently devoted to processing verification requests and to alleviate the current administrative burden associated with responding to these requests. In addition, the Exchange believes that the proposed cap strikes an appropriate balance between not overburdening the Exchange's surveillance staff with the processing of verification requests and leaving in place a meaningful and reasonable opportunity for CBOE members to request verification. Specifically, the Exchange believes that the proposed cap is reasonable based on its analysis that the cap will affect a small percentage of the members requesting verification while at the same time materially reducing the total number of transactions that will need to be reviewed by the Exchange's surveillance staff.

The CBOE also proposes several amendments to revise the procedures applicable to the appeal and review of fines imposed under CBOE Rule 17.50. First, the Exchange notes that all fines imposed under CBOE Rule 17.50 are appealable to the CBOE's BCC, except for fines imposed for trading conduct and decorum violations not exceeding $2,500, which are appealable to the Exchange's Appeals Committee and are governed by CBOE Chapter 19, "Hearings and Review." The CBOE proposes to amend Exchange Rule 17.50 to clarify the procedures applicable to appeals from fines imposed for trading conduct and decorum violations by adding paragraph (d)(1), which notes that, among other things, a person fined for such violations may contest the Exchange's determination by filing a written application with the Secretary of the Exchange pursuant to CBOE 19.2, "Submission of Application to Exchange," and stating that a hearing, if requested, will be conducted in accordance with the provisions of CBOE Rules 19.3, "Procedure Following Applications for Hearing," and 19.4, "Hearing." Under paragraph (d)(2), the Appeals Committee may waive the forum fee if the Appeals Committee finds that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the Appeals Committee is a fine which is less than the total fine initially imposed by the Exchange.

In addition, after a hearing or review in which the BCC determines that a person is guilty of a rule violation, CBOE Rule 17.50(c) currently requires the BCC to impose a forum fee of $100 against the person if the determination was reached without a hearing, or $300 if a hearing was conducted. The CBOE proposes to amend the rule to provide the BCC with the discretion to waive the forum fee if the BCC finds that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the BCC is a fine which is less than the total fine initially imposed by the Exchange. The CBOE believes that this amendment will lead to a more equitable resolution of certain appeals under CBOE Rule 17.50 in situations where the BCC believes that a waiver of the forum fee is warranted, for example, when a fine is reduced on appeal.

The CBOE also proposes to amend CBOE Rule 17.50 to make the procedures applicable to requests by the Board for review by the Board of determinations of the BCC and Appeals Committee under CBOE Rule 17.50 consistent with the procedures applicable to requests by the Board for Board review of other decisions of those committees as provided in CBOE Rules 17.10(c) and 19.5(a).

Finally, the CBOE proposes a nonsubstantive change to clarify CBOE Rule 17.50(g)(1), "Violation of position limit rules," by deleting a potentially confusing reference to CBOE Rule 24.4, "Position Limits for Broad-Based Index Options." Currently, CBOE Rule 17.50(g)(1), which applies to violations of all of the Exchange's position limit rules, only specifically references CBOE Rules 4.11, "Position Limits," and 24.4(a), and does not specifically reference the other CBOE rules which determine compliance with CBOE Rule 4.11, the Exchange's general rule

[1] *See* Letter from Brandon Becker, Director, Division, Commission, to Charles Henry, President, CBOE, dated October 20, 1993.

[2] *See* Letter from Charles Henry, President, CBOE, to Brandon Becker, Director, Division, Commission, dated January 14, 1994.

governing position limits.[3] Although the CBOE states that this is not technically incorrect—because all position limit violations, no matter what type of option they relate to, are violations of CBOE Rule 4.11—the current references are potentially confusing. Therefore, to eliminate potential confusion, the CBOE proposes to delete the reference to CBOE Rule 24.4(a), so that CBOE Rule 17.50(g)(1), as amended, will refer only to CBOE Rule 4.11.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(7), in particular, in that it enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days after the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29788 Filed 12–2–94; 8:45 am]

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[3] Other CBOE position limit rules which establish ways to determine compliance with CBOE Rule 4.11 with respect to particular types of options include CBOE Rule 24.A, "Position Limits for Industry Options," CBOE Rule A.7, "Position Limits';' (Flexible Exchange Options), CBOE Rule 21.3, "Position Limits" (Treasury Bonds and Notes), and CBOE Rule 23.3, "Position Limits" (interest rate options)

[4] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–35017; File No. SR–NASD–94–43]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Examination Question Bank, Specifications and Study Outline for the Direct Participation Programs Limited Principal (Series 39) Examination

November 29, 1994.

On July 26, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder.[3] The rule change amends the examination specifications and study outline for the Series 39 examination.

The NASD has revised materials pertaining to new products, and has included new material pertaining to recently effective regulations affecting direct participation programs. The number of questions per examination and the examination time are unaffected by the amendments.

Notice of the proposed rule change, as amended, together with its terms of substance was provided by issuance of a Commission release [4] and by publication in the **Federal Register**.[5] No comments were received in response to the Notice. This order approves the proposed rule change, which will be effective 60 days from the date of this order.

As the NASD indicated in its rule filing, the amendments to the Series 39 examination are designed to reflect recent changes in the products offered in the industry and to reflect changes in the rules and regulations affecting direct participation programs. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(g)(3) of the Act.[6] Section 15A(g)(3) provides, among other things, that a registered securities association may require that members and their associated persons meet certain training, experience and competence standards. The proposed changes to the examination will help ensure that persons seeking registration in the securities industry have attained the requisite levels of knowledge and competence.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–43 be, and hereby is, approved, effective on January 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[1] The NASD filed five amendments, four of which were filed subsequent to the notice being published in the **Federal Register**. In the first amendment, filed on August 1, 1994, the NASD provided the amended examination specifications for the Series 39 exam. The examination specifications were filed pursuant to a request by the NASD for confidential treatment. In the second amendment, filed on August 31, 1994, the NASD provided the question bank for the Series 39 exam. The question bank was filed pursuant to a request by the NASD for confidential treatment. In the third amendment, filed via facsimile on September 7, 1994, the NASD provided a one page summary of the changes to the Series 39 specifications and study outline. In the fourth amendment, filed on October 13, 1994, the NASD provided more questions to be added to the question bank for the Series 39 exam. The test selection specifications were also amended. Additionally, a technical change to the study outline was made. In the fifth amendment, filed via facsimile on November 23, 1994, the NASD made a technical change in one question from the Series 39 question bank.

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Rel. No. 34495 (August 5, 1994).

[5] 59 FR 42625 (August 18, 1994).

[6] 15 U.S.C. § 78*o*–3(g)(3).

[7] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29789 Filed 12–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35018; File No. SR–NASD–94–41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Examination Question Bank, Specifications and Study Outline for the Direct Participation Programs Limited Representatives (Series 22) Examination

November 29, 1994.

On July 26, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder.[3] The rule change amends the examination specifications and study outline for the Series 22 examination.

The NASD has revised materials pertaining to taxation, and has included new material pertaining to recently effective regulations affecting direct participation programs. The number of questions per examination and the examination time are unaffected by the amendments.

Notice of the proposed rule change, as amended, together with its terms of substance was provided by issuance of a Commission release [4] and by publication in the **Federal Register**.[5] No comments were received in response to the Notice. This order approves the proposed rule change, which will be effective 60 days from the date of this order.

As the NASD indicated in its filing, the amendments to the Series 22 examination are designed to reflect recent changes in the products offered in the industry and to reflect changes in the rules and regulations affecting direct participation programs. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(g)(3) of the Act.[6] Section 15A(g)(3) provides, among other things, that a registered securities association may require that members and their associated persons meet certain training, experience and competence standards. The proposed changes to the examination will help ensure that persons seeking registration in the securities industry have attained the requisite levels of knowledge and competence.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–41 be, and hereby is, approved, effective on January 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 94–29790 Filed 12–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35015; File No. SR-Phlx–93–14]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change Relating to Hedge Order Spread Priority

November 29, 1994.

On April 1, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b–4 thereunder, [2] a proposed rule change to permit various types of hedge orders to attain spread priority. On November 17, 1994, the Phlx submitted Amendment Number 1 ("Amendment No. 1") to the proposal to clarify, among other things, that the proposed priority principles in the original filing will only apply to hedge orders and to remove synthetic option orders from the definition of hedge order.[3] On November 23, 1994, the Phlx filed Amendment No. 2 ("Amendment No. 2") to the proposal to clarify the definition of multi-spread transaction in Commentary .02 to Rule 1066 and amend Options Floor Procedure Advice F–14 to reference the procedures for the execution of synthetic orders.[4]

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on November 17, 1993.[5] No comments were received on the proposal. This order approves the proposal, as amended.

I. Description of the Proposal

The Phlx proposes to permit certain types of hedge orders to attain spread priority, *i.e.*, to be executed as a single transaction, with priority over certain existing bids or offers for each leg of the transaction. Under the proposal, the Exchange is amending Rule 1066 to define the types of hedge orders that would be eligible for spread priority. Specifically, paragraph (f) of Rule 1066 would be amended to define the term hedge order to include spread orders, straddle orders, and combination orders for the same account.[6] Additionally, Rule 1066(g) would be amended to define a synthetic option order as an order to buy or sell a stated number of option contracts and buy or sell the underlying stock in an amount that would offset (on a one-for-one basis) the option position. This proposed definition would include buy-writes, synthetic calls, and synthetic puts. As with hedge orders, synthetic options may be quoted at a net debit or credit.[7]

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[1] The NASD filed five amendments, four of which were filed subsequent to the notice being published in the **Federal Register**. In the first amendment, filed on August 1, 1994, the NASD provided the amended examination specifications for the Series 22 exam. The examination specifications were provided pursuant to a request by the NASD for confidential treatment. In the second amendment, filed on August 31, 1994, the NASD provided the question bank for the Series 22 exam. The question bank was filed pursuant to a request by the NASD for confidential treatment. In the third amendment, filed via facsimile on September 7, 1994, the NASD provided a one page summary of the changes to the Series 22 study outline. This technical amendment is available for inspection and copying in the Commission's Public Reference Room. In the fourth amendment, filed on October 13, 1994, the NASD provided more questions to be added to the question bank for the Series 22 exam. A technical change to the study outline also was made. In the fifth amendment, filed via facsimile on November 23, 1994, the NASD deleted four questions, and made technical changes in two questions, from the Series 22 question bank.

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Rel. No. 34494 (August 5, 1994).

[5] 59 FR 42625 (August 18, 1994).

[6] 15 U.S.C. § 78*o*–3(g)(3).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR § 240.19b–4 (1991).

[3] *See* Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Derivative Products Regulation, SEC, dated November 17, 1994.

[4] *See* Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Derivative Products Regulation, SEC, dated November 23, 1994.

[5] *See* Securities Exchange Act Release No. 33179 (November 10, 1993), 58 FR 60715.

[6] A combination order under proposed Rule 1066(f)(3) would include conversions (generally, a transaction involving buying the underlying stock, buying a put, and selling call) and reversals (generally, a transaction involving selling the underlying stock, selling a put, and buying a call). *See* Amendment No. 1 and Securities Exchange Act Release No. 22373 (Aug. 29, 1985), 50 FR 36686 (Sept. 9, 1985).

[7] *See* Amendment No. 1.

Currently, Phlx Rule 1033(d) affords priority to certain spread transactions. Under this provision, an eligible spread is executable as a single transaction at a total net credit/debit against one other member that represents all legs of the trade provided that net credit/debit improves the established market for the spread as measured by the aggregate price of the respective legs, if executed individually. The new proposed language to Rule 1033(d) would clarify that in order to establish whether a spread transaction has improved the established market, at least one option leg must be executed at a better price than the established market for the option and no option leg can be executed outside of the established market.[8] Pursuant to this proposed rule change, all of the types of hedge orders defined in proposed Rule 1066(f) would be eligible for spread priority.[9] Rule 1033(e) would clarify the priority principles applicable to synthetic options,[10] and Rule 1033 would also be amended to add headings to each paragraph for quick reference to the appropriate topic.

As a result of the proposed changes to Rules 1066 and 1033, corresponding changes to OFPA F–4 will be required. OFPA F–4 (Orders Executed as Spreads, Straddles, or Combinations) would be amended to reflect the definitional changes to Rule 1066. Accordingly, the title would be changed to "Orders Executed as Spread, Straddle, Combination or Synthetic Orders," and the text would reflect the new term, synthetic orders. OFPA F–4 would additionally require the marking of order tickets executed in reliance upon the spread priority rules with a "syn" for synthetic orders in addition to the existing requirement that spreads, straddles, and combinations also be marked with the identifier "sp," "st," or "comb." Also, the Phlx will disseminate the appropriate Options Price Reporting Authority ("OPRA") prefix as an indicator that each option leg was executed as part of a hedge transaction.[11] A new Advice enumerating the procedure for executing hedge orders is also proposed for both equity option and foreign currency option ("FCO") floors. OFPA F–14 (Executing Hedge Orders) restates the definitions in Rule 1066(f) and the priority procedures in Rule 1033(d) and (e) for easy reference by floor persons in the floor procedure advice handbook. Finally, Advice D–2, Instances of Non-Liability for Floor Brokers or Specialists, would be amended to include synthetic orders.

Certain changes proposed by the Phlx to Rules 1066 and 1033 are applicable solely to the trading of FCOs. The Phlx believes these changes will allow Phlx market participants to utilize foreign currency options contracts more effectively as risk hedging instruments. The Exchange notes that the FCO markets tend to attract and be utilized by sophisticated institutional and corporate investors. This is in part due to the nature of the instruments and the tremendous size of the underlying currency markets. Sophisticated institutional and corporate investors frequently effect ratio and multi-part transitions, rather than relying on one-to-one spreads and other orders.

First, because Rule 1033 deals with priority for different types of spreads, existing Commentary .02 of Rule 1066 is proposed to be moved to Rule 1033(f). Because Rule 1066 generally contains definitional provisions, a new Commentary .02 to Rule 1066 would be adopted containing a definition of multi-spread transactions in FCOs.[12]

Second, Rule 1033(g) is proposed to be added to state that for options on foreign currency, a spread order may consist of a different number of contracts so long as the number of contracts differ by a permissible ratio. As a result, ratio spreads would become eligible for spread priority pursuant to Rule 1033(d). For purposes of this rule, a permissible ratio would be defined as one-to-one, on-to-two, one-to-three, and two-to-three.

Third, proposed Rule 1033(h) is a new paragraph governing multi-spread priority for an FCO participant holding two spread type orders for the same amount. Eligible multi-spread transactions in FCOs, as defined in new Commentary .02 of Rule 1066, could be executed as a single transaction as long as at least one of the individual legs of each individual spread (up to a maximum of six legs for the total transaction, or two spreads) is executed at a better price than the established bid or offer for that option, and that no option leg is executed at a price outside of the established bid or offer for that option contract. The language of Rule 1033(h) parallels existing language in Rule 1033(f), relating to three-way transactions.[13]

Finally, OFPA F–16 (Two-Way, Three-Way and Multi-Spread Transactions) is proposed by the Phlx for adoption. This Advice restates the aforementioned definitions and procedures regarding FCO spread priority for easy reference by floor persons in the floor procedure advice handbook.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[14] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Commission believes that the proposal will ensure adequate protection to investors because the rule as amended will only afford priority to those transactions that improve the established market for the spread, as measured by the aggregate price of all legs of the transaction. Because the rule provides that at least one leg of the transaction must be executed at a better price than the established market for the option and that no leg of the transaction may be executed outside of the established market for the option series, the Commission believes that this change affords greater protection to the limit order book and therefore, that customer limit orders will not be disadvantaged. Furthermore, because the Rule currently requires that one member must represent all legs of the trade and that the trade may only be executed against one other member, public customers are still less likely to lose priority to hedge orders. The Commission believes the proposal is a

[8] *See* Amendment No. 2.

[9] Amendment No. 1 clarifies that synthetic options will not be eligible for hedge order priority.

[10] Because spread priority principles will not apply, the option leg of a synthetic option order will have to be executed at a price better than the established market in order to be eligible for net debit/credit quoting and execution. The option leg of a synthetic option order, in that instance, will receive price priority under the normal priority principles (*i.e.*, it must better the existing market to receive priority.) *See* Amendment No. 1 and Rule 1014.

[11] *See* Amendment No. 1

[12] The Phlx amended Commentary .02 to Rule 1066 to require that all legs of a multi-spread transaction be for the same account. *See* Amendment No. 2.

[13] Proposed amended rule 1033(f) defines three-way transactions as spread, straddle, and combination orders of three individual series in the same FCOs where (i) the order size for each of the three individual series are equal to each other, or (ii) the combined order size of any two series on the same side of the market is either equal to the order size of the third series or differs from the order size of the third series by a permissible ratio. A permissible ratio is any one of the following: one-to-one, one-to-two, one-to-three, and two-to-three.

[14] 15 U.S.C. § 78f(b)(5) (1982).

reasonable effort by the Phlx to accommodate the ability to price hedge orders more competitively while at the same time not disadvantaging the public customer limit order book. The Commission also notes that the priority principles applicable to synthetic options remain unchanged, *i.e.*, the option leg will have to be executed at a price better than the established market in order to receive price priority.[15]

The Phlx has created a new Advice, OFPA F–14, that restates the definitions of hedge orders contained in Rule 1066(f) and enumerates the priority principles contained in Rule 1033. Additionally, the Phlx has amended OFPA F–4 to, among other things, require the marking of order tickets executed in reliance upon the spread priority rules. OFPA F–14 simply restates the definitions and principles already established in Rules 1066 and 1033 for easy reference by floor traders. Moreover, the amendment to OFPA F–4 merely crates a new trade identifier for synthetic options similar to that already required the hedge orders. Accordingly, the Commission believes these changes raise no new or unique regulatory issues.

Several other changes are applicable only to foreign currency options. The Phlx has added Commentary .02 to Rule 1066 to provide a definition of multi-spread transactions, and new paragraph (h) to Rule 1033 was created to allow multi-spread transactions in FCOs for the same account to be executed as a single transaction in accordance with spread priority principles. Although the Commission has been concerned that granting priority to ratio orders and multi-part transactions would allow institutional orders to preempt public customer orders, the Commission believes the above changes are appropriate in the context of the FCO market only for several reasons. First, the Commission notes that the FCO market is dominated by institutions and sophisticated corporate investors who regularly utilize ratio orders and conduct multi-spread transactions. Second, because the number of public customer orders placed on the books of foreign currency specialists is not significant, preemption of customer orders is unlikely. Third, the priority rules applicable to multi-spread transactions mirror the priority rules currently in place for three-way spread type orders, as stated in Rule 1033(e). Because a multi-spread order, as defined by Commentary .02 to Rule 1066, combines two-way and/or three-way spread transactions (to a maximum of six legs for the total transaction), and must be for the same account, the Commission believes that this change will allow institutional investors to better utilize sophisticated trading techniques involving FCO's without altering the existing priority principles applicable to three-way orders.

The proposal also permits spread orders in the FCO market to consist of a different number of contracts provided the number of contracts differ by a permissible ratio. This will permit ratio orders to become eligible for spread priority pursuant to Rule 1033(d). The Commission recognizes the predominance of institutional investors and the prevalence of spread-type ratio orders in the FCO markets. Accordingly, the Commission believes the ability to utilize ratio orders will facilitate opportunities for risk hedging.

The Phlx has restated the above changes to the definitions and priority principles applicable to FCOs in OFPA F–16 for easy reference by floor persons. Therefore, the Commission does not believe these changes raise any new or unique regulatory issues.

Finally, OFPA D–2 has been amended to provide for the inclusion of synthetic options. Because synthetic orders consist of two separate transactions which may be quoted at a net debit/credit, the Commission notes there will be instances where floor members will be unable to fill both components of the order at the net price. Accordingly, the Commission believes it is proper to include synthetic orders within OFPA D–2 so as not to subject floor members to liability for failure to fill an order at a specified price.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 permits synthetic orders to be quoted at a net debit/credit, and also removes synthetic options from the definition of hedge order. The ability to quote in net prices will permit market participants to price these orders more precisely, which should result in greater efficiency and improved liquidity in their execution, and better prices for investors. Furthermore, the Commission notes that the exclusion of synthetic orders from the definition of hedge order will have the effect of not extending the spread priority rules to synthetic orders. The Commission believes this will prevent the excessive loss of priority to public customers on the limit order book. Additionally, the Amendment requires the stock portion of synthetic options and conversions and reversals to be executed prior to the execution of the option portion of the transaction. The Commission believes this change is consistent with previous instances where the Commission has required related transactions to be effected prior to the execution of the options order, in order to prevent stock prices from being influenced by the options leg of the transaction. The definitions of hedge order in Rule 1066(f) and multi-spread transaction in Commentary .02 to Rule 1066 in Amendment No. 2 have also been amended to include the requirement that all legs of the transaction(s) be for the same account.[16] The Commission believes these changes will prevent the unbundling of orders for the purpose of taking advantage of the benefits of the spread priority rules. Amendment No. 2 also creates a new paragraph (d) in OFPA F–14 for synthetic option orders. This change simply restates for the benefit of floor personnel the procedures involved in executing synthetic orders and, therefore, raises no new or unique regulatory issues. Finally, in Amendment No. 2, the Phlx inserted the clause "in accordance with Rule 1014" to paragraph (e) of Rule 1033. The Commission notes that this change clarifies that synthetic orders are not eligible for special priority rules and that they must instead be executed in accordance to the Phlx's normal order priority principles, which are referenced in Rule 1014 (g) and (h). Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[15] *See supra* notes 9 and 10.

[16] Amendment No. 1 clarifies the definition of hedge order while Amendment No. 2 relates to multi-spread transactions.

available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1994.

It therefore is Ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, as amended, (SR–Phlx–93–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29791 Filed 12–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20738; No. 812–9206]

AUSA Life Insurance Company, et al.

November 28, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: AUSA Life Insurance Company, Inc. ("AUSA Life"), AUSA Endeavor Variable Annuity Account ("Variable Account"), AEGON USA Securities, Inc. ("AEGON Securities"), and Certain Principal Underwriters ("Future Underwriters").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Variable Account of a mortality and expense risk charge in connection with the issuance and sale of certain flexible premium variable annuity contracts ("Contracts").

FILING DATE: The application was filed on September 1, 1994. An Amended and Restated Application was filed on October 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Craig D. Vermie, Esq., AUSA Life Insurance Company, Inc., 4333 Edgewood Road, N.E., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. AUSA Life is a stock life insurance company that principally sells life insurance and annuity contracts. It currently is licensed to do business in the District of Columbia and all states except Alabama, Arkansas, Florida, Hawaii, Idaho, Montana, North Carolina, Oregon, Utah, Washington and Wyoming. AUSA Life is an indirect, wholly-owned subsidiary of AEGON USA, Inc. AEGON USA is indirectly owned by AEGON n.v., a Netherlands holding company conducting its business through subsidiary companies engaged primarily in the insurance business.

2. The Variable Account is a separate account registered with the Commission under the 1940 Act as a unit investment trust. The Variable Account consists of several subaccounts ("Subaccounts"), each investing solely in a corresponding portfolio of the Endeavor Series Trust ("Series Fund" or "Series Fund Portfolios"), or in shares of WRL Growth Portfolio ("WRL Growth Portfolio"), a portfolio within the WRL Series Fund, Inc.'s ("WRL Fund"). Both the Series Fund and the WRL Fund are registered open-end management investment companies of the series type. Shares of the Series Fund Portfolios and the WRL Growth Portfolio will be sold to the Separate Account at net asset value. Series Fund Portfolios and the WRL Growth Portfolio are responsible for all of their respective expenses, including applicable investment advisory fees.

3. AEGON Securities, an affiliate of AUSA Life, will be the distributor and principal underwriter of the Contracts. Broker-dealers other than AEGON Securities may also serve as distributors and principal underwriters of the Contracts ("Future Underwriters"). AEGON Securities is, and any Future Underwriter will be, registered as a broker-dealer under the Securities Exchange Act of 1934, and a member of the National Association of Securities Dealers, Inc.

4. The Contracts are individual flexible premium variable annuity contracts offered in connection with retirement plans that may qualify for favorable Federal income tax treatment ("Qualified Plans") or on a non-tax qualified basis ("Non-Qualified Plans"). A registration statement on Form N–4 to register the Contracts under the Securities Act of 1933 has been filed with the Commission.[1]

5. The Contracts provide for, among other things: (a) certain minimum initial and subsequent premium payments, which will be credited with the investment experience of the selected Subaccount(s) investing in Series Fund Portfolios or the WRL Growth Portfolio; (b) several Annuity Payment Options on both a fixed and variable basis, beginning on the Annuity Commencement Date; and (c) the payment of a death benefit, which is equal to the greater of the Contract Value or Premium Payments (net of withdrawals) plus 5.0% annual interest.

6. Various fees and charges are deducted under the Contracts. An annual policy maintenance charge of the lesser of 2% of Contract Value or $35 per Contract Year will be deducted prior to the Annuity Commencement Date, and upon a full surrender on any date other than a Policy Anniversary, to compensate AUSA Life for contract administration. A daily administrative expense charge, equal to an effective annual rate of .15% of the net assets of each Subaccount in which the Contract

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[17] 15 U.S.C. § 78s(b)(2) (1982).

[18] 17 CFR § 200.30–3(a)(12) (1993).

[1] Applicants state that the Contracts currently are being issued by International Life Investors Insurance Company ("ILI") through its ILI Endeavor Variable Annuity Account ("ILI Separate Account"), and that the AUSA Contracts are identical to the ILI Contracts except for the identity of the depositor and the issuing separate account. Applicants further state that ILI intends to transfer its variable annuity business to AUSA Life through an exchange offer to be made in compliance with the requirements of Rule 11a–2 of the 1940 Act. Applicants represent that their request for exemptive relief is identical in all material respects to the relief previously granted ILI and the ILI Separate Account in connection with the ILI Contracts. Both ILI and AUSA Life are indirect wholly-owned subsidiaries of AEGON USA, Inc., an indirect wholly-owned subsidiary of AEGON n.v. and, thus, affiliates of each other.

Owner has invested, will be deducted prior to the Annuity Commencement Date and, if a Variable Payment Option is selected, may be deducted after that Date. No charge currently is made for transfers among the Portfolios; however, the right is reserved to impose a charge of up to $25 for the thirteenth and each subsequent transfer thereafter during a single Contract Year. AUSA Life does not expect a profit from these charges. AUSA represents that it will monitor its administrative expenses and the proceeds of these charges on at least an annual basis to ensure compliance with Rule 26a–1 under the 1940 Act.

7. AUSA Life will deduct applicable premium taxes from the Policy Value on the Annuity Commencement Date, or upon full surrender or payment of the Death Benefit. No charges currently are made for federal, state or local taxes, other than premium taxes; however, such taxes may be deducted in the future.

8. No sales charge is deducted from premium payments. However, certain full or partial surrenders will be subject to a maximum 7% contingent deferred sales charge ("CDSC"), which will be imposed on a declining basis during the first seven Contract Years after payment of the premium being withdrawn. The CSDC will compensate AUSA Life for expenses relating to the distribution and sale of the Contracts. For purposes of computing the CSDC, the earliest premium payments will be deemed to be withdrawn first. No CSDC will be applied after the first Contract Year to that portion of the first surrender in the Contract Year equal to 10% or less of the Contract Value. The CSDC also will not apply under certain circumstances if the Contract Value is applied to provide an annuity under one of the Annuity Payment Options.

AUSA Life does not anticipate that the CDSC will generate sufficient revenues to pay all its distribution costs. Excess distribution costs would be paid out of AUSA Life's general assets, which may include profits derived from the mortality and expense risk charge assessed under the Contracts.

9. A daily charge equal to an effective annual rate of 1.25% of the value of the net assets in the Separate Account will be deducted to compensate AUSA Life for bearing certain mortality and expense risks under the Contracts. Of that amount, approximately 0.45% is for mortality risks and approximately 0.80% is for expense risks. This charge applies prior to the Annuity Commencement Date and, if a Variable Payment Option is selected, after that Date.

10. The mortality risk arises from AUSA Life's contractual obligation to make Annuity Payments (determined in accordance with the annuity tables and other provisions provided in the Contracts) regardless of how long any individual Annuitant or all Annuitants may live. This undertaking assures that neither an Annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the monthly annuity payments that the Annuitant will receive under the Contracts. A mortality risk also is assumed in connection with the Death Benefit Guarantee, for which there is no extra charge.

11. The expense risk assumed by AUSA Life's actual administrative costs will exceed the amount recovered through the administrative and policy maintenance charges.

12. AUSA Life currently anticipates that the mortality and expense risk charge will be more than sufficient to cover its costs. Accordingly, any excess will be profit to AUSA Life and may be available to pay distribution costs for the Contracts that are not covered by funds derived from the CSDC.

Applicants' Legal Analysis:

1. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Separate Account of the 1.25% charge for the assumption of mortality and expense risks. Applicants further request that such exemptive relief be extended to Future Underwriters, a class consisting of broker-dealers who may, in the future, act as principal underwriters of the Contracts. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants state that the terms of the relief requested with respect to any Future Underwriter are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants state that without the requested relief, exemptive relief would have to be requested for each new principal underwriter. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. Applicants state that, if AUSA Life were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit and could be disadvantaged by increased overhead of AUSA Life. Applicants argue that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Both the delay and the expense of repeatedly seeking exemptive relief would, Applicants believe, impair AUSA Life's ability to effectively take advantage of business opportunities as they arise.

2. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the deposit or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants submit that AUSA Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge of 1.25% under the Contracts is a reasonable and proper insurance charge to compensate AUSA Life for assuming certain risks under the Contracts, including the risk that: (a) Annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; and (b) the Account Value will be less than the Death Benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges. Thus, Applicants assert that this charge is consistent with the protection of investors.

4. AUSA Life represents that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon AUSA Life's analysis of publicly available information about similar industry products, taking into

consideration such factors as current charge levels, the existence of charge level guarantees, guaranteed death benefits, and guaranteed annuity rates. AUSA Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the product analyzed in the course of, and the methodology and results of, its comparative review.

5. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. AUSA Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and Contract Owners. The basis for that conclusion is set forth in a memorandum which will be maintained by AUSA Life at its administrative offices and will be available to the Commission.

6. AUSA Life also represents that the Separate Account will only invest in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors of trustees, a majority of whom are not "interested persons" of the company, formulate and approve any such plan.

Conclusion:

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29792 Filed 12–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20737; File No. 812–9224]

Citicorp Life Insurance Company, et al.

November 28, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Citicorp Life Insurance Company ("Citicorp Life"), First Citicorp Life Insurance Company ("First Citicorp"), Citicorp life Variable Annuity Separate Account (the "Separate Account"), First Citicorp Life Variable Annuity Separate Account (the "First Citicorp Separate Account") (together the "Separate Accounts"), and The Landmark funds Broker-Dealer Services, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26 (a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction from the assets of the Separate Accounts of a mortality and expense risk charge under certain variable annuity contracts.

FILING DATE: An application was filed on September 12, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 23, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 800 Silver Lake Boulevard, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Citicorp Life is a stock life insurance company organized under the laws of Arizona. Citicorp Life is a wholly-owned subsidiary of Citibank Delaware, which is, in turn, a wholly-owned subsidiary of Citicorp, a bank holding company. Citicorp Life is licensed to do business in 46 states and the District of Columbia. Citicorp Life is the depositor and sponsor of the Separate Account.

2. First Citicorp, a wholly-owned subsidiary of Citicorp Life, is a stock life insurance company organized under the laws of New York. First Citicorp is licensed to do business only in New York and Arizona. First Citicorp is the depositor and sponsor of the First Citicorp Separate Account.

3. The Separate Account and the First Citicorp Separate Account were established by Citicorp Life and First Citicorp, respectively, to fund certain individual flexible premium deferred variable annuity contracts ("Contracts"). The Separate Accounts are registered as unit investment trusts under the 1940 Act and the Contracts are registered under the Securities Act of 1933. The Separate Accounts are divided into sub-accounts, each of which invests solely in the shares of the corresponding portfolio of one of the following series investment companies: the Landmark Variable Insurance Products Fund, the Fidelity Variable Insurance Products Fund, the A.I.M. Variable Insurance Funds, Inc., and the M.F.S. Variable Insurance Trust (collectively, the "Funds"). Additional sub-accounts may be established in the future to invest in other portfolios of the funds or other investment companies or unit investment trusts.

4. The Contracts are individual flexible premium deferred variable annuity contracts designed to provide benefits in connection with retirement plans that qualify for special federal tax treatment, or on a non-qualified basis. Contract owners may allocate payments to one or more sub-accounts or to the Fixed Account Option that is part of the general account of either Citicorp Life or First Citicorp.

5. The Landmark Funds Broker-Dealer Services, Inc., registered as a broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., will serve as the principal underwriter of the Contracts.[1]

6. There is an annual Contract administration charge of $30 that is deducted in reliance on Rule 26a–1. Applicants do not anticipate any profit from this charge.

7. There is a daily administrative charge at an annual rate of 0.05% of the assets of the Separate Accounts. This charge is guaranteed not to increase and is deducted in reliance on Rule 26a–1 under the 1940 Act. Applicants do not expect a profit from this charge.

8. The Contracts do not provide for a front-end sales charge to be deducted from purchase payments. Instead, a surrender or contingent deferred sales

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

charge ("CDSC") of up to 7% of the amount withdrawn or surrendered is charged. During each Contract year, up to 10% of all purchase payments, less prior withdrawals, may be withdrawn without the imposition of a surrender charge. The following table shows the charges applied to purchase payments withdrawn or surrendered, on a first-in-first-out basis:

Number of years since date of purchase payment	Charge as percentage of purchase payment withdrawn (percent)
0–1	7
1–2	6
2–3	5
3–4	4
4–5	3
5+	0

9. Citicorp Life and First Citicorp will deduct a mortality and expense risk charge that is equal, on an annual basis, to 1.25% of the average daily net asset value of the Separate Accounts: approximately .50% for mortality risks and .75% for expense risks.

The mortality risks assumed by Citicorp Life and First Citicorp arise from their guarantees to make annuity payments as provided in the Contracts regardless of how long all annuitants or any individual annuitant lives. Also, Citicorp Life and First Citicorp bear mortality risks associated with the Contracts' death benefit provisions. The expense risks assumed by Citicorp Life and First Citicorp are the risks that actual administrative costs will exceed the amount recovered from the administration charges, processing fees, if any, and the annual contract fee.

10. Premium taxes of states and other governmental entities, currently ranging up to 3.5%, are deducted from Contract Value either at the time the Contract is surrendered, on the annuity income date, or at such other time as the taxes are assessed.

11. Currently no fee is charged for transfers among the sub-accounts and the Fixed Account. However, Citicorp Life and First Citicorp reserve the right to charge $25 for the 13th and each subsequent transfer during a Contract year. Applicants represent that this charge, if imposed, would be deducted in reliance on Rule 26a–1 under the 1940 Act. Citicorp Life and First Citicorp do not anticipate any profit from this charge.

12. Currently no processing fee is charged for withdrawals. However, Citicorp Life and First Citicorp reserve the right to charge the lesser of $25 or 2% of the amount withdrawn for the 13th and each subsequent withdrawal during a Contract year. This charge would be deducted in reliance on Rule 26a–1 under the 1940 Act. Applicants do not expect a profit from this charge.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Accounts under the Contracts.

3. Applicants represent that the mortality and expense risk charge is within the range of industry practice with respect to comparable annuity products. Applicants base this representation on an analysis of publicly available information about comparable products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates, Citicorp Life and First Citicorp represent that they will maintain at their administrative offices memoranda, available to the Commission, setting forth in detail this analysis.

4. To the extent the CDSC is insufficient to cover the actual cost of distribution costs will be paid from Citicorp Life's and First Citicorp's general assets, including the profits, if any, from the mortality and expense risks charges. Applicants represent that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and Contract owners. The basis for such conclusion will be set forth in memoranda maintained by the Citicorp Life and First Citicorp at their administrative offices and available to the Commission upon request.

5. Citicorp Life and First Citicorp represent that the Separate Accounts will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Separate Accounts under the Contracts meet the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29793 Filed 12–2–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0202]

M&I Ventures Corporation

Notice is hereby given of the filing of a request by M&I Ventures Corporation (M&I), a Small Business Investment company, located at 770 North Water Street, Milwaukee, WI 53202 for an exemption to CFR 13, Section 107.901(b)(1) of the Small Business Investment Company Regulations which prohibit a licensee from directly or indirectly financing an associate.

M&I has requested the exemption from Section 107.903 so that: (i) Thomas B. Hansen, an associate of M&I, may become a director, officer and 10% stockholder of Predelivery Service Corporation (PSC), a small concern recently financed by M&I, and (ii) M&I may provide additional financing to PSC in the future without prior SBA approval. M&I is an unleveraged Licensee and expects to remain so.

In October of 1994, M&I and William Blair Leveraged Capital Fund, L.P. (Blair), an unaffiliated third party investor, each provided $2,520,120 on the same terms for a 30% share each of PSC equity to partially finance a management buy-out of PSC from Ford Motor Company (Ford). Additional debt financing for the buy-out which totaled

$23,320,120 was provided by the Bank of America and Ford. Pursuant to the transaction, all future decisions by the investors concerning PSC will require the unanimous consent of M&I and Blair. The interests of both the Licensee and PSC were protected due to the participation of unaffiliated third parties material to the transaction.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Milwaukee, Wisconsin.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Dated: November 18, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-29774 Filed 12-2-94; 8:45 am]

BILLING CODE 8025-01-M

Norwest Equity Partners V; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Norwest Equity Partners V (Applicant), 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, Minnesota 55402 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

Norwest Equity Partners V, a Minnesota limited partnership, is one of several venture capital funds formed by Norwest Venture Capital Management, Inc., a Minnesota corporation which will function as the investment advisor. The applicant's general partner is Itasca Partners II, a Minnesota limited liability partnership; 99% of the committed capital will be supplied by a limited partner, Norwest Limited, Inc., which is a subsidiary of Norwest Corporation, and sole owner of Norwest Venture Capital Management, Inc. Norwest Corporation is the nation's 14th largest bank holding company.

The general partner, Itasca Partners II, is located at the same address as the applicant. Its partners are:

Name and Title

Daniel J. Haggerty, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Managing Partner

John E. Lindahl, 2800 Piper Jaffray Tower, 222 South Ninth Steet, Minneapolis, MN 55402—Managing Partner

George J. Still, Jr., Building 3, Suite 105, 3000 Sand Hill Road, Menlo Park, California 94025—Managing Partner

Robert C. Fleming, 20th Floor, 50 Milk Street, Boston, Massachusetts 02109—Partner

Kevin G. Hall, Building 3, Suite 105, 3000 Sand Hill Road, Menlo Park, California 94025—Partner

Promod Haque, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Partner

Ernest C. Parizeau, Wellesley Office Park, Suite 305, 40 William Street, Wellesley, Massachusetts 02181—Partner

Stephen R. Sefton, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Partner

John J. Thomson, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Partner

John P. Whaley, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Partner

Northwest Venture Capital Management, Inc. is located at the same address as the applicant. Its officers are:

Name and Title

Daniel J. Haggerty, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—CEO, Pres., Director

John T. Thornton, Northwest Center, Minneapolis, MN 55402—Director

Michael T. Gallagher, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Vice President

George J. Still, Jr., Building 3, Suite 105, 3000 Sand Hill Road, Menlo Park, California 94025—Vice President

John E. Lindahl, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Vice President

Robert C. Fleming, 20th Floor, 50 Milk Street, Boston, Massachusetts 02109—Vice President

Kevin G. Hall, Building 3, Suite 105, 3000 Sand Hill Road, Menlo Park, California 94025—Vice President

Promod Haque, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Vice President

Ernest C. Parizeau, Wellesley Office Park, Suite 305, 40 William Street, Wellesley, Massachusetts 02181—Vice President

Stephen R. Sefton, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Vice President

John L. Thomson, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Vice President

John P. Whaley, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—VP, Treas., Secy.

Thomas J. Ryan, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Asst. Treasurer

Patti Reskin, 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402—Controller, Asst. Secy.

The following limited Partner owns 10 percent or more of the applicant:

Name and Percentage of Ownership

Norwest Limited, Inc., Norwest Center, Sixth and Marquette, Minneapolis, Minnesota 55402—99%

Norwest Equity Partners V will begin operations with committed capital of $200 million. The applicant will be a source of debt and equity financing for qualified small business concerns.

Norwest Equity Partners V will have offices in Minnesota, California, and Massachusetts, but will invest nationwide. The applicant does not plan to apply for SBA financing.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Minneapolis, Minnesota, Menlo Park, California, and Wellesley, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: November 25, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–29745 Filed 12–2–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Palm Beach International Airport, West Palm Beach, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised future noise exposure map submitted by the Palm Beach County Department of Airports, West Palm Beach, Florida for The Palm Beach International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for The Palm Beach International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before May 17, 1995. This program was submitted subsequent to a determination by FAA that the associated existing noise exposure map submitted under 14 CFR Part 150 for The Palm Beach International Airport was in compliance with applicable requirements effective February 1, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the revised future noise exposure map and of the start of its review of the associated noise compatibility program is November 18, 1994. The public comment period ends January 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised future noise exposure map submitted for The Palm Beach International Airport is in compliance with applicable requirements of Part 150, effective November 18, 1994. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 17, 1995. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Palm Beach County Department of Airports, West Palm Beach, Florida, submitted to the FAA on October 6, 1994, a revised future noise exposure map, descriptions and other documentation which were produced during the Palm Beach International Airport FAR Part 150 Study conducted between March 21, 1991 and October 4, 1994. It was requested that the FAA review this material as the future noise exposure map, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the revised future nose exposure map and related descriptions submitted by the Palm Beach County Department of Airports, West Palm Beach, Florida. The specific map under consideration is "REVISED FIVE-YEAR (1998) NOISE EXPOSURE MAP, INCLUDING IMPLEMENTATION OF REVISED NOISE COMPATIBILITY PROGRAM WITH EXISTING OFF-AIRPORT LAND USE" in the submission. The FAA has determined that this map for The Palm Beach International Airport is in compliance with applicable requirements. This determination is effective on November 18, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a funding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlying of noise contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for The Palm Beach International Airport, also effective on November 18, 1994. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 17, 1995.

The FAA's detailed evaluation will be conducted under the provision of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level

of aviation safety, crate an undue burden on interstate or foreign commerce, or be reasonable consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397

Palm Beach County Department of Airports, Palm Beach International Airport, Building 846, West Palm Beach, FL 33406–1491

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 18, 1994.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 94–29500 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–41]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 26, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 25, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27724.

Petitioner: Academics of Flight.

Sections of the FAR Affected: 14 CFR subpart C, part 65.

Description of Relief Sought: To permit Academics of Flight to administer a school aircraft dispatcher written examination, in lieu of the FAA Aircraft Dispatcher written examination, to graduates of its FAA-approved Aircraft Dispatcher Program.

Docket No.: 27951.

Petitioner: Corning Incorporated.

Sections of the FAR Affected: 14 CFR 25.562 (b) and (c).

Description of Relief Sought: To permit Corning Incorporated relief from the seat dynamic test requirements for the Dornier 328–100 airplane by using seats that are authorized under Technical Standard Order (TSO) C127.

Disposition of Petitions

Docket No.: 26303.

Petitioner: Florida Aircraft Leasing Corporation.

Sections of the FAR Affected: 14 CFR 91.9(a).

Description of Relief Sought/ Disposition: To permit Florida Aircraft Leasing Corporation to operate its McDonnell Douglas DC–6A and DC–6B aircraft at a 5 percent increased zero fuel and landing weight for the purpose of operating all-cargo aircraft under part 125 of the FAR.

Grant, November 8, 1994, Exemption No. 5388B

Docket No.: 27155.

Petitioner: Saab Aircraft AB.

Sections of the FAR Affected: 14 CFR 25.562(c)(5).

Description of Relief Sought/ Disposition: To exempt Saab Aircraft AB from the HIC requirement of § 25.562(c)(5), as amended by Amendment 25–64, which requires that each occupant must be protected from serious head injury under the conditions prescribed in paragraph (b) of this section.

Denial November 8, 1994, Exemption No. 5983

[FR Doc. 94–29801 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 9 through January 12, 1995, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Gold Coast Hotel, 4000 W. Flamingo Road, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held from January 9 through January 12, 1995, at the Gold Coast Hotel, 4000 W Flamingo Road, Las Vegas, NV.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and

upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 6, 1995. The next quarterly meeting of the FAA ATPAC is planned to be held from April 10–13, 1995, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on November 29, 1994.

W. Frank Price,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 94–29819 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bangor International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Bangor International Airport 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).

DATES: Comments must be received on or before January 4, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert W. Ziegelaar, Airport Director for Bangor International Airport at the following address: Bangor International Airport, 287 Godfrey Blvd., Bangor, Maine 04401.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Bangor under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Bangor International Airport 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).

On November 10, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Bangor was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than March 2, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: May 1, 1995
Proposed charge expiration date: March 15, 2005
Total estimated PFC revenue: $8,742,415
Brief description of proposed project: Reconstruct Terminal Apron

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None Excluded.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burlington International Airport, 287 Godfrey Blvd., Bangor, Maine.

Issued in Burlington, Massachusetts on November 15, 1994.

Bradley A. Davis,

Acting Manager, Airports Division, New England Region.

[FR Doc. 94–29802 Filed 12–2–94; 8:45 am]

BILLING CODE 4910–13–M

Correction to Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jackson Hole Airport, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction.

SUMMARY: The FAA submits a correction to the notice printed on page 55149 of the November 3, 1994, **Federal Register**. The notice erroneously indicated that "The FAA will approve or disapprove the application, in whole or in part, no later than February 4, 1995".

The correction is as follows: "The FAA will approve or disapprove the application, in whole or in part, no later than January 25, 1995".

Issued in Renton, Washington on November 17, 1994.

David A. Field,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 94–29803 Filed 12–2–94; 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 October 1994, there were six applications and three amendments approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 USC 40117 (Public Law 103–272) 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: Salt Lake City Airport Authority (SLCAA), Salt Lake City, Utah.

Application number: 94–01–C–00–SLC.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $65,177,790.

Charge Effective Date: December 1, 1994.

Eastimated Charge Expiration Date: May 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: (1) All air taxi/commercial operators filing or required to File FAA Form 1800–31; (2) Charter operators providing on-demand, non-scheduled services.

Determination: Approved. Based on information contained in the SLCAA's application, the FAA has determined each of the proposed classes account for less than 1 percent of the total annual enplanements at Salt Lake City International Airport.

Brief Description of Projects to Impose and Use:

Airport deicing/anti-icing project,
Portions of the Federal Inspection Services/SkyWest facility,
Authority maintenance facility-new snow
Airport facilities,
Airport master plan and Part 150 update,
New runway 34L/16R,
Regional aircraft rescue and firefighting burn pit simulator,
Runway snow removal equipment,
Runway incursion improvements—Phases I and II,
Runway incursion Phase III/taxiway H,
Runway 14/32 warm-up apron,
Taxiway K rehabilitation and overlay,
2200 North properties acquisition.

Brief Description of Project Disapproved to Impose and Use: Bird hazard remediation.

Determination: The FAA has determined that insufficient data was available to make an environmental determination, as required under section 158.29(b)(1)(iv). The FAA concluded that the project is at an early planning stage and has not progressed to a point where impacted areas can be identified and analyzed for environmental impacts. Therefore, this project is disapproved for imposition and use of a PFC.

Decision Date: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dakota Chamberlin, Denver Airports District Office, (303) 286–5543.

Public Agency: Port of Bellingham, Washington.

Application Number: 94–02–C–00–BLI.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved net Use PFC Revenue: $732,000.

Charge Effective Date: January 1, 1995.

Estimated Charge Expiration Date: January 1, 1997.

Class of Air Carriers Not Required to Collect PFC'S:

(1) Scheduled air carriers operating aircraft with less than 10 seats (FAR Part 135) and (2) non-scheduled air carrier and charter flights using aircraft with less than 10 seats (FAR Part 135).

Determination: Approved. Based on information submitted in the Port of Bellingham's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Bellingham International Airport.

Brief Description of Project Approved For Impose and Use: Part 150 land acquisition program.

Decision Date: October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Carolyn Read, Seattle Airports District Office, (206) 227–2661.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville Virginia.

Application Number: 94–04–C–00–CHO.

Application Type: Impose and use PFC revenue.

PFC Level: $2.00.

Total Approved Net PFC Revenue: $371,628.

Charge Effective Date: September 1, 1992.

Charge Expiration Date: October 1, 1993.

Brief Description of Projects Approved for Use:

Disabled passenger lift
General aviation taxiway and ramp,
Modify air carrier terminal security screening point,
Construct general aviation terminal access road,
Acquire land for runway 21 protection zone,
Acquire runway friction measuring device,
Environmental assessment extend runway 3 safety area.

Decision Date: October 12, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: The County of Emmet, Pellston, Michigan.

Application Number: 94–02–U–00–PLN.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved net PFC Revenue: $372,842.

Charge Effective Date: March 1, 1993.

Estimated Charge Expiration Date: August 1, 1997.

Brief Description of Projects Approved For Use:

Rehabilitate and resurface runway 14/32.
Construct blast pads on runway 14/32.

Decision Date: October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: Cedar Rapids Airport Commission, Cedar Rapids, Iowa.

Application Number: 94–01–C–00–CID.

Application Type: Impose and Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $6,330,000.

Charge Effective Date: January 1, 1995.

Estimated Charge Expiration Date: February 1, 2001.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the Cedar Rapids Airport Commission's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Cedar Rapids Municipal Airport.

Brief Description of Project Approved For Collection and Use:

Jet holdroom/gate expansion,
Commuter holdroom/gates screening/expansion/security,
Baggage claim expansion,
Terminal apron expansion.

Brief Description of Project Withdrawn: Terminal Sprinkler Fire.

Determination: The Cedar Rapids Airport Authority Commission withdrew this project from the application by letter dated October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Eleanor Anderson, Central Region Airports Division, (816) 426–4728.

Public Agency: Monterey Peninsula Airport District, Monterey, California.

Application Number: 94–02–U–00–MRY.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $3,960,855.

Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: June 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: Previously approved in the FAA's October 8, 1993, Record of Decision.

Brief Description of Project Approved For Use:

Residential soundproofing Phase 2–5,
Terminal renovation/improvement.

Decision Date: October 31, 1994.

FOR FURTHER INFORMATION CONTACT:
Joseph Rodriquez, San Francisco
Airports District Office, (415) 876–2805.

AMENDMENTS TO PFC APPROVALS

Amendment number city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–01–JAC, Jackson, WY	10/13/94	$1,081,183	$413,319	02/01/96	03/31/95
92–01–C–01–TEX, Telluride, CO	10/13/94	200,000	1,300,000	11/1/97	11/1/07
92–01–C–01–GJT, Grand Junction, CO	10/13/94	1,545,000	1,545,000	03/01/98	03/01/98

Issued in Washington, D.C. on November 21, 1994.

Donna Taylor,

Manager, Passenger Facility Charge Branch.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date *
Alabama					
92–01–I–00–HSV., Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	3	$20,831,051	06/01/1992	11/01/2008
93–02–U–00–HSV., Huntsville Intl-Carl T Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2008
94–03–C–00–HSV., Huntsville Intl-Carl T Jones Field, Huntsville	06/29/1994	3	0	09/01/1994	11/01/2008
92–01–C–00–MSL., Muscle Shoals Regional, Muscle Shoals .	02/18/1992	3	100,000	06/01/1992	02/01/1995
94–02–C–00–MSL., Muscle Shoals Regional, Muscle Shoals .	05/17/1994	3	60,000	08/01/1994	10/01/1996
Arizona					
92–01–C–00–FLG., Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM., Yuma MCAS/Yuma International, Yuma .	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
Puerto Rico					
92–01–C–00–SJU., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93–02–U–00–SJU., Luis Munoz Marin International, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands					
92–01–I–00–STT., Cyril E King, Charlotte Amalie	12/08/1992	0	0	03/01/1993	02/01/1995
92–01–I–00–STX., Alexander Hamilton, Christiansted St Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995
Arkansas					
94–01–I–00–FSM., Fort Smith Municipal, Fort Smith	05/18/1994	3	4,040,076	08/01/1994	04/01/2007
California					
92–01–C–00–ACV., Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
94–02–C–00–ACV., Arcata, Arcata	08/23/1994	3	369,500	11/01/1994	11/01/1996
94–01–C–00–BUR., Burbank-Glendale-Pasadena, Burbank	06/17/1994	3	34,989,000	09/01/1994	10/01/2001
93–01–C–00–CIC., Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1997
92–01–C–00–IYK., Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–LGB., Long Beach-Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–LAX., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
94–01–C–00–MOD., Modesto City-County Arpt-Harry Sham, Modesto	05/23/1994	3	300,370	08/01/1994	08/01/2001
93–01–C–00–MRY., Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
92–01–C–00–OAK., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
94–02–C–00–OAK., Metropolitan Oakland International, Oakland	02/23/1994	3	8,999,000	05/01/1994	04/01/1995
93–01–I–00–ONT., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–SMF., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC., San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93–02–U–00–SJC., San Jose International, San Jose	02/22/1993	3	0	05/01/1993	08/01/1995
93–03–C–00–SJC., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92–01–C–00–SBP., San Luis Obispo County-McChesney Fie, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92–01–C–00–STS., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
94–02–C–00–STS., Sonoma County, Santa Rosa	07/13/1994	3	272,365	10/01/1994	07/01/1997
91–01–I–00–TVL., Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado					

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date *
92–01–C–00–COS., City of Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–C–00–DVX., Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL., Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT., Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GUC., Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ., Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93–01–C–00–PUB., Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92–01–C–00–SBS., Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92–01–C–00–TEX., Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut					
93–01–C–00–HVN., Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999
93–01–I–00–BLD., Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
94–03–U–00–BDL., Bradley International, Windsor Locks	02/22/1994	3	0	05/01/1994	09/01/1995
Florida					
93–01–C–00–DAB., Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92–01–C–00–RSW., Southwest Florida International, Fort Myers	08/31/1992	3	253,858,512	11/01/1992	06/01/2014
93–02–U–00–RSW., Southwest Florida International, Fort Myers	05/10/1993	3	0	11/01/1992	06/01/2014
93–01–C–00–JAX., Jacksonville International, Jacksonville	01/28/1994	3	12,258,255	05/01/1994	07/01/1997
92–01–C–00–EYW., Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92–01–C–00–MIH., Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
94–01–C–00–MIA., Miami International Miami	08/19/1994	3	64,770,000	11/01/1994	08/01/1996
92–01–C–00–MCO., Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93–01–C–00–MCO., Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
93–01–I–00–PFN., Panama City-Bay County International, Panama City	12/01/1993	3	8,238,499	02/01/1994	10/01/2007
92–01–C–00–PNS., Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92–01–I–00–SRQ., Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92–01–I–00–TLH., Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93–02–U–00–TLH., Tallahassee Regional, Tallahassee	12/30/1993	0	0	02/01/1993	02/01/1998
93–01–C–00–TPA., Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
93–01–C–00–PBI., Palm Beach International, West Palm Beach	01/26/1994	3	38,801,096	04/01/1994	04/01/1999
Georgia					
93–01–C–00–CSG., Columbus Metropolitan, Columbus	10/01/1993	3	534,633	12/01/1993	06/01/1995
91–01–C–00–SAV., Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92–01–I–00–VLD., Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
94–01–C–00–BOI., Boise Air Terminal-Gowen Field, Boise	05/13/1994	3	6,857,774	08/01/1994	10/01/1998
Idaho					
93–01–C–00–SUN., Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92–01–C–00–IDA., Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
94–01–I–00–LWS., Lewiston-Nez Perce County, Lewiston	02/03/1994	3	229,610	05/01/1994	03/01/1997
94–01–C–00–PIH., Pocatello Regional, Pocatello	06/30/1994	3	400,000	10/01/1994	03/01/2002
92–01–C–00–TWF., Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois					
94–01–C–00–BMI., Bloomington/Normal, Bloomington/Normal	08/30/1994	3	3,855,012	11/01/1994	05/01/2010
93–01–C–00–MDW., Chicago Midway, Chicago	06/28/1993	3	500,418,285	09/01/1993	08/01/01
94–02–U–00–MDW., Chicago Midway, Chicago	09/06/1994	3	0	12/01/1994	08/01/2001
93–01–C–00–ORD., Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
94–02–U–00–ORD., Chicago O'Hare International, Chicago	09/16/1994	3	0	12/01/1994	10/01/1999
94–01–C–00–MLI., Quad-City, Moline	09/29/1994	3	11,582,995	12/01/1994	11/01/2008
94–01–C–00–PIA., Greater Peoria Regional, Peoria	09/08/1994	3	4,083,195	12/01/1994	05/31/2001
94–01–C–00–UIN., Quincy Municipal Baldwin Field, Quincy	07/08/1994	3	115,517	10/01/1994	07/01/1997
92–01–I–00–RFD., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93–02–U–00–RFD, Greater Rockford, Rockford	09/02/1993	3	0	12/01/1993	10/01/1996
92–01–I–00–SPI, Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93–02–U–00–SPI, Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93–03–I–00–SPI, Capital, Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana					
92–01–C–00–FWA, Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93–01–C–00–IND, Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
94–01–C–00–SBN, Michiana Regional, South Bend	08/26/1994	3	9,185,403	11/01/1994	12/31/2003

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date *
Iowa					
93–01–C–00–DSM, Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92–01–I–00–DBQ, Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
94–02–C–00–DBQ, Dubuque Regional, Dubuque	02/09/1994	3	203,420	05/01/1994	02/01/1996
93–01–C–00–SUX, Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
94–01–C–00–ALO, Waterloo Municipal, Waterloo	03/29/1994	3	637,000	06/01/1994	06/01/1998
Kansas					
94–01–C–00–ICT, Wichita Mid-Continent, Wichita	09/29/1994	3	4,259,535	12/01/1994	11/01/1997
Kentucky					
94–01–C–00–CVG, Cincinnati/Northern Kentucky International, Covington	03/30/1994	3	20,737,000	06/01/1994	09/01/1995
93–01–C–00–LEX, Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93–01–C–00–PAH, Barkley Regional, Paducah	12/02/1993	3	386,550	03/01/1994	12/01/1998
Louisiana					
92–01–I–00–BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93–02–U–00–BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/28/1993	3	0	12/01/1992	12/01/1998
93–01–C–00–MSY, New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93–02–U–00–MSY, New Orleans International/Moisant Field, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93–01–I–00–SHV, Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
93–01–C–00P–PWM., Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2001
Maryland					
92–01–I–00–BWI., Baltimore-Washignton International Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
94–02–C–00–BWI., Baltimore-Washington International Baltimore	08/09/1994	3	144,727,094	11/01/1994	04/01/2009
94–01–I–00–CBE, Greater Cumberland Regional, Cumberland	03/30/1994	3	150,000	07/01/1994	07/01/1999
Massachusetts					
93–01–C–00–BOS., General Edward L. Logan International, Boston	08/24/1993	3	604,794,000	11/01/1993	10/01/2011
92–01–C–00–ORH., Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan					
92–01–C–00–DTW., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92–01–I–00–ESC., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93–01–C–00–FNT., Bishop International Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92–01–I–00–GRR., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92–01–C–00–CMX., Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93–01–C–00–IWD., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93–01–C–00–LAN., Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92–01–I–00–MQT., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
94–02–U–00–MQT., Marquette County, Marquette	04/06/1994	3	0	07/01/1994	04/01/1996
94–01–C–00–MKG., Muskegon County, Muskegon	02/24/1994	3	5,013,088	05/01/1994	05/01/2019
92–01–C–00–PLN., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1998
Minnesota					
93–01–C–00–BRD., Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
94–01–C–00–DLH., Duluth International, Duluth	07/01/1994	3	562,248	10/01/1994	04/01/1996
94–02–C–00–INL., Falls International, International Falls	09/24/1994	3	243,537	12/01/1994	12/01/1998
92–01–C–00–MSP., Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
94–02–C–00–MSP., Minneapolis-St Paul International, Minneapolis	05/13/1994	3	113,064,000	08/01/1994	06/01/1998
Mississippi					
91–01–C–00–GTR., Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92–01–C–00–GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	390,595	07/01/1992	12/01/1993
93–02–C–00–GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,817	07/01/1992	12/01/1995
92–01–C–00–PIB., Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93–01–C–00–JAN., Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–MEI., Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
93–02–C–00–MEI., Key Field Meridian	10/19/1993	3	155,223	11/01/1992	08/01/1996
94–01–C–00–TUP., Tupelo Municipal—C D Lemons Field, Tupelo	08/03/1994	3	461,000	11/01/1994	10/01/1999

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date *
Missouri					
93–01–C–00–SGF., Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92–01–C–00–STL., Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana					
93–01–C–00–BIL., Billings-Logan International, Billings	01/26/1994	3	5,672,136	04/01/1994	05/31/2002
93–01–C–00–BZN., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
94–01–C–00–BTM., Bert Mooney, Butte	04/17/1994	3	410,202	07/01/1994	05/01/2000
92–01–C–00–GTF., Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–GTF., Great Falls International, Great Falls	05/25/1993	3	0	11/01/1992	07/01/2002
92–01–C–00–HLN., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–FCA., Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–MSO., Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada					
91–01–C–00–LAS., Mc Carran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–LAS., Mc Carran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
94–03–U–00–LAS., Mc Carran International, Las Vegas	04/20/1994	0	0	07/01/1994	09/01/2014
93–01–C–00–RNO., Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire					
92–01–C–00–MHT., Manchester, Manchester	10/13/1992	3	5,461,000	10/01/1993	03/01/1997
New Jersey					
92–01–C–00–EWR., Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York					
93–01–I–00–ALB., Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–BGM., Binghamton Regional/Edwin A Link Fie, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–BUF., Greater Buffalo International, Buffalo	05/09/1992	3	189,873,000	08/01/1992	03/01/2026
94–01–C–00–ISP., Long Island Mac Arthur, Islip	09/23/1994	3	18,033,985	12/01/1994	12/31/2006
92–01–I–00–ITH., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
94–02–C–00–ITH., Tompkins County, Ithaca	09/06/1994	3	1,344,167	12/01/1994	01/01/2004
92–01–C–00–JHW., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92–01–C–00–JFK., John F Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–LGA., LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93–01–C–00–PLB., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
94–01–C–00–SLK., Adirondack, Saranac Lake	05/18/1994	3	121,952	08/01/1994	01/01/2003
92/01/C–00–HPN., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina					
94–01–C–00–AVL., Asheville Regional, Asheville	09/19/1994	3	4,909,314	12/01/1994	11/01/2000
93–01–C–00–ILM., New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota					
92–01–C–00–GFK., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–MOT., Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio					
92–01–C–00–CAK., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–CLE., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
94–02–U–00–CLE., Cleveland-Hopkins International, Cleveland	02/02/1994	3	0	05/01/1994	11/01/1995
92–01–I–00–CMH., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93–02–I–00–CMH., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–03–U–00–CMH., Port Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
94–02–C–00–DAY., James M Cox Dayton International, Dayton	07/25/1994	3	23,467,251	10/01/1994	10/01/2001
93–01–C–00–TOL., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
94–01–C–00–YNG., Youngstown—Warren Regional, Youngstown	02/22/1994	3	351,180	05/01/1994	07/01/1996
Oklahoma					
92–01–C–00–LAW., Lawton Municipal, Lawton	05/08/1992	3	482,135	08/01/1992	04/01/1996
92–01–I–00–TUL., Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93–02–U–00–TUL., Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon					
93–01–C–00–EUG., Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93–01–C–00–MFR., Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93–01–C–00–OTH., North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92–01–C–00–PDX., Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
94–02–C–00–PDX., Portland International, Portland	07/12/1994	3	53,653,440	11/01/1994	09/01/1999
93–01–C–00–RDM., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania					
92–01–I–00–ABE., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–ADD., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date *
94–01–C–00–DUJ., Du Bois-Jefferson County, Du Bois	09/29/1994	3	200,300	12/01/1994	07/01/1997
92–01–C–00–ERI., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93–01–C–00–JST., Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92–01–I–00–PHL., Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93–02–U–00–PHL., Philadelphia International, Philadelphia	05/14/1993	3	0	08/01/1993	07/01/1995
94–01–C–00–RDG., Reading Regional/Carl A Spaatz Field, Reading	09/16/1994	3	600,750	12/01/1994	08/01/1998
92–01–C–00–UNV., University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93–01–C–00–AVP., Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	12/01/1993	06/01/1997
Rhode Island					
93–01–C–00–PVD., Theodore F Green State, Providence	11/30/1993	3	103,885,286	02/01/1994	08/01/2013
South Carolina					
93–01–C–00–CAE., Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93–01–C–00–49J., Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee					
93–01–C–00–CHA., Lovell Field, Chattanooga	04/26/1994	3	7,177,253	07/01/1994	10/01/2002
93–01–C–00–TYS., McGhee Tyson, Knoxville	10/06/1993	3	5,681,615	01/01/1994	01/01/1997
92–01–I–00–MEM., Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93–02–C–00–MEM., Memphis International, Memphis	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92–01–C–00–BNA., Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas					
93–02–C–00–AUS., Robert Mueller Municipal, Austin	06/04/1993	3	6,181,800	11/01/1993	01/01/1995
94–01–C–00–BPT., Jefferson County, Beaumont/Port Arthur	06/03/1994	3	563,126	09/01/1994	11/01/1996
93–01–C–00–CRP., Corpus Christi International, Corpus Christi	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
94–01–C–00–DFW., Dallas/Fort Worth International, Dallas/Fort Worth	02/17/1994	3	115,000,000	07/01/1994	02/01/1996
92–01–C–00–ILE., Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93–01–I–00–LRD., Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93–01–C–00–LBB., Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
94–02–U–00–LBB., Lubbock International, Lubbock	02/15/1994	3	0	05/01/1994	02/01/2000
92–01–I–00–MAF., Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
94–02–U–00–MAF., Midland International, Midland	04/14/1994	3	0	07/01/1994	01/01/2013
93–01–C–00–SJT., Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
93–01–C–00–TYR., Tyler Pounds Field, Tyler	12/20/1993	3	819,733	03/01/1994	07/01/1998
94–01–C–00–VCT., Victoria Regional, Victoria	08/25/1994	3	$195,960	12/01/1994	10/01/1997
Virginia					
92–01–I–00–CHO. Charlottesville-Albemarle Charlottesville	06/11/1992	2	$255,559	09/01/1992	11/01/1993
92–02–U–00–CHO., Charlottesville-Albemarle, Charlottesville	12/21/1992	2	0	09/01/1992	11/01/1993
93–03–U–00–CHO., Charlottesville-Albemarle, Charlottesville	10/20/1993	2	0	01/01/1994	11/01/1993
94–01–C–00–RIC., Richmond International (Byrd Field), Richmond	02/04/1994	3	30,976,072	05/01/1994	08/01/2005
93–01–C–00–IAD., Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	01/01/1994	11/01/2003
93–01–C–00–DCA., Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
94–94–02–U–00–DCA., Washington National, Washington, DC	04/06/1994	3	0	07/01/1994	11/01/2000
WASHINGTON					
93–01–C–00–BLI., Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	01/01/1995
93–01–C–00–PSC., Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93–01–C–00–CLM., William R Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
94–01–C–00–PUW., Pullman-Moscow Regional, Pullman	03/22/1994	1	169,288	06/01/1994	01/01/1998
92–01–C–00–SEA., Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93–02–C–00–SEA., Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93–01–C–00–GEG., Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93–01–I–00–ALW., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93–01–C–00–EAT., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92–01–C–00–YKM., Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
94–02–C–00–YKM., Yakima Air Terminal, Yakima	09/22/1994	3	14,745	04/01/1995	06/01/1995
West Virginia					
93–01–C–00–CRW., Yeager, Charleston	05/28/1993	3	3,254,126	08/01/1993	04/01/1998
93–01–C–00–CKB., Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92–01–C–00–MGW., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
94–02–C–00–MGW., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/16/1994	2	222,500	12/01/1994	12/01/1999
Wisconsin					
94–01–C–00–ATW., Outagamie County, Appleton	04/25/1994	3	3,233,645	07/01/1994	09/01/2000

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date *
92–01–C–00–GRB., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
94–01–C–00–LSE., La Crosse Municipal, La Crosse	04/06/1994	3	795,299	08/01/1994	08/01/1997
93–01–C–00–MSN., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93–01–I–00–CWA., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93–01–C–00–RHI., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming					
93–01–C–00–CPR., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93–01–C–00–CYS., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93–01–I–00–GCC., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93–01–C–00–JAC., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam					
92–01–C–00–NGM., Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
93–02–C–00–NGM., Agana Nas, Agana	02/25/1994	3	258,408,107	05/01/1994	06/01/2021
Puerto Rico					
92–01–C–00–BQN., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–PSE., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94–29804 Filed 12–2–94; 8:45 am]
BILLING CODE 4910–13–M

Maritime Administration

[Docket S–915]

Lykes Bros. Steamship Co., Ltd.; Notice of Application for Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended

By application of November 21, 1994, Lykes Bros. Steamship Co., Inc. (Lykes) requests a waiver of the provisions of section 804 of the Act so as to permit it to time charter up to four 2,400 TEU containerships under foreign registry in the trade between ports on the U.S. gulf and east coast and north Europe.

The vessels for which a waiver is sought are now under construction in a German shipyard for a U.S. documentation citizen owner. The first vessel is scheduled for delivery in March 1995 with the remaining vessels to be delivered at three month intervals thereafter. Lykes has committed to time charter these vessels on a long term basis.

The likely itinerary of the vessels according to Lykes will be Galveston, New Orleans, Miami, Charleston, Norfolk, New York, Boston, Antwerp, Bremerhaven, Felixstowe, and LeHavre.

For quite some time now, Lykes notes that it, just as other subsidized carriers, has been unable to acquire modern efficient subsidy eligible tonnage at world prices. Lykes contends that it is essential for Lykes to upgrade the fleet of vessels available to it in order to maintain its competitive position in the trade and to meet the needs of its customer base.

Lykes concludes that failure to grant this application would deprive it of the use of these modern vessels and the revenue they will generate.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on December 19, 1994. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804) (Operating-Differential Subsidies)).

Dated: November 30, 1994.

By Order of the Maritime Administrator

Joel C. Richard,

Secretary.

[FR Doc. 94–29827 Filed 12–2–94; 8:45 am]
BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. EA92–041; Notice 3]

General Motors Pickup Truck Defect Investigation

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Change of location and time of public meeting.

SUMMARY: On October 27, 1994, NHTSA published a notice that it will hold a public meeting on December 6, 1994 regarding the initial decision by the Secretary of Transportation that certain pickup trucks manufactured by General Motors Corporation (GM) with fuel tanks mounted outside the frame rails contain a defect that relates to motor vehicle safety. In view of the intense interest in this meeting, NHTSA has changed the location and starting time for the meeting.

FOR FURTHER INFORMATION CONTACT: Ellen Berlin, Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; (202) 366–9550.

SUPPLEMENTARY INFORMATION: On October 17, 1994, Secretary of Transportation Federico Peña announced his initial decision that model year 1973–1991 full-sized GM pickup trucks and cab-chassis equipped with fuel tanks mounted outboard of the frame rails contain a defect related to motor vehicle safety. 59 Fed. Reg. 54025 (October 27, 1994).

That notice also announced that, pursuant to 49 U.S.C. § 30118 and 49 CFR 554.10, a public meeting will be

held on December 6, 1994, in order to afford GM and other interested persons an opportunity to present information, views, and arguments on the issue of whether the vehicles covered by this initial decision contain a defect related to motor vehicle safety.

The public meeting was originally scheduled to begin at 10:00 a.m. in the Department of Transportation headquarters building. However, in view of the number of people who have advised the agency that they wish to appear and the public interest in this proceeding, NHTSA has decided to move the meeting to the Federal Aviation Administration Auditorium, Third Floor, 800 Independence Avenue, S.W., Washington, D.C. In addition, in order to attempt to complete the meeting within three days, it will begin at 9:00 a.m. each day.

Authority: 49 U.S.C. § 30118; delegation of authority at 49 CFR 1.50(a).

Issued on: November 30, 1994.

Howard M. Smolkin,

Executive Director.

[FR Doc. 94–29885 Filed 11–30–94; 4:54 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 28, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, N.W., Washington, D.C. 20220.

Special Request: In order to implement the proposed strategic plan by January 1, 1995, the Department of the Treasury on behalf of the U.S. Mint is requesting Office of Management and Budget (OMB) review and approval by December 22, 1994. All comments must be received by close of business December 16, 1994.

U.S. Mint

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Voluntary Customer Satisfaction Surveys to Implement E.O. 12862 for the U.S. Mint.
Description: These voluntary customer surveys will be used to implement E.O. 12862 by obtaining quantitative and qualitative customer data for evaluating Customer Satisfaction.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,100.
Estimated Burden Hours Per Response: 12 minutes.
Frequency of Response: Other (one-time collection).
Estimated Total Reporting Burden: 220 hours.
Clearance Officer: Mike Green (202) 634–8300, United States Mint, 1730 K. Street, N.W., Suite 800, Washington, DC 20212.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–29783 Filed 12–2–94; 8:45 am]

BILLING CODE 4810–37–P

Public Information Collection Requirements Submitted to OMB for Review

November 27, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0023.
Form Number: PD F 4000.
Type of Review: Extension.
Title: Request by Owner for Reissue of United States Savings Bonds/Notes to Add Beneficiary or Coowner, Eliminate Beneficiary or Decedent, Show Change of Name, and/or Correct Error in Registration.
Description: This form is used by owners to identify securities for which reissue is requested and to indicate the new registration required.
Respondents: Individuals or households.
Estimated Number of Respondents: 600,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300,000 hours.
OMB Number: 1535–0091.
Form Number: None.
Type of Review: Extension.
Title: Regulations Governing United States Treasury Certificates of Indebtedness—State and Local Government Series, United States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series.
Description: These are regulations authorizing the issuing of United States Treasury bonds, notes, and certificates of indebtedness of the State and Local Government Series.
Respondents: State or local governments.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 167 hours.
Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–29784 Filed 12–2–94; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

November 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0951.

Form Number: IRS Forms 5434 and 5434–A.

Type of Review: Extension.

Title: Application for Enrollment (5434).

Application for Renewal of Enrollment (5434–A).

Description: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper: Form 5434: 1 hour, Form 5434–A: 27 minutes.

Frequency of Response: Other (once every 3 years).

Estimated Total Reporting/ Recordkeeping Burden: 3,800 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–29785 Filed 12–2–94; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

[T.D. 94–97]

Tariff Classification of Imported Magnets

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final change of position.

SUMMARY: This document gives notice of a change of position regarding the classification of imported articles consisting of small metal or barium ferrite magnets placed in a plastic, textile or ceramic housing (sometimes referred to as refrigerator or household magnets), under the Harmonized Tariff Schedule of the United States (HTSUS).

Customs has ruled in the past that based on the composition of the magnet, it was classified either as an article of metal under heading 7323, HTSUS, or as an article of ceramic (barium ferrite) under heading 6912, HTSUS.

Customs now believes that because composite goods consisting of magnets and a textile, plastic or ceramic housing or shell, have the essential character of magnets, they are properly classifiable as such under heading 8505, HTSUS. The result of this change of position is a small decrease in the rate of duty on the subject merchandise.

DATES: The change in tariff classification resulting from this decision will be effective on or after December 5, 1994 for all entries not finally liquidated as well as to merchandise entered for consumption or withdrawn from warehouse on or after this date.

FOR FURTHER INFORMATION CONTACT: Robert F. Altneu, Office of Regulations and Rulings (202) 482–7030.

SUPPLEMENTARY INFORMATION:

Background

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Magnets are specifically provided for in heading 8505, HTSUS. In several rulings, we have held that articles consisting of a magnet placed within a decorative housing or shell made of plastic, ceramic, or textile (sometimes referred to as refrigerator or household magnets), were composite goods. Classification was considered under the following subheadings and duty rates:

6912.00.50: Ceramic tableware, kitchenware, other household articles . . . : [o]ther

The general, column one rate of duty is 7 percent *ad valorem.*

7323.99.90: Table, kitchen or other household articles and parts thereof, of iron or steel . . . : [o]ther: [o]ther: [n]ot coated or plated with precious metal: [o]ther: [o]ther. . . .

The general, column one rate of duty is 3.4 percent *ad valorem.*

8505.19.00: Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization. . . : [p]ermanent magnets and articles intended to become permanent magnets after magnetization: [o]ther. . . .

The general, column one rate of duty is 4.9 percent ad *valorem.*

Because the article was a composite good consisting of metal, ceramic, textile, and/or plastic, it was prima facie classifiable under two or more headings. Customs would then apply GRI 3(b) to determine the essential character of the article.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Cooperation Council's official interpretation of the HTSUS. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN VIII to GRI 3(b) states as follows:

> [t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In the rulings issued, Customs concluded that the magnet imparts the essential character to the article. The plastic, textile or ceramic portion of the article merely embellished the article and acted as a decorative selling feature.

However, Customs precluded classification of the article under heading 8505, HTSUS, which specifically provides for permanent magnets based upon a portion of EN 85.05. EN 85.05, page 1341, states in pertinent part as follows:

> [t]his heading does not cover: [e]lectro-magnets, permanent magnets or magnetic devices of this heading, when presented with machines, apparatus, toys, games, etc., of which they are designed to form part (classified with those machines, apparatus, etc.)

Based upon this portion of EN 85.05, we held that the magnets were designed to form part of the article. It was concluded that because the magnets are presented with and incorporated into a textile, ceramic or plastic article (i.e., a hook, fruit caricature or advertising slogan), they are precluded from classification in heading 8505, HTSUS. Because the essential character of the article is the magnet, the article would then be classified based upon the composition of the magnet as an article of metal under heading 7323, HTSUS, or as an article of ceramic (barium ferrite) under heading 6912, HTSUS.

Several rulings were issued following this rationale. *See* HQs 082500, 083130, 083133, 083134, 089332, 089333, 089760; NYs 860370, 862523. This list may not be exhaustive. There may be others issued by Customs in New York or in the various Customs districts under the pre-entry classification procedures.

In a notice published in the **Federal Register** on June 28, 1994 (59 FR 33320), Customs furnished notice that the classification of the subject merchandise was under review and requested comments from interested parties.

Only two submissions were received in response to the notice. While both agreed to the proposed change of position, they each provided a substantive discussion of the legal issues involved.

Discussion of Comments

Comment: Articles consisting of small metal or barium ferrite magnets placed in a plastic, textile or ceramic housing (sometimes referred to as refrigerator or household magnets) are eo nomine provided for under heading 8505 as magnets, based upon GRI 1. *See* O.C.O.D. 89–1, 23 Cust. Bull. 36, dated September 6, 1989.

Response: Customs disagrees that the subject merchandise is classifiable under GRI 1. Magnets entered unattached to any other object are eo nomine classifiable under heading 8505, HTSUS. Magnets placed in a plastic, textile or ceramic housing are prima facie classifiable under headings 8505, 3926, 6307, or 6912, HTSUS, respectively. Because the subject merchandise is comprised of two or more articles classified under separate headings, classification cannot be determined by use of GRI 1. Therefore, GRI 3 must be used.

Furthermore, O.C.O.D. 89–1 was issued as guidelines on the proper interpretation and application of GRI 1 to classify merchandise to the importing community. Since the enactment of the HTSUS, Customs has consistently issued binding rulings which set forth the proper interpretation of articles which are prima facie classifiable in two or more headings under the HTSUS according to GRI 3.

Comment: The proposed change in the method of classification of the subject merchandise should apply to all relevant protested and unliquidated entries, as well as to future entries.

Response: Because Customs believes that our previous interpretation was incorrect and this change in position results in a slight reduction in duties, we believe that the benefit should be available to importers immediately for all entries not finally liquidated.

Conclusion

It is now our position that EN 85.05 has been misinterpreted. The exclusion in EN 85.05 is designed to cover only those articles in which the magnet is merely an insignificant part of a larger article (i.e., kitchen cabinets with a magnet to keep the doors closed). In such cases, the magnet portion is ignored for classification purposes, and the article (i.e., kitchen cabinet) is classified as if the magnet were not present.

In regards to articles consisting of a metal or barium ferrite magnet and a plastic, textile or ceramic shell or housing (i.e., a hook, fruit caricature or an advertisement slogan), Customs believes that they are composite goods. Customs will continue to apply an essential character analysis pursuant to GRI 3(b) to find the essential character of the merchandise. If the shell or housing portion of the article merely embellishes the product and acts as a decorative selling feature, and the essential character is imparted by the magnet, then the article is properly classifiable in heading 8505, HTSUS, as a permanent magnet. This change in position only relates to how Customs interprets the exclusion stated in EN 85.05.

The change in tariff classification resulting from this decision will be effective immediately for all entries not finally liquidated as well as to merchandise entered for consumption or withdrawn from warehouse on or after this date. By this action, those rulings which are inconsistent with our current position are revoked.

Approved: November 22, 1994.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–29831 Filed 12–2–94; 8:45 am]

BILLING CODE 4820–02–P

Tariff Classification of Water Resistant Garments With Non-Water Resistant Hood

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Proposed change of practice; solicitation of comments.

SUMMARY: Pursuant to section 177.10(c)(1) of the Customs Regulations (19 CFR 177.10(c)(1)), this notice advises the public that Customs proposes a change of practice regarding the classification of imported merchandise consisting of water resistant jackets with non-water resistant hoods, under the Harmonized Tariff Schedule of the United States (HTSUS).

Customs has rules in the past that water resistant garments with non-water resistant hoods were classified as water resistant garments as per the terms of Chapter 62, HTSUS.

After a thorough review of the issue, it is Customs opinion that the permanently attached hood of a garment is an integral part of the garment as a whole. As such, if the hood is not similarly coated (in the same manner as the jacket), the garment is precluded from classification as a water resistant garment. The result of this proposed change of practice would be an increase in the rate of duty on the subject merchandise.

By this action, those rulings which are inconsistent with our current practice would be revoked. Before adopting this proposed change, consideration will be given to any written comments timely submitted in response to publication of this document.

DATES: Comments must be received on or before February 3, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C., 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Classification Branch, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

Background

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative chapter notes.

Chapter 62, HTSUS, provides for articles of apparel and clothing accessories not knitted or crocheted. Additional U.S. Note 2 to Chapter 62, HTSUS, in addressing the term "water resistant", refers to garments classified within certain subheadings of the chapter. On separate occasions, Customs determined that the hood was a peripheral aspect of the garment. Accordingly, when a water resistant analysis was conducted, no consideration was given to the hood, i.e., whether it was or was not water resistant.

Several rulings were issued following this rationale. *See* DD 888234, DD884731, NY 887628 and NY 874163. This list may not be exhaustive. There may be others issued by Customs in the various Customs districts.

Proposed Change of Practice

As a result of our reexamination of the issue we find that Additional U.S. Note 2 to Chapter 62, HTSUS, has not been

applied to its proper effect. There is nothing in the language of that Note which suggests that only a portion of a garment be made water resistant in order for the entire garment to be classifiable as water resistant. The test, as it is written, applies to the complete garment. On water resistant garments, the hood contributes materially to the garment's usefulness and, essentially, is an integral part of the garment itself. The hood adds significant additional protection to the wearer in times of inclement weather.

This change in practice only relates to water resistant garments with non-water resistant hoods that are an integral part of the garment (i.e. permanently attached to the garment).

Authority

This notice is published in accordance with section 177.10, Customs Regulations (19 CFR 177.10).

Comments

Before adopting this proposed change in practice, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

George J. Weise,

Commissioner of Customs.

Approved: November 16, 1994.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–29832 Filed 12–2–94; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Freedom Support Act Secondary School Initiative for School Linkages

AGENCY: United States Information Agency.

ACTION: Amendment—Request for Proposals.

SUMMARY: This is an amendment to the request for proposals (RFP) published October 27, 1994, beginning on page 54027 and ending on page 54029, concerning exchanges through school linkage program with the Newly Independent States of the former Soviet Union (Announcement Number E/P–95–25). This amendment adds the country of Moldova to the list of countries eligible to participate in this program. Moldova was inadvertently omitted from the original RFP.

FOR FURTHER INFORMATION CONTACT:

For clarification, contact David Dallas, NIS Secondary School Division (E/PY) Room 314, (202) 619–6299.

Dated: November 30, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on Monday, December 12, 1994, at 8:30 a.m.–4:30 p.m. and Tuesday, December 13, 1994, at 10:00 a.m.–12:30 p.m. The location of meetings will be 811 Vermont Avenue, NW, Washington, DC, Room 442.

The Committee's objectives are to review Department of Veterans Affairs construction standards and criteria relating to fire, earthquake, and other natural disaster resistant construction.

The meetings on both days will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Krishna K. Banga, Senior Structural Engineer, Facilities Quality Office, Office of Construction Management, Department of Veterans Affairs Central Office (phone 202–233–7370) prior to November 25, 1994.

Dated: November 16, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–29782 Filed 12–2–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 232
Monday, December 5, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 8, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Gas Water Heaters

The staff will brief the Commission on options for Commission action to address the risk that gas-fired water heaters will ignite vapors from flammable liquids that are present in the home.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION; Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: November 30, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–30002 Filed 12–1–94; 3:22 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION WASHINGTON, DC 20207

TIME AND DATE: Wednesday, December 7, 1994, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 30, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–30001 Filed 12–1–94; 3:23 pm]

BILLING CODE 6355–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 Fed. Reg. 59498, November 17, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) December 1, 1994.

CHANGE IN THE MEETING:

Closed Session

The closed session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: November 30, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–29930 Filed 12–1–94; 11:24 am]

BILLING CODE 6750–06–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND PLACE: Friday, December 16, 1994, at 9:00 a.m. The meeting will be held at Eximbank in Room 1141, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: Environmental Procedures.

PUBLIC PARTICIPATION: The meeting will be open to public observation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3957, not later than Thursday, December 15, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 13, 1994, Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3957 or TDD: (202) 535–3377.

FURTHER INFORMATION: For further information, contact Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3957.

Carol F. Lee,

General Counsel.

[FR Doc. 94–29899 Filed 12–1–94; 3:58 pm]

BILLING CODE 6690–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 60867, November 28, 1994].

STATUS: Open meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: November 28, 1994.

CHANGE IN THE MEETING: Deletion.

The following items will not be considered at an open meeting scheduled for Thursday, December 1, 1994, at 10:00 a.m.

1. A release soliciting comment on interpretation of transfer agent rules to address the problems of undeliverable dividend and interest distributions and other issues related to lost security holders and abandoned property. For further information, please contact Ester Saverson, Jr. at (202) 942–4187.

2. A staff letter to the New York Stock Exchange, granting no-action relief from Section 16 of Regulation T, subject to certain conditions, if broker-dealers borrow securities for the purpose of participating in DRSPPs. For further information, please contact Thomas McGowan at (202) 942–4886.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: November 30, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–30009 Filed 12–1–94; 3:55 pm]

BILLING CODE 8010–01–M

federal register

Monday
December 5, 1994

Part II

Environmental Protection Agency

40 CFR Parts 141 and 143
Analytical Methods for Regulated Drinking Water Contaminants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 143

[WH–FRL–5116–4]

RIN 2040–AC12

National Primary and Secondary Drinking Water Regulations: Analytical Methods for Regulated Drinking Water Contaminants.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating the use of several new analytical methods and updated versions of previously approved methods for a number of regulated contaminants in drinking water. At the same time, the Agency is withdrawing approval of outdated methods or outdated versions of the same methods. The purpose of the rule is to approve new methods, withdraw outdated methods, and update older methods for analysis of regulated contaminants in drinking water. The rule is expected to eliminate unnecessary duplication by withdrawing older versions of the same method, and satisfy public requests for approval of new technologies in drinking water analyses.

DATES: This final rule is effective on January 4, 1995. The incorporation of the publications listed in this document are approved by the Director of the Federal Register as of January 4, 1995.

ADDRESSES: Copies of the public comments received on the proposal, EPA's responses, and all other supporting documents are available for review at the U.S. Environmental Protection Agency (EPA), Drinking Water Docket, 401 M Street, S.W., Washington, D.C. 20460. For access to the docket material, call (202) 260–3027 on Monday through Friday, excluding Federal holidays, between 9:00 am and 3:30 pm Eastern Time for an appointment.

FOR FURTHER INFORMATION CONTACT: Dr. Jitendra Saxena, Drinking Water Standards Division, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–9579. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 am to 5:30 pm Eastern Time.

For technical information regarding chemistry methods, contact Richard Reding, Ph.D., Office of Ground Water and Drinking Water (TSD), U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, telephone (513) 569–7946, or Baldev Bathija, Ph.D., Office of Ground Water and Drinking Water (MC–4603), U.S. Environmental Protection Agency, Washington, D.C. 20460, telephone (202) 260–3040. For technical questions regarding microbiology methods, contact Paul S. Berger, Ph.D., Office of Ground Water and Drinking Water (MC–4603), U.S. Environmental Protection Agency, Washington, D.C. 20460, telephone, (202) 260–3039.

SUPPLEMENTARY INFORMATION:

EPA Regional Offices:

I JFK Federal Bldg., One Congress Street, 11th floor, Boston, MA 02203, Phone: (617)565–3610, Jerry Healey
II 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264–1800, Walter Andrews
III 841 Chestnut Building, Philadelphia, PA 19107, Phone: (215) 597–9873, Stuart Kerzner
IV 345 Courtland Street, N.E., Atlanta, GA 30365, Phone: (404) 347–3633, Wayne Aronson
V 77 West Jackson Boulevard, Chicago, IL 60604, Phone: (312) 353–2151, Ed Watters
VI 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 655–7150, Thomas Love
VII 726 Minnesota Avenue,Kansas City, KS 66101,Phone: (913) 276–7032, Ralph Langemeir
VIII One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202–2466, Phone: (303) 293–1652, Patrick Crotty
IX 75 Hawthorne Street, San Francisco, CA 94105, Phone: (415) 744–1817, William Thurston
X 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 553–4092, Kenneth Feigner

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I. Statutory Authority

The Safe Drinking Water Act (SDWA), as amended in 1986, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (42 U.S.C. 300g–1). NPDWRs apply to public water systems (42 U.S.C. 300f(1)(A)). According to section 1401(1)(D) of the Act, NPDWRs include "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures. * * *" In addition, Section 1445(a) of the Act authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. EPA's promulgation of analytical methods is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA Section 1450(a) (42 U.S.C. 300j–9(a)).

II. Regulatory Background

EPA has promulgated analytical methods for all currently regulated drinking water contaminants for which MCLs or monitoring requirements have been promulgated. In most cases, the Agency has promulgated regulations specifying (i.e., approving) use of more than one analytical method for a contaminant, and laboratories may use any one of them for determining compliance with an MCL or monitoring requirement. After any regulation is published, EPA may amend the regulations to approve additional methods, or modifications to approved methods, or withdraw methods that become obsolete.

On December 15, 1993, EPA proposed to approve the use of several new methods and modifications of existing methods that EPA believed were as good as, or better than, current methods and procedures (58 FR 65622). The Agency also proposed to withdraw approval for outdated methods or outdated versions of the same methods. In addition, EPA published a Notice of Availability (NOA) (59 FR 35891) on July 14, 1994, to make available data from EPA's evaluation of several new analytical methods, and to propose withdrawal of approval for several outdated EPA methods. EPA requested public comments on the proposal and on the NOA. Today's notice takes final action on the methods covered by the proposal and the NOA.

III. Explanation of Today's Action

With a few minor exceptions, which are described below, the actions described in the 1993 proposed rule and the 1994 NOA are approved in today's rule. The coliform transit time will remain at 30 hours, and the Agency will not require systems to hold samples at 10 °C during transit. EPA will approve the Colisure test for simultaneously determining the presence of total coliforms and *E. coli*.

In the July 1994 NOA, EPA described the new versions of EPA Methods 200.7, 200.8, 200.9, 245.1 (EPA, 1994a) and 504.1 (EPA, 1993d) that are approved in today's rule. Mercury and sodium have been added to the analytical scope of Methods 200.8 and 200.7, respectively. EPA is approving EPA Method 508.1 (EPA, 1994c), which allows liquid-solid extraction (LSE) procedures to be used under Method 508 conditions for analysis of many analytes contained in EPA Methods 507 and 508. A minor revision to dioxin method 1613 that allows use of LSE is approved. Hexachlorocyclo-pentadiene has been added to the analytical scope of EPA Method 508.

Trimethylsilyldiazomethane may be used as an alternative derivatizing reagent in Methods 515.1 and 515.2. EPA Methods 150.1, 150.2 and 515.1 are not withdrawn. Turbidity measurements of samples need not be made immediately before beginning an analysis for metals; it is only necessary that the sample be acidified and held for sixteen hours. For EPA Method 531.1 (carbamates), samples no longer need to be frozen, thereby eliminating the possibility of frozen samples breaking the sample vial. Standard Method 6610 is approved as an alternative to Method 531.1. Analysis for 2,3,7,8–TCDD (dioxin) with Method 1613, or for asbestos with Method 100.1 or 100.2 can be simplified by using the guidance contained in the EPA document, Technical Notes on Drinking Water Methods (EPA, 1994d).

Technical Notes contains mandatory and optional procedures that will be cited in the drinking water regulations.

EPA is also correcting minor errors in the 1993 proposal. An erroneous listing of USGS methods I–2822–85 and I–2823–85 for sulfate, and ASTM D2036–91A for cyanide are removed in today's rule. The ASTM method had been listed twice in the table of approved methods. A typographical error occurred in listing the USGS method for silver and the ASTM method for chloride. The correct listings are USGS I–3720–85 (silver) and ASTM D4327–91 (chloride).

The effective date for all actions in this rule, except withdrawal of obsolete methods, is January 4, 1995. The withdrawal date for obsolete methods is July 1, 1996 (or 18 months from publication, whichever is later), which is a year later than proposed. After this date, EPA's manual "Methods for Chemical Analysis of Water and Wastes" (EPA, 1983a) will contain only three approved drinking water methods—Methods 150.1, 150.2, and 245.2. To spare new laboratories the expense of purchasing this manual, EPA will provide single copies of these methods to users who do not have a copy of the 1983 manual. For the convenience of readers and for clarity of the rules, methods that are withdrawn will be specified only by tabulating them in the document, Technical Notes on Drinking Water Methods (EPA, 1994d), and in the next revision of the Manual for the Certification of Laboratories Analyzing Drinking Water (EPA, 1990b).

IV. Response to Comments Received on the Proposed Rule and Notice of Availability

EPA received 136 comments on the December 15, 1993, proposal; 92 comments were related to chemical-analytical methods and 79 comments were related to the methods associated with the coliform and surface water treatment rules. The Agency received twenty comments on the July 14, 1994, Notice of Availability. The commenters included analytical laboratories, water utilities, analytical instrument manufacturers, State and local regulators, and trade associations.

A summary of major comments and the Agency's response to the issues raised are presented in this section. The Agency's detailed response to the comments received on the 1993 proposed rule and the 1994 NOA is available in the public docket for this rule (EPA, 1994e).

A. New Methods

Comment on the ten new methods was favorable. These methods, EPA methods 100.2, 551, 552.1, 555, Standard Methods 4500–Cl–E, 4500–Cl–H, 4500–Cl–I, 4500–O_3–B, 4500–ClO_2–E and Great Lakes Instruments Method 2 were described in the 1993 proposal. Specific public comments on some of the methods are answered below.

EPA Method 100.2 (asbestos) Four comments contained several suggestions and criticisms. Method 100.2 has been editorially revised to reflect the comments. These changes, however, do not affect the performance, cost or applicability of the method. One commenter asked EPA to approve SM 2570 for asbestos, which was published in a 1994 supplement to the eighteenth edition of *Standard Methods* (APHA, 1994). EPA does not approve SM 2570 for asbestos in today's rule, because this method differs in significant ways from Method 100.2. For example, SM 2570 uses a larger pore filter (0.45 micron) to trap asbestos fibers, while EPA method 100.2 uses a 0.22 micron filter. The commenter did not provide any data comparing asbestos trapping efficiency of these two filters, whereas EPA has data (EPA, 1994e) to show that larger pore-size filters trap fewer asbestos fibers in drinking water samples.

Method 552.1 A commenter asked that the sodium hydroxide rinse in Method 552.1 be optional, because the rinse is not compatible with their LSE product. Method 552.1 was developed and validated with ion exchange cartridges to take advantage of the special chemical properties of dalapon and the other acids covered by the method. To efficiently extract the acids the ion exchange resin must be activated with a sodium hydroxide rinse. Sorbent conditioning and elution steps, which are specified in Method 552.1 or any LSE method, cannot be modified or eliminated to accommodate the support material. Thus, EPA will not allow the sodium hydroxide rinse in Method 552.1 to be optional, because EPA has received no data to support the commenter's request to make the rinse optional.

The same commenter asked for a more generic definition of LSE media in Method 552.1 and in other LSE methods. The commenter believes EPA is unnecessarily narrowing the choice of LSE disks and cartridges. EPA does not believe LSE methods are overly restrictive in allowing use of alternative LSE disks or cartridges. However, EPA believes that additional guidance to help users correctly choose alternative LSE media without compromising the reliability of the analysis would be useful. The guidance is summarized below and will be published in Technical Notes on Drinking Water Methods (EPA, 1994d). The guidance is applicable to all LSE methods and supersedes the phrase "or equivalent" that is used in some methods to describe selection of alternative LSE cartridges or disks.

Liquid-solid extraction is performed using various sorbents that are either packed into a cartridge or enmeshed in a disk of inert support material. EPA methods describe the cartridge or disk that was used to develop the LSE procedure, and to produce the data which is published in the method. If a product is mentioned in the methods, it is for information purposes only. EPA believes various LSE cartridges and disks may be used, provided they meet all quality control requirements of the method, and provided they contain a sorbent that uses the same physicochemical principles as the cartridge or disk that is described in the approved LSE method. To demonstrate that alternative LSE cartridges and disks meet all quality control criteria, the analyst must be aware of the chemistry of the method. For example, in

evaluating Method 552.1 the recovery of the free acid (not a chemical derivative) from the water sample must be tested with the alternative LSE cartridge or disk.

In judging LSE disk media, both the sorbent and the support must be evaluated. In the case of sorbents, similarities in polarity are not sufficient. For example, a C_{18}-Silica sorbent may not perform the same as a styrene divinylbenzene copolymer sorbent. Thus, these sorbents would not be considered to be equivalent. In judging supports, any physical support used to hold the sorbent is acceptable provided the support is inert and compatible with the solutions or solvents required in the conditioning and elution steps of the method. However, any sorbent conditioning or elution steps, which are specified in the method must not be modified or eliminated to accommodate the support material.

EPA Method 555 Several commenters noted that the method detection limits (MDLs) for some analytes were greater than MDLs in the alternative method (EPA Method 515.1), or were too high to meet monitoring triggers, which are specified at 40 CFR 141.24(h)(18). Thus, they questioned whether Method 555 was a suitable alternative to Method 515.2. EPA believes commenters mistakenly looked at MDLs in Table 2 of Method 555, which shows the results of spikes at 10 ppb. However, spikes at 0.5 ppb (Table 5 in the method) resulted in MDLs that are equivalent to Method 515.1 MDLs, and these MDLs have been validated in a second laboratory (EPA, 1992a). EPA also notes that monitoring triggers for several organic contaminants, including Method 555 analytes, may be amended in a future rulemaking (EPA, 1993b, 1994f).

Great Lakes Instruments (GLI) Method 2 (turbidity) Some commenters objected to the method because it is vendor and instrument-specific. EPA generally develops and approves methods that are not vendor-specific. Users are not limited to the GLI method; generic methods SM 2130B and EPA 180.1 are approved for turbidity. However, under the Alternative Test Procedures (ATP) program EPA has approved vendor-specific methods or products as alternatives to approved methods (53 FR 5142, February 19, 1988). GLI Method 2 was evaluated under EPA's ATP program and recommended for approval as an alternative method. EPA realizes GLI is the source of copies of GLI Method 2, which is a factor a laboratory choosing to adopt this method must consider.

Some commenters believed the GLI method should be approved as a version of an international procedure, ISO 7027. The ISO procedure measures turbidity via either 90° scattered or transmitted light depending on concentration. Although instruments conforming to ISO 7027 specifications are similar to the GLI instrument, only the GLI instrument uses pulsed, multiple detectors to simultaneously read both 90° scattered and transmitted light. EPA has received no data on the ISO 7027 use of separate 90° scattered or transmitted light measurements to judge equivalency to other approved turbidity methods.

SM 4500–Cl–E, Low Level Amperometric Titration A commenter noted a typographical error in a calculation in SM 4500–Cl–E, which the Standard Methods Committee has agreed to correct. In approving SM 4500–Cl–E, EPA will print the correct formula for SM 4500–Cl–E in Technical Notes on Drinking Water Methods (EPA, 1994d). The Standard Methods Committee will publish a correction to this method in the next (19th) edition of Standard Methods (Eaton, 1993a).

SM 6610 (APHA, 1994) A commenter asked to approve this method as an alternative to EPA Method 531.1. EPA aided the development of this method, which was published in 1994 in a supplement to the eighteenth edition of Standard Methods. EPA agrees with the commenter, and will approve SM6610 for analysis of aldicarb, aldicarb sulfone, aldicarb sulfoxide, carbaryl, carbofuran, 3-hydroxycarbofuran, methomyl, and oxamyl.

EPA Method 1613, Revision B, dioxin (EPA, 1994i) EPA was asked to replace the approved Revision A of Method 1613 with Revision B. EPA agrees with the suggestion. As with Revision A, users can greatly simplify use of Revision B of Method 1613 when only 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8–TCDD) is to be determined in drinking water samples by using procedures described in Technical Notes on Drinking Water Methods (EPA, 1994d).

EPA proposed Revision A of Method 1613 for the monitoring of several chlorinated dioxins and furans under the Clean Water Act on February 7, 1991 (56 FR 5090), and approved it only for measurement of 2,3,7,8–TCDD under the Safe Drinking Water Act on July 17, 1992 (57 FR 31803). In response to comments on the 1991 proposal, EPA developed Revision B. The only technical changes made in Revision B that affect determination of 2,3,7,8–TCDD in drinking water matrices are (1) slight changes in performance specifications based on the compilation of data from interlaboratory and other studies, (2) additional language intended to provide analysts with increased flexibility to use liquid solid extraction procedures, and (3) further clarification of the documentation required when analysts employ the flexibility provided in the method to use alternate techniques not explicitly described in the method.

B. Expanded Scope for Already Approved Methods

Comments on expanding the analytical scope of these five methods were favorable. These methods, EPA Methods 200.8, 200.9, 300.0, SM 4110B and American Society for Testing and Materials (ASTM) method D4327–91, were discussed in the 1993 proposal or the 1994 NOA. Specific comments requesting that approved methods cover additional analytes are described and answered below.

A commenter asked EPA to expand the scope of Method 200.8 to include additional metals that are not currently regulated by EPA. While EPA encourages laboratories to use any approved method for all contaminants that are within the analytical scope of the method, EPA can only approve a method for contaminants that are regulated. One commenter asked why Method 200.9 did not include the secondary drinking water contaminant, zinc. EPA believes analysis of zinc with Method 200.9 is impractical, because the instrument and procedure used are very sensitive to small amounts of lead. The analysis is subject to random contamination, and the concentration range of zinc that can be reliably measured is too narrow to be of use with typical drinking water samples. EPA recommends more suitable methods (EPA 200.7, 200.9, SM 3120B and SM 3111B) for measurement of zinc in drinking water samples.

Commenters were concerned about expanding the scope of the ion chromatography methods to include fluoride. They believed that EPA did not have data to show that interference problems would not preclude use of ion chromatography for the analysis of fluoride in drinking water samples. EPA's 1990 study (Bionetics) which involved participation of seventeen laboratories demonstrated that fluoride can be reliably measured in drinking water samples with ion chromatography. Thus, EPA has no hesitation in approving the three proposed ion chromatography methods for the analysis of fluoride in drinking water.

C. Updated Methods

Comment on updating earlier versions of six methods to the current versions was favorable. These methods, EPA Methods 504.1, 515.2, 524.2, 525.2, 548.1 and 549.1, were discussed in the 1993 proposal or the 1994 NOA. Problems were reported by a commenter with the use of trimethylsilyldiazomethane (TMSD) for derivatization of the analytes in Methods 515.1 and 515.2. The commenter suggested that EPA also allow the use of diazomethane for this purpose. EPA agrees with the commenter and, as discussed in the 1993 proposal, EPA allows use of either derivatizing reagent. However, because dalapon is not adequately derivatized by TMSD, the use of TMSD in Method 515.1 is not approved for analysis of dalapon. Procedures for using TMSD with Methods 515.1 and 515.2 are described in the document *Technical Notes on Drinking Water Methods* (EPA, 1994d).

D. Updates to Methods by Reference to Most Recent Manual

Comments were favorable on approving versions of previously approved methods that are now contained in the eighteenth edition of *Standard Methods* (APHA, 1992) and in five new EPA manuals (EPA, 1994a, 1991, 1990a, 1992b and 1993a). These publications were described and discussed in the 1993 proposal or the 1994 NOA. Questions or requests from commenters about some of the methods contained in these publications are described and answered below.

1994 EPA Metals Manual (EPA, 1994a) Three commenters asked to add other regulated metals to the scope of Method 200.7, because use of a new axial configured inductively coupled plasma (ICP) atomic emission spectroscopy (AES) instrument improves the sensitivity of the method to the required regulatory limits. EPA will not approve this request in today's rule, because Method 200.7 as written allows use of other types of ICP/AES instruments that cannot meet the regulatory limits for the additional metals. To extend the scope of Method 200.7 as suggested by the commenters would require either a formal ATP approval (EPA, 1993c), or publication of a new AES method that allowed only instruments with an axial configuration.

1991 Organic Methods Manual (EPA, 1991) One commenter requested a change in the scope of EPA Method 505 because of the detection limits for some method analytes. These changes included withdrawal of alachlor, atrazine and simazine, and addition of toxaphene. EPA is evaluating the detection limits in several methods. When this evaluation is complete, EPA may propose to withdraw approval of methods or modify the scope of methods, such as Method 505. In the interim, EPA does not agree that the scope of Method 505 should be changed to withdraw alachlor, atrazine and simazine. However, EPA agrees that analysis for these nitrogen-containing compounds may require use of a nitrogen-phosphorous detector (NPD) rather than the electron capture detector (ECD). Today's rule specifies that an NPD should be substituted for the ECD in Method 505 (or another approved method should be used) to determine alachlor, atrazine and simazine, if lower detection limits are required.

EPA agrees with the comment about toxaphene. In today's rule EPA is correcting an omission in the 1993 proposal by continuing to approve Method 505 for toxaphene. However, EPA notes that the Method 505 MDL for toxaphene is very close to the MCL. To improve the sensitivity of the analysis analysts may wish to use Method 508 for toxaphene and other Method 505 analytes for which use of an NPD will not improve the sensitivity. Method 508 is very similar to Method 505 except that the MDLs are lower, because a larger sample volume is extracted.

MCL compliance determination for PCBs requires that EPA method 505 or 508 be used as a screen for PCBs as Aroclors prior to quantitation as decachlorobiphenyl by EPA Method 508A. Three commenters requested that EPA switch the sequence of compliance methods for PCBs, i.e., use Method 508A to screen and Method 505 or 508 to quantify PCBs. The suggested change in the sequence of compliance methods is beyond the scope of this rule since it would require amending the MCL compliance determination sequence in 40 CFR 141.24(h)(13)(i)–(iii). Only Method 508A can measure decachlorobiphenyl, and § 141.24(h)(13)(ii) specifically requires "using Method 508A to quantify PCBs as decachlorobiphenyl".

It was suggested by a commenter that EPA include hexachlorocyclopentadiene (HCP) in the scope of EPA Method 508. EPA agrees with the commenter, and will allow measurement of HCP with EPA Method 508. However, the analyst must show that the analyte recoveries and other criteria, which are specified for HCP in Section 9 of Method 508.1 are achieved using Method 508 procedures. This option will be described in the document, Technical Notes on Drinking Water Methods (EPA, 1994d).

1993 EPA Inorganic Methods Manual (EPA, 1993a) A commenter asked what the differences were between Method 335.3 and the updated version, Method 335.4, since both versions require manual distillation of the sample to prepare it for measurement of cyanide. The technical differences between these methods are minor. EPA improved the automation of procedures in Method 335.4, and added the option to use a labor-saving distillation procedure. The distillation option is described in Method 335.4, and it is approved and described for other spectrophotometric methods in Technical Notes on Drinking Water Methods (EPA, 1994d).

Two commenters objected to replacement of Method 335.3 with 335.4. The objection appeared to be based on the mistaken belief that Method 335.4 requires a manual distillation of the sample to prepare it for measurement of cyanide and that the earlier version, Method 335.3, did not. EPA has never allowed spectrophotometric measurements of cyanide in water samples without manual distillation of the sample using SM 4500–CN–C (cf. 40 CFR 136.3, Table 1B; 59 FR 4507, January 31, 1994; and 57 *FR* 31839, July 17, 1992). Commenters may have been misled by a discussion in Method 335.3 of an alternate ultraviolet (UV) digestion procedure that does not require manual distillation. EPA has never approved this optional UV procedure for compliance measurements of cyanide, because EPA has no data to show that UV digestion would not provide inaccurate results that underestimate the level of contamination. To avoid manual distillation of the sample, laboratories may use a selective electrode method for cyanide.

EPA notes that the "amenable" spectrophotometric methods, ASTM D2036–91B and SM 4500–CN–G, also require distillation prior to either free or total cyanide measurements. To further clarify EPA's intent to require manual distillation for all spectrophotometric determinations of cyanide, these methods will be listed at 40 CFR 141.23(k) in today's rule under the phrase "Manual distillation followed by". Immediately following this phrase, the rules specify use of SM 4500–CN–C to conduct this distillation.

Microbiological Methods

The vast majority of comments on the eighteenth edition version of microbiology methods concerned the maximum time between sample collection and analysis (transit time) of

drinking water samples. Commenters opposed reducing this time from 30 hours (16th edition of Standard Methods) to 24 hours (18th edition of Standard Methods). The Standard Methods committee reduced the transit time because of its concern about coliform die-off in the sample over time. Commenters opposed reducing the time because it would (1) be logistically impractical if not impossible to do, (2) increase costs for sample transport and resampling, (3) cause hardships in sample collection, and (4) complicate and decrease laboratory flexibility. A few commenters claimed that the reduced transit time is not supported by data.

Coliforms usually die off over time, especially when water temperatures are warm, but EPA recognizes that there is debate among investigators over the rate of that decline. EPA is currently conducting additional studies on this question, using fecal coliforms and *E. coli*, and results are anticipated by the end of 1994. Given the logistical and other problems that might result by decreasing the transit time to 24 hours, EPA is deferring a decision on whether to reduce the transit time until more data become available. For the time being, the Agency has added a footnote to the Table in § 141.21(f)(3), allowing a maximum transit time of 30 hours. If EPA decides that a reduction from 30 hours is warranted, the Agency will work with the States to minimize the hardships identified in the public comments. Meanwhile, EPA strongly encourages States and systems to review their procedures and identify practical alternatives for providing samples to laboratories more quickly.

Other commenters objected to the requirement in the 18th edition of Standard Methods to hold samples at less than 10 °C during transit. The Standard Methods committee specified this value because of its concern about coliform die-off in the sample at higher temperatures, where the bacterial metabolism of coliforms and non-coliforms alike is normally greater.

Commenters objected to any EPA requirement that would require them to keep samples cool during sample transit. They asserted that this requirement would (1) be unnecessary and would complicate sample transport logistics, (2) increase sampling costs and shipping costs for both systems and laboratories, because coolers and ice packs cost money and samples are heavier and thus more expensive to ship, and (3) lead to problems with frozen samples or a significantly increased number of invalid samples. Commenters also stated that under the presence-absence concept, sample cooling was less important than under the earlier rule based on coliform density.

EPA is deferring a decision on sample transit temperature until the Agency initiates a review, and possible revision, of the Total Coliform Rule. For the time being, the Agency has added a footnote to the Table in § 141.21(f)(3) encouraging, but not requiring, systems to hold samples at less than 10 °C during transit. Nevertheless, the Agency strongly encourages systems to cool their samples during transit, especially during warm summer months, to minimize coliform die-off. The Agency is currently conducting additional studies on this question, using fecal coliforms and *E. coli*, and results are anticipated by the end of 1994. If EPA decides that a reduction is warranted, the Agency will work with the States to minimize the hardships identified in the public comments.

EPA is also approving a new method, the Colisure test, for simultaneously determining the presence of total coliforms and *E. coli*, both of which must be monitored under the Total Coliform Rule (40 CFR 141.21). Data supporting the use of this method was presented in the notice of July 14, 1994 (NOA).

Most commenters supported approval of the Colisure test, but several raised questions about the test, primarily concerning the incubation time. They cited the Broadway et al. (1992) data that indicated that only 64% and 69% of the bottles were total coliform-positive and *E. coli*-positive, respectively, after 24 hours compared to the 48-hour results. According to the Broadway et al. data, 85% and 88% of the bottles were total coliform-positive and *E. coli*-positive, respectively, after 28 hours compared to the 48-hour results.

EPA agrees with the commenters who contended that 24 hours of incubation was insufficient for the Colisure test. The Agency, however, believes that the recovery rate after 28 hours is reasonable, and will approve the Colisure test as a 28-hour test. Moreover, based on additional data from the product manufacturer showing that the false-positive rate after 48 hours is small, EPA will allow laboratories to hold the test up to 48 hours before observing results.

Chemical Methods

There were only minor comments on the proposal to update chemistry methods to the versions contained in the 18th edition of Standard Methods. The 18th edition versions contain no or minor changes to earlier versions, and EPA received no comments to document specific hardships in converting to 18th edition chemical methods. Several commenters noted that, although thallium is not in the scope of SM 3113B, EPA erroneously approved SM 3113B for thallium (57 FR 31840, July 17, 1992). EPA agrees and will delete this approval in today's rule.

A commenter noted that the 18th edition version of SM 4500–Cl–G omits instructions that would allow measurement of total residual chlorine in drinking water samples using a colorimetric method. The Standard Methods Committee has written (Eaton, 1993b) that an editorial omission, not a technical change, occurred in recent versions of SM 4500–Cl–G. The error will be corrected in the next (19th) edition of Standard Methods. EPA corrects the error today by describing the omitted instructions in Technical Notes on Drinking Water Methods (EPA, 1994d).

E. Methods To Be Withdrawn and Replaced

General Comments Received on Withdrawal of Methods

One commenter suggested that all methods carry a "draft" status for three years after publication; other commenters asked EPA to approve new methods more quickly. It would defeat EPA's intent to provide modern technology quickly, if a method had to be published, proposed, and then kept in draft status for three years. EPA balances this problem by allowing optional use of old or new methods during a transitional period, which in the case of this rule extends to July 1, 1996 (or 18 months after publication, whichever is later).

Several commenters believed EPA was eliminating, or intended to eliminate, all autoanalyzer or colorimetric methods. This is incorrect; EPA is replacing only obsolete methods with equivalent ASTM, EPA and Standard Methods. EPA is not eliminating colorimetric or autoanalyzer technology for any regulated contaminant, except arsenic. Evidence of EPA's intent is in the 1993 methods manual (EPA, 1993a), which updated colorimetric methods for cyanide (335.4), nitrite and nitrate (353.2), and sulfate (375.2). EPA has and continues to approve autoanalyzer and colorimetric ASTM and Standard Methods for cyanide, fluoride, nitrite, nitrate and sulfate.

Some commenters stated that changing from EPA methods to equivalent Standard Methods and

ASTM methods would be very time-consuming and expensive, but provided no specific information to support this statement. EPA is withdrawing methods that are incomplete and often require users to rely on the equivalent ASTM or Standard Methods. Thus the change, in many cases, has already taken place. In other cases, there are very minor differences between the withdrawn and the replacement methods. EPA notes that laboratories may continue to use a withdrawn method for other than compliance monitoring samples. EPA's actions in today's rule save laboratories money, because they need only support one version of an ASTM, EPA, or Standard Method. Prior to this rule, laboratories were required to use methods in the 14th, 16th, 17th, and 18th editions of Standard Methods, and at least two different versions of EPA Methods 200.7 and 524.2.

EPA received numerous comments requesting an extension of the withdrawal date for analytical methods. The suggested dates ranged from July 1, 1995, to July 1, 2000. Based on these comments, EPA will extend the methods withdrawal date from July 1, 1995, to July 1, 1996 (or 18 months from publication, whichever is later), which is beyond the withdrawal date suggested by most commenters. New methods or new versions of current methods will be approved within 30 days of publication of the rule. This overlap in approval dates for new methods and withdrawal of obsolete methods will give laboratories sufficient time to become certified with the new methods.

Comments on Withdrawal of Specific Methods

Packed-Column EPA Methods

Commenters generally favored withdrawal of packed column methods for volatile organic compounds (VOCs) and trihalomethanes (THMs), and replacing them with technologically advanced capillary column methods. Additional costs incurred in supporting older, obsolete methods until EPA withdraws these methods, and the suitability of capillary columns to handle the increasing number of regulated contaminants were cited as reasons for supporting withdrawal. The July 1, 1995, withdrawal date may be too early, as pointed out by some commenters. EPA will extend the date to July 1, 1996 (or 18 months from publication, whichever is later), to give laboratories more time to plan an orderly transition to capillary column methods.

Some commenters asked EPA for continuation of the use of packed-column methods, if they meet current regulatory requirements. EPA feels that packed-column methods have many drawbacks. For example, the cis and trans dichloroethene isomers cannot be separated with the packed-columns specified for VOC analysis (Lyter, 1994). Such separation problems with packed-column methods have limited EPA's ability to prepare samples for EPA's laboratory performance evaluation (PE) program. To accommodate packed-column methods, separate PE samples are prepared for THMs and VOCs to minimize THM and VOC interferences that users of packed column EPA methods will experience. If only capillary columns are approved, EPA will have more latitude to mix VOCs and THMs in PE samples to better test laboratories with concentrations and mixtures of THMs and VOCs, as might realistically occur in drinking waters. EPA notes that laboratories may continue to use packed column methods for other than compliance monitoring analyses, such as routine plant operation or source evaluation samples.

A commenter asked why EPA proposed to withdraw THM Methods 501.1 and 501.2 in the 1993 proposal, but subsequently proposed to continue approval of these packed column methods in the Information Collection Rule (ICR) (59 FR 6354 and 6413–6414, February 10, 1994). In today's rule, EPA is clarifying why and how Methods 501.1 and 501.2 can and should be withdrawn without affecting analytical needs that were described in the ICR proposal. In the ICR, EPA proposed Methods 501.1 and 501.2 only because ICR data must be gathered quickly to support pending disinfectant byproduct control regulations. To support these regulations, EPA proposed to conduct THM monitoring at a limited number of PWS for eighteen months beginning in 1995. Since this data must be collected by laboratories certified to conduct THM analyses, it could be a hardship to revoke the certification of laboratories now using Methods 501.1 and 501.2. EPA notes that EPA also proposed and encouraged laboratories to use one of the capillary column methods (EPA Methods 502.2, 524.2 and 551) to conduct THM monitoring for the ICR. And in a subsequent disinfection byproduct rule (59 FR 38668, July 29, 1994) EPA proposed only capillary methods for THM compliance monitoring (59 FR 38821).

As explained in the 1993 proposal and in the 1992 THM methods rule (58 FR 41344, August 3, 1993), EPA intends to and will withdraw packed column methods for THM and VOC compliance analysis. To accommodate the special and immediate information collection needs of the ICR, EPA is deferring withdrawal of packed column Methods 501.1 and 501.2 until July 1, 1996 (or 18 months after publication, whichever is later). This date is expected to be after the beginning of the proposed ICR monitoring period. When the ICR rule is promulgated, certification under Methods 501.1 and 501.2 will be granted such that the withdrawal date will not impede collection of THM data for the ICR.

Colorimetric Methods for Arsenic—A commenter requested that EPA not withdraw colorimetric methods for arsenic. Because the detection limits of these methods are very near the MCL for arsenic, colorimetric measurements do not provide a reliable indication of variability of, or trends in, ambient concentrations of arsenic in the water supply when these concentrations are less than the MCL. EPA believes the detection limit deficiency warrants withdrawal of colorimetric methods for arsenic.

In addition, since EPA approves other methods that measure all twelve regulated metals, including arsenic, it is not cost-effective to measure arsenic separately with a colorimetric method. The cost of a complete, broad-spectrum metals analysis by atomic absorption or ICP is not reduced if arsenic is not included. And EPA knows of no situation where arsenic is the only metal to be determined in a compliance sample. EPA believes that there is no scientific reason or economic need for a colorimetric method that only measures arsenic. However, EPA notes that withdrawal of these methods does not preclude their use for other than compliance monitoring samples.

EPA Methods 208.2 and 354.1—A commenter asked EPA to replace EPA Methods 208.2 (barium) and 354.1 (nitrite) with the equivalent methods SM 3113B and SM 4500–NO_2–B, which are published in the 18th edition of Standard Methods (APHA, 1992). EPA agrees and will withdraw Methods 208.2 and 354.1, since equivalent methods using the same equipment and procedures are approved.

EPA Method 340.2 (fluoride)—Commenters expressed concern that withdrawal of this ion-selective electrode method will require use of EPA Method 300.0, which requires purchase of an ion chromatograph. This is incorrect; only the EPA ion-selective electrode method will be withdrawn. The ASTM and SM methods, which use the same equipment as the EPA method, are approved for fluoride compliance determinations.

Hydrazine Methods for Nitrate and Nitrite—A commenter agreed with

EPA's withdrawal of hydrazine method 353.1, stating that the method is obsolete. The commenter, however, wanted EPA to make available at least one hydrazine method for nitrite and nitrate by approving SM 4500–NO_3–H. EPA is withdrawing Method 353.1 because hydrazine is carcinogenic and toxic, and creates a significant hazardous waste disposal problem. SM 4500–NO_3–H has the same problems and, therefore, cannot be approved. EPA believes users of hydrazine methods will be able to convert easily to the approved cadmium reduction methods for nitrate and nitrite by changing their reagent from hydrazine to cadmium when their supply of hydrazine is depleted. The cadmium methods, which have been approved for nitrate and nitrite since 1991, use the same equipment as the hydrazine methods.

Flame AA for metals—Three commenters requested that flame atomic absorption (AA) and graphite furnace methods not be withdrawn. EPA has not withdrawn flame AA and graphite furnace methods published by ASTM or Standard Methods; only the obsolete EPA versions of these methods are withdrawn.

Direct Aspiration Flame AA Methods—Some commenters wanted EPA to expand the scope of these methods to include metals other than barium and nickel. EPA cannot expand the scope, because the methods are not sensitive enough to measure metals other than barium and nickel.

Method 515.1—EPA received many comments requesting that this method not be withdrawn, primarily for two reasons. First, neither proposed replacement method, 552.1 or 515.2, covers all of the regulated chemicals that are in Method 515.1. Secondly, the new dalapon method (552.1) requires significantly different equipment, procedures and skills than Method 515.1. Four commenters agreed with EPA's proposal to withdraw Method 515.1, because a combination of Methods 515.2 and 552.1 meets their regulatory needs. EPA agrees with the majority of commenters and will not withdraw Method 515.1.

Methods for Secondary Contaminants—Some commenters believed that delisting a secondary contaminant method precludes its use for other than compliance monitoring samples. This is not correct; EPA does not certify laboratories for secondary monitoring, and EPA only recommends methods for secondary contaminants. Unless State requirements provide otherwise, laboratories may use methods other than those cited at 40 CFR 143.4(b) for measurement of secondary contaminants.

EPA Method 245.2 (mercury)—EPA was asked to withdraw this method, which is an automated, cold vapor method for mercury. EPA cannot withdraw this method because there is no other equivalent version of the method. Because EPA does not have enough information to assess the effect that withdrawal of Method 245.2 would have, it is deferring a decision on withdrawal.

EPA Methods 150.1, 150.2 (pH)—In the 1994 NOA, EPA proposed to replace these methods with equivalent ASTM and Standard Methods for pH. A commenter noted that the EPA methods are easier to use under field conditions. The commenter indicated that since many pH measurements are made in the field at the point of sample collection, withdrawal of the EPA methods would pose a significant hardship. EPA agrees with the commenter, and will not withdraw these methods until ASTM or Standard Methods pH methods are simplified for field use.

F. Miscellaneous

Reformat Listing of Methods in 40 CFR Parts 141 and 143—Commenters have asked EPA to improve the organization and clarity of the drinking water regulations. Commenters have criticized the organization of the rules, and noted difficulty in obtaining copies of drinking water regulations. They need the regulations, because they contain tables and lists of approved methods, and because mandatory method instructions are included in the text of the rules and in footnotes to the tables of methods. These instructions are not contained in the approved methods, because they were developed after the method was published. In today's rule, EPA is minimizing the use of footnotes and lengthy technical instructions in drinking water rules. EPA is accomplishing this by including these instructions in the document Technical Notes on Drinking Water Methods (EPA, 1994d). This EPA publication contains mandatory procedures, clarifications and helpful options, such as guidance on more efficient ways to conduct asbestos and dioxin compliance measurements. EPA will place these instructions in the affected method when the method is revised and published. EPA intends to use this document to publish future method corrections or modifications (after notice and comment in the **Federal Register** as necessary). EPA believes Technical Notes will be easier for users to obtain, read and photocopy than the tables of approved methods in the drinking water rules. Incorporating Technical Notes on Drinking Water Methods by reference in the rule has the effect of making its provisions as mandatory as those in the approved drinking water methods.

EPA is improving the clarity of the rules by consolidating listings of analytical methods. Analytical methods for THMs have been moved from § 141.30 to § 141.24(e). Appendix C of § 141.30, which contained THM Methods 501.1 and 501.2, is withdrawn immediately, but the methods may be used for compliance monitoring under § 141.30 until July 1, 1996 (or 18 months from publication, whichever is later). And analytical methods formerly specified for lead, copper, and corrosivity at 40 CFR 141.89(a) and sodium at § 141.41(d) are now listed with other inorganic methods at § 141.23(k)(1). EPA notes that although sodium was removed from the list of 83 contaminants included in the 1986 amendments to the SDWA (53 FR 26487), the provisions at § 141.41 still obtain.

Specifications for Continuous Chlorine Monitoring Methods—Commenters favored the proposed specification for continuous chlorine monitoring measurements to be based on calibration with an approved grab sample method. Two commenters asked EPA to extend the calibration period to seven days. EPA has no data to support such an extension. However, the EPA protocol for continuous chlorine monitoring allows a laboratory to use an alternative protocol, if it is approved by the State. EPA believes it is prudent for States to monitor and approve changes to the EPA protocol, such as those suggested by commenters. The protocol approved in today's rule is specified at 40 CFR 141.74(a)(2), and allows States to grant variations, including certain changes in the chemistry of the method.

Allow Interchange of Detectors in EPA Methods 505, 507, 508—Commenters favored this proposal. Two commenters noted that data with alternative detectors must be verified, and were concerned about poor ECD response of some nitrogen-containing compounds. EPA agrees that data must be verified when changing detectors, and that the results for all chemicals in Methods 505, 507 or 508 may not meet quality control requirements when an alternative detector is used. This is why Section 6.8.3 of Methods 507 and 508, and Section 10.4 of Methods 505, 507 and 508 allow alternative detectors only if the initial demonstration of capability criteria in Section 10 of each method is met by the alternative detector.

One commenter wanted to allow use of other detectors with EPA Method 504. EPA cannot approve this request, because EPA has no data to justify use of alternative detectors in Methods 504 or 504.1, which use an electron capture detector (ECD). The ECD has been the only detector capable of routinely measuring EDB and DBCP at the required parts-per-trillion concentrations (56 FR 3550, January 30, 1991).

Guidance on Preserving Samples—A commenter asked that biocide procedures be dropped from the VOC methods, because EPA has dropped mercuric chloride as a biocide in synthetic organic chemical (SOC) methods. EPA dropped mercuric chloride from SOC methods, because EPA has no data to show that biodegradation of a regulated SOC occurs in a typical drinking water sample, and because mercuric chloride is toxic and a hazardous waste. However, EPA has data to show degradation (EPA, 1994e) in samples collected for measurement of VOCs. The biocide procedures required in the VOC methods require some combination of chilling, rapid transit and analysis, or acidification. None of these procedures pose health or waste disposal problems that compare with the problems associated with preservation using mercuric chloride. Therefore, EPA continues to require use of a biocide in VOC methods.

Liquid-Solid Extraction (LSE) in EPA Methods 507 and 508—Some commenters believed more data were needed before EPA allowed use of LSE in Methods 507 and 508; EPA agrees. EPA stated in the December proposal that "the Agency regards this proposed modification as tentative and will base a final decision on whether to approve on public comment and additional EPA performance data." After studying this option and developing additional data (EPA, 1994e), EPA has decided not to add LSE as an option in Methods 507 and 508, because EPA does not have data to support use of this technique for all of the chemicals in the methods. As an alternative, EPA has developed and is approving Method 508.1 (EPA, 1994c). Method 508.1 uses the procedures and the electron capture detector that are used in Method 508, and it allows use of LSE. The scope of Method 508.1 covers many of the Method 507 and 508 analytes that are subject to regulated or unregulated contaminant monitoring requirements, but it does not include butachlor, PCBs or toxaphene. In today's rule EPA will approve Method 508.1 for measurement of alachlor, atrazine, chlordane, endrin, heptachlor, heptachlor epoxide, hexachloro-benzene, hexachlorocyclopentadiene, lindane, methoxychlor, and simazine, which are regulated SOCs. It is also approved for aldrin, dieldrin, metolachlor, metribuzin, and propachlor, which are unregulated SOCs.

Methods for Other Contaminants—In the 1993 proposal EPA provided guidance to systems that wish to measure chemicals that are not regulated, and need advice on what method to use. The guidance stated that "although EPA approves methods only for contaminants regulated under the Safe Drinking Water Act, the Agency encourages laboratories to use these methods for other contaminants if the method description specifically includes these contaminants." One commenter mistakenly believed that this eliminates the use of other methods or techniques, such as test kits. Although EPA encourages laboratories to save money by using a compliance method to measure all chemicals of interest that are in the analytical scope of the method, this does not preclude systems from using other methods, including test kits, for samples other than compliance monitoring samples.

EPA cautions users to carefully evaluate the performance of a method when using it for samples other than compliance monitoring samples or for contaminants not regulated under the SDWA. For example, EDB and DBCP appear in the scope of EPA Methods 504.1, 502.2, 524.2 and 551. However, Methods 502.2 and 524.2 are not approved for compliance analyses, because they do not have the sensitivity to measure compliance with the EDB and DBCP MCLs.

Methods Approval Process—Several commenters believe that the process of proposing and approving methods or method modifications will always be too slow to accommodate the technical and certification needs of the laboratory community. To solve this problem, commenters asked EPA to specify performance criteria in drinking water rules, or in the approved methods. The purpose of this would be to allow laboratories to use any analytical method, provided it met the mandatory criteria. EPA agrees that the present methods approval system is slow. To solve this problem, EPA and other organizations are seeking to consolidate methods across regulatory programs and media, and to write generic method performance criteria (EPA, 1994g). A performance-based method system, as suggested by commenters, might be part of the final solution. There are two groups working on this problem. The groups are the Intergovernmental Task Force on Monitoring, and EPA's Environmental Monitoring Management Council. A recommendation of these groups may be for EPA to propose a new method approval and method-writing protocol. The protocol would be designed to expedite approval of drinking water method modifications while maintaining the degree of control needed to ensure effective enforcement of drinking water regulations.

Field and Test Kits—Two commenters noted an omission in the rule text in the 1993 proposal that appears to eliminate an important option. This option allows States to approve use of DPD colorimetric test kits for measurement of chlorine residuals. EPA did not intend to eliminate this option, and agrees the wording in the 1993 proposal (58 FR 65631) may be misleading. Today's rule clearly allows use of the DPD kits, provided the State also approves use of the kits. This option is specified at 40 CFR 141.74(a)(2).

A commenter asked EPA to approve field kits for pH, and methods for continuous monitoring of pH and residual chlorine. EPA does not need to approve field methods for pH because currently, analysis with an approved pH method may be conducted in the field or in the laboratory. Regarding continuous monitoring methods, in today's rule, EPA provides criteria for continuous monitoring of chlorine residuals (40 CFR 141.74(a)(2)). Since EPA does not require continuous pH monitoring, EPA does not approve or disapprove methods for continuous measurement of pH.

Turbidity—A commenter asked that turbidity measurements, which are specified in the drinking water regulations, be waived if no particulate or cloudiness is visible to the analyst. The present requirement is that turbidity be measured in all samples, and that digestion be performed if the turbidity is one NTU or greater. EPA cannot waive turbidity measurements on samples that appear to be clear, because samples with turbidity of up to three NTU can appear clear to the unaided eye.

Corrosivity—One commenter noted the proposed rule made no reference to updating the methods for corrosivity in 40 CFR 141.42(c). These methods were published in 1980 and 1982 (45 FR 57346, August 27, 1980 and 47 FR 10999, March 12, 1982). In the Lead and Copper Rule (56 FR 26460, June 7, 1991), EPA agreed that corrosion control strategies could be developed or evaluated by measuring alkalinity and other parameters (56 FR 26489 and 26496). However, the Lead and Copper

Rule did not update or specify use of the methods in 40 CFR 141.42(c). Instead, more current methods were specified in 40 CFR 141.89(a) (56 FR 26509–26510). In today's rule, EPA eliminates possible confusion between the requirements in 40 CFR 141.89 and 141.42 by removing subparagraphs 40 CFR 141.42(a)–(c).

New Technologies—Comments were received asking the Agency to evaluate and develop methods based on new technologies, such as bioassay, ELISA, and capillary electrophoresis. The Agency continues to incorporate new technologies in methods, and appreciates the many articles that were sent to draw attention to new technologies. In the last twenty years, the Agency has aided the development of the mass spectrometer into a powerful and routine analytical instrument. With suggestions from the laboratory community (56 FR 3550, January 30, 1991), the Agency moved from packed to capillary column gas chromatographic technology, and expects to adopt innovative procedures and instruments in future methods.

In the 1993 proposal, EPA invited public suggestions that EPA might consider approving in this rule or in a later rulemaking. This invitation was not meant to imply that new methods or method modifications submitted as suggestions would or could bypass requirements that are specified at 40 CFR 141.27. Some commenters expressed interest in having their method or instrumentation included in EPA-approved methods. EPA suggests that these commenters submit their data to EPA's Alternative Test Procedures (ATP) program for evaluation. A method or instrument can be considered for approval by EPA after it has received a favorable evaluation under the ATP program. A protocol for submitting ATP data is available from EPA (EPA, 1993c).

V. Availability and Sources for Methods Information

Commenters requested help in obtaining copies of analytical methods cited in drinking water rules. Sources of all approved methods are contained in the References section of this rule. These methods are available for review but not distribution at the EPA Drinking Water Docket (MC 4101), 401 M Street SW., Washington, DC 20460. For access to the docket material, please call (202) 260–3027 between 9 am and 3:30 pm, EST, Monday through Friday, excluding federal holidays. EPA only stocks or distributes copies of methods published by EPA. All other methods must be obtained from the publisher. Sources (with addresses) for all approved methods are cited at 40 CFR Parts 141 and 143, and in the References section of today's rule. Most EPA methods and the document, Technical Notes on Drinking Water Methods, may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The toll-free number is: (800) 553–6847, local: (703) 487–4650. Refer to the drinking water rules or the References section of this rule to obtain the NTIS order number and purchase information, or contact the Safe Drinking Water hotline. The hotline operates from 9 a.m. and 5:30 p.m. EST, Monday through Friday, excluding federal holidays. The toll-free number is (800) 426–4791. EPA Methods 504.1, 508.1 and 525.2 are not published in an NTIS manual. These methods may be obtained directly from EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268; the phone number is (513) 569–7586. Since Methods 150.1 (pH), 150.2 (pH) and 245.2 (mercury) are published in "Methods for Chemical Analysis of Water and Wastes" (EPA, 1983a), owners of this EPA manual do not need to reorder these methods.

EPA believes most laboratories will need only the more recently published or approved methods that are listed in today's rule. These methods (or manuals) are as follows. Technical Notes on Drinking Water Methods, October 1994, NTIS PB95–104766; EPA Method 508.1, "Determination of Chlorinated Pesticides, Herbicides, and Organohalides in Water Using Liquid-Solid Extraction and Electron Capture Gas Chromatography", October 1994; EPA Method 100.2, "Determination of Asbestos Structures over 10μm in Length in Drinking Water", June 1994, NTIS PB94– 201902; "Methods for the Determination of Metals in Environmental Samples—Supplement I", May 1994, NTIS PB94–184942; EPA Method 525.2, "Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction in Capillary Column Gas Chromatography/Mass Spectrometry", March 1994; EPA Method 504.1, "1,2-Dibromoethane (EDB), 1,2-Dibromo-3-chloropropane (DBCP), and 1,2,3-Trichloropropane (123TCP) in Water by Microextraction and Gas Chromatography", 1993; "Methods for the Determination of Inorganic Substances in Environmental Samples", August 1993, NTIS PB91–231498; "Methods for the Determination of Organic Compounds in Drinking Water—Supplement II," August 1992, NTIS PB92– 207703; Standard Methods for the Examination of Water and Wastewater 18th Edition Supplement, 1994; Colisure, Millipore Corp., 1994; and GLI Method 2, "Turbidity", Great Lakes Instruments, Inc., November 2, 1992.

The American Society for Testing and Materials (ASTM) annually reprints all of the methods contained in the *Annual Book of ASTM Methods*, even methods that have not been editorially or technically revised. Thus, it is permissible to use any edition that contains the EPA-approved version of the compliance method. EPA notes that Orion Method 601 "Standard Method of Test for Nitrate in Drinking Water", which is equivalent to SM 4500–NO_3^- D (APHA, 1992), is identical to Orion Method WeWWG/5880. Method WeWWG/5880 is approved for nitrate analysis. ATI Orion republished the method in 1994 and renumbered it as 601, because the 1985 manual "Orion Guide to Water and Wastewater Analysis", which contained WeWWG/5880, is no longer available. In today's rule EPA cites WeWWG/5880 as 601 at 40 CFR 141.23(k)(1).

VI. Regulation Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires EPA to explicitly consider the

effect of these regulations on small entities. By policy, EPA has decided to consider regulatory alternatives if there is any economic impact on any number of small entities.

This rule is consistent with the objectives of the Regulatory Flexibility Act because it will not have any economic impact on any small entities. This rule specifies analytical methods that laboratories must use for testing regulated drinking water contaminants. Monitoring requirements were promulgated in earlier notices. The rule would require laboratories to use the most recent version of a method and imposes no additional requirements. It is actually expected to reduce cost of analysis by eliminating current requirements to use different versions of the same method, and by allowing more contaminants to be analyzed simultaneously by using a single method. Therefore, the Agency believes that this notice would have no adverse effect on any number of small entities.

C. Paperwork Reduction Act

The rule contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Science Advisory Board, National Drinking Water Advisory Council, and Secretary of Health and Human Services

In accordance with section 1412(d) and (e) of the SDWA, the Agency consulted with the Science Advisory Board, the National Drinking Water Advisory Council, and the Secretary of Health and Human Services on this action and took their comments into account.

VII. References

APHA. 1992. Eighteenth edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

APHA. 1994. Method 6610 "Carbamate Pesticides" in *Standard Methods for the Examination of Water and Wastewater, 18th Edition Supplement*, 1994, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. APHA.

ASTM. 1994. *Annual Book of ASTM Methods*, 1994, Vol. 11.01 and 11.02, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

Bionetics. Report from Kenneth W. Edgell, et al., "Determination of Inorganic Anions in Water by Ion Chromatography: Collaborative Study", Bionetics Corp., 16 Triangle Park Drive, Cincinnati, Ohio 45246, 1991.

Broadway, S., B. Pyle, G. McFeters. 1992. Final report of equivalency testing for Colisure. Montana State University, Bozeman, MT.

Eaton. 1993a. Letter from Andrew D. Eaton, Standard Methods Committee, "Error in 4500–Cl E", American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005, June 4, 1993.

Eaton. 1993b. Letter from Andrew D. Eaton, Standard Methods Committee, "Inquiry on Chlorine Residual 4500–Cl (18th Edition)", American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005, October 26, 1993.

EPA. 1974. Method 245.2, "Mercury, Automated Cold Vapor Technique", EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268, 1974. Also contained in reference EPA, 1983a.

EPA. 1978. Method 150.1, "pH, Electrometric", EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268, 1978. Also contained in reference EPA, 1983a.

EPA. 1982. Method 150.2, "pH Continuous Monitoring, Electro-metric", EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268, December 1982. Also contained in reference EPA, 1983a.

EPA. 1983a. "Methods for Chemical Analysis of Water and Wastes", EPA, March 1983, NTIS PB84–128677.

EPA. 1983b. Method 100.1, "Analytical Method for the Determination of Asbestos Fibers in Water", September 1983, NTIS PB83–260471.

EPA. 1990a. "Methods for the Determination of Organic Compounds in Drinking Water—Supplement I", July 1990, NTIS PB91–146027.

EPA. 1990b. *Manual for the Certification of Laboratories Analyzing Drinking Water*, Third Edition, Office of Water Resource Center (RC–4100), 401 M. Street S.W., Washington, D.C. 20460, EPA 570–9–90–008, April 1990.

EPA. 1991. "Methods for the Determination of Organic Compounds in Drinking Water", December 1988, revised July 1991, NTIS PB91–231480.

EPA. 1992a. Memorandum from Richard L. Carr, "Second Laboratory Validation of Method 555", December 10, 1992, U.S. Environmental Protection Agency.

EPA. 1992b. "Methods for the Determination of Organic Compounds in Drinking Water—Supplement II," August 1992, NTIS PB92–207703.

EPA. 1993a. "Methods for the Determination of Inorganic Substances in Environmental Samples", August 1993, NTIS PB94–121811.

EPA. 1993b. Memorandum from James R. Elder, "Detection Limits in Compliance Monitoring", December 16, 1993, U.S. Environmental Protection Agency.

EPA. 1993c. "Protocol for Nationwide Approval of New or Revised Methods", Rev. 1.4, EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268, July 14, 1993.

EPA. 1993d. Method 504.1, "1,2-Dibromoethane (EDB), 1,2-Dibromo-3-chloropropane (DBCP), and 1,2,3-Trichloropropane (123TCP) in Water by Microextraction and Gas Chromatography", EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268, 1993.

EPA. 1994a. "Methods for the Determination of Metals in Environmental Samples—Supplement I", May 1994, NTIS PB94–184942.

EPA. 1994b. Method 525.2, Rev. 1.0, "Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction in Capillary Column Gas Chromatography/Mass Spectrometry", EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268, March 1994.

EPA. 1994c. Method 508.1, Rev. 1.0, "Determination of Chlorinated Pesticides, Herbicides, and Organohalides by Liquid-Solid Extraction and Electron Capture Gas Chromatography", EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268, 1994.

EPA. 1994d. *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, NTIS PB95–104766.

EPA. 1994e. "Response to Comments on December 15, 1993, Analytical Methods Proposal, 58 *FR* 65622", Office of Water Docket (MC 4601), 401 M. St. S.W., Washington, D.C. 20460, October 1994.

EPA. 1994f. Memorandum from Mary Ann Feige, et al., "Detection Limits in the Regulations", March 11, 1994, U.S. Environmental Protection Agency.

EPA. 1994g. Memorandum from Robert M. Sussman, "EMMC Activities", May 13, 1994, U.S. Environmental Protection Agency.

EPA. 1994h. Method 100.2, "Determination of Asbestos Structures over 10μm in Length in Drinking Water", June 1994, NTIS PB94–201902.

EPA. 1994i. Method 1613: "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS", October 1994, NTIS PB95–104774.

Great Lakes. GLI Method 2, "Turbidity", Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, WI 53223, November 2, 1992.

Lyter. Letter from P. Ted Lyter, Dept. of Environmental Resources, Commonwealth of Pennsylvania, P.O. Box 1467, Harrisburg, PA 17105–1467, January 12, 1994.

Millipore. "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography", Method B–1011, Millipore Corporation, Waters Chromatography Division, 34 Maple Street, Milford, MA 01757.

Millipore. 1994. Colisure Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Drinking Water. February 28, 1994. Millipore Corp., Technical Services Department, 80 Ashby Road, Bedford, MA 01730.

Orion. Technical Bulletin 601, "Standard Method of Test for Nitrate in Drinking Water", PN 221890–001, ATI Orion, 529 Main Street, Boston, MA 02129, July 1994.

Technicon. 1972. Industrial Method No. 129–71W, "Fluoride in Water and Wastewater", Technicon Industrial Systems, Tarrytown, NY 10591, December 1972.

Technicon. 1989. Method No. 380–75WE, "Fluoride in Water and Wastewater", Technicon Industrial Systems, Tarrytown, NY 10591, February 1976.

USGS. 1989. Methods I–3720–85, I–3300–85, I–1030–85, I–1601–85, I–2598–85, I–1700–85 and I–2700–85 in *Techniques of Water Resources Investigations of the U.S. Geological Survey*, Book 5, Chapter A–1, 3rd ed., U.S. Geological Survey, Books and Open File Reports Section, Box 25425, Federal Center, Denver, CO 80225–0425, 1989.

USGS. 1993. Method I–2601–90 in *Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments*, Open File Report 93–125, U.S. Geological Survey, Books and Open File Reports Section, Box 25425, Federal Center, Denver, CO 80225–0425, 1993.

List of Subjects

40 CFR Part 141

Environmental Protection, Chemicals, Incorporation by reference, Intergovernmental relations, Water supply.

40 CFR Part 143

Chemicals, Incorporation by reference, Intergovernmental relations, Water supply.

Dated: November 25, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 141 and 143 of title 40, Code of Federal Regulations, are amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9.

2. Section 141.21 is amended by revising paragraph (f)(3), removing and reserving (f)(4), revising the next to last sentence of (f)(5), revising the second sentence of (f)(6)(i), revising the second sentence of (f)(6)(ii), Adding (F)(6)(iv), and adding a new sentence as the next to last sentence in (f)(8) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) Public water systems must conduct total coliform analyses in accordance with one of the analytical methods in the following table. These methods are contained in the 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. A description of the Colisure Test may be obtained from the Millipore Corporation, Technical Services Department, 80 Ashby Road, Bedford, MA 01730. The toll-free phone number is (800) 645–5476.

Organism	Methodology	Citation
Total Coliforms [1].	Total Coliform Fermentation Technique [2,3,4].	9221A, B.
	Total Coliform Membrane Filter Technique.	9222A, B, C.
	Presence-Absence (P–A) Coliform Test [4,5].	9221D.
	ONPG–MUG Test [6].	9223.
	Colisure Test [7].	

[1] The time from sample collection to initiation of analysis may not exceed 30 hours.

[2] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate for total coliforms, using lactose broth, is less than 10 percent.

[3] If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half to two-thirds after the sample is added.

[4] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[5] Six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.

[6] The ONPG–MUG Test is also known as the Autoanalysis Colilert System.

[7] The Colisure Test must be incubated for 28 hours before examining the results. If an examination of the results at 28 hours is not convenient, then results may be examined at any time between 28 hours and 48 hours.

(4) [Reserved]

(5) * * * The preparation of EC medium is described in the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, Method 9221E—p. 9–52, paragraph 1a. * * *

(6) * * *

(i) * * * EC medium is described in the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, Method 9221E—p. 9–52, paragraph 1a. * * *

(ii) * * * Nutrient Agar is described in the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, p. 9–47 to 9–48.

(iii) * * *

(iv) The Colisure Test. A description of the Colisure Test may be obtained from the Millipore Corporation, Technical Services Department, 80 Ashby Road, Bedford, MA 01730.

* * * * *

(8) * * * A description of the Colisure Test may be obtained from the Millipore Corp., Technical Services Department, 80 Ashby Road, Bedford, MA 01730. * * *

* * * * *

3. Section 141.22(a) is amended by removing the next to last sentence and revising the last sentence to read as follows:

§ 141.22 Turbidity sampling and analytical requirements.

* * * * *

(a) * * * Turbidity measurements shall be made as directed in § 141.74(a)(1).

* * * * *

4. Section 141.23 is amended by removing paragraph (k)(2) and redesignating paragraph (k)(4) as (k)(2), by removing paragraph (k)(3) and redesignating paragraph (k)(5) as (k)(3), by removing and reserving paragraph (q), and revising paragraph (k)(1) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(k) * * *

(1) Analysis for the following contaminants shall be conducted in accordance with the methods in the following Table, or their equivalent as determined by EPA. Criteria for analyzing arsenic, barium, beryllium, cadmium, calcium, chromium, copper, lead, nickel, selenium, sodium, and thallium with digestion or directly without digestion, and other analytical test procedures are contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994. This document also contains approved analytical test methods which remain available for compliance monitoring until July 1, 1996. These methods will not be available for use after July 1, 1996. This document is available from the National Technical Information Service, NTIS PB95–104766, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847.

Contaminant	Methodology	EPA	ASTM[3]	SM[4]	Other
Antimony	ICP-Mass Spectrometry	[2]200.8			
	Hydride-Atomic Absorption		D-3697-92		
	Atomic Absorption; Platform	[2]200.9			
	Atomic Absorption; Furnace			3113B.	
Arsenic	Inductively Coupled Plasma	[2]200.7		3120B.	
	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
	Atomic Absorption; Furnace		D-2972-93C	3113B.	
	Hydride Atomic Absorption		D-2972-93B	3114B.	
Asbestos	Transmission Electron Microscopy	[9]100.1			
	Transmission Electron Microscopy	[10]100.2			
Barium	Inductively Coupled Plasma	[2]200.7		3120B.	
	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Direct			3111D.	
	Atomic Absorption; Furnace			3113B.	
Beryllium	Inductively Coupled Plasma	[2]200.7		3120B.	
	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
	Atomic Absorption; Furnace		D-3645-93B	3113B.	
Cadmium	Inductively Coupled Plasma	[2]200.7			
	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
	Atomic Absorption; Furnace			3113B.	
Chromium	Inductively Coupled Plasma	[2]200.7		3120B.	
	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
	Atomic Absorption; Furnace			3113B.	
Cyanide	Manual Distillation followed by			4500-CN-C.	
	Spectrophotometric, Amenable		D2036-91B	4500CN-G.	
	Spectrophotometric Manual		D2036-91A	4500-CN-E	[5]I-3300-85
	Semi-automated	[6]335.4			
	Selective Electrode			4500CN-F.	
Fluoride	Ion Chromatography	[6]300.0	D4327-91	4110B.	
	Manual Distill.; Color. SPADNS			4500F-B,D.	
	Manual Electrode		D1179-93B	4500F-C.	
	Automated Electrode				[11]380-75WE
	Automated Alizarin			4500F-E	[11]129-71W
Mercury	Manual, Cold Vapor	[2]245.1	D3223-91	3112B.	
	Automated, Cold Vapor	[1]245.2			
	ICP-Mass Spectrometry	[2]200.8			
Nickel	Inductively Coupled Plasma	[2]200.7		3120B.	
	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
	Atomic Absorption; Direct			3111B.	
	Atomic Absorption; Furnace			3113B.	
Nitrate	Ion Chromatography	[6]300.0	D4327-91	4110B	[8]B-1011
	Automated Cadmium Reduction	[6]353.2	D3867-90A	4500-NO_3-F.	
	Ion Selective Electrode			4500-NO_3-D	[7]601
	Manual Cadmium Reduction		D3867-90B	4500-NO_3-E.	
Nitrite	Ion Chromatography	[6]300.0	D4327-91	4110B	[8]B-1011
	Automated Cadmium Reduction	[6]353.2	D3867-90A	4500-NO_3-F.	
	Manual Cadmium Reduction		D3867-90B	4500-NO_3-E.	
	Spectrophotometric			4500-NO_2-B.	
Selenium	Hydride-Atomic Absorption		D3859-93A	3114B.	
	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
	Atomic Absorption; Furnace		D3859-93B	3113B.	
Thallium	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
Lead	Atomic absorption; furnace		D3559-90D	3113B.	
	ICP-Mass spectrometry	[2]200.8			
	Atomic absorption; platform	[2]200.9			
Copper	Atomic absorption; furnace		D1688-90C	3113B.	
	Atomic absorption; direct aspiration		D1688-90A	3111B.	
	ICP	[2]200.7		3120B.	
	ICP-Mass spectrometry	[2]200.8			
	Atomic absorption; platform	[2]200.9			
pH	Electrometric	[1]150.1	D1293-84	4500-H^+-B.	
		[1]150.2			
Conductivity	Conductance		D1125-91A	2510B.	
Calcium	EDTA titrimetric		D511-93A	3500-Ca-D.	
	Atomic absorption; direct aspiration		D511-93B	3111B.	
	Inductively-coupled plasma	[2]200.7		3120B.	
Alkalinity	Titrimetric		D1067-92B	2320B.	

Contaminant	Methodology	EPA	ASTM[3]	SM[4]	Other
	Electrometric titration				[5] I–1030–85
Orthophosphate[12].	Colorimetric, automated, ascorbic acid	[6] 365.1		4500–P–F.	
	Colorimetric, ascorbic acid, single reagent		D515–88A	4500–P–E.	
	Colorimetric, phosphomolybdate;				[5] I–1601–85
	automated-segmented flow;				[5] I–2601–90
	automated discrete				[5] I–2598–85
	Ion Chromatography	[6] 300.0	D4327–91	4110.	
Silica	Colorimetric, molybdate blue;				[5] I–1700–85
	automated-segmented flow				[5] I–2700–85
	Colorimetric		D859–88		
	Molybdosilicate			4500–Si–D.	
	Heteropoly blue			4500–Si–E.	
	Automated method for molybdate-reactive silica			4500–Si–F.	
	Inductively-coupled plasma	[2] 200.7		3120B.	
Temperature	Thermometric			2550B.	
Sodium	Inductively-coupled plasma	[2] 200.7			
	Atomic Absorption; direct aspiration			3111B.	

FOOTNOTES:

[1] Methods 150.1, 150.2 and 245.2 are available from US EPA, EMSL, Cincinnati, OH 45268. The identical methods were formerly in "Methods for Chemical Analysis of Water and Wastes", EPA–600/4–79–020, March 1983, which is available at NTIS, PB84–128677.

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I", EPA–600/R–94–111, May 1994. Available at NTIS, PB 94–184942.

[3] The procedures shall be done in accordance with the *Annual Book of ASTM Standards*, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[4] The procedures shall be done in accordance with the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[5] Available from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225–0425.

[6] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 "Standard Method of Test for Nitrate in Drinking Water", July 1994, PN 221890–001, Analytical Technology, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[8] Method B–1011, "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography", Millipore Corporation, Waters Chromatography Division, 34 Maple Street, Milford, MA 01757.

[9] Method 100.1, "Analytical Method For Determination of Asbestos Fibers in Water", EPA–600/4–83–043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] Method 100.2, "Determination Of Asbestos Structure Over 10-μm In Length In Drinking Water", EPA–600/R–94–134, June 1994. Available at NTIS, PB94–201902.

[11] The procedures shall be done in accordance with the Industrial Method No. 129–71W, "Fluoride in Water and Wastewater", December 1972, and Method No. 380–75WE, "Fluoride in Water and Wastewater", February 1976, Technicon Industrial Systems. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Technicon Industrial Systems, Tarrytown, NY 10591. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of Federal Register, 800 Capitol Street, NW., Suite 700, Washington, DC.

[12] Unfiltered, no digestion or hydrolysis.

* * * * *

(q) [Reserved]

5. Section 141.24 is amended by removing and reserving paragraphs (f)(16), and (h)(12), adding paragraphs (e), reviewing paragraph (h)(13), introductory text, and paragraph (h)(13)(i) to read as follows:

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.

* * * * *

(e) Analyses for the contaminants in this section shall be conducted using the following EPA methods or their equivalent as approved by EPA. Methods 502.2, 505, 507, 508, 508A, 515.1 and 531.1 are in *Methods for the Determination of Organic Compounds in Drinking Water*, EPA–600/4–88–039, December 1988, Revised, July 1991. Methods 506, 547, 550, 550.1 and 551 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement I*, EPA–600–4–90–020, July 1990. Methods 515.2, 524.2, 548.1, 549.1, 552.1 and 555 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement II*, EPA–600/R–92–129, August 1992. Method 1613 is titled "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS", EPA–821–B–94–005, October 1994. These documents are available from the National Technical Information Service, NTIS PB91–231480, PB91–146027, PB92–207703 and PB95–104774, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847. Method 6651 shall be followed in accordance with the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal

Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Method 6610 shall be followed in accordance with the *Supplement to the 18th edition of Standard Methods for the Examination of Water and Wastewater*, 1994, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Other analytical test procedures are contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, NTIS PB95–104766. This document also contains approved analytical methods which remain available for compliance monitoring until July 1, 1996. These methods will not be available for use after July 1, 1996. EPA Methods 504.1, 508.1 and 525.2 are available from US EPA EMSL, Cincinnati, OH 45268. The phone number is 513–569–7586.

Contaminant	Method
Benzene	502.2, 524.2.
Carbon tetrachloride	502.2, 524.2, 551.
Chlorobenzene	502.2, 524.2.
1,2-Dichlorobenzene	502.2, 524.2.
1,4-Dichlorobenzene	502.2, 524.2.
1,2-Dichloroethane	502.2, 524.2.
cis-Dichloroethylene	502.2, 524.2.
trans-Dichloroethylene.	502.2, 524.2.
Dichloromethane	502.2, 524.2.
1,2-Dichloropropane	502.2, 524.2.
Ethylbenzene	502.2, 524.2.
Styrene	502.2, 524.2.
Tetrachloroethylene	502.2, 524.2, 551.
1,1,1-Trichloroethane	502.2, 524.2, 551.
Trichloroethylene	502.2, 524.2, 551.
Toluene	502.2, 524.2.
1,2,4-Trichlorobenzene.	502.2, 524.2.
1,1-Dichloroethylene	502.2, 524.2.
1,1,2-Trichloroethane	502.2, 524.2.
Vinyl chloride	502.2, 524.2.
Xylenes (total)	502.2, 524.2.
2,3,7,8-TCDD (dioxin)	1613.
2,4-D	515.2, 555, 515.1.
2,4,5-TP (Silvex)	515.2, 555, 515.1.
Alachlor	505[1], 507, 525.2, 508.1.
Atrazine	505[1], 507, 525.2, 508.1.
Benzo(a)pyrene	525.2, 550, 550.1.
Carbofuran	531.1, 6610.
Chlordane	505, 508, 525.2, 508.1.
Dalapon	552.1, 515.1.
Di(2-ethylhexyl) adipate.	506, 525.2.
Di(2-ethylhexyl) phthalate.	506, 525.2.
Dibromochloropropane (DBCP).	504.1, 551.
Dinoseb	515.2, 555, 515.1.
Diquat	549.1.
Endothall	548.1.
Endrin	505, 508, 525.2, 508.1.
Ethylene dibromide (EDB).	504.1, 551.
Glyphosate	547, 6651.
Heptachlor	505, 508, 525.2, 508.1.
Heptachlor Epoxide	505, 508, 525.2, 508.1.
Hexachlorobenzene	505, 508, 525.2, 508.1.
Hexachlorocyclopentadiene.	505, 525.2, 508, 508.1.
Lindane	505, 508, 525.2, 508.1.
Methoxychlor	505, 508, 525.2, 508.1.
Oxamyl	531.1, 6610.
PCBs[2] (as decachlorobiphenyl).	508A.
(as Aroclors)	505, 508.
Pentachlorophenol	515.2, 525.2, 555, 515.1.
Picloram	515.2, 555, 515.1.
Simazine	505[1], 507, 525.2, 508.1.
Toxaphene	505, 508, 525.2.
Total Trihalomethanes.	502.2, 524.2, 551.

[1] A nitrogen-phosphorous detector should be substituted for the electron capture detector in Method 505 (or another approved method should be used) to determine alachlor, atrazine and simazine, if lower detection limits are required.

[2] PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl.

* * * * *

(h) * * *

(12) (Reserved)

(13) Analysis for PCBs shall be conducted as follows using the methods in paragraph (e) of this section:

(i) Each system which monitors for PCBs shall analyze each sample using either Method 505 or Method 508.

* * * * *

6. Section 141.30 is amended by revising paragraph (e) and by removing removing Appendix A, Appendix B, and Appendix C to read as follows:

§ 141.30 Total trihalomethane sampling, analytical and other requirements.

* * * * *

(e) Sampling and analyses made pursuant to this section shall be conducted by the total trihalomethane methods as directed in § 141.24(e), and in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS, PB95–104766.

* * * * *

7. Section 141.40 is amended by revising paragraphs (g), (n)(11), and (n)(12) to read as follows:

§ 141.40 Special monitoring for inorganic and organic chemicals.

* * * * *

(g) Analysis for the unregulated contaminants listed under paragraphs (e) and (j) of this section shall be conducted using EPA Methods 502.2 or 524.2, or their equivalent as determined by EPA, except analysis for bromodichloromethane, bromoform, chlorodibromomethane and chloroform under paragraph (e) of this section also may be conducted by EPA Method 551, and analysis for 1,2,3-trichloropropane also may be conducted by EPA Method 504.1. A source for the EPA methods is referenced at § 141.24(e).

* * * * *

(n) * * *

(11) Systems shall monitor for the unregulated organic contaminants listed below, using the method(s) identified below and using the analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS, PB95–104766. Method 6610 shall be followed in accordance with the *Standard Methods for the Examination of Water and Wastewater 18th Edition Supplement*, 1994, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A source for EPA methods 505, 507, 508, 508.1, 515.2, 525.2 and 531.1 is referenced at § 141.24(e).

Contaminants	Method
aldicarb	531.1, 6610.
aldicarb sulfone	531.1, 6610.
aldicarb sulfoxide	531.1, 6610.
aldrin	505, 508, 525.2, 508.1.
butachlor	507, 525.2.
carbaryl	531.1, 6610.
dicamba	515.2, 555, 515.1.
dieldrin	505, 508, 525.2, 508.1.
3-hydroxycarbofuran	531.1, 6610.
methomyl	531.1, 6610.

Contaminants	Method
metolachlor	507, 525.2, 508.1.
metribuzin	507, 525.2, 508.1.
propachlor	508, 525.2, 508.1.

(12) Systems shall monitor for sulfate, an unregulated inorganic contaminant, by using the methods listed at § 143.4(b).

* * * * *

8. Section 141.41 is amended by revising paragraph (d) to read as follows:

§ 141.41 Special monitoring for sodium.

* * * * *

(d) Analyses for sodium shall be conducted as directed in § 141.23(k)(1).

9. Section 141.42 is amended by removing and reserving paragraphs (a) through (c).

10. Section 141.74 is amended by revising paragraphs (a)(1) and (a)(2), and removing paragraphs (a)(3) through (a)(7) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) Public water systems must conduct analysis of pH in accordance with one of the methods listed at § 141.23(k)(1). Public water systems must conduct analyses of total coliforms, fecal coliforms, heterotrophic bacteria, turbidity, and temperature in accordance with one of the following analytical methods and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS PB95–104766.

Organism	Methodology	Citation [1]
Total Coliforms.	Total Coliform Fermentation Technique / 3,4,5/.	9221A, B, C
	Total Coliform Membrane Filter Technique.	9222A, B, C
	ONPG-MUG Test [6].	9223
Fecal Coliforms.	Fecal Coliform MPN Procedure [7].	9221E
	Fecal Coliforms Membrane Filter Procedure.	9222D
Heterotrophic bacteria [2].	Pour Plate Method.	9215B
Turbidity.	Nephelometric Method.	2130B
	Nephelometric Method.	180.1 [8]
	Great Lakes Instruments.	Method 2 [9]
Temperature.	.....	2550

FOOTNOTES:

[1] Except where noted, all methods refer to the 18th edition of *Standard Methods for the Examination of Water and Wastewater, 1992*, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

[2] The time from sample collection to initiation of analysis may not exceed 8 hours.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate for total coliforms, using lactose broth, is less than 10 percent.

[4] Media should cover inverted tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] The ONPG-MUG Test is also known as the Autoanalysis Colilert System.

[7] A–1 Broth may be held up to three months in a tightly closed screwcap tube at 4°C.

[8] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[9] GLI Method 2, "Turbidity", November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table. The methods are contained in the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992. Other analytical test procedures are contained *in Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS PB95–104766. If approved by the State, residual disinfectant concentrations for free chlorine and combined chlorine also may be measured by using DPD colorimetric test kits. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the State.

Residual	Methodology	Methods
Free Chlorine.	Amperometric Titration.	4500–Cl D
	DPD Ferrous Titrimetric.	4500–Cl F
	DPD Colorimetric.	4500–Cl G
	Syringaldazine (FACTS).	4500–Cl H
Total Chlorine.	Amperometric Titration.	4500–Cl D
	Amperometric Titration (low level measurement).	4500–Cl E
	DPD Ferrous Titrimetric.	4500–Cl F
	DPD Colorimetric.	4500–Cl G
	Iodometric Electrode.	4500–Cl I
Chlorine Dioxide.	Amperometric Titration.	4500–ClO_2 C
	DPD Method	4500–ClO_2 D
	Amperometric Titration.	4500–ClO_2 E
Ozone	Indigo Method	4500–O_3 B

* * * * *

11. Section 141.89 is amended by revising paragraph (a) introductory text; removing the table in paragraph (a); and by removing and reserving paragraph (b) to read as follows:

§ 141.89 Analytical methods.

(a) Analyses for lead, copper, pH conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted with the methods in § 141.23(k)(1).

* * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

1. The authority citation for part 143 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9.

2. Section 143.4 is amended by revising paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) Measurement of pH, copper and fluoride to determine compliance under § 143.3 may be conducted with one of the methods in § 141.23(k)(1). Analyses of aluminum, chloride, foaming agents, iron, manganese, odor, silver, sulfate, total dissolved solids (TDS) and zinc to determine compliance under § 143.3 may be conducted with the methods in

the following Table. Criteria for analyzing aluminum, copper, iron, manganese, silver and zinc samples with digestion or directly without digestion, and other analytical test procedures are contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS PB95–104766.

Contaminant	EPA	ASTM[3]	SM4	Other
Aluminum	[2]200.7		3120B.	
	[2]200.8		3113B.	
	[2]200.9		3111D.	
Chloride	[1]300.0	D4327–91	4110	
			4500–Cl—D	
Color			2120B.	
Foaming Agents			5540C.	
Iron	[2]200.7		3120B.	
	[2]200.9		3111B	
			3113B	
Manganese	[2]200.7		3120B.	
	[2]200.8		3111B.	
	[2]200.9		3113B.	
Odor			2150B.	
Silver	[2]200.7		3120B	I–3720–85[5]
	[2]200.8		3111B.	
	[2]200.9		3113B.	
Sulfate	[1]300.0	D4327–91	4110.	
	[1]375.2		4500–SO_4–F	
			4500–SO_4–C,D	
TDS			2540C.	
Zinc	[2]200.7		3120B.	
	[2]200.8		3111B.	

FOOTNOTES:

[1] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I", EPA–600/R–94–111, May 1994. Available at NTIS, PB94–184942.

[3] The procedures shall be done in accordance with the *Annual Book of ASTM Standards*, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[4] The procedures shall be done in accordance with the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[5] Available from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225–0425.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Small Cities Community Development Block Grant Program Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3840; FR–3831–N–01]

Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of approximately $50,616,000 in FY 1995 funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant (CDBG) Program. The NOFA contains information concerning the deadline for filing grant applications; eligibility of applicants; available amounts; selection criteria; and the application process, including how to apply for funding and how selections will be made.

DATES: Applications are due by February 3, 1995. Application kits may be obtained from and must be submitted to either HUD's New York or Buffalo Office. Applications, if mailed, must be postmarked no later than midnight on February 3, 1995. If an application is hand-delivered to the New York or the Buffalo office, the application must be delivered to the appropriate office by no later than 4:00 p.m. on the deadline date. Application kits will be made available by a date that affords applicants no fewer than 30 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is not received by 4:00 p.m. on, or postmarked by, February 3, 1995. Applicants should take this procedure into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Stephen Rhodeside, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410. Telephone (202) 708–1322 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement. The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) and have been assigned OMB approval number 2506–0020.

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I. Purpose and Substantive Description

A. Authority and Background

1. Authority

Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); 24 CFR part 570, subpart F.

2. Background

Title I of the Housing and Community Development Act of 1974 authorizes the Community Development Block Grant (CDBG) Program. Section 106 of Title I permits the States to elect to assume the administrative responsibility for the CDBG Program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within any State that does not elect to assume the administrative responsibility for the program. Subpart F of 24 CFR part 570 sets out the requirements for HUD's administration of the CDBG Program in nonentitled areas (Small Cities Program). This NOFA supplements subpart F of 24 CFR part 570, which sets out the requirements applicable to the CDBG Program in nonentitled areas.

In accordance with 24 CFR 570.420(e) and 570.420(h)(3), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (HUD Reform Act), HUD is issuing this NOFA for New York State's Small Cities Program for Fiscal Year (FY) 1995 to announce the allocation of funds for Single Purpose and Comprehensive grants, and to establish the deadline for filing grant applications. The NOFA explains how HUD will apply the regulatory threshold requirements for funding eligibility, and the selection criteria for rating and scoring applications for Comprehensive grants and for scoring projects in applications for Single Purpose grants.

The Department has proposed regulations at 24 CFR 570.420–32 which govern the HUD-administered Small Cities program in New York. These regulations will modify the HUD-administered Small Cities program to allow for multi-year plans.

The multi-year plan competition will permit the Department to select multi-year plans of two or three years in a competition that will allow the first year to be funded. The Department intends to fund future years of the plan on a non-competitive basis, pursuant to acceptable performance, submission of an acceptable application and certifications, the provision of adequate appropriations for the HUD-administered Small Cities program, and publication of a final rule.

Section I.A.3 of this NOFA provides a description of certain statutory amendments that apply to the HUD-Administered Small Cities Program, even though conforming regulations have not yet been adopted. The statutory amendments listed in Section I.A.3 require little or no regulatory elaboration. Conforming amendments will be made to 24 CFR part 570, subpart F in future rulemaking. Other information about the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Office and Buffalo Office.

3. Statutory Changes

Both the National Affordable Housing Act (Pub.L. 101–625, approved November 28, 1990) (NAHA) and the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (the 1992 Act) amended Title I of the Housing and Community Development Act of 1974 (the HCD Act). Various amendments made by the two recent statutes are applicable, as described below, to the funds made available under this NOFA.

a. *Principal Benefit Certification.* NAHA amended section 101(c) of the HCD Act to require that at least 70 percent of the CDBG assistance provided over a specified period must be used for activities that principally benefit low- and moderate-income persons. Applicants must certify that CDBG assistance will be used as required by the amended section 101(c). The principal benefit certification has been revised to incorporate this change from 60 percent to 70 percent.

b. *Program Income.* In determining the applicability of CDBG requirements to the use of program income, section 804 of the 1992 Act removes any consideration of whether the grantee is still participating in the CDBG program. This means that program income generated from projects funded in FY 1993 and thereafter will always be subject to all of the CDBG requirements.

c. *Microenterprise and Small Business Development.* Section 807(c) of the 1992 Act defines a "small business" as one that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 632(a)), and defines a "microenterprise" as a commercial enterprise having five or fewer employees, one or more of whom own the enterprise.

Additionally, section 807(c) of the 1992 Act provides that in the provision of assistance under § 570.203(b) to for-profit microenterprises and small businesses, HUD will not consider the use of CDBG funds for training, technical assistance, and other support costs provided to such entities to be planning or administrative costs.

(Section 807(c) also directs HUD not to consider CDBG funds as being used for a planning or administrative activity when the funds are used to pay costs to develop the capacity of the grantee (or a subrecipient) to provide training, technical assistance or other support services to small businesses or microenterprises. Consequently—since these activities are not to be considered as planning or administrative activities—they *are* subject to compliance with the national objective requirements.)

d. *Lump Sum Drawdowns.* The use of lump sum drawdowns for residential rehabilitation has been re-authorized for CDBG funds appropriated after Fiscal Year 1992.

e. *Eligible Activities.* (1) *Changes Affecting Existing Categories.*

(a) *Assistance to For-Profit Businesses.* Section 806(b) of the 1992 Act amends section 105(a) of the HCD Act so that CDBG assistance provided to for-profit businesses is not limited to activities for which no other forms of assistance are available, or to activities that could not be accomplished, but for that assistance.

(b) *Direct Homeownership Assistance.* NAHA amended section 105(a) of the HCD Act to provide that CDBG funds can be used to provide direct assistance to facilitate and expand homeownership among persons of low- and moderate-income. Under this provision, CDBG funds may be used to: subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers; finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers; acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that assistance under Title I of the HCD Act may not be used by recipients or subrecipients to guarantee mortgage financing directly); provide up to 50 percent of the downpayment required from low- and moderate-income buyers; and pay reasonable closing costs normally associated with the purchase of a home incurred by a low- and moderate-income homebuyer. While this provision was set to expire on October 1, 1993, it has been extended to October 1, 1994 by section 807(b) of the 1992 Act, with authority for HUD to extend the date for an additional year. HUD published a notice in the Federal Register on September 30, 1994 to officially extend the expiration date to October 1, 1995. Under the terms of this

provision, the locality must commit funds to a specific homeowner prior to October 1, 1995.

(c) *Code Enforcement.* Section 807(e) of the 1992 Act adds "private improvements or services" undertaken in an area to the list of activities that may be considered, together with code enforcement, in determining whether CDBG funds may be used to pay for the code enforcement in an area.

(d) *Loans to Subrecipients.* Section 807(d) of the 1992 Act amends section 105(a)(14) of the HCD Act to authorize the use of CDBG assistance for activities in the form of loans—both interim and long-term—as well as grants.

(e) *Public Service Cap.* NAHA amended section 105(a)(8) of the HCD Act by placing the 15 percent cap for public services on each State's total nonentitlement CDBG allocation, plus 15 percent of program income anticipated to be received in the fiscal year. (Previously, the 15 percent cap for public services was applied to each recipient's grant.) As a result of this provision, HUD may award a grant to a recipient for public service activities with 100 percent of the funds spent for public service activities. However, any application requesting funds for public service activities must be ratable under one of the existing Single Purpose or the Comprehensive grant categories. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest-rated applications until the cap is reached.

(f) *Neighborhood-Based Nonprofit Organizations.* Section 807(f) of the 1992 Act amends section 105(a)(15) of the HCD Act to add nonprofit organizations serving the development needs of communities in nonentitlement areas as entities eligible to carry out CDBG activities.

(2) New Categories of Eligible Activities. (a) Nonprofit Capacity Building. Section 807(a)(4) makes eligible the provision of technical assistance to public or nonprofit entities to increase the capacity of these entities to carry out eligible neighborhood revitalization or economic development activities. Section 807(a)(4) makes clear, however, that the use of funds for technical assistance is not to be considered as a planning or administrative cost of the program. Before the amendment, the use of CDBG funds for nonprofit capacity building was an eligible activity only under § 570.205, and therefore was subject to the cap on planning and administration set out at § 570.200(g). While nonprofit capacity building is now eligible under the new provision and is not subject to a percentage limitation, it should be noted that any such use of funds under the new authority must be shown to meet one of the national objectives. (This may be difficult in some cases, since all activities carried out by the nonprofit using the added capacity will need to be considered for that purpose.)

(b) *Institutions of Higher Education.* Section 807(a)(4) of the 1992 Act makes it possible for a grantee to provide CDBG funds to institutions of higher education to carry out activities otherwise eligible for CDBG assistance, provided that it can be determined that the institution has demonstrated a capability to carry out such activities.

(c) *Acquisition by Tax Foreclosure.* Section 807(a)(4) of the 1992 Act makes eligible the use of CDBG funds to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of housing in primarily low- and moderate-income neighborhoods.

(d) *Microenterprises.* Section 807(a)(4) of the 1992 Act establishes a new category of eligibility under which CDBG funds may be used to provide assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable these entities to facilitate economic development by:

- Providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;
- Providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and
- Providing general support (such as peer support programs and counseling) to the owners of microenterprises and to persons developing microenterprises.

(e) *Housing Services.* Section 807(a)(4) of the 1992 Act, as amended by section 207 of the Multifamily Housing Property Disposition Reform Act of 1994, establishes a new category of eligibility for "housing services". Housing services include housing counseling, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities authorized under the HOME program.

(f) *Lead-Based Paint Hazards.* Section 1012 of the 1992 Act amends section 105(a) by stating that CDBG funds may be used for lead-based paint hazard evaluation and reduction, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851). It should be noted that § 570.202(a)(iv) currently authorizes inspection and abatement of lead-based paint in conjunction with CDBG-assisted rehabilitation. Additionally, § 570.205 authorizes evaluation of lead-based paint hazards within the jurisdiction generally. Until the regulations are modified to incorporate this new provision, grantees may use the new authority to fund lead-based paint inspection of houses whether or not rehabilitation of the houses will be CDBG-funded. The new authority may also be used to fund large scale evaluation of lead based-paint hazards in the community (assuming that it is an approved activity in the Small Cities application), outside of the 20 percent limitation on planning and administration cost, if the grantee can demonstrate that the evaluation addresses a CDBG national objective.

(3) Changes Concerning National Objectives. (a) Low/Mod Jobs Presumption. Section 806(e) of the 1992 Act amends section 105(c) of the HCD Act by adding a new paragraph (4) which states that, for purposes of determining whether an activity involves the employment of persons the majority of whom are low- and moderate-income persons, a person may be presumed to be a low- and moderate-income person in either of the following circumstances:

- if the employee resides in, or the assisted activity through which he or she is employed, is located in a census tract that meets the Federal enterprise zone eligibility criteria; or
- the employee resides in a census tract where not less than 70 percent of the residents are low- and moderate-income persons.

The provision of new paragraph (4) concerning the percentage of low- and moderate-income persons residing in a census tract was effective upon enactment. However, because existing HUD regulations do not clearly apply enterprise zone criteria to census tracts, the portion of new paragraph (4) concerning census tracts that meet the Federal enterprise zone eligibility criteria will not become effective until

regulations are established identifying the specific criteria that must be met.

f. *Housing Strategies.* Any applicant which plans to undertake a housing activity with Fiscal Year 1995 funds under the HUD-administered Small Cities Program must prepare and submit a comprehensive housing affordability strategy (CHAS) to be eligible to apply for such assistance. In order to receive funding if the Small Cities application is approved, the housing strategy must be approved by HUD. Further, any Small Cities application for which a housing strategy is required must include a certification that the application is consistent with the housing strategy.

Current CHAS regulations were published in the **Federal Register** on September 1, 1992, at 57 FR 40038, as amended, in part, on March 12, 1993 at 58 FR 13686. These regulations are codified in 24 CFR part 91. Applicants under this NOFA are permitted to use an abbreviated housing strategy, as set forth in § 91.25 of the CHAS regulations. Applicants are advised to begin preparation of the abbreviated strategy at the earliest possible time in order to have sufficient time to fulfill the applicable citizen participation requirements, which provide that the strategy must be available to the public for at least thirty days before its submission to HUD. Additional information about abbreviated strategy requirements is provided in the application kit.

If possible, applicants should endeavor to submit the abbreviated strategy in advance of the Small Cities application due date. The latest time at which the abbreviated strategy will be accepted by HUD for the HUD-administered Small Cities Program in New York will be the application due date for the Small Cities application. Failure to submit the abbreviated strategy by the due date is not a curable technical deficiency. As noted in Section II.C.2. of this NOFA, certain applicants may satisfy this submission requirement by submitting amendments which update the CHAS or abbreviated strategy submitted in conjunction with their Fiscal Year 1994 application. Questions regarding the housing strategies should be directed to the appropriate HUD field office.

Complete Small Cities applications for which the abbreviated strategy has been submitted but not yet approved will still be rated and ranked with the other applications; if determined to be fundable, those applications will receive a conditional approval subject to approval of the abbreviated strategy. However, such an approval will be rescinded if the abbreviated strategy has not been approved by HUD within 60 days from the date that the conditional approval has been announced. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

g. *Section 3.* Assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations in 24 CFR part 135, as amended by an interim rule published on June 30, 1994 (59 FR 33866). One of the purposes of this NOFA, which is consistent with section 3, is to give, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance to low- and very low-income persons. Public entities awarded funds under this NOFA, and that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements set forth in the regulations published on June 30, 1994.

4. Accountability in the Provision of HUD Assistance: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. (See also Section II.D. of this NOFA.) On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and applicant and recipient disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. *HUD Responsibilities.* (1) Documentation and Public Access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

b. *Units of General Local Government Responsibilities.* Units of general local government awarded assistance under this NOFA are subject to the provisions of either paragraph b(1), *or* paragraph (b)(2) *and* (b)(3). For units of local government awarded assistance under this NOFA which in turn make the assistance available on a NON-COMPETITIVE BASIS for a specific project or activity to a subrecipient, paragraph b(1) applies. For units of local government awarded assistance under this NOFA, which in turn make the assistance available on a COMPETITIVE BASIS for a specific project or activity to a subrecipient, paragraphs b(2) *and* (3) apply.

(1) Disclosures. The units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR 12 subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

(2) Documentation and Public Access. The recipient unit of general local government must ensure that documentation and other information regarding each application submitted to the recipient by a subrecipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material, including any letters of support, available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Unit of general local government recipients must also notify the public of the subrecipients of the assistance. Each recipient will develop documentation, public access, and notification procedures for its programs. (See 24 CFR 12.14(b) and 12.16(c), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for more information on these documentation and public access requirements.)

(3) Disclosures. Units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for five years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

B. Allocation Amounts

1. Total Available Funding

The nonentitlement CDBG funds for New York State for FY 1995 total approximately $50,616,000. $44,438,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's Buffalo Office. $6,178,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Office. HUD has the option to revise these allocations in order to assure a competitive distribution of funds.

2. Imminent Threats

All imminent threat projects must meet the national objective of benefitting low-and moderate-income persons. The Department may elect to set aside up to 15% of the Fiscal Year 1995 allocation for imminent threat projects. These funds will be available until the rating and ranking process for funds distributed under this NOFA is completed.

C. Eligibility

1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding: metropolitan cities, urban counties, units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city, and Indian tribes eligible for assistance under section 106 of the HCD Act. Applications may be submitted individually or jointly.

2. Previous grantees

Eligible applicants, which previously have been awarded Small Cities Program CDBG grants, are also subject to an evaluation of capacity and performance. Numerical thresholds for drawdown of funds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.) An additional threshold established this year relates to the submission of annual Performance Assessment Reports (PARs) which are due annually for each grant which a local government has received. Failure to submit a PAR is not a curable technical deficiency. Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

3. Eligible Activities and National Objectives

Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. Each activity must meet one of the national objectives (i.e. benefit to low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community), and each grant must meet the requirements for compliance with the primary objective of principally benefitting low- and moderate-income persons, as required under the provisions of § 570.200(a) (2) and (3) and § 570.208, which supersede § 570.420(h)(2). As described in Section I.A.3.a. of this NOFA, the principal benefit requirement was increased by NAHA from 60 to 70 percent. The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.200(a)(3) (i) through (v).

4. Environmental Review Requirement

The HUD environmental review procedures contained in 24 CFR part 58 apply to this program. Under part 58, grantees assume all of the responsibilities for environmental review, decision-making and action pursuant to the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

D. Types of Grants

1. Comprehensive Grants

a. *General.* Comprehensive grants are available to fund projects which meet the following criteria:

(1) Address a substantial portion of the identified community development needs within a defined area or areas;

(2) Involve two or more activities related to each other that will be carried out in a coordinated manner;

(3) Have a beneficial impact within a reasonable period of time. HUD may make an exception to the requirement that all activities must be carried out in a defined area or areas if the applicant can demonstrate that the comprehensive strategy is a reasonable means of addressing identified needs.

If an application for a Comprehensive grant does not meet the requirements of the Comprehensive Grant Program, HUD will rate the proposal as a Single Purpose grant.

b. *Grant Limits and Funding Requirements.* The maximum grant for a Comprehensive grant is $900,000. Up to 25% of the FY 1995 allocation may be made available for Comprehensive grants. Grant funds requested must be sufficient, either by themselves or in combination with funds from other sources, to complete the project within a reasonable amount of time. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

2. Single Purpose Grants

a. *General.* Single Purpose grants are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set of

activities. Each project must address community development needs in one of the following problem areas:

—Housing
—Public Facilities
—Economic Development.

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Description, Community Development Activities, Impact Description and Program Schedule forms have been filled out, indicating project names). In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were rated as a whole, as has been the case with some economic development and housing projects. If, however, the projects tend to meet impact criteria to the same extent, or the weaker element is only a small portion of the overall project, there is no discernable benefit in designating separate projects.

b. *Grant Limits and Funding Requirements.* The maximum annual grant for a Single Purpose grant is $400,000, except that counties may apply for up to $600,000 in Single Purpose funds. At least 75 percent of the FY 1995 allocation will be made available for Single Purpose Grants. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be $600,000. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

3. Applications With Multiple Projects

If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the limits identified in Section I.D.1.b and I.D.2.b. of this NOFA.

4. Multiyear Plans

a. *General.* Multiyear plan grants are available to fund projects that will have a substantial and comprehensive effect on meeting the grantees identified community development needs. It is envisioned that the large majority of multiyear plan projects will address a defined area or areas, but grantees may apply for grants for activities that will affect the grantees entire jurisdiction.

Multiyear plans may be for two or three years. The action plan for each year of the multiyear plan must be a viable project on its own. The multiyear plans will be rated competitively against each other. Multiyear plans that are selected will be funded for the first year of the plan. HUD intends to fund succeeding years of the plan on a non-competitive basis, subject to acceptable performance, submission of an acceptable application and certifications, and the provision of adequate appropriations for the HUD-administered Small Cities Program. HUD reserves the right to lower the amount of funds for succeeding years if nonentitled areas are not in compliance with performance requirements and applicable regulations.

b. *Grant Limits and Funding Requirements.* The maximum annual grant for a multiyear plan is $900,000. The maximum funding for implementing an entire multiyear plan is $1,800,000 for a two year multiyear plan, and $2,700,000 for a three year multiyear plan. Grant funds requested must be sufficient, either by themselves or in combination with funds from other sources, to complete the project within a reasonable amount of time. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

E. Selection Criteria/Ranking Factors and Final Selection

1. General

Complete applications received from eligible applicants by the application due date are rated and scored by HUD. Regardless of the type of grant sought (Single Purpose or Comprehensive), applications are rated and scored against four factors. These four factors are discussed in more detail in subsection 3 of this Section E. Previous grantees of Small Cities Program CDBG grants also undergo a performance evaluation. The criteria for determining adequacy of performance are discussed in subsection 2 of this Section E.

2. Performance Evaluation

As noted in Section C of this NOFA, previous grantees of Small Cities Program CDBG grants are subject to an evaluation of performance and capacity to undertake the proposed program. For purposes of making performance evaluations, HUD will use any information available as of the application due date. Performance also will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual in-house reviews. Grantees may be requested to submit additional information, if generally available facts raise a question as to capacity to undertake the proposed program. No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 1995 and pertain to all Single Purpose and Comprehensive Grants:

FY 1989 and earlier.	Grants must be closed out
FY 1990	Grant funds 100% expended
FY 1991	Grant funds 75% expended
FY 1992	Grant funds 30% expended
FY 1993	Recipients must be on target with respect to the latest Small Cities Program Schedule received by HUD.

NOTE: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant that fails to meet the percentages specified above may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after the application due date be accepted.

b. *Compliance with Applicable Laws and Regulations.* An applicant will be considered to have performed inadequately if the applicant:

(1) Has not substantially complied with the laws, regulations, and Executive Orders applicable to the CDBG Program, including applicable civil rights laws as may be evidenced by: an outstanding finding of civil rights noncompliance, unless the applicant demonstrates that it is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance; an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; a deferral of Federal funding based upon civil rights violations; a pending civil rights suit brought against it by the Department of Justice; or an unresolved

charge of discrimination issued against it by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;

(2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or

(3) Has not resolved or attempted to resolve audit findings.

An applicant will be ineligible for a grant where the inadequate performance in compliance with applicable laws and regulations evidences a lack of capacity to carry out the proposed project or program. An application also will not be accepted from a unit of general local government which has an outstanding audit finding or monetary obligation for any HUD program. Additionally, applications will not be accepted from any entity which proposes an activity in a unit of general local government that has an outstanding audit finding or monetary obligation for any HUD program. The Director of the Community Planning and Development Division of the HUD field office may provide waivers to this prohibition, but in no instance will a waiver be provided where funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

c. *Performance Assessment Reports.* Under 24 CFR 570.507, Small Cities CDBG grantees are required to submit Performance Assessment Reports (PARs) annually on the date when the grant was originally executed. For an application for FY 1995 funds to be considered for funding, the applicant must be current in its submission of Performance Assessment Reports. Failure to submit a PAR is not a curable technical deficiency under Section V of this NOFA.

3. Four Factor Rating

As noted in subsections 1 and 3 of this Section E, all applications are rated and scored against four factors. These four factors are:

—Need based on absolute number of persons in poverty;
—Need based on the percent of persons in poverty;
—Program Impact; and
—Outstanding performance in fair housing and equal opportunity.

A maximum of 615 points is possible under this system with the maximum points for each factor being:

Need—absolute number of persons in poverty.	75 points.
Need—percent of persons in poverty.	75 points.
Program Impact	400 points.
Outstanding performance—FHEO:	
Provision of fair housing choice.	20 points.
Fair Housing Programs	20 points.
Minority contracting	15 points.
Equal opportunity employment.	10 points.
Total	615 points.

Each of the four factors is outlined below. All points for each factor are rounded to the nearest whole number. Applicants should note that there is a distinct difference in the methods used to evaluate Program Impact for Single Purpose grants versus Program Impact for Comprehensive grants. These differences are more fully discussed below.

a. *Need—Absolute number of persons in poverty.* HUD uses 1990 census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Comprehensive and Single Purpose grant applicants are grouped and rated separately for this factor. Applicants which are county governments are rated separately from all other applicants. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

b. *Need—Percent of persons in poverty.* HUD uses 1990 census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Comprehensive and Single Purpose grant applicants are grouped and rated separately for this factor. Applicants in each group are compared in terms of the percentage of their population below the poverty level. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

c. *Program Impact—General.* In evaluating program impact, HUD will consider:

—Extent and seriousness of the identified needs;
—Results to be achieved;
—Number of beneficiaries, given the type of program;
—Nature of the benefit;
—Additional actions that may be necessary to fully resolve the need;
—Previous coordinated actions taken by the applicant to address the need;
—Environmental considerations;
—Whether displacement will be involved and what steps will be taken to minimize displacement and to mitigate its adverse effects or related hardships; and
—Where appropriate, housing site selection standards.

Assessments are done on a comparative basis and, as a result, it is important that each applicant present information in a detailed and uniform manner.

In addressing Program Impact criteria, applicants should adhere to the following general guidelines for quantification. Where appropriate, absolute and percentage figures should be used to describe the extent of community development needs and the impact of the proposed program. This includes, but is not limited to, appropriate units of measure (e.g., number of housing units or structures, linear feet of pipe, pounds per square inch, etc.), and costs per unit of measure. These quantification guidelines apply to the description of need, the nature of proposed activities and the extent to which the proposed program will address the identified need.

Appropriate documentation should be provided to support the degree of need described in the application. Basically, the sources for all statements and conclusions relating to community needs should be included in the application or incorporated by reference. Examples of appropriate documentation include planning studies, letters from public agencies, newspaper articles, photographs and survey data.

Generally, the most effective documentation is that which specifically addresses the subject matter and has a high degree of credibility. Applicants which intend to conduct surveys to obtain data are advised to contact the appropriate HUD office prior to conducting the survey for a determination as to whether the survey methodology is statistically acceptable.

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

Past productivity and administrative performance of prior grantees will be taken into consideration when reviewing the overall feasibility of the program. Overall program design,

administration and guidelines are other feasibility issues that should be articulated and presented in the application, since they are critical in assessing the effectiveness and impact of the proposed program.

(1) *Program Impact—Single Purpose Grants.* Each project will be rated against other projects addressing the same problem area, so that, for example, housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were all related as a whole, as has been the case with some economic development projects. If, however, the projects tend to meet the impact criteria to the same extent, or the weaker element is only a small portion of the overall program, there is no discernable benefit in designating separate projects.

Applicants should bear in mind that the impact of the proposed project will be judged by persons who may not be familiar with the particular community. Accordingly, individual projects will be rated according to how well the application demonstrates in specific, measurable terms, the extent to which the impact criteria are met. General statements of need and impact alone will not be sufficient to obtain a favorable rating.

(a) *Program Impact—Single Purpose—Housing.* There are three distinct types of Single Purpose Housing projects: Housing Rehabilitation, Creation of New Housing and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(i) *Housing Rehabilitation. Needs.* Each application should provide information on the total number of units in the project area, the number that are substandard, and the number of substandard units occupied by low- and moderate-income households. The purpose of this information is to establish the relative severity of housing conditions within the designated project area compared to other housing rehabilitation applications. The application also should describe the date and methodology of any surveys used to obtain the information, including an explicit and detailed definition of "substandard".

Surveys of Housing Conditions. Surveys of housing conditions serve several purposes in evaluating applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

Project Design and Feasibility. The application should describe the project in sufficient detail to allow the reviewer to assess its feasibility and its probable impact on the conditions described. It also should describe project requirements in such a way that regulatory and policy concerns will be addressed.

In reviewing applications from grantees with prior housing rehabilitation projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications.

It should be noted that HUD encourages communities to design projects supplementing CDBG rehabilitation funds with private funds wherever feasible and appropriate, especially in the case of rental units and housing not occupied by lower income persons. In such cases, the CDBG subsidy should be as low as possible, while retaining sufficient incentive to attract local participants. On the other hand, projects designed for low income homeowners should not require private contributions at a level that puts the project out of reach of potential participants.

Where the creation of new units is proposed through conversion, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information. The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structure for residential use, or new construction projects for which the proposed project will provide non-construction assistance.

Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact. Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

The impact of the proposed project will be based on the degree of need, the number of units to be created, overall feasibility and the nature and cost of the proposed activities.

For projects consisting of more than one activity, the activity that directly addresses the need must represent at least the majority of funds requested. Other activities must be incidental to and in support of the principal activity. For example, public improvements included in a rehabilitation project that addresses housing need must: be a relatively small amount in terms of funds requested; clearly be in support of the housing objective; and demonstrate a positive and direct link to the national objective.

For incidental activities claiming benefit to low- and moderate-income persons on an area basis, the application must document that at least 51 percent of the residents of the service area meet the low- and moderate-income requirement. Funds should not be requested for activities that are not incidental to, and in support of the principal activity.

Scoring. Individual projects often vary in the extent to which they meet the criteria outlined above. Accordingly, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all projects receiving a particular rating will match all the criteria point-by-point, in the same manner. The objective for non-target area projects, in as much as they are sparsely populated, only should be to assist low- and moderate-income persons. Accordingly, the following standard will be used for rating housing rehabilitation projects:

Maximum (400 Points)

1. Severe need is shown in the project area, in terms of the proportion of units that are substandard and the extent of disrepair in the units.

2. The project would bring all, or almost all, of the units in the project area up to standard.

3. There are no feasibility questions, such as availability of other resources, marketability, or appropriateness of project design, which would hinder the timely completion of the project as proposed.

4. Benefits a large number of persons when compared to other housing projects.
5. Significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Substantial (300 Points)

1. Serious need is shown.
2. Project would bring most of the units in the area up to standard.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.
5. Substantially supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Moderate (200 Points)

1. Serious need is shown, but is not as well documented as in other applications.
2. Project would bring units up to standard, but not to the same extent as other applications.
3. There may be some minor feasibility questions.
4. Benefits a significant number of persons.
5. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Minimal (100 Points)

1. Some need is evident, but it is not serious compared to other applications, or is not well documented.
2. Project may bring most units up to standard, but not to same extent as in other applications.
3. There are serious feasibility questions.
4. Benefits a small number of persons.
5. Minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Insignificant (0 Points)

1. Very little need has been demonstrated.
2. Project would not rehabilitate most units.
3. There are serious feasibility questions.
4. Benefits a very small number of persons.
5. Does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(ii) *Creation of New Housing.* CDBG funds may be used to support the construction of new housing units, and, in certain circumstances, to finance the actual cost of constructing new units. New construction may be carried out by an eligible non-profit entity pursuant to 24 CFR 570.204, or as last resort housing. Support of new construction could include activities such as the acquisition and/or clearance of land, the provision of infrastructure, or the payment of certain planning costs.

Where the creation of new units is proposed, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information. The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from new construction projects for which the proposed project will provide non-construction assistance.

Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact. Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

The impact of the proposed project will be based on the degree of need, the number of units to be created, overall feasibility and the nature and cost of the proposed activities.

Scoring. Individual projects often vary in the extent to which they meet the criteria outlined above. Accordingly, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all projects receiving a particular rating will match all the criteria point-by-point, in the same manner. Accordingly, the following standard will be used for rating projects supporting new housing construction:

Maximum (400 Points)

1. Severe need for new housing affordable to low- and moderate-income persons is shown in the project area.
2. Project would create a large number of new housing units affordable to low- and moderate-income persons.
3. There are no feasibility questions, such as availability of other resources, marketability, or appropriateness of project design, which would hinder the timely completion of the project as proposed.
4. Benefits a large number of persons when compared to other new housing projects.
5. Project would affirmatively further fair housing choice by resulting in the spatial deconcentration of minorities throughout the community, or would provide spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.
6. Significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Substantial (300 Points)

1. Serious need for new units affordable to low- and moderate-income persons is shown.
2. Project would create a substantial number of new housing units.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.
5. Project would affirmatively further fair housing choice through significant efforts toward the spatial deconcentration of minorities throughout the community, or would provide significant efforts toward spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.
6. Substantially supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Moderate (200 Points)

1. Serious need is shown, but is not as well documented as in other applications.
2. Project would create new units but not a substantial number.
3. There may be some minor feasibility questions.
4. Benefits a significant number of persons.
5. Project would have some effect of affirmatively furthering fair housing choice by encouraging spatial deconcentration of minorities throughout the community, or would encourage spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.
6. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Minimal (100 Points)

1. Some need is evident, but it is not serious compared to other applications, or is not well documented.
2. Project will create a few new units but not as many as in other applications.
3. There are serious feasibility questions.
4. Benefits a small number of persons.
5. Project would minimally affirmatively further fair housing choice by encouraging spatial deconcentration of minorities throughout the community, or would encourage spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.
6. Minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Insignificant (0 Points)

1. Very little need has been demonstrated.
2. Project would not provide for new units.
3. There are serious feasibility questions.
4. Benefits a very small number of persons.
5. Project would have no effect of affirmatively furthering fair housing choice through the spatial deconcentration of minorities throughout the community, or would not encourage spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.
6. Does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(iii) *Direct Homeownership Assistance.* Homeownership activities are defined as activities which would promote homeownership within the applicant jurisdiction, focusing particularly on aiding low- and moderate-income persons in becoming homeowners. While declining to identify any particular type of proposed project as superior, HUD is identifying several criteria which must be addressed within the project design, in order for the application to receive the maximum project impact.

Applications must include a well developed description of homeownership needs in the applicant

jurisdiction, focusing particularly on the needs of low- and moderate-income persons. The description also should include, if applicable, any alternative approaches which have been considered in meeting homeownership needs. Project feasibility must be addressed as part of the application.

The application must demonstrate that the proposed project would make effective use of all available funds. This would include any local, State or other Federal funds which would be utilized by the proposed project. If other such funds are included as part of the proposed project, the applicant must demonstrate that such funds are committed and truly available for the project.

Any efforts which would affirmatively further fair housing, by promoting homeownership among minorities as well as homeownership throughout the community, must be outlined in the application.

The application must explain how the project would benefit low- and moderate-income homebuyers, particularly focusing on first-time and minority homebuyers. The application also should address any homeownership counseling services, including counseling pertaining to Federal, State, and local fair housing laws and requirements, which would be provided to persons selected to participate in the proposed project. Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to complement available public sector funds, including CDBG money.

HUD will review each application which meets the threshold against the following criteria:

Maximum (400 Points)

1. Project design is appropriate to meet demonstrated homeownership need and alternative approaches to meeting the need are shown to have been considered. Additionally, there are no feasibility questions regarding the implementation and execution of the proposed project according to the schedule.

2. The application documents serious homeownership needs in the community and the proposed project would make effective use of available funds.

3. The proposed project would affirmatively further fair housing by including initiatives to reach out to potential minority homeowners and by promoting homeownership opportunities throughout the community.

4. The proposed project would target first-time homebuyers.

5. The proposed project would provide homeownership counseling to project participants.

6. The proposed project would complement other Federal, State or local programs which promote homeownership.

7. The proposed project would utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions.

8. Significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Substantial (300 Points)

1. Project design demonstrates a workable approach to homeownership assistance needs, and there are no major feasibility questions regarding implementation of the proposed project.

2. Substantial homeownership needs are documented by the application, and the proposed project would make effective use of available funds.

3. The proposed project would affirmatively further fair housing by promoting homeownership opportunities throughout the community.

4. The proposed project would encourage homeownership among first-time homebuyers.

5. The proposed project would encourage local financial institutions to lend to assisted homebuyers.

6. Substantially supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Moderate (200 Points)

1. The proposed project has potential to meet homeownership needs in the community, and there are minor feasibility questions regarding implementation.

2. Homeownership needs in the community are documented, but not as well as in other applications.

3. The proposed project would include efforts to affirmatively further fair housing through homeownership.

4. The proposed project would educate and inform citizens of homeownership assistance available through the project.

5. The proposed project would not include private sector involvement.

6. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Minimal (100 Points)

1. There are serious feasibility questions regarding the implementation and execution of the proposed project.

2. The proposed project would have little impact upon homeownership needs in the community.

3. The proposed project would contribute minimally to fair housing in the community.

4. The proposed project would marginally aid first-time homebuyers versus all homebuyers.

5. Minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community

Insignificant (0 Points)

1. The proposed project has major feasibility questions which would inhibit its implementation and execution.

2. The proposed project does not address identified homeownership needs in the community.

3. The proposed project would not actively affirmatively further fair housing.

4. The proposed project would be of little benefit to first time homebuyers.

5. Does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(b) *Program Impact—Single Purpose—Public Facilities Affecting Public Health and Safety.* In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible: the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included.

In order to show that the project is likely to impact upon the problem, the following items should be covered:

(1) Total project costs. Total project costs should be documented by qualified third party estimates, and be as recent as possible.

(2) Source of other funds. To the extent that CDBG funds will not cover all costs, the source of other funds should be identified and committed. If local funds are to be used, the applicant should show both the willingness and the ability to provide the funds.

(3) How the project will solve the problem. The applicant should demonstrate that the project will completely solve the problem and, if applicable, the applicant should address whether the proposal would be satisfactory to other State/local agencies which have jurisdiction over the problem.

(4) Cost effectiveness of the proposal. The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered.

(5) Reasonableness of service area. The applicant should address whether the service area claimed for the project

is reasonable, in view of the nature of the proposed project, and if not, the applicant should address what effect a more realistic appraisal would have on overall benefit to low- and moderate-income persons.

(6) Project impact on public health and safety; and

(7) Other applicable feasibility issues have been addressed.

Individual projects often vary in the extent to which they meet the criteria outlined above. Therefore, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all applications receiving a particular rating will match point-for-point all the criteria in the same way. The following standards will be applied:

Maximum (400 Points)

1. Need is serious, current and requires prompt attention.
2. Program would resolve the problem completely, either through funds requested or with the support of other resources already committed.
3. No other obstacles to timely and effective implementation of the program exist.
4. Benefits a large number of persons when compared to other public facility projects.
5. Demonstrates that the applicant has considered and, as appropriate, will use alternative cost effective methods or material in the execution of the project.
6. Public health and safety concerns are fully resolved by the project.
7. Project would significantly address serious deficiencies in accessibility for disabled persons and/or provide a substantial increase in the number of public facilities accessible to disabled persons.
8. Significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Substantial (300 Points)

1. Serious need is shown.
2. Program would resolve the problem completely.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.
5. There is evidence that efforts have been made to minimize project costs through use of alternative methods and materials, as appropriate.
6. Public health and safety concerns are substantially resolved by the project.
7. Project would substantially address serious deficiencies in accessibility for disabled persons and/or provide a significant increase in the number of public facilities accessible to disabled persons.
8. Substantially supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Moderate (200 Points)

1. Serious need is shown, but is not as serious or well documented as other applications.
2. Program may not meet the need as completely as in some other applications.
3. There may be some questions relative to feasibility.
4. Benefits a significant number of persons.
5. There is evidence that efforts have been made to minimize project costs.
6. Public health and safety concerns are partially met by the project.
7. Project would somewhat address serious deficiencies in accessibility for disabled persons and/or provide some increase in the number of public facilities accessible to disabled persons.
8. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Minimal (100 Points)

1. Some need is evident, but is not serious.
2. Only a portion of the need would be met or the problem would not be resolved completely.
3. There are serious feasibility questions.
4. Benefits only a small number of persons.
5. There is little evidence that efforts have been made to minimize costs.
6. Public health and safety concerns are minimally addressed by the project.
7. Project would minimally address serious deficiencies in accessibility for disabled persons and/or provide a minimal increase in the number of public facilities accessible to disabled persons.
8. Minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Insignificant (0 Points)

1. No clear need has been demonstrated.
2. Program is not appropriate to meeting described needs, or there is serous doubt that there would be much impact on needs.
3. There are major feasibility questions.
4. Benefits a very small number of people.
5. There is no evidence that efforts have been made to minimize project costs.
6. Public health and safety needs are not addressed by the project.
7. Project would not address serious deficiencies in accessibility for disabled persons and/or would not provide an increase in the number of public facilities accessible to disabled persons.
8. Project does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(c) *Program Impact—Single Purpose—Economic Development Projects.* As discussed earlier in this section of the NOFA, each individual Single Purpose project will receive a separate impact rating. Applicants whose proposed economic development program will include multiple proposals should determine the most appropriate form of submission. This determination will require a choice as to either the incorporation of all proposals into a single project or the submission of separate projects for each proposal (each transaction will be considered a separate project). The single project format presents an "all or nothing" situation. In determining the appropriate submission format, applicants should consider the ability of a transaction to rate well on its own, based on the magnitude of employment impact, size of the financial transaction and the other factors discussed in this section.

The submission of proposals as separate projects must be clearly designated by the applicant with individual Needs Descriptions, Community Development Activities, Impact Descriptions and Program Schedule forms, including an appropriate name for each project on HUD Form 4124.1.

Section 807(c)(3) of the 1992 Act provides that it is the sense of Congress that each grantee should devote one percent of its grant for the purpose of providing assistance under section 105(a)(23) of the HCD Act to facilitate economic development through commercial microenterprises. A microenterprise is defined as a commercial enterprise with five or fewer employees, one or more of whom owns the enterprise. This should be considered in developing an economic development application.

It is noted that in accordance with section 806 of the 1992 Act, the Department published on May 31, 1994, a proposed rule relating to evaluation and selection of Economic Development activities by grantees. It is strongly suggested that you read the proposed rule as it reflects the Department's latest proposed policy on the evaluation of Economic Development Projects.

In addition to the standard submission requirements, to receive maximum points, Small Cities applicants must submit information that demonstrates that CDBG funds are needed for the proposed project or activity. HUD will evaluate this material as part of its Eligibility Review *prior to considering an application for funding* in the FY 1995 competition. The following is a discussion of some of the factors HUD will consider in assessing projects in these key areas:

(i) *The Appropriate Determination.* HUD requires that economic development activities undertaken with CDBG funds be appropriate to carry out an economic development project. Applicants should attempt to demonstrate that each economic development project has a reasonable likelihood of success.

Applicants must document the financial analysis of the project's need for assistance, as well as public benefit factors that were considered in making its determination that assistance is appropriate. The applicant is expected

to provide clear documentation on how the decision was reached.

The written documentation of the financial analysis of the project's need should use the following steps:

1. *Reasonableness of Proposed Costs.* The applicant must review each project cost element and determine that the cost is reasonable and consistent with third-party, fair-market prices for that cost element. The general principle is that the level of CDBG assistance cannot be adequately determined if the project costs are understated or inflated.

2. *Commitment of Other Sources of Funds.* The applicant shall review all projected sources of funds necessary to complete the project and shall verify that all sources (in particular private debt and equity financing) have been firmly committed to the extent practicable, and are available to be invested in the project. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to deliver.

3. *No Substitution of CDBG Funds for Private Sources of Funds.* The applicant shall financially underwrite the project and ensure to the extent possible that CDBG funds are not being substituted for available private debt financing or equity capital. The analysis must be tailored to the type of project being assisted (i.e. real estate, user project, capital equipment, working capital, etc.). Real estate projects require different financial analysis than working capital or machinery and equipment projects. Applicants should ensure that both a significant equity commitment by the for-profit business exists, and that the level of certainty of the end use of the property or project is sufficient to ensure the achievement of national objectives within a reasonable period of time.

4. *Establishment of CDBG Financing Terms.* The amount of CDBG assistance provided to a for-profit business ideally should be limited to the amount, with appropriate repayment terms, sufficient to go forward without substituting CDBG funds for available private debt or cash equity. The applicant should structure its repayment terms so that the business is allowed a reasonable rate of return on invested equity, considering the level of risk of the project. It should be remembered that equity funds generally should bear the greatest risk of all funds invested in a project.

5. *Assessing Public Benefit.* The extent of public benefit expected to be derived from the economic development project must be assessed. While no standards have been promulgated in a final rule, the assessment of public benefit should consider such factors as the number and type of jobs to be created or retained, in relation to the needs of low- and moderate-income persons who are likely to be employed, the extent to which a business provides essential services to low- and moderate-income neighborhoods, and increases to the tax base including property, sales and income taxes in the area. These factors are not all inclusive.

(ii) *CDBG Assistance Must Minimize Business and Job Displacement.* Each applicant will evaluate the potential of each economic development project for causing displacement of existing businesses and lost jobs in the neighborhood where the project is proposed to be located. When the grantee concludes that the potential exists to cause displacement, given the size, scope or nature of the business, then the grantee must, to the extent practicable, take steps to minimize such displacement. The project file must document the grantee's review conclusions and, if applicable, the steps the grantee will take to minimize displacement.

(iii) *Section 105(a)(17) Requirements.* Section 105 (a)(17) of the HCD Act requires that an activity assisted under that section achieve one of the following criteria:

(1) Creates or retains jobs for low- and moderate-income persons (note that a project which meets the national objective of principally benefitting low- and moderate-income persons by creating or retaining jobs, 51 percent of which are for low- and moderate-income persons, will be deemed to have met this criterion without any additional documentation);

(2) Prevents or eliminates slums or blight (note that a project which meets the national objective of aiding in the prevention or elimination of slums or blight on an area basis will be deemed to have met this criterion without any additional documentation);

(3) Meets an urgent need (note that a project which meets the national objective of meeting community development needs having a particular urgency will be deemed to have met this criterion without any additional documentation);

(4) Creates or retains businesses owned by community residents;

(5) Assists businesses that provide goods or services needed by and affordable to low- and moderate-income residents;

(6) Provides technical assistance to promote any of the activities under (1) through (5) of this subsection.

(iv) *National Objectives.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low- and moderate-income persons in this manner. Such projects will be considered to benefit low- and moderate-income persons where the criteria of 24 CFR 570.208(a)(4) are met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are taken by or made available to such persons, or retained by such persons. The extent to which the proposed project will directly address employment opportunities for low- and moderate-income persons in the applicant jurisdiction will be a primary factor in HUD's assessment of the proposed program.

In determining whether the person is a low- and moderate-income person for these activities, it is the person's family income at the time the CDBG assistance is provided that is determinative. When making judgments concerning whether an individual qualifies as a low- and moderate-income person, both family size and the income of the entire family must be considered. This consideration is necessary because a low- and moderate-income person is defined as a member of a low- and moderate-income family. The 1992 Act amends the HCD Act by stating that a person may be presumed to be a low- and moderate-income person if the employee resides in a census tract where not less than 70 percent of the residents are low- and moderate-income persons. HUD will also accept a written certification by a person of his or her family income and size to establish low- and moderate-income status. The certification may simply state that the person's family income is below that required to be low- and moderate-income in that area. The form for such certification must include a statement that the information is subject to verification. The application must contain adequate documentation to explain fully, and to support, the process that will be used to ensure that project(s) comply with the low- and moderate-income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process.

(v) *Application Requirements.* To the extent feasible, the material listed below should be submitted for economic

development projects. The material should be submitted for *each proposed activity* (e.g., each loan will be considered a separate activity), whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since economic development projects are rated against each other, the more completely these submission requirements are met, the greater the potential exists for enhancing the impact score of the project.

1. A letter from each appropriate developmental entity which includes at least the following information:

a. A detailed physical description of the project with a schedule of events and maps or drawings as appropriate.

b. The estimated costs for the project, including any working capital requirements.

c. A discussion of all financing sources, including the need for CDBG, the terms of the CDBG assistance, and the proposed lien structure. The amount, source and nature of any equity investment(s) must also be provided as well as a commitment to invest the equity.

d. A discussion of employment impact which includes a schedule of newly created positions. The schedule should identify the number, salary and skill level of each permanent position to be created. If jobs are made available to low- and moderate-income persons, the applicant must also demonstrate and document how persons from low- and moderate-income households will be accorded first consideration for employment opportunities.

e. A discussion of all appropriate feasibility issues including, but not limited to: site control, zoning, public approvals and permits, impact fees, corporate authorizations, infrastructure, environment and relocation.

f. An analysis and summary of market and other data which supports the anticipated success of the project.

2. A development budget showing all costs for the project, including professional fees and working capital.

3. Documentation to support project costs. Documentation generally should be from a third party source and be consistent with the following guidelines:

a. Acquisition costs should be supported by an appraisal.

b. Construction/renovation costs should be certified by an architect, engineer or contractor. Use of Federal Prevailing Wage Rates should be cited where applicable.

c. Machinery and equipment costs should be supported by vendor quotes.

d. Soft costs (e.g., legal, accounting, title insurance) need be substantiated only where such costs are anticipated to be abnormally high.

4. Letters from all financing sources discussing (at a minimum) the amount and terms of the proposed financing, and the current status of the application for funding.

5. Historical financial data of the development entity, preferably for the last three years. This information may be submitted under separate cover with confidentiality requested. It is recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

6. A two-to-five year cash flow pro forma with accompanying notes citing basic assumptions.

7. The applicant's assessment of the project's consistency with the CDBG program eligibility appropriate standards and with the national objectives requirements.

(vi) *Review Criteria.* In evaluating and rating economic development projects, HUD will analyze the following factors:

1. *Employment:* The extent to which the proposed project will directly address employment opportunities for low- and moderate-income persons in the applicant's jurisdiction will be a primary factor in HUD's assessment of program impact. Applicants are reminded that for an activity to be consistent with the statutory objective of low- and moderate-income benefit, as a result of the creation or retention of jobs, at least 51 percent of created or retained employment opportunities must be held by, or made available to, persons from low- and moderate-income families. Applicants must fully document and describe employment benefits. In addition, applicants should address the following issues:

a. All employment data must be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, and applicants must take into account such factors as seasonal and part-time employment. A seasonal job may be considered permanent if the season is long enough to be considered the person's principal occupation; permanent part-time jobs must be converted to the full-time equivalent.

b. The amount of CDBG assistance required to produce each full-time equivalent job will affect the impact assessment by HUD. Lower CDBG costs per job are preferable to higher CDBG costs per job. Such assessments of impact will be done on a comparative basis among all projects submitted, rather than by comparison to a given standard.

c. The use of CDBG funds to assist a business with transferring to a different community will generally be considered as having *no* employment impact. Exceptions to this rule may include an expansion to the business as a result of, or concurrent with, the transfer; or if the business can demonstrate that it is infeasible to continue operations at the current site. If the applicant proposes to assist in a transfer of operations based on an exception to the general rule, HUD should be contacted early in the planning process to discuss the viability of such a proposal. Failure to do so could result in the application receiving 0 impact points.

d. Applicants are encouraged to use CDBG funds for projects that provide as many jobs as possible for individuals that are currently receiving public assistance. Providing employment to recipients of public assistance will help break the cycle of dependency and empower low income citizens to take control of their lives.

2. *Feasibility.* A high-impact rating will not be given to projects that are likely to encounter feasibility issues which would hinder the timely completion of the project. Such issues include, but are not limited to: site control, zoning, public approvals and permits, infrastructure, environment, and relocation. Applicants should address these and any other applicable issues and provide documentation where appropriate.

Applicants *also must demonstrate* the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis or market data, which indicates an inordinate risk in the undertaking of the project, will affect the overall rating of program impact.

3. *Leverage.* Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. Projects which fully conform with those requirements by providing the maximum feasible level of private investment will be considered as having appropriate leverage. The extent of firm commitments for private financing will be reviewed as well as the amount of equity investment. The project will be reviewed to determine whether CDBG funds are replacing private sources of funds. In order to receive maximum impact CDBG funds may not replace private financing, CDBG assistance must be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds should bear the greatest risk in the project.

4. *Taxes.* While not a primary factor in the evaluation of impact, projects which will augment the applicant's tax base may have a positive effect on the rating of program impact. It is recognized, however, that good projects do not always result in increased tax revenues due to their nature.

5. *Repayment.* Where CDBG repayments are to be made in some manner to the applicant, the proposed use of those repayments for economic development purposes will be considered.

6. *Cost Reasonableness.* In order to receive a rating greater than the minimal, the costs must be reasonable, i.e. not inflated.

7. *Base Closures.* The Department recognizes that communities facing the loss of a military base may need a well-planned economic development project to help alleviate the effect of the base closure. Well planned projects that will help successfully alleviate the economic impact of base closures will tend to have a high impact and rate well in the competition.

8. *Empowerment Zones/Enterprise Communities.* The Department is supportive of using funds from this NOFA to support projects in designated Empowerment Zones and Enterprise Communities. A project that significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community will receive a maximum impact score provided that the other factors for maximum impact are met.

(vii) *Scoring.* Individual projects often vary in the extent to which they meet the criteria outlined above. It is, therefore, difficult to precisely define those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all applications receiving a "maximum" rating will match all the criteria, point by point, in the same manner. The following standards will be applied:

Maximum (400 Points)

1. The analysis of market and other risk data provides reasonable assurance that the project will be successful.

2. The project will have a direct and positive impact on employment opportunities for persons from low- and moderate-income households, and the extent of that impact compares favorably with that of other applicants.

3. All appropriate feasibility issues have been addressed (including the submission of firm private financing commitments) and there is reasonable assurance that the project will be completed in a timely manner.

4. The Public Benefits (e.g., loan repayments, increases to the tax base including property, sales and income taxes to the area, other development likely to be stimulated by the activity) to be derived from the project are considerable relative to other proposals.

5. The infusion of CDBG funds will leverage a substantial investment of private and other dollars.

6. The project costs are reasonable (i.e. not inflated).

7. CDBG funds will not replace private financing, CDBG assistance will be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds will bear the greatest risk in the project.

8. Project significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Substantial (300 Points)

The criteria for Maximum (400 Points) is met, with either of the following exceptions:

1. While the project will have a direct and positive impact on employment opportunities for persons from low- and moderate-income households, the extent of that impact is less than that demonstrated by applicants receiving the maximum rating.

2. While there are no major feasibility problems, there are feasibility issues which have not been fully addressed and/or may have a negative effect on timely implementation of the project. However, overall success of the project appears achievable.

In addition:

3. The Public Benefits derived from this project will be greater than that received by the majority of applicants.

4. CDBG funds will leverage more private and/or other public dollars than the majority of projects in the competition.

5. The project costs are reasonable (i.e. not inflated).

6. CDBG funds will not replace private financing, CDBG assistance will be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds will bear as great a risk as other project funds.

7. Project significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Moderate (200 Points)

The project presents at least one of the following deficiencies which would affect the appropriateness of CDBG funding:

1. An analysis of the project indicates that the likelihood of the availability of other required financing is questionable.

2. There is a major feasibility issue which is likely to affect completion of the project.

3. The analysis of market and other risk data indicates a likelihood that the project will not create a significant employment impact.

4. The number of employment positions to be created is significantly low and/or the CDBG cost per employment position is significantly high in relation to other applications.

In addition:

5. There will be some Public Benefits resulting from this project.

6. CDBG dollars will leverage a moderate amount of private and/or other public funds relative to other projects.

7. The project costs are reasonable (i.e. not inflated).

8. Project moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Minimal (100 Points)

The project presents at least one of the following serious deficiencies which would affect the appropriateness of CDBG funding:

1. An analysis of the project indicates that other required financing is unlikely to be available.

2. There will be few, if any, Public Benefits resulting from this project.

3. CDBG dollars will leverage little private and/or other public investment in the project.

4. Project minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

Insignificant (0 Points)

The activity presents at least one of the following serious deficiencies which indicates the inappropriateness of CDBG funding:

1. It is clear that the activity cannot be accomplished based on any combination of the following factors:

(1) Major feasibility issues.

(2) Inordinate risk.

(3) Unavailability of required financing.

2. The activity will not have a direct impact on employment opportunities for persons from low- and moderate-income households.

3. The completion of the project will result in no Public Benefits or will be detrimental to the community.

4. No other investment will be triggered by the use of CDBG funds for this activity.

5. Project does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(2) *Program Impact—Comprehensive Program Grants.* Comprehensive programs must address a substantial portion of the identifiable community development needs of a defined area(s). The extent to which activities are coordinated will be a major consideration in the evaluation of program impact. In defining an appropriate area for comprehensive treatment, applicants should consider the severity of condition within the area and the resources to be provided. The impact is greatest where community development needs will be substantially addressed over a reasonable period of time. Exceptions to the requirement that activities be concentrated within a defined area or areas may be made if the applicant can demonstrate that the proposed program represents a reasonable means of addressing the identified needs.

HUD will assess the impact of the program for each of the four program design criteria selected, based on the

factors described below. Applicants must describe fully the extent to which the program will address each criterion selected. HUD will compare all programs which address a particular criterion. The best proposal for that criterion will be the standard by which all others will be judged, although that proposal will not necessarily be awarded a significant impact.

Assignment of Program Impact points for a Comprehensive Grant application is a two-step process. First, the potential of the proposed program of activities to achieve the results intended by each selected criterion when considered in relation to other communities selecting the same criterion is assessed. A numerical value is assigned, based on the following:

The results would have insignificant impact—0 Points
The results would have minimal impact—2 Points
The results would have a moderate impact—4 Points
The results would have a maximum impact—8 points

After each of the four criteria selected by an applicant is rated and a value assigned, the values are summed. A minimum of 12 points will be required at this stage in order for the application to be eligible for further consideration. A score of less than 12 points indicates that the proposed activities would have insufficient impact to warrant funding.

Following this process, the actual points for impact are determined by dividing each applicant's Program Impact Score by the highest Program Impact Score achieved by any applicant and multiplying the result by 400.

Listed below are the ten design criteria and the standards which HUD has developed to evaluate each criterion. The applicant must select and address four of the criteria. In addition to these standards, the Submission Requirements and Review Criteria for Economic Development Projects under the Single Purpose Program apply in determining the eligibility and rating for economic development proposals that are a part of a Comprehensive Program. It is particularly important that applicants fully address the economic development criteria should Criteria 5 and 6 be selected.

(a) *Criterion 1—Supports Comprehensive Neighborhood Conservation, Stabilization, Revitalization, New Housing Construction or Promotes Homeownership.* The applicant must describe the degree to which the identified needs of a defined area or areas will be addressed in a coordinated manner. In defining an area or areas, applicants should examine carefully the extent of needs and the resources available to address those needs. Where an area has not been defined, the applicant should describe fully the appropriateness of implementing activities on a community-wide basis.

In evaluating the impact of the proposed program, HUD will examine the following factors:

—Nature and severity of neighborhood needs.

—Extent to which needs will be addressed.

—Amount of funds required to implement neighborhood activities.

—Extent to which activities are coordinated to address housing, public facility and economic development needs. Program impact will be the greatest where a substantial portion of the needs within a defined area will be met.

—Extent to which the project promotes fair housing choice in homeownership among protected classes.

—Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

The strongest consideration for housing rehabilitation programs is given to those applicants which have designed their housing programs by taking into account both structural conditions and appropriate financing mechanisms. The proposed program should be structured in a way to be marketable, given income and structural characteristics of the neighborhood area. The physical needs of residential or mixed use properties must be well stated and documented in terms of substandardness. Applicants will be expected to maximize the leveraging of private funds, encourage the participation of local financial institutions, and develop realistic program guidelines. Private funds available from financial lending sources should be established. If leveraging is infeasible, the applicant must fully document that fact. The most effective housing programs will be those which will address a substantial portion of the identified needs, while maximizing the impact of Federal funds.

For those programs that will support the construction of new residential units, project feasibility will be critical. While the extent of need and number of units to be created will be a primary consideration in evaluating the impact, issues of site control, marketability and assurance of private financing must be addressed, and must be documented.

Homeownership activities will be reviewed in terms of: how effectively the program would meet homeownership needs identified in the community; and the extent to which they would make effective use of available funds.

Public service activities also may be considered in conjunction with other activities under this criterion. Again, any such activities would need to meet demonstrated needs within the community.

The impact of public improvement activities will be assessed primarily on the documented severity of the need and the extent to which the proposed program will address that need. Those needs which directly affect the public safety and welfare will be considered the most severe.

Economic development activities also will be evaluated by the extent to which they will alleviate the identified problems. However, the assessed impact for these activities is often diminished due to feasibility concerns.

In addition to quantifying the extent of the anticipated improvements, applicants must demonstrate that the proposed activities can be carried out—that is, documentation with respect to private participation in such activities must be thorough. Letters of only general interest, by either property owners or other private sector participants, do not necessarily ensure their participation in the program. Some degree of assurance of participation should be presented.

Review Criteria and Submission requirements for Housing described under the Single Purpose Program apply in evaluating and rating housing proposals that are a part of a Comprehensive Program.

(b) *Criterion 2—Provides Housing Choice Within the Community Either Outside Areas with Concentrations of Minorities and Low- and Moderate-Income Persons or in a Neighborhood Which is Experiencing Revitalization and Substantial Displacement as a Result of Private Reinvestment, by Enabling Low- and Moderate-Income Persons to Remain in Their Neighborhood.* If a proposed program provides housing choice within the community outside areas with concentrations of minorities and low- and moderate-income persons, the application must document that there are existing areas which do, in fact, contain concentrations of low- and moderate-income families and minorities. The proposed program, if implemented, must result in additional housing assistance being provided in areas of non-concentration. Communities with no minorities or minority concentrations may receive

impact points where opportunities are provided outside areas of low- and moderate-income concentration. The degree of impact will be based upon the severity of needs, the number of units to be provided, and the nature and cost of the activities.

In a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, the applicant must provide a detailed description of the revitalization efforts within the neighborhood, the amount of displacement of low- and moderate-income persons, and the manner in which the implementation of the proposed program will enable displacees to remain in the neighborhood. The degree of needs, nature and cost of activities, and percentage of needs to be addressed will be evaluated to determine program impact.

(c) *Criterion 3—Supports the Expansion of Housing for Low- and Moderate-Income Persons by Providing Additional Housing Units Not Previously Available.* The proposed program clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structures to residential use, or new construction projects for which the proposed program will provide non-construction or construction assistance. Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect program impact. Applicants should address the areas of site control and marketability, in addition to addressing feasibility from the standpoint of project financing. Consideration will not be given to proposed programs which will rehabilitate occupied units or displace current occupants. The impact of the proposed programs will be based upon the degree of needs, the number of units to be created, and the nature and cost of the proposed activities.

(d) *Criterion 4—Addresses a Serious Deficiency in a Community's Public Facilities.* Consideration will be given to the extent of deficiencies, and their relative seriousness, of the identified need. The following factors will be considered:

—Documentation of the seriousness of deficiencies. Appropriate documentation should be provided to substantiate the degree of seriousness. Those deficiencies which directly affect the public safety and welfare will be considered most severe.

—The nature and cost of the proposed activities in relation to the percentage of need to be addressed.

—The extent to which the proposed program will address a variety of deficiencies in public facilities within a defined area.

—Coordination with other activities within the defined area.

—The degree to which the application addresses such feasibility issues, including but not limited to, the validity of cost estimates by qualified sources, the availability of other funds, site control, and environmental constraints.

—The number of persons to benefit.

—The extent to which the project addresses serious deficiencies in accessibility requirements and/or expands the number of accessible public facilities.

—Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

(e) *Criterion 5—Expands or Retains Employment Opportunities.* Consideration will be given to proposed programs that will result in the creation of new jobs or retention of existing employment opportunities. The following factors will be considered:

—The number of jobs to be created or retained in relation to the identified needs. Documentation should be provided to substantiate the number and type (permanent or seasonal, full or part-time) of job claimed. Letters from local development agencies or expected participants which express more than general interest would be appropriate. With respect to job retention, evidence should be provided to demonstrate that without the proposed program, existing jobs would be lost. The applicant also must address the potential impact of job loss on the community.

—The extent to which CDBG funds are used to leverage private commitments. If leveraging is proposed, applicants should analyze the actual amount of additional funds required to make the project financially feasible. In designing a program to assist existing business expansion or retention, or to encourage new business development, applicants must address whether CDBG funds will be used for infrastructure, land assemblage or other financial incentives. These factors may be important considerations for a firm deciding where to locate and whether to expand or reduce the scope of its operation. CDBG funds may be more effectively used as a loan rather than a grant. In this regard, the CDBG funds would generate additional program resources through loan repayments to the community. It is considered especially advantageous if a revolving loan fund is established and repayments continue to be used to expand or retain employment opportunities.

—The relationship of the activity to other projects being implemented within the defined area.

—The number of persons to benefit.

—Particular attention will be given to the extent to which the Review Criteria and Submission Requirements for Economic Development Projects are addressed (see Single Purpose Program Criteria).

—Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

—Extent to which the project results in the employment of persons on public assistance.

(f) *Criterion 6—Attracts or Retains Businesses which Provide Essential Services.* Consideration will be given to proposed programs which will address the attraction or retention of businesses commonly associated with neighborhood needs (corner grocery stores, dry cleaners, pharmacies, etc.). The applicant must describe clearly the nature and anticipated impact of activities. Documentation in the form of letters from existing or new potential businesses offering a commitment to the program should be included. (Letters of only general interest by property owners do not necessarily ensure their participation in the program, or their willingness to secure debt if private lending is proposed). The following factors will be considered:

—The impact of the proposed program in relation to the identifiable neighborhood needs. The extent of area stability must be documented. In describing the needs of a business district or neighborhood commercial area, such factors as overall structural conditions, business turnovers, and vacancy rates over a period of time should be clearly presented. The formulation of a commercial revitalization program must be based on a thorough assessment of local needs and a realistic program design. An important consideration is whether the proposed program is designed to be marketable given income characteristics, local business condition, etc. The condition of supporting public facilities and improvements and their influence on the business environment must be established. If public improvements are proposed in connection with economi

expansion or retention, applicants must address the extent to which the lack of these improvements impact on business.

—Attraction/retention must be fully documented by the applicant. With respect to business retention, evidence should be provided to demonstrate clearly and objectively that without the proposed CDBG Program, existing retail/commercial businesses would curtail their operations. The applicant also must document and address the potential impact of the business loss on the community and/or target area. HUD would accept as examples of clear and objective evidence a notice issued by the business to affected employees, a public announcement by the business, or financial records provided by the business that clearly indicate the need for closing or moving all or portions of the business out of the area.

—The amount of private funds to be leveraged. If leveraging is proposed, applicants should analyze the actual amount of private or public funds needed to make the project financially feasible. In this regard, the establishment of a revolving loan fund, in which repayments would continue to be used to attract or retain businesses providing essential services, would be considered a positive factor.

—The relationship of the activity to a comprehensive approach to meeting the overall needs of the neighborhood area.

—The impact of the proposed program in utilizing minority, women-owned, and project area businesses.

—Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

—Extent to which the project results in the employment of persons on public assistance.

(g) *Criterion 7—Removes Slums or Blighting Conditions.* Consideration will be given to proposed programs which will have a direct impact on the removal of slums or blighting conditions. Appropriate areas may include, but are not limited to, deteriorated residential or commercial structures, inappropriate land uses, or blighting conditions, such as repeated flooding and drainage problems or serious deficiencies in public facilities. Applicants should be aware that slum and blight activities can be carried out under the national objective of benefit to low- and moderate-income persons. If an applicant elects to qualify the activity on this basis, the degree of low- and moderate-income benefit must be demonstrated by the applicant.

Where residential or commercial rehabilitation activities are proposed as preventing or eliminating blighting conditions, the application must clearly document the number, type, and condition of deteriorating or deteriorated buildings in the designated target area. Detailed conditions of the physical condition of buildings or structures would be appropriate to establish the extent of substandard and blighting conditions. For rehabilitation of residential structures to be designed as eliminating blight and addressing an area's deterioration, the buildings must be considered substandard under local definition.

When an area is determined to be blighted, there must be a substantial number of deteriorated or dilapidated buildings, or the public improvements throughout the area must be in a state of deterioration. The proposed CDBG program or project must be designed to eliminate or address a substantial portion of the identified blighting conditions or physical decay. CDBG assistance for facilities or structures which are in good repair and show no real signs of deterioration would not score well under this criterion. For instance, minor facade improvements to a commercial building alone would not indicate that a building is in poor condition. However, assistance to a commercial area which consists of deteriorating businesses, storefronts in serious need of rehabilitation, a high vacancy factor, and public improvements, such as parking areas and parking access improvements which are in need of physical upgrading, would have a direct impact on eliminating blighting conditions. Public improvements that are so deteriorated that they constitute a genuine threat to the continued viability of an area by discouraging private investment necessary to maintain properties may also be considered a blighting influence. The following factors will be considered:

—Extent and documented seriousness of conditions/needs. References to engineering studies, surveys or letters from appropriate local agencies should be included.

—Impact of the proposed program in relation to providing long-term permanent solutions to alleviate the identified need. Short-term or superficial improvements will not be considered to have a significant impact.

—Coordination with other projects and activities which will address needs within the defined area.

—Nature of any proposed re-use: degree of commitment for re-use.

—Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

(h) *Criterion 8—Resolves a Serious Threat to Health or Safety.* The applicant must describe the condition which poses a threat to public health and safety. A serious threat refers to a situation which demands immediate attention. This may be a condition that has just occurred or a condition which, though long standing, has intensified to become an immediate danger.

Applicants should be aware that imminent threat/urgent need activities can be carried out under the national objective of benefit to low- and moderate-income persons. If an applicant elects to qualify the activity on this basis, the degree of low- and moderate-income benefit must be demonstrated by the applicant. Consideration will be given to the following:

—The extent to which a serious threat to health or safety is documented, or of recent origin, or which recently became urgent. Documentation should include the identification of the existing conditions by appropriate agencies.

—The extent to which the serious threat will be resolved.

—The submission of documentation which demonstrates that other financial resources are insufficient or unavailable to resolve such needs.

—The degree to which the application addresses issues such as the validity of cost estimates by qualified sources; the availability of other funds; site control and environmental conditions; or other public body approvals.

—The number of persons to benefit, as well as the number of individuals actually threatened.

Note: This criterion is generally more restrictive than Criterion 4. The existing condition must pose a serious and immediate threat to the health or welfare of the target population.

(i) *Criterion 9—Supports Other Federal or State Programs Being Undertaken in the Community or Deals with the Adverse Impact of Another Recent Federal or State Action. The Other Federal or State Program or Action Must Be of Substantial Size or Impact in the Community in Relation to the Proposed Program.* The application must contain a complete description of the Federal or State Program(s) (excluding other CDBG Programs) which currently are underway, or a complete description of the adverse impact of a recent Federal or State action (e.g. the closing of a military base). A Federal or State program or action not yet initiated will be considered only where the application provides documentation establishing the certainty of, and the approximate commencement date of, the described program or action.

The proposed CDBG Program must demonstrate clearly the magnitude of the effect of the Federal or State Program or action on the community. The degree to which the proposed CDBG Program will support the Federal or State Program, and/or the extent to which the adverse impact of Federal or State action will be mitigated, also must be demonstrated.

In addition to the above, the nature and costs of the proposed activities will be considered in determining the degree of impact.

(j) *Criterion 10—Supports Energy Production or Conservation.* This criterion will be judged, and points will be awarded, based upon the community's ability to demonstrate that the proposed program will support energy production or conservation. Applicants are urged to develop innovative approaches toward addressing energy needs with Small Cities CDBG funds. Energy considerations can be a factor in most activities proposed by smaller communities. Attention should focus on new methods of producing energy or conserving energy where possible. In developing and evaluating proposals, there are a number of energy aspects to consider. The following factors will be considered:

—Cost efficiency—Relationship of dollar amount to benefits to be derived. The applicant must document estimates of energy costs which are to be saved as a result of the proposed program. The proposed program should make maximum use of non-CDBG resources as well as CDBG funds. Appropriate documentation must be provided to ensure that the proposal is economically feasible.

—The extent to which the proposed program will support other programs currently aimed at addressing energy production or conservation needs of the community. From a management standpoint, proposed projects should be consistent with needs or objectives of any plan for energy management or conservation. Applicants should pursue the availability of other resources from Federal or State energy related programs. The degree of commitment of other resources should be established. State energy offices, private as well as municipally-owned utility companies, and home heating oil companies may be appropriate entities to be involved in the development and planning of proposals.

—The application should address whether the project is based on appropriate technology, materials and methods to maximize energy conservation. Engineering reports or studies would be appropriate evidence to support the overall feasibility of the project. The conversion of existing facilities, where appropriate, rather than proposing new construction may be more economical.

—While housing rehabilitation programs which include weatherization/winterization components will be considered, they generally will not be presumed as addressing a severe need unless unique conditions are specifically identified and cost savings are properly documented.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 65 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract or block numbering area (BNA), and they must be in accordance with the 1990 Census data. Additionally, maps must identify the locations of areas with minorities by census tract or BNA. If there are no minority areas, state so on the map. Only population data from the 1990 Census will be acceptable for purposes of this section.

Please note that a "minority" is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native. For the purposes of this section, the separate category—"women"—is not considered a minority.

Counties claiming points under this criterion must use county-wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead entity only.

The following factors will be used to judge outstanding performance in these areas. Please note that the criteria are the same for Comprehensive and Single Purpose applicants, and that points for outstanding performance may be claimed under each criterion:

(1) *Housing Achievements* (40 points total).

(a) 20 Points—Provision of Assisted Housing—Providing assisted housing for low- and moderate-income families, located in a manner which provides housing choice in areas outside of minority, or low- and moderate-income concentrations.

Points will be awarded where both of the following criteria are met:

(i) More than one-third of the housing assistance provided by the applicant in the last five (5) years (excluding Section 8 existing and housing assistance provided in place) has been in Census Tracts (CT) or Block Numbering Areas (BNA) having a percentage of minority population which is less than the minority population in the community as a whole; and

(ii) With regard to the Section 8 Existing Program, a community must show the location (CT or BNA) of its currently occupied family units by race/ethnicity. Points will be awarded if more than one-half of the minority assisted families occupy units in areas which have a lower percentage of minority population than that of the community as a whole.

A community with no minorities must show the extent to which its assisted housing is located outside areas of concentrations of low- and moderate-income persons. In order to receive points under this criteria, applicants should follow the process outlined in (i) and (ii) above, substituting low- and moderate-income persons and families for minority persons or families. Applicants addressing the first criterion must use a map indicating the location of all assisted housing and a narrative which indicates the number of units and the type of assisted housing. The map also must show the general location of low- and moderate-income households and minority households, giving the numbers and percentages for both.

To qualify as housing assistance provided, the units being claimed must be part of a project located outside minority or lower income concentrated areas which has, at a minimum, received a firm commitment from the funding agency.

(iii) Points also may be awarded for efforts which enable low- and moderate-income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of (a) and (b) in order to receive points. Points will be awarded where more than one half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

—the neighborhood experienced revitalization;

—the amount of displacement was substantial;

—displacement was caused by private reinvestment;

—low- and moderate-income persons were permitted to remain in the

neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded where there is a balanced distribution of assisted housing throughout the community.

(b) 20 Points—Implementation of a HUD-approved New Horizons Fair Housing Assistance Project or a Fair Housing Strategy that is equivalent in scope to a New Horizons Project.

The applicant must demonstrate that it is implementing a HUD-approved New Horizons Fair Housing Assistance Project or demonstrate participation in a HUD-approved county/State/regional New Horizons Project; or that the applicant is implementing a fair housing strategy that is equivalent in scope to a New Horizons Project. If the applicant is implementing a New Horizons Project, it must include:

—the date it was approved (by HUD); and

—those actions taken to implement the plan.

If the applicant is implementing an equivalent fair housing strategy, it must include:

—the strategy being implemented;

—those actions taken to implement the strategy.

Please note that a fair housing strategy must include the four elements of a New Horizons Project in order to be considered equivalent in scope:

—Local compliance activities;

—Educational programs to enhance the clarity and understanding of the community's fair housing policy. For communities with few or no minorities, this should include publication in the surrounding communities of the applicant's policy of fair housing for minorities and the disabled;

—Assistance to minority families; and

—Special programs (e.g. utilization of Community Housing Resource Board (CHRB) Programs, efforts to encourage local realtors to enter into voluntary agreements to encourage equal access to financial institutions, etc.).

The fair housing strategy must include goals for each of the above elements. The date of adoption or development of the strategy should be indicated, as well as the date proposed activities will be or have been implemented.

(2) *Entrepreneurial Efforts and Local Equal Employment* (25 points total). Applicants may request points for both of these subfactors and must use the format sheets included in the application.

(a) *Minority Contracting.* 15 points—Outstanding performance points will be given to those applicants who have demonstrated that they have utilized minority businesses to the following degree. The applicant must demonstrate that at least five percent of all its contracts, based on dollar value, have been awarded within the past two years to minority owned and controlled businesses (businesses that are at least 50 percent owned by minorities) provided that the minority population is five percent or less. If the minority population exceeds five percent, then the applicant must have a corresponding percentage of its contracts awarded to minority businesses; however, 20 percent of the total dollar value of its contracts will be sufficient for award of points for any applicant. The applicable percentage of minority population is the percentage of minorities in the applicant's jurisdiction, or is the county percentage, whichever is higher.

The applicant must provide the information as outlined in the suggested format, showing the name, address, telephone number, contract date and contract amount for each contract or subcontract with a minority business. This information is to be provided in addition to information required on the HUD Form 4124.4, and should be for the two-year period ending February 1, 1994.

(b) *Equal Opportunity Employment.* 10 points—In order to be considered for points, if claimed, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

4. Final Selection.

The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the problem areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. Applicants will receive a single grant in the amount of the project or projects applied for which were ranked high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

—The project receiving the highest program impact rating will be funded;

—If tied projects have the same program impact rating, the project having the highest combined score on the needs factors will be funded;

—If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded; and

—If tied projects have the same program impact ratings, equal needs factor scores, and an equal percent of persons in poverty needs factor score, the application having the most outstanding performance in fair housing and equal opportunity will be funded.

As soon as possible after the rating and ranking process has been completed, HUD will notify all applicants regarding their rating scores and funding status. Thereafter, applicants may contact HUD to discuss scores or any aspects of the selection process.

II. Application and Funding Award Process.

A. Obtaining Applications.

All nonentitled communities in New York State may obtain application kits through HUD's New York or Buffalo Offices. The addresses for HUD's Buffalo and New York offices are:

Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068, Telephone (212) 264–6500

Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 846–5768

B. Submitting Applications.

A final application must be submitted to HUD no later than February 3, 1995. A final application includes an original and two photocopies. In accordance with HUD's regulation at 24 CFR 570.443(a)(1), final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, February 3, 1995. If an application is hand-delivered to the New York or Buffalo Offices, the application must be delivered by 4:00 p.m. on the application deadline date. Applicants in New York, in the counties of Sullivan, Ulster, Putnam, and in non-participating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should

submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the address listed above in Section A.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on, or postmarked by February 3, 1995. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

C. The Application

1. Application Requirements

An application for the Small Cities Program CDBG Grants is made by the submission of:

(a) a completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;

(b) a completed Standard Form 424;

(c) a signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying pursuant to section 319 of the Department of Interior Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), generally prohibiting use of appropriated funds, and, if applicable, Disclosure of Lobbying Activities (SF–LLL);

(d) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance; and if applicable,

(e) CHAS or "abbreviated strategy".

2. Streamlined Application Requirements for Certain Applicants

Applications submitted under the Fiscal Year 1994 NOFA but not selected for funding will automatically be reactivated for consideration under this NOFA, unless the applicant notifies the Department in writing by February 3, 1995 that the applicant does not wish the prior application to be considered in the Fiscal Year 1995 competition. Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

Applicants with activities approved for funding under the Fiscal Year 1994 NOFA are eligible for additional funding for those activities under this NOFA. Applicants seeking additional funding for activities selected for funding under the Fiscal Year 1994 NOFA may notify the Department in writing by February 3, 1995 that they wish to seek additional funding for those activities. Such applicants may incorporate by reference the application materials in the applicant's Fiscal Year 1994 application, and may provide material to update or supplement the prior application.

All applicants are free to submit an entirely new application in place of a previous application should they so desire.

D. Funding Award Process

In accordance with section 102 of the Reform Act and HUD's regulation at 24 CFR 12.16, HUD will notify the public by notice published in the **Federal Register** of all award decisions made by HUD under this competition. In accordance with the requirements of section 102 of the Reform Act and HUD's regulations at 24 CFR part 12, HUD also will ensure that documentation and other information regarding each application submitted under this notice of funding availability is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with § 12.14(b) of these regulations, HUD will make this material available for public inspection for a period of five years, beginning not less than 30 calendar days after the date on which assistance is provided.

III. Technical Assistance

Prior to the application deadline, the Buffalo Office will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations, and defining terms in the application package. In addition, HUD will conduct informational meetings around the State to discuss the Small Cities Program, and will conduct application workshops in conjunction with these meetings. Please contact the Buffalo Office for further information regarding these meetings. Application kits will be available at these meetings, as well as from the HUD offices previously identified in Section II of this NOFA, and will also be available at the informational meetings. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

In order to be considered for funding, complete applications (an original and two photocopies of the entire application) must be physically received by the appropriate HUD office on February 3, 1995 by 4:00 p.m. or, if mailed, postmarked no later than midnight, February 3, 1995. Applications must be delivered or mailed to the appropriate HUD office at the address indicated in Section II.

IV. Checklist of Application Submission Requirements.

The following checklist is intended to aid applicants in determining whether their application is complete:

Application Completeness Checklist

Applicant: _____
Comprehensive Grant _____
Single Purpose Grant _____
Multiyear _____
Amount Requested $ _____

1. Is amount of funds requested within established maximum?

2. Part I—Needs Description (HUD Form 4124.1)

(a) Single Purpose Grants

i—Program Area

_____ Housing
_____ Target Area
_____ Non-target Area
_____ Public Facilities
_____ Economic Development (If an "appropriate" analysis is required but is not included, the application cannot be rated.)

ii.—Is description of community development needs included in application?

(b) Comprehensive Grants

i—Have four design criteria been selected and discussed in application?

ii—Is description of community development needs included in application?

(c) Multiyear

i—Is the plan for two or three years?

ii—Does the action plan for each year present a viable project on its own?

3. Part II—Community Development Activities (HUD Form 4124.2)

(a) Has national objective been identified for each activity?

(b) Will 70 percent of grant funds primarily benefit low- and moderate-income persons? (If not, the application cannot be rated.)

4. Part III—Impact Description (HUD Form 4124.3)

5. Part IV—Outstanding Performance (HUD Form 4124.4)

6. Part V—Program Schedule (HUD Form 4124.5

7. Part VI—Maps

(a) Location of proposed activities. (Applicants must show the boundaries of the defined area or areas.)

(b) Location of areas with minorities by census tract. (If there are no minority areas, state so on the map.)

(c) Housing conditions if project involves housing rehabilitation. (Number and location of each standard and substandard unit should be clearly identified.)

8. (a) Is Standard Form 424 complete?
Yes No

(b) Is original signature on at least one copy?
Yes No

9. Is Certification signed with original signature?
Yes No

10. If housing activities have been proposed as part of application, has the Comprehensive Housing Affordability Strategy (CHAS) been prepared and submitted to HUD (or included with this application)?

11. Form HUD–2880, Application/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12.

V. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

Applicants should note that if a CHAS is required in support of a housing activity, the failure to submit a CHAS in a timely manner is not considered a curable deficiency.

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the FY 1993 NOFA for this program. Because no substantive programmatic changes have been made, that Finding remains applicable to this NOFA and is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to the Small Cities Program of New York State, none of its provisions will have an effect on the relationship between the Federal Government and New York State, or the State's political subdivisions.

Family

The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Accountability in the Provision of HUD Assistance

See Section I.A.4 of this NOFA.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4. In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are

restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage.

Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Dated: November 29, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–29808 Filed 12–2–94; 8:45 am]

BILLING CODE 4210–29–P

federal register

Monday
December 5, 1994

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 14, 15, and 52
Federal Acquisition Regulation; Certified Cost or Pricing Data Threshold; Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

[FAC 90–22; FAR Case 94–720]

RIN 9000–AG19

Federal Acquisition Regulation; Certified Cost or Pricing Data Threshold

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have agreed to an interim rule to increase the threshold for certified cost or pricing data from $100,000 to $500,000 for civilian agencies and to remove the requirements for commercial pricing certificates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* December 5, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 3, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405, Phone: (202) 501–4755.

Please cite FAC 90–22, FAR case 94–720 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602–2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–22, FAR case 94–720.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

This notice announces FAR revisions developed under FAR case 94–720, which was based on provisions in the Act that increased the threshold for obtaining certified cost or pricing data from $100,000 to $500,000 for civilian agencies. This matches the threshold previously applicable only to the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard. The Act also repealed the requirements to obtain commercial pricing certification for certain items under civilian agency contracts. This interim rule is intended solely to make the changes necessary to implement those limited portions of the Act. Further, more extensive changes to implement other portions of the Act will be made subsequently.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–720) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see ADDRESSES caption, above) on or before January 4, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because nearly all contracts awarded to small business are awarded on the basis of competition for a firm fixed price and submittal of cost or pricing data is not required. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C 601, et seq. (FAC 90–22, FAR case 94–720), in correspondence.

C. Paperwork Reduction Act

The paperwork burden estimate applicable to the requirements for certified cost or pricing data (9000–0013) has been reduced to reflect the reduced numbers of submittals of certified cost or pricing data by civilian agency contractors. The reduction in the estimated burden for cost or pricing data requirements stems from the reduced number of submittals of cost or pricing data due to the increase in the threshold from $100,000 to $500,000. The paperwork burden applicable to the Commercial Pricing Certification requirements (9000–0105) has been eliminated. Inquiries should be directed to the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755 and cite FAC 90–22, OMB Clearance No. 9000–0013 or 9000–0105.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the portion of the Federal Acquisition Streamlining Act of 1994 that increases the certified cost or pricing data threshold for civilian agencies is effective upon enactment. Additionally, the Act repeals the requirements for commercial pricing certifications and the unnecessary regulatory burden related to commercial pricing certificates should be eliminated as quickly as possible to reduce administrative costs within the Government and at contractor locations.

List of Subjects in 48 CFR Parts 14, 15 and 52

Government procurement.

Dated: November 29, 1994.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–22 are effective December 5, 1994.

Dated: November 17, 1994.

Albert A. Vicchiolla

Acting Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: November 23, 1994.

Thomas Luedtke,

Deputy Associate Administrator for Procurement, NASA.

Dated: November 28, 1994.

Eleanor R. Spector,

Director, Defense Procurement.

Therefore, 48 CFR Parts 14, 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 14, 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

2. Section 14.201–7 is amended in paragraphs (a), (b)(1), and (c)(1) by removing "$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed $500,000." and inserting "the threshold for submission of cost or pricing data at 15.804–2(a)(1)." in its place, by redesignating paragraph (d) as (e), and adding a new (d) to read as follows:

14.201–7 Contract clauses.

* * * * *

(d) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in 15.804–2(a)(1), without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of clauses 52.214–27, Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, and 52.214–28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

* * * * *

14.214 [Reserved]

3. Section 14.214 is removed and reserved.

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.804–2 is amended by revising paragraphs (a)(1) and (2) to read as follows:

15.804–2 Requiring cost or pricing data.

(a)(1) The threshold for obtaining cost or pricing data is $500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. Except as provided in 15.804–3, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect at time of agreement on price or, in the case of existing contracts, the threshold specified in the contract—

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts);

(ii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish cost or pricing data (see 15.804–3(i); or

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection.

Price adjustment amounts shall consider both increases and decreases. (For example, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(2) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in paragraph (a)(1) of this subsection, without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of the clauses 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, and 52.215–25, Subcontractor Cost or Pricing Data—Modifications, or 52.215–24, Subcontractor Cost or Pricing Data, as applicable. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

* * * * *

15.813 [Reserved]

5. Section 15.813 is removed and reserved, and subsections 15.813–1 through 15.813–7 are removed.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.214–27 is amended by revising the clause date and the introductory text of paragraph (a) to read as follows:

52.214–27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding

* * * * *

Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (Nov 1994)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1), except that this clause does not apply to any modification for which the price is—

* * * * *

7. Section 52.214–28 is amended:

(a) By revising the clause date and the introductory text of paragraph (b);

(b) In paragraph (a) by removing "$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000" and inserting "the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1)" in its place; and

(c) In (d) by removing "$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, in each subcontract that exceeds $500,000" and inserting "the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1)" in its place.

The revised text is to read as follows:

52.214–28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Nov 1994)

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1) when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

* * * * *

52.214–29 [Amended]

8. Section 52.214–29 is amended in the introductory paragraph by revising "14.201–7(d)" to read "14.201–7(e)".

52.215–23 [Amended]

9. Section 52.215–23 is amended by revising the clause date to read "(NOV 1994)" and in the introductory text of paragraph (a) by removing "$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000" and inserting "the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1)" in its place.

52.215–24 [Amended]

10. Section 52.215–24 is amended by revising the clause date to read "(NOV 1994)" and twice in the introductory text of paragraph (a) and once in the introductory text of (c) by removing "$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000" and inserting "the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1)" in its place.

11. Section 52.215–25 is amended by revising the clause date, paragraph (a), the introductory text of (b), and (d) to read as follows:

52.215–25 Subcontractor Cost or Pricing Data—Modifications.

* * * * *

Subcontractor Cost or Pricing Data—Modifications (Nov 1994)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1); and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1) when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.804–2(a)(1), when entered into.

(End of clause)

52.215–32 [Removed and Reserved]

12. Section 52.215–32 is removed and reserved.

52.215–37 [Removed and Reserved]

13. Section 52.215–37 is removed and reserved.

[FR Doc. 94–29811 Filed 12–2–94; 8:45 am]
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Federal Register

Monday
December 5, 1994

Part V

Department of Education

Rehabilitation Training Programs; Notices

DEPARTMENT OF EDUCATION

RIN 1820-ZA01

Rehabilitation Training Programs

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces priorities for four programs administered by the Office of Special Education and Rehabilitative Services. The Secretary may use these priorities for competitions in fiscal year (FY) 1995 and subsequent years. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. These priorities are intended to prepare individuals to enter rehabilitation professions and to maintain and upgrade the basic skills and knowledge of trained rehabilitation professionals.

EFFECTIVE DATE: These priorities take effect on January 4, 1995.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on a specific priority is in the section describing the program under which the priority is being announced.

SUPPLEMENTARY INFORMATION: This notice contains one priority under the statutory authority for Rehabilitation Training, one priority under the Rehabilitation Continuing Education Programs, four priorities under the Rehabilitation Short-Term Training program, and two priorities under the Interpreter Training for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program. A separate competition will be established for each priority. These programs are authorized by section 302 of the Rehabilitation Act of 1973, as amended (Act). The purpose of each program is stated separately under the title of that program. The announcement for each program also lists the name, address, and telephone number of the person who may be contacted for further information.

These priorities support the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The Department supports a variety of training activities in vocational rehabilitation and training that enhance the knowledge and skills of personnel.

On September 6, 1994, the Secretary published a notice of proposed priorities for these programs in the **Federal Register** (59 FR 46118).

Note: This notice of final priorities does *not* solicit applications. In any year in which the Secretary chooses to use a priority, the Secretary invites applications through a notice in the **Federal Register** and designates that priority as absolute or competitive preference or invitational. The effect of each type of priority is explained in the notice of proposed priorities and in 34 CFR 75.105.

Notices inviting applications under these competitions are published in separate notices in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 64 parties submitted comments. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows. Please note that this section addresses only those proposed priorities on which substantive comments were received or priorities that have been substantially changed as a result of the Secretary's review. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are also not addressed.

General Comments

Comments: Three commenters expressed concern that vocational evaluation and work adjustment, an important component of the rehabilitation of persons with disabilities, is being eliminated by the Rehabilitation Services Administration (RSA) as a training focus from its discretionary grant programs in general and from these priorities in particular. Therefore, it was recommended that an additional priority be included to provide training for community rehabilitation personnel in the field of vocational evaluation and work adjustment.

Discussion: An announcement to fund projects that will provide vocational evaluation and work adjustment training for FY 1995 was published on June 16, 1994. In addition, vocational evaluation and work adjustment training is not precluded under these priorities.

Changes: None.

Comments: One commenter recommended that every priority included in the notice, and every future RSA priority, provide training in access to assistive technology and devices. In addition, one of the same commenters proposed that two technology-specific priorities be added to this notice.

Discussion: Training in this area is allowed under any of the priorities in this notice. The Secretary believes that training rehabilitation personnel in assistive technology can lead to increased choices and opportunities for persons with disabilities.

Changes: None.

Comments: One commenter suggested that a priority be added that would provide additional resources to State vocational rehabilitation agencies to facilitate ongoing career advancement opportunities on behalf of their clients.

Discussion: The Secretary agrees that the facilitation of ongoing career advancement opportunities on behalf of clients of State vocational rehabilitation agencies is important. State vocational rehabilitation agencies are currently provided resources under the in-service training program to carry out post-employment programs, such as the development of career advancement opportunities for their clients.

Changes: None.

Comments: One commenter recommended that the order in which the priorities are listed in this notice be changed to give preference for funding to one of the priorities that is not listed as number one.

Discussion: The order in which the priorities appear in the notice is not related to importance or any preference.

Changes: None.

Rehabilitation Training

Priority—National Clearinghouse of Rehabilitation Training Materials

Comments: Four of the commenters suggested specific criteria that a National Clearinghouse should address during the grant competition: linkages with other clearinghouses, the provision of materials in alternative formats, adequate facilities for storage and dissemination, and a project director experienced in both rehabilitation and information systems.

Discussion: The current selection criteria already include the concerns raised by the commenters and will provide the basis for the evaluation of the proposals under this program.

Changes: None.

Comments: One commenter suggested that the proposed National Clearinghouse of Rehabilitation Training Materials be merged with the National Rehabilitation Information Center, which is funded by the National Institute on Disability and Rehabilitation Research.

Discussion: While such a merger is not feasible at this time, the possibility of such a merger will be considered.

Changes: None.

Rehabilitation Continuing Education Programs

Priority—Rehabilitation Continuing Education Programs for Providers of Community Rehabilitation Services

Comments: Ten of the commenters indicated their desire to have a project under this priority in their geographical region.

Discussion: The Secretary will consider the needs of all regions as well as the geographical distribution of projects in selecting grantees. Regions that are not announced for funding in FY 1995 will be considered for competitions in FY 1996 and FY 1997.

Changes: None.

Comments: Six commenters expressed concern regarding the availability of training under this priority to direct service personnel in rural areas, and several of these commenters recommended that projects under this priority be required to coordinate training through existing programs in rural areas or use distance education strategies.

Discussion: Projects funded under this priority are required to provide training for direct service personnel throughout a multi-State geographical area. The use of distance education strategies and linkages with existing training programs serving rural areas is not precluded under this priority.

Changes: None.

Comments: Two commenters expressed concern that the priority will discourage academic and certificate training, and one commenter suggested that academic-type training be included under the priority.

Discussion: The focus of this priority is on the provision of ongoing post-employment training in community rehabilitation programs. The Secretary believes that the training proposed is appropriate to meet these needs.

Changes: None.

Comments: Two commenters recommended that the priority emphasize human resource development principles.

Discussion: The Secretary believes that the provision of quality post-employment training that will maintain or upgrade the skills of persons engaged in community rehabilitation programs is career enhancing and reflective of human resource development principles.

Changes: None.

Comments: Two commenters suggested that programs funded under this priority provide technical assistance and demonstrate institutional collaboration.

Discussion: These activities may be carried out by projects funded under this priority.

Changes: None.

Comments: One commenter expressed concern that the priority will not provide training opportunities for professional persons, such as vocational evaluators and work adjustment personnel, who are employed by community rehabilitation programs.

Discussion: The Secretary notes that the priority addresses the need for ongoing post-employment training for all personnel employed by community rehabilitation programs.

Changes: None.

Comments: One commenter suggested that the priority be more responsive to individuals with disabilities by requiring the projects funded under this priority to promote cooperation with local partnerships funded by the School-to-Work Opportunities Act and with employment centers, and to include training in the evaluation of occupational and skill attainment.

Discussion: The Secretary believes that these activities are encouraged under the priority as projects are required to coordinate their efforts with employment agencies and school-to-work projects, as well as to provide training to meet recurrent and common training needs, which could include the evaluation of occupational and skill attainment.

Changes: None.

Comments: One commenter expressed concern that the term "community rehabilitation programs" may be perceived in many parts of the country to include organizations serving mentally ill individuals, and in other parts of the country it may be more narrowly defined to include only facilities or sheltered workshops.

Discussion: The Secretary believes that the term "community rehabilitation programs" is inclusive of organizations serving individuals with mental illness.

Changes: None.

Comments: One commenter suggested that the training under this priority be restricted to State vocational rehabilitation personnel.

Discussion: State vocational rehabilitation personnel are but one resource for individuals with disabilities. Other significant resources include services and personnel provided by community rehabilitation programs. On-going post-employment training targeted to these programs is necessary to achieve improved employment outcomes for persons with disabilities. In addition, the Rehabilitation Act requires that a large portion of the training program allocation be used solely for State agency personnel training. The purpose of this priority is to target funds specifically toward a population of personnel that does not receive specific funding.

Changes: None.

Rehabilitation Short-Term Training Program

Priority 1—Personnel Specifically Trained To Deliver Services in Client Assistance Programs

Comments: One commenter indicated that the priority would be enhanced by inclusion of training in systemic advocacy.

Discussion: The Secretary agrees that systemic advocacy is an important component of Client Assistance Programs and believes that the priority as written allows for this type of training under this priority.

Changes: None.

Priority 2—Training Rehabilitation and Mental Health Personnel To Provide Improved Rehabilitation Services to Individuals With Mental Illness

Comments: One commenter indicated that the use of a strong peer-counseling role in the provision of support to consumers and their families has been beneficial and should be a component of the proposed priority.

Discussion: Training on the use of demonstrated beneficial strategies such as peer-counseling is authorized under the priority.

Changes: None.

Priority 3—Training Members of American Indian Tribes, State Vocational Rehabilitation Staff, and Rehabilitation Educators on Services for American Indians With Disabilities

Comments: One commenter expressed concern that the priority restricts training to States having high American Indian populations when the needs of American Indians living in States with low populations are just as great. In addition, the commenter indicated that, since the needs of these two groups are different, it will be difficult for States with low American Indian populations to successfully replicate the training models developed. For these reasons, the commenter recommended that the priority be opened to all States.

Discussion: The Secretary does not agree that the needs and issues of the individuals are different if the population of American Indians is low in the State. Services still must be culturally appropriate for the individuals. The purpose of the training is to develop the skills of rehabilitation

counselors and other staff who work in State rehabilitation agencies on how to work effectively with American Indians. The priority mandates that the project address the use of appropriate rehabilitation methods, cultural differences, and development of mutual understanding and trust between the service provider and recipient of services through the development of culturally sensitive rehabilitation training materials. The Secretary does not agree that replication will be difficult since the size of the population within the State is not considered to be a factor in using appropriate rehabilitation methods that respect the cultural differences. The Secretary does agree, however, that the training should be made available to all States where there is a significant population of American Indians since the State is required to provide vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the State provides those services to other significant segments of the population of individuals with disabilities residing in the State (section 101(a)(20) of the Rehabilitation Act of 1973, as amended).

Changes: The priority has been changed to target States with significant rather than high American Indian populations.

Comments: One commenter indicated opposition to the priority because of its focus on one specific population, stating that such a focus would encourage division among the underserved and unserved.

Discussion: The Secretary does not agree that focusing this priority on a population that is one of the most underserved and unserved groups of individuals with disabilities would encourage division among unserved and underserved groups. The Secretary believes that the cultural differences of American Indians requires special emphasis to improve services.

Changes: None.

Comments: One commenter expressed concern over the train-the-trainer approach required by this priority and recommended that the best approach to understanding the rehabilitation issues and ensuring sensitivity to cultural needs is to use American Indians to help State agency personnel improve skills necessary for the provision of services. The commenter believes that focusing on the development of local relationships and the use of available materials would serve State agencies better and that a collaborative training approach would be more appropriate.

Discussion: The inclusion of American Indians in the development of all aspects of the training and in the development of training materials under this priority is mandatory. Additionally, nothing in this priority or in the train-the-trainer approach would preclude the use of already available materials. The Secretary further notes that training in the development of local relationships can be included in the training materials that address appropriate rehabilitation methods in providing vocational rehabilitation services to American Indians with disabilities.

Changes: None.

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind

General Comments

Comments: Two commenters recommended that a significant effort and commitment be made to the training of oral interpreters and that training become a funding priority. It was suggested that applicants for grants be asked to document how they will interest people in oral interpreting training and to include information on the contents of the curriculum.

Discussion: The regulations in 34 CFR 396.1 describe the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program as a program that trains a sufficient number of skilled interpreters to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by training manual, tactile, oral, and cued speech interpreters. The curriculum developed by the National Technical Institute for the Deaf for the training of oral interpreters is included in the training program conducted by the two federally funded national interpreter training projects and is also being used by the 10 regional interpreter training projects. In addition, within the curriculum of each of the affiliate institutions, preservice training programs provide an introduction to oral interpreting and other interpreting methodologies.

Changes: None.

Comments: One commenter recommended that research be conducted, perhaps under the auspices of National Institute on Disability and Rehabilitation Research (NIDRR), in the area of sign-to-voice interpreting to identify the factors involved in the development of competency in sign-to-voice interpreting. Concern was also expressed about the proliferation of the interpreter certification systems, and commenters urged that a stronger link be established between current projects involved in training of sign language interpreters and external practices for evaluation and certification of sign language interpreters.

Discussion: The Secretary recognizes the importance of competency in the area of sign-to-voice interpreting and believes that it is the responsibility of the training projects to include this aspect of interpreting in their curricula. The comment concerning the need for research in this area will be shared with appropriate individuals in NIDRR. Concerning the need for stronger links between the training projects and the authorities responsible for evaluation and certification of interpreters, 34 CFR 396.20 of the regulations on application content requires that an application include an assurance that the project shall cooperate or coordinate its activities, as appropriate, with the activities of other projects funded under this program. In addition, the Secretary points out that certain projects that are currently funded are coordinating with external entities in the field for the certification of sign language interpreters.

Changes: None.

Comments: One commenter supported the priority to increase the focus on training of interpreters for individuals who are deaf-blind; however, it was requested that the Department consider the maximum possible project period of 60 months as a full funding cycle rather than assessing the project during its third year to determine whether there is a need to provide funding beyond 36 months.

Discussion: The Secretary has identified a maximum possible project period of 60 months. The Secretary believes that at least 36 months will be necessary to meet the requirements of the priority. The Secretary believes that an assessment during the third year of the project period is necessary to ensure that the project is meeting the objectives established in its original application and to determine whether there is a need to provide funding beyond 36 months.

Changes: None.

Comments: Two commenters suggested that the project period be permitted to extend beyond 60 months.

Discussion: The project period is limited by the Act to no more than 60 months. Furthermore, the Secretary believes that the 60-month project period will provide sufficient time to carry out the requirements of this priority

Changes: None

Comments: One commenter requested that additional requirements be included under this priority to require adherence to the Conference of Interpreter Trainers program standards, and that the project also include a program component that shows an effort to recruit and train individuals who are deaf to become interpreters/transliterators for individuals who are deaf-blind.

Discussion: The regulations in § 396.4 define "qualified professional" as an individual who has either met existing national or State certification or evaluation requirements; or successfully demonstrated equivalent interpreting skills through prior work experience. The Secretary believes that this definition gives the project the necessary flexibility to determine the most appropriate certification or evaluation requirements for its purpose and geographic area. The regulations in 34 CFR 385.44 require that any grantee who provides training must give due regard to the training of individuals with disabilities as part of its effort to increase the number of qualified personnel available to provide rehabilitation services. The Secretary believes that this requirement adequately responds to the recommendation that the project make an effort to recruit and train individuals who are deaf to become interpreters/transliterators for individuals who are deaf-blind.

Changes: None.

Priority 1—National Project with Major Emphasis on Interpreting for Individuals Who Are Deaf-Blind

Comments: One commenter suggested that the training program be located in proximity to a substantial population of individuals who are deaf-blind.

Discussion: The regulations in 34 CFR 396.20(b) require that the project's application include a description of the geographical area to be served. The instructions accompanying the request for applications will emphasize further this requirement to highlight the importance of the existence of an adequate target population to be served by the project in its geographical area.

Changes: None.

Priority 2—National Project to Address the Interpreting Needs of Culturally Diverse Communities

Comment: One commenter suggested that the purpose of the program as stated in the notice of proposed priorities be modified by inserting between the words "skilled interpreters" and "throughout" the following phrase: "particularly those from culturally diverse backgrounds."

Discussion: The Secretary agrees that this suggestion has merit because it emphasizes the importance of recruiting potential interpreters from those culturally diverse communities; however, the purpose of the program is stated in the regulations and was simply repeated for informational purposes in the notice of proposed priorities. Consequently, it would be necessary to propose the requested change in a notice of proposed rulemaking.

Changes: None.

Comment: Two commenters voiced support for this priority and one of these two commenters recommended that the training projects be housed in an Historically Black College or University (HBCU). The other commenter believed that the priority should establish appropriate liaisons with postsecondary education institutions with significant enrollment of students representing culturally diverse backgrounds, particularly Historically Black Colleges and Universities.

Discussion: The Secretary appreciates this support and notes that the regulations in 34 CFR 396.2 concerning eligibility for an award would include applications for training grants from Historically Black Colleges and Universities.

Changes: None.

Rehabilitation Training

Purpose of Program: The Rehabilitation Training program supports projects to ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs, through supported employment programs, through independent living services programs, and through client assistance programs. The program supports projects to maintain and upgrade basic skills and knowledge of personnel employed to provide state-of-the-art service delivery systems and rehabilitation technology services.

For Further Information Contact: Robert Werner, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3322 Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–8291. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Priority

Priority—National Clearinghouse of Rehabilitation Training Materials

Background

The Rehabilitation Services Administration (RSA) has funded a clearinghouse for rehabilitation training materials since 1961. Over the years, the clearinghouse has facilitated the development and dissemination of material for use in the training of rehabilitation personnel. Regulations for the Rehabilitation Training program in 34 CFR 385.42 state that a set of any training materials developed under the Rehabilitation Training program must be submitted to any information clearinghouse designated by the Secretary. The project funded under this priority would be designated to receive training materials developed by other projects during the project's duration. Users of the clearinghouse cover the range of rehabilitation providers, but most frequently include State vocational rehabilitation agency personnel, rehabilitation counselors, rehabilitation educators, community rehabilitation program personnel, and advocates for individuals with disabilities.

The Secretary has identified a maximum possible project period of 60 months. The Secretary believes that at least 36 months will be necessary to meet the requirements of the priority. The Secretary will be assessing, during the third year of the project period, whether there is a need to provide funding beyond 36 months.

Priority

The project must—

- Demonstrate experience and capacity to provide for a national clearinghouse of rehabilitation training materials;
- Identify and gather rehabilitation information and training materials for use in preparing pre-service and in-service education and training for rehabilitation personnel;
- Disseminate, in a cost-effective manner, rehabilitation information and state-of-the-art training materials and methods to rehabilitation personnel to assist them in achieving improved outcomes in vocational rehabilitation, supported employment, and independent living; and
- Provide linkages and policies for the exchange of information and referral of inquiries with other existing clearinghouses and information centers supported by the U.S. Department of Education, including the Educational Resources Information Center and the National Rehabilitation Information Center.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the Education Department General Administrative Regulations selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the additional 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

Applicable Program Regulations: 34 CFR Part 385.

Program Authority: 29 U.S.C. 774.

Rehabilitation Continuing Education Programs

Purpose of Program: The Rehabilitation Continuing Education Programs are designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

For Further Information Contact: Beverly Steburg, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3328 Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9817. 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.

Priority

Priority—Rehabilitation Continuing Education Programs for Providers of Community Rehabilitation Services

Background

In section 2(a) (2) and (5) of the Act, Congress reported findings that, as a group, individuals with disabilities constitute one of the most disadvantaged groups in society subject to discrimination in many critical areas, including employment. Furthermore, Congress found that individuals with disabilities, including individuals with the most severe disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided.

Community rehabilitation programs, working closely with individuals with disabilities, their advocates, representatives, families, labor unions, and employers, are a significant resource for addressing the national problem of unemployment and underemployment of individuals with severe disabilities. Those programs serve an estimated two million individuals with disabilities annually, many through referral arrangements with vocational rehabilitation State agencies.

Ongoing post-employment training is needed for all who work in community rehabilitation programs to achieve improved employment outcomes for individuals with disabilities, especially volunteers, providers, and employers who fill key roles in staffing, directing, and using these programs.

In the past, RSA funded many nonacademic training programs that maintain or upgrade the skills of currently employed individuals in community rehabilitation programs under the Rehabilitation Long-Term Training program. However, final regulations for the Rehabilitation Long-Term Training program (59 FR 31060) focus on the support of academic programs that award degrees or certificates. Therefore, support for nonacademic training programs will be carried out under the other applicable training program authorities, such as this Rehabilitation Continuing Education program, the Short-Term Training program, and the Experimental and Innovative Training program.

The Secretary has identified a maximum possible project period of 60 months. The Secretary believes that at least 36 months will be necessary to meet the requirements of the priority. The Secretary will be assessing, during the third year of the project period, whether there is a need to provide funding beyond 36 months.

Priority

The project must—

- Provide post-employment training for job coaches and other direct service community rehabilitation personnel, including employers and co-workers of people with disabilities who provide support at work for persons with severe disabilities (often called natural support), administrators, volunteers and peer counselors, and other personnel of community rehabilitation programs;
- Coordinate with activities supported by business and industry, State vocational rehabilitation agencies, school-to-work transition projects, and job development centers funded by the National Institute on Disability and Rehabilitation Research;
- Provide seminars, forums, train-the-trainer training, technical assistance, and similar methods to meet recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area; and
- Demonstrate potential for replication of training methods based on project outcomes through the dissemination of training materials and protocols.

Applicable Program Regulations: 34 CFR Part 389.

Program Authority: 29 U.S.C. 774.

Rehabilitation Short-Term Training

Purpose of Program: The purpose of the Rehabilitation Short-Term Training program is to provide Federal support for the development and conduct of special seminars, institutes, workshops, and technical instruction in areas of special significance to the delivery of vocational, medical, social, and psychological rehabilitation services.

For Further Information Contact: For priority 1, contact Beverly Steburg, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3328, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9817. For priority 2, contact Ellen Chesley, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3318, Switzer Building, Washington, D.C. 20202–2649. Telephone (202) 205–9481. For priority 3, contact Barbara Sweeney, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3225, Switzer Building, Washington, D.C. 20202–2735. Telephone: (202) 205–9544. For priority 4, contact Parma Yarkin, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3220, Switzer Building, Washington, D.C. 20202–2647. 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.

Priorities

Priority 1—Personnel Specifically Trained to Deliver Services in Client Assistance Programs

Background

The Rehabilitation Act Amendments of 1992 (Pub. L. 102–569) made significant changes in rehabilitation service provisions under Title I of the Act. Client Assistance Programs (CAPs) provide assistance in informing and advising all clients and applicants of available benefits under the Act. Section 302 of the Act includes personnel

specifically trained to deliver services in CAPs to be among the personnel that the Rehabilitation Training program must consider in reviewing personnel shortages and training needs. Through the 1992 Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation, CAP directors have reported critical training needs for both CAP administrative and service-delivery personnel.

The Secretary has identified a maximum possible project period of 60 months. The Secretary believes that at least 36 months will be necessary to meet the requirements of the priority. The Secretary will be assessing, during the third year of the project period, whether there is a need to provide funding beyond 36 months.

Priority

The project must—

- Provide training to CAP personnel on an as-needed basis, including—(1) Management training on skills needed for strategic and operational planning and direction of CAP services; and (2) Consumer advocacy training on skills and knowledge needed by CAP staff to assist persons with disabilities to gain access to and to use the services and benefits available under the Rehabilitation Act, particularly new Title I requirements;
- Coordinate training efforts with training supported by the Center for Mental Health Services and the Administration on Developmental Disabilities for protection and advocacy on common areas, such as financial management; and
- Include both national and regional training seminars in each project year.

Priority 2—Training Rehabilitation and Mental Health Personnel to Provide Improved Rehabilitation Services to Individuals With Mental Illness

Background

High turnover rates and inadequate academic preparation of service staff are continuing problems among programs providing rehabilitation services to individuals with severe mental illness (Pratt and Gill, "Developing Interagency In-Service Training," Psychosocial Rehabilitation Journal, Vol. 16, No. 1, July, 1992). Ongoing research has documented the need for competency-based training to promote the recruitment, career development, and retention of personnel who provide support and rehabilitation services to persons with mental illness ("A Comprehensive Study of Human Resource Development Issues—Present and Future—for Personnel Providing Psychosocial Rehabilitation Services," Project No. H133G10072, awarded July 1, 1991, by the National Institute on Disability and Rehabilitation Research to the International Association of Psychosocial Rehabilitation Services).

Provision of rehabilitation services to persons with severe mental illness is complicated by the need for staff to interact frequently with professionals in other agencies and disciplines. Cross-training of counselors, psychiatrists, psychologists, social workers, evaluators, and other professionals is essential to effective interagency cooperation. Rehabilitation and related staff must be knowledgeable about key legislation such as the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Social Security Act. Increasingly, rehabilitation services involve persons with severe mental illness making their own choices and family members having a role in rehabilitation programs. Staff require training to be effective in consumer-directed rehabilitation.

The Secretary intends to make an award with a project period of up to 36 months.

Priority

Projects must—

- Develop training to improve the skills and knowledge of existing personnel in providing mental health and vocational rehabilitation services to persons with severe mental illness;
- Disseminate training materials on organizational coordination, resources, and organizational linkages, including findings from RSA-supported demonstration projects, that will enhance employment outcomes of individuals with mental illness served by the programs of vocational rehabilitation, supported employment, and independent living;
- Improve the skills of rehabilitation counselors, administrators, and related professionals, such as psychologists, evaluators, and psychiatrists, in working with persons with mental illness disabilities in the development and implementation of Individualized Written Rehabilitation Programs and vocational placements;
- Develop instructional techniques for working with consumers and family members on problem-solving and decisionmaking skills that will enhance employment outcomes;
- Include information in curriculum materials on provisions of Titles II and XVI of the Social Security Act that are related to work incentives for individuals with disabilities and on employment-related provisions of the Americans with Disabilities Act;
- Provide training through special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of rehabilitation services to individuals with severe mental illness;
- Provide training for three or more States; and
- Demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols.

Priority 3—Training Members of American Indian Tribes, State Vocational Rehabilitation Agency Staff, and Rehabilitation Educators on Services for American Indians With Disabilities

Background

The Act has a number of provisions that relate to the needs of American Indians with disabilities. Under section 101(a)(20), States are required, as appropriate, to actively consult in the development of the State plan for vocational services with American Indian tribes and tribal organizations and Native Hawaiian organizations.

Section 101(a)(15) requires that States conduct continuing statewide studies of the needs of individuals with disabilities and how these needs may be most effectively met, including outreach to minorities and those who have been unserved or underserved. Vocational rehabilitation services are provided under section 130 of the Act to American Indians residing on reservations. Under the Act, the term American Indians includes Eskimos and Aleuts.

American Indians have one of the highest disability rates of all population groups. Yet, according to recent RSA statistical data on the vocational rehabilitation program, when American Indians with disabilities receive vocational rehabilitation services, they have a low rehabilitation success rate.

Some of the major problems in providing services to American Indians include—(1) Lack of outreach efforts to rural and isolated areas where many American Indians live; (2) Cultural differences that make use of standard rehabilitation practices or methods less effective and may lead to lack of mutual understanding and trust between the provider and recipient of services; (3) Language and communication barriers; and (4) Limited employment opportunities in rural areas and on reservations.

These problems are being addressed, in part, through the American Indian vocational rehabilitation services (section 130) discretionary grants.

Increased cooperative efforts and sharing of information have occurred as a result of linkages between the discretionary projects and State rehabilitation agencies. There is a great need, however, for training methods and materials to improve the provision of services to American Indians with disabilities. Rehabilitation counselors and other staff who work in State rehabilitation agencies that serve significant populations of American Indians need training on how to work effectively with this population. In addition, institutions of higher education, which prepare individuals to provide vocational rehabilitation services to American Indians with disabilities, have a need for culturally appropriate materials.

The Secretary intends to make an award with a project period of up to 36 months.

Priority

The project must—

- Develop, with the active participation of American Indians, culturally sensitive rehabilitation training materials that address the use of appropriate rehabilitation methods, cultural differences, and development of mutual understanding and trust between service provider and recipient;
- Use a "train-the-trainer" approach to train State rehabilitation unit in-service training educators and rehabilitation educators on all materials developed in order to improve the skills and knowledge of personnel providing vocational rehabilitation services to American Indians with disabilities;
- Conduct seminars and workshops for rehabilitation counselors and upper management rehabilitation administrators in States with significant American Indian populations on how to reach out to American Indian populations with disabilities, including effective services planning in conjunction with section 130 American Indian vocational rehabilitation services grants;
- Provide training in State agencies with significant American Indian populations; and
- Demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols.

Priority 4—Training Impartial Hearing Officers on Provisions of the Act

Background

The Rehabilitation Act Amendments of 1992 contain several new requirements for due process applicable to State rehabilitation agencies that provide services under Title I of the Act. For example, agency personnel shall presume that an applicant can benefit from vocational rehabilitation services unless they can demonstrate by clear and convincing evidence that the applicant is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome. If an individual with a disability is dissatisfied with an eligibility determination or other decisions affecting the nature, scope, onset, duration, or other conditions of services, the applicant or recipient is entitled to a fair hearing before an impartial hearing officer under section 102(d) of the Act.

An impartial hearing officer is defined in section 7(28) of the Act. Among the qualifications the impartial hearing officer must have is knowledge of the delivery of vocational rehabilitation services, the State plan for rehabilitation services, and the Federal and State regulations governing the provision of services. Hearing officers are required in section 102(d)(2)(C) of the Act to be qualified to perform their official duties.

One problem in training hearing officers is that there is a lack of an organized and accessible information base of hearing decisions and appeals such as is commonly found in our judicial system. Those compilations relate hearing decisions to State administrative case law, encourage the use of precedent in hearing decisions, provide evaluative data to State agencies on policies and practices that require revision or remediation, and provide information for use by the Federal Government in its monitoring responsibilities. A digest of hearing decisions and appeals, if published nationally, would also be of great benefit to multiple agencies, constituent groups, and Client Assistance Programs.

The Secretary intends to make an award with a project period of up to 36 months. The Secretary expects that the materials developed under this project would be used by projects funded under the State Vocational Rehabilitation Unit In-Service Training program, the Rehabilitation Continuing Education Program, and the Client Assistance Program training projects.

Priority

The project must—

- Provide seminars and workshops for impartial hearing officers that address the many changes in due process requirements in the Act, including—(1) The rights and remedies for people with disabilities seeking services under Title I of the Act; and (2) The conduct of impartial hearings;
- Develop model materials and decision compilations (including, if appropriate, computer-accessed compilations) for in-State and national dissemination of information on hearing decisions and appeals; and
- Provide training that is national in scope and training approaches and materials that, when replicated and adapted, are suited to train State rehabilitation agency staff and Client Assistance Program staff who have significant involvement with hearings and hearing officers.

Applicable Program Regulations: 34 CFR Part 390.

Program Authority: 29 U.S.C. 774.

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind

Purpose of Program: The purpose of this program is to assist in providing a sufficient number of skilled interpreters throughout the country for employment in public and private agencies, schools, and other service-providing institutions to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—(1) Training manual, tactile, oral, and cued speech interpreters; (2) Ensuring the maintenance of the skills of interpreters; and (3) Providing opportunities for interpreters to raise their level of competence.

For Further Information Contact: Victor Galloway, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3228, Switzer Building, Washington, D.C. 20202–2736. Telephone: (202) 205–9152. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8352.

Priorities:

Priority 1—National Project With Major Emphasis on Interpreting for Individuals Who Are Deaf-Blind

Background

The Rehabilitation Act Amendments of 1992 expanded the purpose and scope of this program to include a requirement that each funded project train interpreters for "individuals who are deaf-blind" as well as interpreters for "individuals who are deaf." Each project has the discretion to provide training for interpreters for these two disability populations to the extent, and in the specific communication modes, appropriate to the needs of these populations in the geographical area to be served by the project. To participate in major life activities, increased numbers of individuals who are deaf-blind require skilled interpreting

services. Interpreting for individuals who are deaf-blind is an intensive, one-to-one exercise, requiring significant skill. Expertise in the training of interpreters for individuals who are deaf-blind needs to be developed and made available to the field. A national project is needed that will give primary focus to training interpreters for individuals who are deaf-blind to better enable regional projects supported under this program to meet the communication needs of individuals who are deaf-blind. A national project is also needed to assist in improving the training of interpreters for individuals who are deaf.

There is also need for technical assistance to regional projects on curriculum development for interpreters to serve deaf-blind individuals and on model methods of instruction for use in the training of interpreters. The Secretary has identified a maximum possible project period of 60 months. The Secretary believes that at least 36 months will be necessary to meet the requirements of the priority. The Secretary will be assessing, during the third year of the project period, whether there is a need to provide funding beyond 36 months.

Priority

This project must—

- Be of national scope;
- Concentrate on curriculum development for training interpreters for individuals who are deaf-blind in order to improve the capabilities of regional projects;
- Furnish technical assistance to the regional projects in training interpreters to meet the communication needs of individuals who are deaf;
- Establish cooperative relationships with the regional interpreter training projects to be funded by the Secretary in fiscal year 1995;
- Use collaborative training approaches, such as workshops and seminars, to address curriculum development, classroom training of interpreters, preparation of interpreter trainers (faculty development), and other activities that will increase the number of interpreters and the skills and knowledge of interpreters to meet the communication needs of individuals who are deaf and individuals who are deaf-blind.

Priority 2—National Project to Address the Interpreting Needs of Culturally Diverse Communities

Background

A national project is needed that will provide technical assistance to interpreter training projects to improve the recruitment of interpreters who are minority group members and to improve the training of interpreters to better meet the special needs of minority individuals who are deaf or deaf-blind. This project would assist all other projects funded under this program in increasing their efforts in these areas and in better meeting the interpreting needs of different cultures.

The interpreter service needs of minority group individuals who are deaf or hard of hearing is an issue that has been raised nationally. An RSA-funded evaluation study reported that approximately 90 percent of graduates from the interpreter training programs around the country are White, while 4 percent are African-American and 5 percent are Hispanic. The National Registry of Interpreters for the Deaf reported that, in a given year, of 2,057 interpreters certified by their registry, only 20 were non-White persons. A Health Interview Survey, conducted by the National Center for Health Statistics in 1990–91, reported that of the 20 million individuals who are deaf or hard of hearing, 1.2 million are Afro-American and 900,000 are Hispanic.

A national project is needed to concentrate on curriculum that will improve the skills of interpreters working with minority group members. Strategies for the recruitment of minority interpreters also need to be developed and made available to the field.

The Secretary has identified a maximum possible project period of 60 months. The Secretary believes that at least 36 months will be necessary to meet the requirements of the priority. The Secretary will be assessing, during the third year of the project period, whether there is a need to provide funding beyond 36 months.

Priority

This project must—

- Be of national scope;
- Provide technical assistance to the regional interpreter training projects supported under this program in recruiting and training interpreters to meet the communication needs of culturally diverse populations;
- Develop curriculum to improve the knowledge of interpreters with respect to social and cultural concepts of interpreting, such as body language, spatial considerations, and communication between individuals from different cultures;
- Establish cooperative relationships with the regional projects to be funded by the Secretary during fiscal year 1995 by conducting workshops and seminars to improve curriculum development, classroom training of interpreters, preparation of interpreter trainers, recruitment outreach to members of racial and ethnic minority groups, and other activities that will increase the number and skills of interpreters to help meet the communication needs of individuals from different cultures; and
- In carrying out project activities, address at a minimum the needs of the minority populations referred to in section 21 of the Rehabilitation Act, including African-Americans, Hispanics, American Indians, and Asian-Americans.

Applicable Program Regulations: 34 CFR Part 396.

Program Authority: 29 U.S.C. 771a(f).

Intergovernmental Review

These programs are 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 these programs.

(Catalog of Federal Domestic Assistance Number 84.264 Rehabilitation Continuing Education Program; 84.246 Rehabilitation Short-Term Training; 84.275 Rehabilitation Training—General; and 84.160 Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind)

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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[CFDA No.: 84.275A]

Rehabilitation Training—National Clearinghouse of Rehabilitation Training Materials

Notice inviting applications for a new award for fiscal year (FY) 1995.

Purpose of Program: The Rehabilitation Training program supports projects to ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs, through supported employment programs, through independent living services programs, and through client assistance

programs. The program supports projects to maintain and upgrade basic skills and knowledge of personnel employed to provide state-of-the-art service delivery systems and rehabilitation technology services.

Deadline for Transmittal of Applications: February 28, 1995.

Deadline for Intergovernmental Review: April 29, 1995.

Applications Available: December 29, 1994.

Available Funds: $250,000.

Estimated Range of Awards: $250,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR Part 385, except §§ 385.31 and 385.32.

Priorities: The priority in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition. For the purpose of this notice, the Secretary designates that priority as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

Selection Criteria:

In evaluating applications for grants under this competition, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the additional 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

For Applications or Information Contact: Robert Werner, U.S. Department of Education, 600 Independence Avenue, S.W., room 3322 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8291. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–29860 Filed 12–2–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.264B]

Rehabilitation Continuing Education Programs

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: The Rehabilitation Continuing Education Programs are designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities throughout a multi-State geographical area.

Eligible Applicants: Applications are invited for the provision of training for Department of Education Regions I, III, VI, and VIII only.

Deadline for Transmittal of Applications: February 28, 1995.

Deadline for Intergovernmental Review: April 29, 1995.

Applications Available: December 29, 1994.

Available Funds: $2,000,000.

Estimated Range of Awards: $490,000–510,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR Part 389.

Priorities: The priority in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register** applies to this competition. For the purpose of this notice, the Secretary designates that priority as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

For Applications or Information Contact: Beverly Steburg, U.S. Department of Education, 600 Independence Avenue S.W., Room 3328 Switzer Building, Washington, D.C. 20203–2649. Telephone: (202) 205–9817. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–29861 Filed 12–2–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.246]

Rehabilitation Short-Term Training

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: The purpose of the Rehabilitation Short-Term Training Program is to provide Federal support for developing and conducting special seminars, institutes, workshops, and technical instruction in areas of special significance to the delivery of vocational, medical, social, and psychological rehabilitation services.

Eligible Applicants: Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

Deadline for Transmittal of Applications: February 28, 1995.

Deadline for Intergovernmental Review: April 29, 1995.

Applications Available: December 29, 1994.

Available Funds: $945,000.

Specific information regarding the estimated range of awards, estimated average size of awards, and estimated number of awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 390.

Priorities: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions. For the purpose of this notice, the Secretary designates those priorities as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

For Applications or Information Contact: For CFDA Nos. 84.246J and 84.246K, contact Beverly Steburg, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3328, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9817. For CFDA No. 84.246B, contact Ellen Chesley, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3318, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9481. For CFDA No. 84.246A, contact Sylvia Johnson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3328, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9312. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

CFDA No.	Priority area	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.246K	Personnel specifically trained to deliver services in client assistance programs	N/A	$200,000	1
84.246B	Training rehabilitation and mental health personnel to provide improved rehabilitation services to individuals with mental illness.	$190,000–$210,000	$200,000	2
84.246A	Training members of American Indian Tribes, State Vocational Rehabilitation Agency Staff, and Rehabilitation Educators on services for American Indians with Disabilities.	N/A	$200,000	1
84.246J	Training impartial hearing officers on provisions of the act	$130,000–$145,000	$145,000	1

[FR Doc. 94–29862 Filed 12–2–94; 8:45 am]
BILLING CODE 4000–01–P

[CFDA No.: 84.160A]

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: The purpose of this program is to train a sufficient number of skilled interpreters to meet the communication needs of individuals who are deaf and individuals who are deaf-blind.

Eligible Applicants: Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

Deadline for Transmittal of Applications: February 28, 1995.

Deadline for Intergovernmental Review: April 29, 1995.

Applications Available: January 3, 1995.

Available Funds: $2,100,000.

Estimated Range of Awards: Regional projects: $120,000-$160,000; National projects: $250,000-$300,000.

Estimated Average Size of Awards: Regional projects: $140,000; National projects: $270,800.

Estimated Number of Awards: Regional projects: 11; National projects: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 385 and 396.

Priorities

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions. For the purpose of this notice, the Secretary designates those priorities as absolute for FY 1995. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

Project Budget: The Department plans to have a project directors' meeting for this program this fiscal year and expects to have annual meetings in future years. The Department, therefore, recommends that travel costs to attend an annual meeting be included in the application budget for the project period.

For Applications or Information Contact: Victor Galloway, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3228 Switzer Building, Washington, D.C. 20202–2736. Telephone: (202) 205–9152. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8352.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 771a(f).

Dated: November 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–29863 Filed 12–2–94; 8:45 am]
BILLING CODE 4000–01–P

Federal Register

Monday
December 5, 1994

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 246 and 266

Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 246 and 266

[Docket No. R-94-1685; FR-3383-F-02]

RIN 2502-AF94

Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans

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

ACTION: Final rule.

SUMMARY: On December 3, 1993, the Department published an interim rule which introduced a new mortgage insurance program authorized by the Housing and Community Development Act of 1992. The program is designed to increase the supply of affordable multifamily units by allowing State and local housing finance agencies (HFAs) to originate and service mortgage loans that are fully insured by HUD's Federal Housing Administration. Under the program, participating HFAs are required to share in the risk associated with monetary losses that may be incurred as a consequence of any loan defaults. Under the interim rule, 33 HFAs were approved to participate in the program. This rule finalizes the standards and procedures of the interim rule after taking into account the concerns expressed, and the recommendations made, during the rule's public comment period.

DATES: Effective date: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: For questions concerning Subparts A-E, contact Jane Luton, Acting Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, room 6116, (202) 708-2556; Subpart F, contact Albert B. Sullivan, Director, Office of Multifamily Housing Management, room 6160, (202) 708-3730; Subpart G, contact John Stahl, Director Multifamily Accounting and Servicing Division, room 6258, (202) 708-0223; Department of Housing and Urban Development 451 Seventh Street SW., Washington, DC 20410. Hearing- and speech-impaired persons may call (202) 708-4594. (The above listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and have been assigned OMB control number 2502-0500.

I. Introduction

Section 542(c) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (1992 Act) as amended by the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103-233, approved April 11, 1994) (1994 Act) authorizes the HUD Secretary to enter into risk-sharing agreements with qualified State or local Housing Finance Agencies (HFAs) to test the effectiveness of certain Federal mortgage loan credit enhancements. (Section 542(c) is a part of subtitle C, title V of the 1992 Act. Section 541 provides that subtitle C, which consists of sections 541 through 544, may be cited as the "Multifamily Housing Finance Improvement Act." This rule implements only section 542(c).) The purpose of section 542(c) is to increase the supply of affordable multifamily housing through partnerships with housing finance agencies (HFAs) where the Department provides full insurance under a risk-sharing agreement to test the effectiveness of providing new forms of Federal credit enhancement for multifamily loans, an intended benefit of which would be increased credit ratings on bond-financed mortgage loans. HUD envisions that, under this program, HFAs will have greater access to capital markets and be able to provide affordable housing in a manner that is both timely and efficient.

The term "partnership" as used in the preceding paragraph and in section 542 is used in the generic sense and not in the technical legal sense. It is not intended to impose any partnership liability on HUD in the event of negligence or other actionable misconduct by an HFA.

The basic structure of the program allows HFAs to carry out certain HUD functions under the program, including the assumption of loan management and property disposition responsibilities for defaulted loans. In the event of a loan default, the HFA is required to share with HUD in any loss arising as a consequence of the loan default.

Section 542(c) prescribes certain requirements for this program, and also authorizes the Secretary to issue such regulations as may be necessary to carry out the program.

II. Legislative Background

The 1992 Act contains definitions for what constitutes "multifamily housing" (section 544(1)), a "qualified" HFA (section 544(2)), and "affordable housing" (section 542(c)(7)). These definitions have been incorporated into the regulation at 24 CFR 266.5.

In addition, section 542(c) prescribes a number of requirements for the program, which may be summarized as follows:

General: HUD is required to execute risk-sharing agreements with qualified HFAs.

Mortgage insurance: Risk-sharing agreements must provide for HUD to fully insure mortgage loans originated by or through HFAs, and for reimbursement to HUD by HFAs for a portion of any losses incurred on the insured loans.

Risk apportionment: The percentage of loss assumed by HUD and the HFA (risk apportionment) must be specified in the risk-sharing agreement between HUD and the HFA. HUD intends to execute a single agreement with each HFA, but the agreement will recognize that the risk apportionment may vary among project loans that are originated by a single HFA. The loan loss percentage for a particular project will be reflected in that project's underlying loan documentation and in an addendum to the risk-sharing agreement.

Reimbursement capacity: The application for participation in this program must demonstrate that the HFA has the financial capacity to fulfill its reimbursement obligations.

Underwriting standards: A qualified HFA that agrees to accept 50 percent or more of the risk of loss on a loan may employ its own underwriting standards, loan terms and conditions. However, where HUD retains more than 50 percent of the risk, it may impose additional underwriting standards, and loan terms and conditions.

Other requirements: Section 542(c) also requires HUD to establish a schedule for mortgage insurance premiums that reflects the risk apportionment for the loan. Lower or nominal premiums will apply to HFAs that assume a greater share of the risk of loss. In addition, HUD is prohibited from applying "identity of interest" provisions in risk-sharing agreements (section 542(c)(5)); and GNMA is prohibited from issuing securities for loans insured under the program (section 542(c)(6)).

Finally, HUD may issue commitments for mortgages that, in the aggregate, do not exceed 30,000 units between now

and September 30, 1995 (section 542(c)(4)). The Congress may expand the program after that date, but no determination will be made until the Secretary has submitted reports (including any recommendations for legislation) to the Congress, as required under section 542(d)(3). (*See*, section 542(c)(4).)

III. The Regulation

The legislation authorizing this program prescribes certain requirements in relation to eligibility and risk apportionment. As a matter of policy, in its formulation of this regulation, HUD has decided to afford qualified HFAs very broad responsibility for the administration of the program, although HUD will monitor HFAs' activities. In addition to underwriting and processing loans, HFAs will service loans, provide management oversight of the projects, and dispose of properties subject to mortgages that fall into default. The regulation provides for sanctions in the event that an HFA is found to be in noncompliance with the requirements of the regulation.

It is to be noted that for this program the Congress, in section 542(c)(2)(E) of the 1992 Act, has assigned to qualified HFAs the responsibility for using their own "underwriting standards and loan terms and conditions for purposes of loans to be insured under this subsection" without further review by the Secretary, except that the Secretary may impose "additional underwriting criteria and loan terms and conditions" in cases where the Secretary retains more than 50 percent of the risk of loss. Further, Congress has authorized HUD through section 542(c)(8) to issue such regulations as may be necessary to carry out this risk-sharing program.

In cases involving "insurance upon completion," HUD will be responsible for final endorsement of the mortgage note for insurance. In cases involving "insurance of advances," HUD will be responsible for the initial and final endorsement of the mortgage note for insurance in a maximum amount set forth on the note. The amount of the insurance, however, will be only to the extent of advances approved during the construction process. The Department has decided to delegate to HFAs the responsibilities for the insurance of advances and cost certification functions. These functions are relevant to the insurance process and are carried out by HUD in full insurance programs under the National Housing Act.

Since the functions proposed for delegation are integral to the insurance process, the Department has determined that the delegation would be legally sustainable if HUD retains the authority to make adjustments to the insured mortgage amount during the period up to and including the time of final endorsement, which it has done in § 266.417 of the rule.

HUD's reservation of final authority to adjust the insured mortgage amount is not meant to suggest that HUD will, as a matter of policy, routinely review all decisions of HFAs about the insurance of advances and cost certification processes. For example, the Commissioner could review the insurance of advances and cost certification processes on a random basis and, up to and including the time of final endorsement, correct errors by adjusting the amount of mortgage insurance. Examples of such reviews of the insurance of advances process could involve a HUD evaluation of an HFA's approval of advances to determine whether such approval is consistent with construction progress. The Department could assess whether other mortgageable items were supported with proper bills and/or receipts before funds were approved. The Department also could consider whether the loan remains in balance by comparison of actual disbursements against a project completion schedule and other loan closing documents. Unless additional requirements are imposed by HUD because it insures more than 50 percent of the risk, the review at cost certification would only involve an assessment that the maximum insurable mortgage amount is supported by costs incurred and approved for the project by the HFA. By this reservation of authority to adjust the mortgage amount, HUD also is reducing any adverse effect from fees, which are linked to mortgage amount, that the HFAs may earn in connection with the project loan.

Notwithstanding the retention by HUD of ultimate authority to adjust the insured mortgage amount, the HFAs still would be carrying out an important function in connection with the insurance of advances and cost certification processes. The delegation of this function is consistent with Congress' view in section 542(a) of the 1992 Act that the relationship between HUD and HFAs is to be a partnership and that major functions are to be the responsibilities of the HFAs as evidenced by the direct assignment of underwriting functions in section 542(c)(2)(E).

The regulation will be contained in a new part 266 in title 24 of the Code of Federal Regulations, which consists of six subparts. A brief summary of each subpart follows.

Subpart A—General Provisions

Subpart A sets forth the purpose and scope of the regulation. It cites the legislative background, and indicates HUD's policy decision to vest broad responsibility for the conduct of the program in participating HFAs. Subpart A also includes definitions of terms used throughout the regulation.

Section 266.10, Allocations of Authority and Credit Subsidy, states that HUD will issue notices in the **Federal Register** inviting State and local HFAs to apply for participation in the program. Earlier provisions contained in the interim rule relating to planned HUD allocations and state-wide caps on the amount of assistance are deleted in this final rule. Those topics instead will be covered in the **Federal Register** Notice.

Section 266.15 describes key components that must be included in the risk-sharing agreement executed between HUD and the HFA. Among other things, the risk-sharing agreement will reflect the agreed upon risk apportionment; the number of units allocated to the HFA; description (*i.e.*, incorporation by reference) of the HFA's standards and procedures for underwriting and servicing of loans; and a list of required HFA certifications designed to assure its proper performance under the program. (The list of certifications is not comprehensive and is subject to change as circumstances and experience dictate.)

Appraisals of all properties must be performed by Certified General Appraisers, licensed in the State in which the property is located, and must be completed in accordance with the Uniform Standards of Professional Appraisal Practice. In addition, 24 CFR part 267 (see final rule published October 3, 1994 at 59 FR 50456), establishes a reporting requirement for the gender and minority classification for appraisers. Compliance with this reporting requirement will be included in the risk sharing agreement.

Subpart A contains sections indicating that future regulatory amendments will not impair previously recognized contract rights and that HUD has no obligation to recognize or deal with parties other than the HFA, in the latter's role as mortgagee of record under a contract of mortgage insurance. Section 266.30 provides that the provisions of 24 CFR part 246 (Local Rent Control) do not apply to this program. The Department will not be utilizing its constitutional authority to preempt local rent control laws for projects with mortgages insured under

part 266. Representatives of HFAs have advised the Department that many HFAs, both State and local, already have such authority and, therefore, the absence of access to the Federal preemption authority would in no way restrict or interfere with the manner in which HFAs currently operate. Since the program involves risk to both HFAs and the Federal government, the Federal interest will be adequately protected by HFAs who use their preemption authority to protect their own interests.

The interim rule also contains a general waiver provision in § 266.35. Under that section, the Commissioner may, upon a finding of good cause, waive any provision in part 266 that is not a statutory requirement, except that the Commissioner will not consider waivers of financial requirements for participating HFAs or underwriting standards required by HUD for Level II participants. All waivers granted under § 266.35 will be in writing and will be published in the **Federal Register**, as required by section 7(q) of the Department of Housing and Development Act (42 U.S.C. 3535(q)).

Subpart B—Agency Requirements

Subpart B describes the criteria HFAs must meet to qualify under the program. It became evident during HUD's review of the applications for participation in the pilot program that there was some confusion as to the interpretation of the term in section 544(2)(B) which defines a qualified housing agency as one that "receives a rating of 'A' for its general obligation bonds." Some agencies interpreted this to mean that an "A" rating on bonds financing a particular project met the definition.

This interpretation would be inconsistent with sections 544(2)(A) and (2)(C), which require evidence of a strong financial capacity on the part of the agency. Such a construction would permit an HFA with one strong bond issue and several other issuances with ratings below "A" to claim that they met the qualified agency criteria. The Department does not construe this to be in accordance with the intent of Congress. In this final rule, HUD interprets the phrase "general obligation bonds" to mean the rating on bonds issued by the HFA based on the strength of the general obligation of the agency itself. Like the "top-tier" rating, a rating of "A" on general obligation bonds is provided by nationally recognized rating agencies only after thorough review and analysis of an agency's financial, administrative and operational capacity. This rating based on the strength of an agency's general obligation pertains to issuance of bonds and other debt instruments that are backed by income/resources from unencumbered fund balances rather than by cash flow from a particular project or projects.

Two levels of approval—Level I and Level II—are described in § 266.100. The primary distinction between the two levels is in the level of risk apportionment an HFA agrees to undertake. HFAs participating at Level I are those that will assume 50 percent or more of the risk associated with a loan default. Level II participants will assume 10 or 25 percent of the risk.

The regulation requires any applicant HFA (whether it selects either Level I or Level II, or both Level I and Level II approval) to meet eligibility standards and application requirements. Eligibility is predicated on an HFA's demonstrable high financial capacity and/or experience and capability in the field of multifamily housing. Application requirements are designed to elicit the HFA's (legal and other) capacity to function in the program.

Subpart B also sets forth minimum reserve requirements that must be met by participating HFAs (§ 266.110). An HFA is required to maintain its basic sound financial capacity at all times. An HFA that qualifies for the program under the criteria in section 544(2) (A) or (B) of the 1992 Act (*i.e.*, is designated "top-tier, or the equivalent thereof" or receives an overall rating of "A" on its general obligation bonds from a nationally recognized rating agency) will not be required to maintain additional reserves unless determined necessary by the Commissioner. "Other agencies," *i.e.*, those that qualify based on other criteria, will be required to establish minimum reserve requirements that are set forth in § 266.110(b). Any HFA that initially qualifies under, but later loses, the "top-tier or equivalent" designation or an overall rating of "A" on its general obligation bonds will be required to immediately establish and maintain the reserve amounts required for "other agencies" by § 266.110(b).

The final rule clarifies two requirements set forth in the interim rule. First, it makes clear (§ 266.105(b)(1)) that there must be documentation satisfactory to the Commissioner that the HFA meets the qualification requirements of § 266.100(a). This documentation must be submitted as a part of its application. Second, it provides that any dedicated account required under § 266.110(b) must be established prior to execution of any Risk Sharing Agreement.

Sections 266.115–266.125 describe the monitoring and evaluation activities and requirements of the program, the kinds of HFA conduct that could give rise to sanctions by the Department, and the nature of sanctions that HUD may impose. The rule provides HFAs the right to an informal hearing where sanctions have been applied.

In this final rule, the language of § 266.15(b)(5) relating to the availability of HFA financial and other records for HUD inspection is revised to reflect the statutory phrasing enacted as section 307(b)(2) of the 1994 Act.

Finally, § 266.130 provides that HFAs may obtain reinsurance for their portion of the risk and describes the conditions under which reinsurance will be permitted.

Subpart C—Program Requirements

Subpart C contains program requirements such as project eligibility and fair housing and equal opportunity requirements. It also describes review functions to be retained by HUD as well as those delegated to HFAs.

Project size and affordability requirements in the rule follow the authorizing legislation. Subject to requirements in the regulation, mortgage insurance will be available under this program for project new construction and substantial rehabilitation, and for existing projects without substantial rehabilitation. Similarly, projects receiving section 8 or other rental subsidies are eligible for insurance under the program, subject to limitations on the rent levels. These limits are designed to ensure that project rents are clearly adequate to support the mortgage. Other eligible projects include single room occupancy (SRO) projects, board and care and assisted living facilities, and projects designed for persons 62 years of age or more. In response to providers of affordable housing, mobile home parks (exclusive of the mobile homes) have been added as an eligible housing type. This will permit HFAs to provide this important type of affordable housing through the Risk-Sharing Program. Transient housing, hotels, nursing homes and intermediate care facilities, and projects located in military impact areas are ineligible for insurance under this program.

The final rule makes clear that, for purposes of this pilot program, cooperative properties are considered rental housing, just as they are under the National Housing Act (see § 266.200(a)). While section 542(c)(7) refers to rents, and section 544 defines multifamily housing as covering not less

than five (5) "rental" units on one (1) site, cooperative carrying charges are similar to rents and HUD does not believe that Congress intended to preclude the insurance of mortgages for cooperatives under the program.

HUD will retain responsibility for assessing the "previous participation" of mortgagors, contractors, consultants or management agents in HUD programs and for intergovernmental and environmental review. HUD will delegate to HFAs the functions pertaining to a project's affirmative fair housing marketing plan and certain activities under the Davis-Bacon Act.

With respect to HUD environmental reviews, it should be noted that section 307(b)(4) of the 1994 Act authorizes the Secretary of HUD, under such regulation in lieu of the environmental protection procedures otherwise applicable, to provide for agreements to endorse for insurance mortgages under this pilot program upon the request of qualified HFAs if the State or unit of general local government, as designated by the Secretary, assumes all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969 and other relevant laws. The statute goes into further detail as to what specific provisions will be contained in any regulations the Secretary may issue. The Department has in process draft regulations to implement this section 307(b)(4) of the '94 Act, which will be promulgated in the **Federal Register** as a separate rule, which will amend both this final rule and 24 CFR part 58—Environmental Review Procedures for the Community Development Block Grant, Rental Rehabilitation, and Housing Development Grant Programs. Until such time as this new rule takes effect, the Department will retain responsibility for assuring compliance with the National Environmental Policy Act of 1969 and related laws.

Section 542(c) of the Act does not statutorily require payment of prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act on projects receiving mortgage insurance under the pilot program. However, the Department has administratively determined that it will require payment of Davis-Bacon wage rates on certain projects receiving mortgage insurance under the program. As provided in § 266.225 of the rule, Davis-Bacon wage rates will be required to be paid to all laborers and mechanics (except volunteers) employed by contractors and subcontractors on projects (1) for which advances are insured under this part; (2) which involve new construction or substantial rehabilitation; and (3) which will contain 12 or more dwelling units. Davis-Bacon requirements will apply only if all of these conditions are met, unless Davis-Bacon wage rates are applicable by reason of assistance from another Federal program. (For example, if assistance under Section 8 is also used in connection with a project under this part that involves minor rehabilitation, Davis-Bacon requirements would apply to the project if it contains nine or more Section 8-assisted units.) The Department has decided to require payment of Davis-Bacon wage rates to ensure that prevailing wage requirements under this program are generally comparable to similar provisions required by statute for multifamily mortgage insurance programs under the National Housing Act.

The rule also states that while the Commissioner retains responsibility for enforcement of labor standards under this section, the Commissioner may delegate to the HFA information collection (*e.g.*, payroll review and routine interviews) and other routine administration and enforcement functions, subject to monitoring by the Commissioner. The Department intends to delegate such routine administration and enforcement functions to HFAs. This delegation is consistent with the Department's decision to delegate many of the functions relating to insurance of individual projects to the HFAs. The delegation is also consistent with the Department's longstanding delegation of routine Davis-Bacon functions to States and local governments under the Community Development Block Grant program.

Subpart D—Processing, Development, and Approval

Subpart D describes functions that the HFA and HUD will undertake in relation to a loan origination and HUD insurance endorsement.

An HFA that assumes 50 percent or more of the risk associated with a loan may use its own underwriting standards and loan terms and conditions to underwrite and approve loans. Where an HFA assumes less than 50 percent of the risk, underwriting standards and loan terms and conditions are subject to HUD review, modification and approval. The rule provisions also cover responsibilities of HFAs concerning such matters as project feasibility, acceptability of the mortgagor, and inspections during the project construction period.

Section 266.310 provides the circumstances where HUD will insure loan advances, or agree to insure the entire mortgage upon completion of construction. Where a mortgage is endorsed for insurance, the interim rule provides that the HFA must remain the mortgagee of record for as long as mortgage insurance is in force.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

Subpart E contains requirements that relate to the mortgage and the property that secures the insured loan.

The Department recognizes that section 542(c)(2)(E) provides that HFAs are permitted to use their own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this program where the HFA is assuming 50 percent or more of the risk of loss. Where the Secretary retains more than 50 percent of the risk of loss, section 542(c)(2)(E) permits the Secretary to impose additional underwriting criteria and loan terms and conditions on loans to be insured under the program. However, it is the Department's view that Congress intended, in enacting section 542(c), to develop a fiscally prudent mortgage insurance program. The interim rule cited several examples of HUD regulations being imposed by the Department, including the requirement that the HUD-insured mortgage constitute a first lien. Subsequent to publication of the interim rule, Congress expressly amended the Act to establish as a program requirement that the insured mortgage be a first lien. However, the Department believes that Congress did not intend to preclude other HUD regulations that would provide: (1) that the HUD-insured mortgage be regularly amortizing; (2) that the insured mortgage contain a covenant against the change in use of the insured property; (3) that the insured mortgage contain a covenant requiring the mortgagor to keep the property, which is security for the mortgage, insured against loss due to fire or other hazards; and (4) that the regulatory agreement executed by the mortgagor contain a provision requiring that the mortgagor be a sole asset mortgagor.

Amortization. The Department does not believe that Congress, in its enactment of section 542(c), intended to permit the use of riskier financing practices such as balloon payment terms and negative amortization. Use of these types of financing practices in insured programs could increase the chances

that an insured mortgage would go into default or otherwise increase the Department's exposure on a mortgage where the terms of the financing permitted negative amortization. It is the Department's view that requiring a mortgage to be regularly amortizing would curtail the use of riskier financing practices that could jeopardize the stability of the insured loan.

Change in use. The Department's purpose in requiring that a mortgage insured under this program contain a covenant prohibiting a change in use of the insured property was to carry out the intent of Congress that the mortgage insurance be used to provide affordable residential housing, rather than for some commercial enterprise, such as a hotel or office building. It has been HUD's view in all of its insurance programs, and it is HUD's view in this rule, that such a provision is not intended to preclude the conversion of a project from rental to cooperative housing since both rental and cooperative housing are residential housing. The "change in use" provision is intended to preclude the conversion of a project from residential use to some other form of use, *e.g*, commercial use.

Hazard insurance. The Department does not believe that Congress, in enacting the section 542(c) risk-sharing program, intended for the Secretary to insure a mortgage on a project that is not insured against damage or destruction due to fire or other hazards. Additionally, the Department cannot conceive of an HFA making a loan on a project that is not insured against loss due to hazards. The requirement that a mortgagor under a mortgage have hazard insurance is a standard mortgage industry practice. Additionally, it is the Department's position that hazard insurance is a fundamental requirement of Federal mortgage insurance to protect the public fisc against loss of public assets and, therefore, must be required in this program.

Single asset mortgagor. The requirement that a mortgagor be a single asset mortgagor is a requirement that is critical to the Department's ability to prevent the mortgagor of an insured project from commingling funds of the insured project with other assets that a mortgagor entity might own, if permitted. If the Department were to allow a mortgagor entity to own assets other than the insured project, this would increase the chances of a mortgagor siphoning off funds from an insured project for use in a conventionally financed project. This could result in the mortgagor of the insured mortgage suffering severe financial difficulty, possibly defaulting on the insured mortgage and a subsequent insurance claim being filed by the HFA. In addition, the assets of an insured project could become at risk, as a result of their application to the debts of a conventionally financed project in financial difficulty where both projects have the same owner.

Other provisions in subpart E pertain to the closing of a mortgage loan. The closing will be held by the HFA, which is then required to submit a closing docket (with required documentation) to HUD for insurance endorsement. The required documentation is set forth in the interim rule as well.

Subpart F—Project Management and Servicing

Subpart F sets out the rules for HFAs to service loans and manage projects.

The HFA will have broad responsibility for the administration of this program, including monitoring and determining the compliance of the project owner with the requirements of this rule. HUD will not hold or be a party to any mortgage or note instruments between the mortgagor and the HFA. HUD will, however, monitor the performance of the HFA to determine its compliance with this subpart.

Section 266.505 lists certain requirements that must be included in the regulatory agreement that is executed by the HFA and the project owner. Those requirements are necessary to assure that the owner will maintain the sound financial and physical condition of the project, and maintain the project as an affordable housing resource. Section 266.510 describes the responsibilities of the HFA for annual project inspections, review of an owner's compliance with the affirmative fair housing marketing plan, and analysis of the owner's annual audit and recordkeeping.

Subpart G—Contract Rights and Obligations

Subpart G contains provisions with regard to the mortgage insurance premium (MIP) in §§ 266.600–266.608. In accordance with section 542(c)(3), the rule provides for a "sliding scale" of MIP payments, with reduced amounts payable in inverse proportion to the increase in an HFA's risk apportionment. Risk apportionment percentages range from 10 to 90 percent. At the high end, an HFA assuming 90 percent of the risk would be required to pay a .05 percent MIP based upon the average outstanding principal balance (without taking into account delinquent payments or prepayments) per annum. At the other end of the spectrum, an HFA assuming 10 percent of the risk would be required to pay a .45 percent MIP based upon the average outstanding principal balance per annum.

Subpart G also contains provisions on insurance endorsement and assignments. Endorsement of the original credit instrument will indicate the Commissioner's insurance of the mortgage. Section 542(c)(2)(B) of the 1992 Act provides for full mortgage insurance for loans originated by or through qualified HFAs. While this provision clearly permits qualified HFAs to underwrite loans for other HFAs or mortgage entities or to sell their loans in the secondary market, the Department discussed this option with HFA representatives with particular concern about how the HFA would maintain its risk-sharing obligation in such transactions. In view of the complexities of implementing this aspect of the statute and the desire to implement the pilot program in a timely manner, it was agreed between the HFAs and HUD that entities other than approved HFAs would not be permitted to be mortgagees originating loans to be insured under this program. The one exception was with respect to the transfer of partial interest under a participation agreement. Section 266.616 permits the transfer of up to 100 percent of the beneficial interest in a loan or a pool of loans insured under part 266, provided that, among other things, the HFA remains the mortgagee of record and is the party with whom the Commissioner deals under the contract of mortgage insurance.

Section 266.620 describes the circumstances under which the contract of insurance will terminate. These are (1) payment in full of the mortgage; (2) acquisition of the mortgaged property by the HFA and notification to the Commissioner that no claim for insurance benefits will be made; (3) acquisition of the property at a foreclosure sale by a party other than the HFA; (4) notification by the HFA to the Commissioner of voluntary termination; (5) a finding of fraud or material misrepresentation on the part of the HFA or its successors with respect to the contract of insurance; or (6) receipt by the Commissioner of an application for final claims settlement.

The latter part of subpart G describes the procedures for filing a claim upon a default, determining the amount of the claim, and payment of the claim. Section 266.630 describes the requirements for filing for a partial payment of a claim. This section is intended to avoid full insurance claim

payments by providing the HFA with flexibility to deal with a nonperforming mortgage where the default is due to circumstances beyond the mortgagor's control and the financial relief provided by the HFA is sufficient to restore the financial viability of the project. When the conditions of this section are met, an HFA may reduce the unpaid principal balance of the insured mortgage by up to 50 percent and may defer delinquent interest. The HFA must secure the mortgagor's repayment of this relief with a second mortgage, which can have deferred amortization thereby allowing the mortgagor to repay the second mortgage in increasingly larger amounts as the project's cash flow improves.

Under this partial claim procedure, upon the HFA providing the above-described relief, HUD makes a partial claim payment to the HFA in an amount that is a percentage of the relief provided by the HFA to the mortgagor. The percentage is equal to HUD's percentage of the risk of loss on the original mortgage loan or 50 percent, whichever is less. The HFA, in turn, must remit to HUD the same percentage of all amounts that it collects on its second mortgage.

When HUD pays a claim (*i.e.*, entire amount, in cash), § 266.638 provides that the HFA will issue a debenture (or a promissory note, a bond, or any other instrument, hereinafter referred to as "debenture") to HUD for the full amount of the claim. The debenture will have a term of five years in order to afford the HFA ample time to work with the mortgagor to cure the default or foreclose and/or resell the project. During the five year period, the HFA will pay HUD interest on the debenture, due and payable on the anniversary of the claim payment. At the end of five years, or at the point of settlement when the debenture is paid, HUD will determine the amount of losses to be apportioned between HUD and the HFA.

Sections 266.640 through 266.656 concern the final disposition of a claim, including the HFA's ability to accept a deed-in-lieu of foreclosure; the use of an appraisal to determine property value in the absence of a foreclosure sale; the manner in which the amount of a loss is determined; and final settlement.

IV. Public Comment on Interim Rule

On December 3, 1993 the Department published in the **Federal Register** (58 FR 64032) an interim rule entitled Housing Finance Agency Risk Sharing Program for Insured Affordable Multifamily Loans. What follows is a description of the significant issues raised by the public in written comments on the rule along with HUD's responses to each of these issues.

During the public comment period, the Department received 12 comments from the following commenters:

1. Idaho Housing Agency
2. Massachusetts Housing Finance Agency
3. National Association of Home Builders
4. Congressman Owen Pickett (2nd Dist., Virginia)
5. American Institute of Certified Public Accountants
6. Colorado Housing and Finance Authority
7. National Council of State Housing Agencies
8. Association of Local Housing Agencies
9. Mortgage Bankers Association
10. American Association of Retired Persons
11. President, Hoover Mortgage Company, Spokane, WA
12. Michigan State Housing Development Authority

The commenters generally favored the program, with comments or recommendations on the specific areas discussed below. The commenters are referred to by their corresponding numbers as listed above.

Section 266.10 Fund allocations.

Comments. Commenter 7 pointed out that the rule states that HUD will allocate unused insuring authority at the beginning of FY 1995, and the draft handbook indicates that HUD may increase or decrease these allocations at the end of FY 1994 depending upon the number of units that have received initial endorsement. The commenter recommended that since HFAs will only have six months to process applications in FY 1994, HUD reduce a participating HFA's allocations only if the HFA agrees that it will be unable to use all its insurance authority by the end of FY 1995. Commenter 1 was also concerned about the short time left in FY 1994 after the application process, and asked whether an HFA would risk the possibility of losing units that are in the application process but which have not reached initial endorsement. That commenter believed that the September 30, 1994 deadline for achieving initial endorsement seemed very unrealistic.

Commenter 9 referred to the limit of 30,000 units that may be insured under the pilot program through Fiscal Year 1995, stating that it does not believe the program will produce a high level of production. Citing the complicated, staff-intensive, and time-consuming transactions involved in underwriting loans of this type, the commenter is of the opinion that risk-sharing with HFAs can only serve as a modest supplement to existing FHA programs. The commenter recommended that HUD improve the delivery of multifamily mortgage insurance under its regular insurance programs as well as under special programs and initiatives such as this one.

Commenter 11 expressed somewhat similar views and urged improvement and augmentation of HUD's multifamily housing staff capabilities.

HUD Response. Because the publication of the interim rule and approval of qualified HFAs occurred later than anticipated, the interim rule and draft administrative handbook do not reflect the correct schedule for reallocation of units for the Pilot program. Unit set-asides and allocations were made in March 1994. Unit allocations may not be used by an HFA until a Risk-Sharing Agreement (RSA) is executed. The time required for HFAs to sign RSAs and return them to HUD has been longer than expected. It is likely that some HFAs may not even have an executed RSA until some time in FY 1995. Therefore, rather than reallocating units at the end of FY 1994, HUD will wait until January 1995 to assess usage and reallocate if necessary.

In the meantime, the Department will use a portion of the 10,000 unit holdback on a "first come, first served" basis for increases to HFA set-asides that have been exhausted. In addition, units will be considered used at an earlier stage—when the Firm Approval Letter is issued—not at initial endorsement. Credit subsidy for a project will also be obligated by the firm approval stage which is a change from the language in the interim rule. Credit subsidy will be obligated and allocated in accordance with outstanding Department instructions.

With respect to the comment regarding use of the units, the Department anticipates that the 30,000 units allocated to the program will be used for the demonstration. The delivery of multifamily mortgage insurance under HUD's regular programs is not the subject of this interim rule. The Risk-Sharing program is a partnership with State and local HFAs to increase the supply of affordable housing; it is not meant to be a substitute for other HUD insurance programs. However, the Department does anticipate that the pilot will become a model for augmenting mortgage insurance capability. In any event, the Department will carefully study the results of the pilot period and expand the program accordingly.

In this regard, although not in response to public comment, we note that it is likely that the program will be expanded, perhaps by another 30,000 units for use beyond the end of FY 1995. The regulation and the above comments do not currently assume this extension. Should this occur during the regulation process, further consideration about reopening the window for application submission and methods for reallocation of units will be required.

Section 266.15 Risk-Sharing Agreement.

Comments. Commenter 12 suggested that the requirement in § 266.15(b)(5)(viii) for a certification from the HFA that it has errors and omissions insurance should be changed or eliminated to reflect situations where HFA employees are covered by a fidelity bond that covers all state employees. The same commenter stated that the requirement in § 266.15(b)(8) for the highest level of appraiser certification is not necessary. The commenter does not employ the use of appraisals for the purpose of establishing completed project value or mortgage amount, but rather to determine the maximum amount of land value (or an existing building's value in the case of rehab) to be recognized in the mortgage calculation.

HUD Response. The program does require that HFAs have errors and omissions insurance and this is reflected in the Risk-Sharing Agreement. If there is an impediment that precludes the HFA from obtaining this insurance, the Department will consider waivers for good cause and with adequate protection under some other means. This provision has, in fact, been waived for two HFAs that were either covered under State provisions or where the State was self-insured. In these cases, this provision of the RSA was modified.

With respect to the comment about use of certified appraisers, the Risk-Sharing program regulation does require compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP requires use of a Certified General Appraiser for work done under either Standard 1, for determining value, or Standard 4, real estate consultations. This latter Standard covers multifamily cases where value is not determined using the standard three approaches to value but the appraiser does a rental and expense analysis and calculates a capitalized value, similar to what HUD does in the Section 221(d)(4) program.

Subpart B—Housing Finance Agency Requirements

Section 266.100 Qualified HFA.

Comments. Commenter 9 expressed a concern that the number of HFAs qualified to originate, underwrite, service and manage multifamily loans is severely limited. The commenter did not question the importance or relevance of the rule's criteria for an HFA to have a certain level of internal staff capacity to review and evaluate work of any contractors it may hire to perform technical services, to make underwriting conclusions, and to oversee its loan portfolio, and that an HFA have an established record in multifamily loan processing, servicing and property disposition, but believes the ability of most HFAs to hire experienced personnel or train existing staff is limited because of local and state budget constraints. The commenter believes that this limited ability to participate will leave many parts of the country with no representation or service.

HUD Response. The Department was pleased to approve 33 applicants under the Risk-Sharing Pilot including 26 States, the District of Columbia, Puerto Rico and 5 localities. The States approved included many of the most populous States—California, New York, Texas, Florida, Pennsylvania, Illinois, Michigan, New Jersey and Massachusetts.

Section 266.105 Application requirements.

Comments. Commenter 5 questioned the requirement in § 266.105(b)(12) for an unaudited interim financial statement if the latest audit statement of an HFA is more than six months old. The commenter stated that the requirement should be more specific about the information to be provided, the time period to be covered, and the standard of accounting to be used. The same commenter stated that the information requested in the additional application requirements for HFAs without top-tier designation or overall rating of "A" (paragraph (c)) could be derived from an HFA's comprehensive annual financial report that also includes its audited financial statements. The commenter suggested that the information be provided only if unavailable in other documents submitted.

Commenter 12 stated that the "highest quality compliance plan" requirement in § 266.105(b)(4) is redundant, since other requirements in the application process will ensure the same result.

HUD Response. The Department has determined after reviewing the large number of applications submitted for participation in the pilot program that the requirement in paragraph § 266.105(b)(12) for an unaudited interim financial statement if the latest HFA audit is more than 6 months old is not only unclear but is unnecessary. This requirement has been removed from the text of this final rule.

However, the requirement for submission of the Questionnaire outlined in the Notice of Invitation and referred to in § 266.105(c) is critical to HUD's capacity to review applications. HFAs with a "top-tier" designation or "A" rating on their general obligation bonds from a national rating agency are subject to an intensive in-depth review of their operations, financial status, administrative capability and a host of other components comprising the other items on the Questionnaire by the rating agencies. Absent that review, HUD must make the same kind of analysis based on the Questionnaire, which is in a clear, concise and focused form. It also affords the HFA the opportunity to present their operations and capacity in a concise and positive way to the Department during the review process.

The quality control plan supplements the other descriptive material submitted relative to underwriting standards and procedures, staff capacity, etc., by indicating the checks and balances within the HFA to ensure compliance with procedures and requirements whether performed by in-house staff or, more particularly, by contract personnel.

Section 266.115 Program monitoring and evaluation.

Comments. Commenter 9 expressed a concern about the program allowing Level I participants to use their own underwriting criteria, fearing that it will make monitoring and reviewing by HUD more difficult. The commenter used the example of HUD's failure to adequately monitor coinsuring lenders who used HUD-established underwriting criteria and to impose sanctions when necessary. The commenter recommended that HUD reconsider its ability to monitor before delegating so much authority to third parties.

Commenter 12 suggested that the § 266.115 requirement for semiannual reports is burdensome, and should be changed to annual reports. The commenter also believes that these reports should only contain information indicating a problem or workout. The commenter also suggested that annual physical inspection and audit reports be sent to HUD only in cases where the

HFA determines there is a likelihood of a claim.

HUD Response. With respect to Level I participants using their own underwriting criteria, the statute specifies that HFAs taking 50 percent or more of the risk (i.e., Level I participants) may use their own underwriting standards and loan terms and conditions. As to the comment on semiannual reports, the Department feels it is imperative that we be able to assess the progress and identify any impending problems through this reporting system. The data requested will also help HUD track other matters, such as MIP. Coupled with annual physical inspection reports and project audit reports, this data will aid HUD in meeting its oversight and monitoring responsibility to make its own informed decision as to whether there is a likelihood of a claim.

Sections 266.120, 266.125 Sanctions.

Comments. Commenter 12 pointed out that § 266.120(e)(13) should be changed to make clear that Level I lenders cannot potentially be penalized for following their own underwriting standards. The commenter also recommended eliminating the provision in § 266.125(a)(4) that allows HUD to terminate insurance in cases of fraud or material misrepresentation by the HFA. The commenter fears that the provision will be unacceptable to bond holders or secondary mortgage market investors who will not be able to rely on the insurance. According to the commenter, the government's interests are adequately protected under § 266.125(a)(2) by the HFA being required to assume a higher risk level.

HUD Response. Level I HFAs may use their own underwriting standards but must, nevertheless, also act prudently in accordance with generally accepted practices. This provision is not intended to penalize participants for plausible judgments about underwriting considerations but, rather, to prohibit the wide-scale abuse that occurred under the coinsurance program. We also note that the provision in § 266.125(a)(4) that allows HUD to terminate insurance in cases of fraud or material misrepresentation by the HFA is the same as for HUD-processed insurance programs under the National Housing Act. Projects insured under the National Housing Act are often bond-financed or sold on the secondary market, so this provision should not be unacceptable to bond holders or secondary markets. Moreover, two of the major rating agencies have thoroughly reviewed this program and have determined this provision, among others, to be satisfactory. They anticipate that they will be rating such loans with bond financing as AAA.

Subpart C—Program Requirements

Sections 266.200, 266.205 Eligible and ineligible projects.

Comments. Transaction costs. Three commenters (1, 2, 7) objected to the requirement that HUD determine whether the transaction costs for existing projects to be acquired are reasonable. The commenters believe this is inconsistent with the statute that allows HFAs to use their own underwriting standards.

Section 8 projects. Commenter 7 also objected to the provision that Section 8 projects may be insured under the program only if the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or market rents in similar projects. The commenter stated that HUD should allow HFAs to insure Section 8 project mortgages without restriction, because it is common for Section 8 rents to exceed market rents, and the restriction unnecessarily and unreasonably limits the use of the program to support financing those projects. Further, the commenter stated that HUD does not provide incentives to reduce the cost of Section 8 projects through refinancing, and believes HFAs should be allowed to retain savings from refinancing those projects.

Board and care/assisted living facilities. Two comments (10, 12) were directed to the restrictions on services that can be provided by board and care/assisted living facilities. Both commenters recommended clarification with regard to the ineligibility of retirement service centers, stating that central kitchens and dining rooms are not necessarily "luxury accommodations," especially where residents are not required to use them. Commenter 10 stated that a strict interpretation of the provision would effectively forbid financing of board and care or assisted living facilities despite its explicit intention of doing so.

Commenter 10 also included a lengthy discussion of the need for special regulations and underwriting standards to govern the financing of assisted living facilities under the risk-sharing demonstration. The commenter pointed out that HUD's own findings when it issued new underwriting standards for the Retirement Service Center (RSC) program just before suspension of the program strongly argue for different underwriting standards for such projects. The commenter argues that the program did not fail because too many services were offered, but rather because the Department underestimated the care needs of the residents and did not adequately examine the financing of necessary services. According to the commenter, the HFA Risk-Sharing program ignores the fundamental lesson of the RSC program that supportive services are essential to a project's success.

Military impact area. Commenters 3 and 4 objected to the definition of "military impact area," stating that it is too broad. First, they argue that the designation of such an area as one in which military-connected households comprise 20 percent or more of the total households in the market area would exclude areas with stable military populations at installations with a certain future. Further, they state that the definition of a "military-connected household" is too broad and the data to ascertain such households are unavailable. Secondly, the commenters object to the total reduction in military households test, stating that it does not apply to many areas in the country where a "total" reduction is not a meaningful possibility.

HUD Response. Transaction costs and Section 8 projects. It was not the original intent of the Department to include either existing projects or Section 8 (or other rental assistance) projects in the Risk-Sharing program. The legislation and legislative history emphasize the expansion of affordable housing opportunities through the program. However, discussions with the industry convinced us that there were certain limited circumstances where the Risk-Sharing program might be warranted for such projects. The compromise reached as a result of these consultations was: (1) the limitation on transaction costs for existing projects, and (2) the requirements relative to establishing the processing rents to be used in determining the maximum insurable mortgage for Section 8 projects that would ensure that project rents are clearly adequate to support the insured mortgage even when the rental assistance contract is shorter than the mortgage term. (This provision is similar to procedures for processing of Section 8 projects by HUD Field Offices.) To permit insurance of Section 8 projects without restriction would either create risk or put the Department in the position of ensuring the continued funding of the Section 8 Contract.

Board and care/assisted living facilities. The definition of board and care/assisted living facilities stands on

its own. Projects meeting the definition are eligible. These facilities are residential health care facilities regulated by State or local government. The Department knows of no States that do not require food service in such facilities. The definition of board and care/assisted living does not conflict with that of retirement service centers. Retirement service centers are unassisted rental projects, not residential health care facilities such as board and care and assisted living, that include luxurious accommodations (such as large living units, and amenities such as tennis courts etc.), mandatory services, and central kitchens and dining rooms. While it is unlikely that such projects could be developed within the affordability parameters of the Risk-Sharing program, the Department wants to exclude any possibility of insuring this kind of rental project which has been so unsuccessful under the regular insurance programs. A discussion of why this kind of project was unsuccessful is not a subject of this preamble.

Military impact area. This definition of military impact area is the general definition the Department has been using for some time. Although few areas have been designated as military impact areas, the ones that have been so designated have been isolated markets with little housing market other than the military base. However, based on the comments, we have revised the interim rule language to clarify and expand the definition of military impact areas. The administrative instructions will also discuss procedures for making of military impact determinations based on these regulatory standards.

Section 266.210 HUD-retained review functions.

Comments. Commenters 3 and 9 expressed concerns about the review functions retained by HUD. The commenters believe that the "dual processing" will result in processing delays, stating that this may limit the program's effectiveness. Both commenters commended the Department's efforts to seek statutory changes in the legislation that would eliminate any legal requirements for the dual processing system.

HUD Response. The major HUD-retained review is the environmental review. At the time of the interim rule, HUD was not authorized to delegate this review. The Multifamily Housing Property Disposition Reform Act of 1994 has now provided authority to delegate this review. The Department currently is developing a rule to implement this new delegation authority.

Section 266.215 Functions delegated by HUD to HFAs.

Comments. Two comments (1, 7) addressed the rule's requirement that cost certification functions be performed subject to terms specified by the Commissioner, and a provision in the draft handbook that the cost certification be in a form acceptable to the HFA. The commenters recommended that these two provisions, which seem to be conflicting, be clarified. The commenters believe that, under the statute authorizing the program, HFAs are to use their own underwriting standards.

HUD Response. The regulation and handbook procedures which relate to cost certification referenced by the commenter are not in conflict with one another. Each provision relates to a different stage of the cost certification process. The handbook provision sets forth what procedures that a mortgagor of a mortgage insured under section 542(c) must follow when submitting cost certification to the HFA. Section 266.215 sets forth what standards (those established by the Commissioner) the HFA must follow in developing cost certification procedures to impose on mortgagors of projects to be insured pursuant to section 542(c). HUD standards require that HFAs establish cost certification procedures which take into consideration the underwriting procedures utilized by the HFA to process the loan. These cost certification procedures are designed to ensure that the actual costs approved were in fact incurred by the mortgagor and that such costs bear a direct relationship to the underwriting utilized in processing the loan.

Section 266.225 Labor standards.

Comments. Three commenters (1, 6, and 7) objected to the requirement that HFAs monitor the administration of the Davis-Bacon Act. Commenter 6 stated that compliance monitoring should not be delegated to entities without authority or compensation for its enforcement. Commenter 1 objected to the provision that HFAs bear financial responsibility for violations, stating that compliance with Davis-Bacon is the responsibility of the owner and contractor. Commenter 7 agreed, stating that no financial liability should be placed on HFAs except for gross negligence in fulfilling reasonable responsibilities to notify applicants of the applicability of Davis-Bacon.

HUD Responses. The Risk-Sharing program delegates to HFAs, to the maximum extent possible, the responsibilities for processing, underwriting, servicing and other aspects of program operation of projects. The ministerial functions of labor standards requirements comprise one of those delegated tasks. While HUD retains the enforcement function for labor standards, HFAs are delegated the payroll review and routine interviews generally carried out as part of the construction inspection function. This is consistent with the Department's long-standing delegation of routine Davis-Bacon functions to States and localities under the Community Development Block Grant program. The financial liability provision is the same as other delegations of labor standards functions.

Section 266.310 Insurance of advances or insurance upon completion; applicability of requirements.

Comment. Commenter 12 asked that "completion of construction" in paragraph (c) be defined so as not to preclude closing subject to escrows acceptable to the HFA, in order to assure completion of non-critical items that remain to be done.

HUD Response. The regulation does not define "completion of construction" since the exact definition will likely vary among the procedures of the 33 approved program participants. Because the Department wishes to allow HFAs to use their own procedures to the maximum extent possible, we do not think that a specific definition is necessary or desirable. This issue will be addressed further in the administrative instructions.

Section 266.405 Title.

Comment. Commenter 12 recommended deleting the requirement that marketable title to the mortgaged property be vested in the mortgagor on the date the mortgage is filed for record, stating that adequate protection is provided in § 266.405(b) and § 266.410(c).

HUD Response. The meaning of this comment is obscure. Paragraph (a) states that marketable title is required and when. Paragraph (b) describes what evidence of title consists of. Section 266.410(c) discusses that the mortgage must be a first lien.

Section 266.410 Mortgage provisions.

Comments. Commenter 3 objected to the requirement that the mortgage provide for full amortization of the loan over the term of the mortgage. The commenter stated that an HFA should be allowed to set the amortization period and term of the mortgage in order to have full access to capital resources. Commenter 12 suggested that use

restrictions (paragraph (f)) should also be included in the regulatory agreement. The same commenter stated that the provision in paragraph (h) regarding modification of terms of the mortgage must result in a reduction of Section 8 rents should be deleted. The commenter stated that the Section 8 statute, regulations, and contract rights should determine HUD's rights to adjust rents, and that this provision could prove harmful where a project is in trouble financially and refinancing at a lower rate could provide the means to address the problem without causing a claim on the insurance fund.

HUD Response. Fully amortizing loan. While the Department wishes to permit HFAs participating in the program to use their own standards and requirements as much as possible, we nevertheless are obliged to develop a fiscally prudent program. Mortgages that are not fully amortizing have an inherent risk that the Department does not wish to incur, particularly in a pilot program that will test so many aspects of this new partnership.

Use restriction. The commenter suggests that the use restriction in the insured mortgage prohibiting the use of the property for any purpose other than that intended on the day the mortgage is executed also be included in the regulatory agreement between the HFA and the mortgagor. Section 266.505(b)(4) on the requirements of the regulatory agreement already contains this provision.

Section 8 projects. Section 8 projects are subject to the Section 8 statute, regulations and contract rights, as well as other HUD guidelines that may arise from time to time in response to Congressional or other requirements. This provision in the Risk-Sharing rule merely notifies participants of current requirements relative to reduction of Section 8 rents in certain circumstances.

Section 266.415 Mortgage lien and other obligations.

Comment. Commenter 12 suggested adding language to the end of paragraph (b) (contractual obligations) to allow a final closing to occur where there may be outstanding lien claims not yet determined by a court in situations where a mortgage lien is protected through title insurance.

HUD Response. The commenter's point is unclear. Paragraph (a) on liens and paragraph (b) on contractual obligations permit inferior liens and obligations that are acceptable to the HFA as long as the HUD mortgage is first in line for payment. If the commenter is referring to mechanics' and similar liens, HUD permits such liens in its own projects where the title company is willing to insure over such liens. There is nothing to preclude HFAs from using this procedure if it is acceptable to them.

Section 266.417 Authority to adjust mortgage insurance amount.

Comments. Three commenters (1, 7, and 12) raised questions about HUD retaining the authority to adjust the insured mortgage amount at any time up to final endorsement. The commenters are concerned that this will undermine the underwriting authority of HFAs.

HUD Response. The authority to adjust the mortgage amount is discussed at length in the preambles to both this rule and the interim rule. It is required because neither the current statutory language in section 542(c) nor the legislative history contains a delegation to HFAs for insurance of advances and cost certification, among other things. In developing the interim rule, the Department examined the legal propriety of such delegations because of the desire to make these delegations to HFAs for maximum program efficiency and determined that such delegations would be sustainable if HUD retains the authority to make adjustments to the insured mortgage amount up to and including the time of final endorsement. As long as the Department retains such ultimate authority, case law supports the legality of such delegation.

HUD's reservation of final authority to adjust the insured mortgage amount is not meant to suggest that HUD will, as a matter of policy, routinely review all decisions about insured advances and cost certification. On the contrary, the draft administrative instructions advise HUD Field Office staff to review a random sample against the HFA's procedures, not HUD's. Further, it states that few projects would likely be subject to any reduction in the mortgage amount. It is noted further that in HUD's own cost certification processes, few mortgage reductions are actually made. It has been emphasized in both written and oral communications to the Field staff that the Risk-Sharing program is a partnership and that the HUD Offices and HFAs should develop a strong working relationship where expectations on both sides are clear, including procedures for insured advances and cost certification.

Section 266.510 HFA responsibilities.

Comment. Commenter 12 suggested that annual audits (paragraph (b)) be required to be sent to HUD only when conditions are discovered which, in the judgment of the HFA, are likely to result in a claim.

HUD Response. With respect to the suggestion that annual project audits be submitted to HUD only when the HFA determines that there is a problem, please see discussion of § 266.115 relative to HUD's monitoring responsibilities. Receipt of the annual project audit and physical inspection report is essential to this monitoring responsibility.

Section 266.616 Assignments.

Comment. Commenter 12 objected to the prohibition against assignment of a mortgage and the requirement that legal title to the mortgage be held by the HFA. The commenter stated that substantial interest rate savings can be generated if insured loans can be sold directly in the market rather than being used as collateral for a bond issue. The commenter urged that these requirements be deleted, at least for Level I participants, where an HFA has a significant residual interest and risk, and where the HFA retains servicing.

HUD Response. The regulations require that the HFA be the mortgagee of record throughout the period of insurance. For the pilot program, HUD has determined that this provision is desirable to ensure that the HFA fully maintain its risk-sharing obligation in these transactions. However, the interim and final rules do allow transfer of up to 100 percent of the beneficial interest in a loan or pool of loans.

Section 266.656 Recovery of costs after final claim settlement.

Comment. Commenter 12 suggested deleting this section unless HUD also is willing to share additional losses incurred by an HFA after a final claim settlement.

HUD Response. The Department has provided for a full 5 years after a claim is paid for an HFA to dispose of a project. HUD must be able to assess its total liability and 5 years was considered to be a reasonable time period. This should be ample time for disposition by the HFA, and the Department fully expects projects to be disposed of within this time. Sales of projects within this 5-year period will result in a final claim settlement based on the sales price and an actual loss amount. However, a final settlement established through appraisals that may be artificially low based on failure to sell during the 5-year period could result in a significant windfall at the Government's expense within a short time. The Department must preclude this from happening. In any event, we anticipate and expect that HFAs will endeavor to dispose of defaulted properties well within the 5 years and

receive a final claim settlement based on an actual loss amount.

V. Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the proposed rule and remains applicable to this final rule. The Finding is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of Rules and Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities. The program will provide a new system of federal credit enhancements to expand the Nation's supply of affordable housing. Qualified State and local housing finance agencies will participate in the program on a voluntary basis.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being, except to the extent that the program authorized by the rule will increase the supply of affordable housing, thereby improving the ability of families to find decent and affordable housing. Any such impact is beneficial and merits no further review under the Order.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The Department has specifically provided in this rule that its regulation on preemption of State or local rent control laws does not apply to this program. Any preemption of those laws for purposes of the housing provided under the program will be done under authority granted the HFAs by State or local law. All authority delegated to HFAs by HUD under this program was done so because the Department believes that is the intent of Congress under section 542(c).

Semiannual Agenda of Regulations

This rule was listed as item number 1792 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57654) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 246

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

In accordance with the reasons set forth in the preamble, title 24 of the Code of Federal Regulations is amended as follows:

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1. The heading of subchapter B of chapter II is revised to read

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT AND OTHER AUTHORITIES

PART 246—LOCAL RENT CONTROL

2. The authority citation for part 246 is revised to read as follows:

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

3. Section 246.1 is amended by adding paragraph (e) to read as follows:

§ 246.1 Scope and effect of regulations.

* * * * *

(e) This part applies to mortgages insured under the National Housing Act. It does not apply to mortgages insured under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707).

4. Title 24 of the Code of Federal Regulations is amended by adding a new part 266 to read as follows:

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

Subpart A—General Provisions

Sec.

266.1 Purpose and scope.
266.5 Definitions.
266.10 Allocations of assistance and credit subsidy.
266.15 Risk-Sharing Agreement.
266.20 Effect of amendments.
266.25 Limitation on HUD insurance liability.
266.30 Nonapplicability of 24 CFR part 246
266.35 Waivers.

Subpart B—Housing Finance Agency Requirements

266.100 Qualified housing finance agency (HFA).
266.105 Application requirements.
266.110 Reserve requirements.
266.115 Program monitoring and evaluation.
266.120 Actions for which sanctions may be imposed.
266.125 Scope and nature of sanctions.
266.130 Reinsurance.

Subpart C—Program Requirements

266.200 Eligible projects.
266.205 Ineligible projects.
266.210 HUD-retained review functions.
266.215 Functions delegated by HUD to HFAs.
266.220 Nondiscrimination in housing and employment.
266.225 Labor standards.

Subpart D—Processing, Development, and Approval

266.300 HFAs accepting 50 percent or more of risk.
266.305 HFAs accepting less than 50 percent of risk.
266.310 Insurance of advances or insurance upon completion; applicability of requirements.
266.315 Recordkeeping requirements.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

266.400 Property requirements—real estate.
266.402 Recordation.
266.405 Title.
266.410 Mortgage provisions.
266.415 Mortgage lien and other obligations.
266.417 Authority to adjust mortgage insurance amount.
266.420 Closing and endorsement by the Commissioner.

Subpart F—Project Management and Servicing

266.500 General.
266.505 Regulatory agreement requirements.
266.510 HFA responsibilities.
266.515 Record retention.
266.520 Program monitoring and compliance.

Subpart G—Contract Rights and Obligations

Mortgage Insurance Premiums

266.600 Mortgage insurance premium: Insurance upon completion.
266.602 Mortgage insurance premium: Insured advances.
266.604 Mortgage insurance premium: Other requirements.
266.606 Mortgage insurance premium: Duration and method of paying.
266.608 Mortgage insurance premium: Pro rata refund.

Insurance Endorsement

266.612 Insurance endorsement.

Assignments

266.616 Transfer of partial interest under participation agreement.

Termination

266.620 Termination of Contract of Insurance.
266.622 Notice and date of termination by the Commissioner.

Claim Procedures

266.626 Notice of default and filing an insurance claim.
266.628 Initial claim payments.
266.630 Partial payment of claims.
266.632 Withdrawal of claim.
266.634 Reinstatement of the contract of insurance.
266.636 Insuring new loans for defaulted projects.
266.638 Issuance of HFA Debenture.
266.640 Foreclosure and acquisition.
266.642 Appraisals.
266.644 Application for final claim settlement.
266.646 Determining the amount of loss.
266.648 Items included in total loss.
266.650 Items deducted from total loss.
266.652 Determining share of loss.
266.654 Final claim settlement and HFA Debenture redemption.
266.656 Recovery of costs after final claims settlement.
266.658 Program monitoring and compliance.

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 266.1 Purpose and scope.

(a) *Authority and scope.* (1) Section 542 of the Housing and Community Development Act of 1992 directs the Secretary of the Department of Housing and Urban Development, acting through the Federal Housing Administration, to carry out programs that will demonstrate the effectiveness of providing new forms of Federal credit enhancement for multifamily loans. Section 542, entitled, "Multifamily Mortgage Credit Demonstrations," provides new independent insurance authority that is not under the National Housing Act.

(2) Section 542(c) of the Housing and Community Development Act of 1992 specifically directs the Secretary to carry out a pilot program of risk-sharing with qualified State and local housing finance agencies (HFAs). The qualified HFAs are authorized to underwrite and process loans. HUD will provide full mortgage insurance on affordable multifamily housing projects processed by such HFAs under this program. Through risk-sharing agreements with HUD, HFAs contract to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

(3) The extent to which HUD will direct qualified HFAs regarding their underwriting standards and loan terms and conditions is related to the proportion of the risk taken by an HFA.

(b) *Purpose.* The primary purpose of this pilot program is to test the effectiveness of providing new forms of credit enhancement for multifamily loans, *i.e.*, utilization of full insurance by HUD, pursuant to risk-sharing agreements with qualified housing finance agencies, for the development of affordable housing. The utilization of Federal credit enhancements should increase access to capital markets and, thereby, increase the supply of affordable multifamily housing. By permitting HFAs to underwrite, process, and service loans and to manage and dispose of properties that fall into default, HUD expects affordable housing to be made available to eligible families and individuals in a timely manner.

§ 266.5 Definitions.

Act means the Housing and Community Development Act of 1992, as amended.

Affordable housing means a project in which 20 percent or more of the units are both rent-restricted and occupied by families whose income is 50 percent or less of the area median income as determined by HUD, with adjustments for household size, or in which 40 percent (25 percent in New York City) or more of the units are both rent-restricted and occupied by families whose income is 60 percent or less of the area median income as determined by HUD, with adjustments for household size. A residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit.

Board and Care/Assisted Living Facility means a residential facility for independent living that is regulated by State or local government that provides continuous protective oversight and assistance with the activities of daily living to frail elderly persons or other persons needing such assistance. Continuous protective oversight may range from as little as awareness on the part of management staff of residents' whereabouts (and the ability to intervene in the event of crisis) to a higher level of services and assistance. Assistance with the activities of daily living may include, but is not limited to, bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, meal preparation, shopping, supervision of medication, and housework.

Commissioner means the Federal Housing Commissioner or his or her authorized representative.

Contract of insurance means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this part and the applicable provisions of the Act.

Credit subsidy means the cost of a direct loan or loan guarantee under the Federal Credit Reform Act of 1990 as defined in subpart B of title 13 of the Omnibus Budget Reconciliation Act of 1990 (Pub.L. 101-508, approved Nov. 5, 1990).

Debenture means the instrument issued by the HFA to HUD upon payment of an insurance claim by HUD. The instrument must be in the standard form of a State or Municipal Debenture issued under the Uniform Commercial Code, where applicable, and must be supported by the full faith and credit of the HFA. The instrument must define the terms and conditions and the risk-sharing portion which the HFA will pay at the end of the term of the Debenture, and must be for the full amount of the claim payment. The term *Debenture* may include similar instruments, such as promissory notes and bonds, as mutually agreed upon by the Commissioner and the HFA.

Designated offices means the HUD Field Offices that are assigned the responsibility for program monitoring, imposing or recommending sanctions for program violations, and conducting informal hearings.

Firm approval letter means a letter issued by HUD to an HFA upon the positive completion of the HUD-retained reviews described in § 266.210. The letter will apportion units to the project and provide that, so long as the HFA is in good standing and absent fraud or misrepresentation by the HFA, HUD will endorse the project mortgage for insurance upon presentation by the HFA of the required Closing Docket and

certifications required by this part and the Commissioner's administrative requirements.

Gross rent includes any utility allowance (including charges for the occupancy of a cooperative unit) determined by the Secretary after taking into account such determination under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). It does not include any payment under section 8 or any comparable rental assistance program (with respect to such unit or occupants thereof), nor does it include any fee for a supportive service that is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of the Code (26 U.S.C. 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. It also does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers Home Administration under section 515 of the Housing Act of 1949 (42 U.S.C. 1485).

Housing finance agency or *HFA* means any public body, agency, or instrumentality created by a specific act of a State legislature or local municipality empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation. The term State includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa and the Virgin Islands.

Insured mortgage means a valid single first lien given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitting on property insured under this part must be expressly subordinate to the insured mortgage.

Level I participants means HFAs that elect to take 50 percent or more of the risk of loss in 10 percent increments on mortgages issued under this program.

Level II participants means HFAs that elect to take 10 or 25 percent of the risk of loss on mortgages issued under this program, dependent on the loan-to-replacement cost or loan-to-value ratio of the project to be insured.

Mortgage means such a single first lien upon the real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

Mortgagee means the original lender under a mortgage and its successors and assigns approved by the Commissioner.

Mortgagor means the original borrower under a mortgage and its successor and assigns.

Multifamily housing means housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Secretary, and consist of not less than 5 rental units (including cooperative units) on 1 site. These units may be detached, semidetached, row house, or multifamily structures.

Qualified HFA means an HFA that meets the requirements described in § 266.100(a).

Risk-Sharing Agreement means a contract between an HFA and the Commissioner that incorporates the terms, obligations, and conditions specified in this part.

Secondary financing means any grant, loan, inferior lien, or other form of indebtedness used during loan origination prior to HUD endorsement to finance a multifamily property insured under this part which is inferior to the insured mortgage as defined above and does not have first priority for payment.

Single Room Occupancy, or SRO, projects means multifamily projects consisting of units that are not required to contain food preparation or sanitary facilities for occupancy by single individuals capable of independent living.

Supportive services means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single room occupancy unit, the term includes any service provided to assist tenants in locating and retaining permanent housing. This definition is to be used in conjunction with the "gross rent" calculation.

§ 266.10 Allocations of Assistance and Credit Subsidy.

(a) *Notice of availability of assistance.* HUD will announce the availability of assistance under this program through publication of a Notice in the **Federal Register**. Such Notice will invite qualified HFAs to submit an application for approval and/or for additional units under this part. The Notice will indicate the deadline date for submission of applications, required documentation, the address to which the applications must be submitted and other relevant information.

(b) Credit subsidy will be obligated and allocated in accordance with outstanding Department instructions.

§ 266.15 Risk-Sharing Agreement.

(a) *Requirement for participation.* Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program.

(b) *Provisions.* The Agreement will include, but not necessarily be limited to, the following:

(1) The allocation of units for the HFA;

(2) The risk sharing level or levels at which the HFA has been approved to participate in the program;

(3) The standards and procedures, and loan terms and conditions, to be used by the HFA in originating, underwriting, closing, project management and servicing of loans and for disposing of defaulted properties (which may be incorporated by reference to existing HFA documents);

(4) The identification of the individuals responsible for the overall underwriting decision (Chief Underwriter) and for project management, servicing, and property disposition (Housing Management Director), principal staff, and identification of individuals, with specimen signatures, with authority to sign loan documents or otherwise commit the HFA;

(5) Certifications by the HFA that it:

(i) Will allow periodic auditing and review by the Commissioner and the HUD Inspector General and their authorized agents regarding the HFA's participation in the program and permit an inspection and examination of its financial and other records as the Commissioner deems necessary for program review and monitoring purposes.

(ii) Will notify HUD promptly in writing any time the HFA changes principal staff, persons authorized to commit the HFA, and operating procedures, underwriting standards and procedures, and loan terms and conditions. Level II HFAs must also obtain the prior written approval of the Commissioner before implementing any amendment to the HFA's underwriting standards and procedures, and loan terms and conditions.

(iii) Has fully disclosed all underwriting standards and procedures, loan terms and conditions;

(iv) Will at all times comply with program financial requirements and notify HUD of any pending and actual changes that would adversely affect HFA operations or financial status;

(v) Will provide HUD with a copy of its annual certified audit report;

(vi) Will comply with all Fair Housing and Equal Opportunity requirements, *i.e.*, the Fair Housing Act (42 U.S.C. 3601–3619), as implemented by 24 CFR part 100; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), as implemented by 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8; titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213), as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), as implemented by 12 CFR part 202; Executive Order 11063, as amended by Executive Order 12259) (3 CFR 1958–1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), as implemented by 24 CFR part 107; Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339), as implemented by 41 CFR part 60; other applicable Federal laws and all regulations issued pursuant to these authorities in lending or investing funds in real estate mortgages; and applicable State and local fair housing and equal opportunity laws.

(vii) Will perform all functions in connection with loans originated under this program including underwriting, loan approval, servicing (including workouts), and disposition functions;

(viii) Has Lender's fidelity bond/surety bond and errors and omissions insurance;

(ix) Will abide by all applicable requirements issued by HUD for performing its functions under this part;

(x) Will issue debentures acceptable to HUD as collateral pending final settlement of a claim;

(xi) Will comply with the affordable housing requirements set forth under this part;

(xii) Will remain mortgagee of record on each loan underwritten under this part for the term of the mortgage insurance;

(xiii) Will follow other applicable Federal rules and regulations.

(6) An agreement to submit an annual certification that there has been no basic change in its organization, business activities, financial status or other information that was submitted in its application to participate in the program, and that the HFA has complied with all eligibility requirements during the past year, and if there has been any such change, the certification required by this paragraph must state the nature of the change;

(7) An agreement that any reinsurance of the HFA's share of the loss will be subordinate to the HUD insured first mortgage and will not affect reimbursement to HUD notwithstanding the timing of the actual settlement between the HFA and the reinsurer; and

(8) An agreement that all appraisal functions will be completed by Certified General Appraisers, licensed in the State in which the property is located, that all appraisal functions will be completed in accordance with the Uniform Standards of Professional Appraisal Practice, and that the HFA will comply with the gender and minority status reporting requirement of 24 CFR 267.3(c) and submit data as required by 24 CFR 267.3(c)(5)(i). In the selection of an appraiser, there shall be no discrimination on the basis of race, color, religion, national origin, sex, age or disability.

§ 266.20 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments to the regulations will not adversely affect the interest of a lender under a Contract of Insurance on any mortgage already insured or on any mortgage to be insured on which HUD has already issued its firm approval letter.

§ 266.25 Limitation on HUD insurance liability.

The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mortgagee of record and as party to a risk-sharing agreement with HUD with respect to the rights, benefits, and obligations of the HFA under the contract of insurance.

§ 266.30 Nonapplicability of 24 CFR part 246.

The provisions of 24 CFR part 246 do not apply to projects that are security for mortgages insured under this part.

§ 266.35 Waivers.

Upon completion of a determination and finding of good cause, the Commissioner may waive any provision of this part in any particular case subject only to statutory limitations, except that no waivers will be provided with respect to financial requirements for participating HFAs or underwriting standards required for Level II participants. Each waiver must be in writing supported by documentation of the facts and reasons that formed the basis for the waiver. HUD will publish a **Federal Register** notice informing the public of all waivers granted under this section in accordance with section 7(q) of the Department of Housing and Urban Development Act and HUD policies regarding publication of waivers.

Subpart B—Housing Finance Agency Requirements

§ 266.100 Qualified housing finance agency (HFA).

(a) *Qualifications.* To participate in the program, an HFA must apply and be specifically approved for the pilot program described in this part, in addition to being a HUD-approved mortgagee in accordance with 24 CFR 202.10 through 202.19. The HFA must maintain eligibility by continuing to comply with the requirements set forth in the Risk-Sharing Agreement and this part. To qualify for participation in the program described in this part, an HFA must:

(1) Carry the designation of "top tier" or its equivalent as evaluated by Standard and Poor's or any other nationally recognized rating Agency; or

(2) Receive an overall rating of "A" for the HFA for its general obligation bonds from a nationally recognized rating agency; or

(3) Otherwise demonstrate its capacity as a sound and experienced HFA based on, but not limited to, experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls, financial management, portfolio quality, and State or local support; and

(4) Be a HUD-approved multifamily mortgagee in good standing; and

(5) Have at least five years experience in multifamily underwriting; and

(6) Certify that:

(i) The Department of Justice has not brought a civil rights suit against the Agency, and no suit is pending;

(ii) There has not been an adjudication of a civil rights violation in a civil action brought against the HFA by a private individual, unless the HFA is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

(iii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has not issued a charge against

the HFA under the Fair Housing Act, unless the HFA is operating under a compliance agreement designed to correct the areas of noncompliance.

(b) *Approval levels.* Approval levels consist of the following:

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards and loan terms and conditions, and assumes 50 to 90 percent of the risk of loss (increments of 10 percent).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards and loan terms and conditions approved by HUD, and:

(i) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects is greater than or equal to 75 percent, the HFA shall assume 25 percent of the risk of loss.

(ii) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation or the loan-to-value ratio for existing projects is less than 75 percent, the HFA shall assume 10 percent, or 25 percent at the HFA's option, of the risk of loss.

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards and loan terms and conditions to be used on Level II loans must be approved by HUD.

§ 266.105 Application requirements.

(a) *Applications for approval as a HUD-approved multifamily mortgagee.* HFAs that are not HUD-approved mortgagees at the time of their application to participate in the pilot program must submit, concurrently, separate applications for approval to participate in the program and for approval to operate as a HUD-approved mortgagee. Application for approval as HUD-approved mortgagee must be submitted to HUD in accordance with the requirements established under 24 CFR 202.10 through 202.19.

(b) *Applications for participation in pilot program.* Applications from HFAs for approval to participate in the pilot program under this part must contain:

(1) Documentation satisfactory to the Commissioner that it meets the qualification requirements set forth in § 266.100(a).

(2) Evidence that the application fee of $10,000 has been wire-transferred to the U.S. Treasury in accordance with instructions in the Notice described in § 266.10(a). This fee will not be refunded once the application has been accepted for review.

(3) Opinion of legal counsel that the HFA has the necessary powers to participate in the pilot program. The opinion for an HFA with an overall rating of "A" on its general obligation bonds must also state that the general obligation will extend to the HFA's responsibilities under the Risk-Sharing Agreement and any debenture issued by the HFA to the Commissioner. If the opinion of counsel does not include this statement, the HFA must comply with the provisions of § 266.110(b).

(4) A copy of the HFA's procedures manual which describes, among other things, the manner in which the HFA will process mortgage loans, including their underwriting standards; a description of the approval process; the HFA fee schedule; a description of loan management, loan servicing, and property disposition activities; and the manner in which the HFA's and mortgagor's reserves and escrows (including letters of credit) will be established and controlled. The manual must also include a processing flow chart and an organizational chart.

(5) A plan describing how the HFA will ensure the highest quality compliance with all HFA and HUD requirements for the origination, processing, underwriting, insurance of advances, cost certification, loan closing, construction and permanent loan management, servicing and disposition of all projects insured or proposed to be insured under this part and for monitoring all work performed by contract personnel, if any.

(6) Identification of the individual responsible for the overall underwriting decision (chief underwriter), and the individual responsible for project management, loan servicing and property disposition (housing management director). These functions may not be contracted out by the HFA. The HFA may contract with outside sources for technical processing and loan servicing services. However, the application must demonstrate internal staff capacity to review and evaluate the work product of the contract sources and to make final underwriting, servicing, and property disposition conclusions.

(7) A description of oversight by State or local governmental agencies.

(8) A copy of the HFA's administrative manual covering its investment policies and overall business and financial practices.

(9) A statement containing the number of units the HFA proposes to process to firm approval letter during the period specified in the relevant **Federal Register** Notice published pursuant to § 266.10 of this part.

Note: The Federal Fiscal Year begins on October 1st, and ends on September 30th.

(10) HFA declaration of the risk-sharing arrangement it has selected i.e., Level I, Level II, or both Level I and Level II.

(11) Documentation containing:

(i) For HFAs that carry the designation of "top tier" or its equivalent, as evaluated by Standard and Poors or any other nationally recognized rating agency, evidence of such designation;

(ii) For HFAs that currently receive an overall rating of "A" for their general obligation bonds from a nationally recognized rating agency, evidence of such a rating; or

(iii) For any other HFA, evidence, as described in paragraph (c) of this section, that demonstrates its capacity as a sound and experienced agency based on, but not limited to, its experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls and financial management, portfolio quality and State or local support.

(12) A certification from the HFA that it will at all times comply with the financial requirements in § 266.110 and, where applicable, maintain required reserves in a dedicated account in liquid funds (*i.e.*, cash, cash equivalents, or readily marketable securities) in a financial institution acceptable to HUD.

(13) Copies of audited financial statements for the HFA's last three fiscal years.

(14) Sample debenture form issued by the HFA.

(c) *Additional application requirements for HFAs without top-tier designation or overall rating of "A" on general obligation bonds.* HFAs without top-tier designation or an overall rating of "A" on general obligation bonds must submit, in addition to the items described in paragraph (b) of this section, such further information specified and required in the **Federal Register** notice published pursuant to § 266.10 of this part. This may include, but is not limited to, information concerning the geographic boundaries served (*e.g.*, city, county); a description of the organizational history which includes the authority to issue bonds and tax credits; length of time in business; general portfolio statistics; a description of all mortgage lending activities, including volume and default and foreclosure rates; a summary of delinquent loans in the last 12 months and the present status of each; relationship to the State or local Government, subsidiary or similar

entity; and experience in multifamily housing.

§ 266.110 Reserve requirements.

(a) *HFAs with top-tier designation or overall rating of "A" on general obligation bonds.* An HFA with a top tier or equivalent designation or an HFA with an overall rating of "A" on its general obligation bonds is not required to have additional reserves so long as the HFA maintains that designation or rating, unless the Commissioner determines that a prescribed level of reserves is necessary. If the designation or rating is lost, the HFA must immediately establish a reserve account funded in accordance with the requirements set forth in paragraph (b) of this section. The reserve account must reflect all loans in the HFA's portfolio endorsed under this part.

(b) *Other HFAs.* (1) For other HFAs, a specifically identified dedicated account consisting entirely of liquid assets (*i.e.*, cash or cash equivalents or readily marketable securities) must be established and maintained in a financial institution acceptable to HUD. This account may be drawn upon by HUD and may be used by the HFA only with the prior written approval of HUD for the purpose of meeting the HFA's risk-sharing obligations under this part. The account must be established prior to the execution of any Risk Sharing Agreement under this part in an initial amount of not less than $500,000. Thereafter, the HFA must deposit at each loan closing and thereafter maintain the following additional amounts in the dedicated account:

(i) $10.00 per $1,000 of the unpaid principal balance that is equal to or less than $50 million; plus

(ii) $7.50 per $1,000 of the unpaid principal balance that is greater than $50 million and less than $150 million; plus

(iii) $5.00 per $1,000 of the unpaid principal balance that is greater than $150 million.

(2) The Commissioner may determine that higher levels of reserves may be necessary.

§ 266.115 Program monitoring and evaluation.

(a) *HFA certifications.* HUD will rely heavily on the certifications required of an HFA under this part and such additional certifications as the Commissioner may require in his or her administrative procedures. An HFA's continued participation in the program is predicated upon compliance with these certifications and its recommending for endorsement only those mortgages that comply with requirements of the program, including the HFA's origination, underwriting and closing procedures incorporated by reference into the Risk-Sharing Agreement.

(b) *Monitoring and evaluation.* Monitoring and evaluation activities will focus on compliance with program requirements and performance of the HFA in meeting program objectives of providing affordable housing. They will enable HUD to evaluate the effectiveness of the program as required by section 542(d)(3) of the Act.

(c) *Responsibility for monitoring and evaluation.* The Commissioner or his or her designee will be responsible for overall program monitoring and evaluation.

(d) *HFA submissions.* (1) For each loan insured under this part, basic underwriting and closing information must be submitted in a format specified by HUD and must accompany the closing docket submitted in accordance with § 266.420(b). Information relative to project management and servicing (including disposition) will be required after endorsement.

(2) The HFA must submit semi-annual reports setting forth the original mortgage amounts and outstanding principal balances on mortgages the HFA has underwritten, and the status of all projects insured under this part (*e.g.*, current, in default, acquired, under workout agreement, in bankruptcy). For projects where the mortgagor has declared bankruptcy, the HFA must submit information containing the date the bankruptcy was filed and the date the HFA requested the Court to dismiss the bankruptcy proceedings.

§ 266.120 Actions for which sanctions may be imposed.

Results of monitoring or other reviews may serve as the basis for the Commissioner's imposing sanctions on the HFA. Violations for which sanctions may be imposed include, but are not limited to:

(a) Commission of fraud or making a material misrepresentation by the HFA with respect to any mortgage insured or to any other matter under this part.

(b) Assignment or transfer of interest in any insured mortgage not in accord with the requirements of this part.

(c) Engagement in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(d) Actions or conduct for which sanctions may be imposed against the HFA by HUD's Mortgagee Review Board under 24 CFR 25.9.

(e) Failure to:

(1) Reveal in its application for participation in the program all the information required by this part;

(2) Notify HUD in a timely manner of any pending or actual changes that would adversely affect HFA operations or financial status;

(3) Comply with all eligibility requirements for participation in the program;

(4) Issue debentures in the event of an initial claim payment by HUD, or to reimburse HUD for payment of a claim;

(5) Maintain its top tier designation or overall rating of "A" on general obligation bonds (or if such designation or rating is lost, comply with paragraph (e)(6) of this section);

(6) Establish and maintain a dedicated account, if required, or meet other financial obligations under this program;

(7) Perform underwriting, insurance of advances, cost certification, management, servicing or property disposition functions in a prudent and acceptable manner based on the standards incorporated by reference into the Risk-sharing Agreement;

(8) Submit financial and other reports required by this part;

(9) Comply with any regulatory requirement or with the Risk-Sharing Agreement;

(10) Maintain any other standards HUD may establish for participation in this program;

(11) Enforce the regulatory agreement provisions with respect to individual projects;

(12) Maintain a default ratio acceptable to HUD relative to the HFA's own portfolio and the defaults experienced under this part by other program participants;

(13) Consider adequately special risk circumstances without compensating for the higher risks of such transactions (*e.g.*, high loan-to-value ratios in areas with high vacancy or default rates); or

(14) Remit mortgage insurance premiums on a timely basis or failure to refund or credit mortgagor's accounts with overpaid mortgage insurance premiums.

§ 266.125 Scope and nature of sanctions.

(a) *Actions by Designated Office.* Depending on the nature and extent of the noncompliance with the requirements of this part, the Designated Office may take any of the following actions:

(1) Require that the HFA execute a trust agreement, establish a trust account in accordance with such agreement, and fund such account which may be drawn upon by HUD for purposes of meeting the HFA's risk-sharing obligations;

(2) Require the HFA to assume a higher portion of risk for the subject and future mortgages;

(3) Recommend to the Commissioner that the HFA be required to contract its loan servicing or property disposition functions to a third party;

(4) Recommend to the Commissioner that the mortgage insurance be terminated in cases of fraud or material misrepresentation by the HFA, or transfer of interest in an insured mortgage or assignment of the mortgage not in accord with the requirements of this part;

(5) Recommend to the Commissioner that approval for the HFA to participate in the program be suspended or withdrawn;

(6) Recommend to the Commissioner that the HFA's mortgagee approval be withdrawn pursuant to 24 CFR part 25 and/or that penalties be imposed pursuant to 24 CFR part 30;

(7) Require additional financial or other reports as may be necessary to monitor the activities of the HFA more closely.

(b) *Actions by Headquarters.* HUD Headquarters may impose any of the sanctions set forth or recommended in paragraph (a) of this section based upon its responsibilities for monitoring and overall program oversight.

(c) *Effect of suspension or withdrawal.* A suspension or withdrawal action will not affect any mortgage insurance endorsement in effect on the date of the suspension or withdrawal action.

(d) *HFA right to informal hearing.* (1) Any sanction imposed by a Designated Office in writing will be immediately effective, will state the grounds for the action, and provide for the HFA's right to an informal hearing before the Designated Office Representative or his or her designee in the Designated Office. The HFA may request an informal hearing within 10 working days of receipt of the suspension or withdrawal action and the Designated Office shall give the HFA an opportunity to be heard within 10 working days of receipt of the HFA's request. The HFA may be represented by counsel. The Designated Office Representative, or his or her designee, will advise the HFA in writing of the decision within 10 working days of the informal hearing, which decision will constitute final HUD action.

(2) Sanctions imposed by Headquarters will be handled in a similar manner, except that the informal hearing shall be before the Commissioner or his or her designee.

§ 266.130 Reinsurance.

Reinsurance will be permitted for the portion of the HFA risk, subject to the following requirements:

(a) Neither HUD's nor the HFA's position shall be subordinated;

(b) The reinsurance may not be used to reduce any reserve or fund balance requirements; and

(c) Such reinsurance does not incur an obligation to the Federal Government.

Subpart C—Program Requirements

§ 266.200 Eligible projects.

(a) *Minimum project size.* Projects insured under this part must consist of five or more rental dwelling units (including cooperative dwelling units) on one site. The site may consist of two or more non-contiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management. The units may be detached, semi-detached, row houses, multifamily structures, or mobile home parks (exclusive of the mobile homes).

(b) *New construction or substantial rehabilitation.* Insurance under this part shall be for the purpose of financing the new construction or substantial rehabilitation of projects meeting the other requirements of this part as follows:

(1) *New construction* occurs when all project and construction elements are installed as part of the work.

(2) *Substantial rehabilitation* is any combination of the following work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and that results in material improvement of the project's economic life, liveability, marketability, and profitability: Replacement, alteration and/or modernization of building spaces, long-lived building or mechanical system components, or project facilities. Substantial rehabilitation may include but not consist solely of any combination of: minor repairs, replacement of short-lived building or mechanical system components, cosmetic work, or new project additions.

(c) *Existing projects.* Financing of existing properties without substantial rehabilitation is allowed.

(1) If an existing multifamily project is being acquired and HUD insurance under this part will be used to facilitate the acquisition of projects to increase the supply of affordable housing, such acquisitions are permissible if the HUD insured mortgage does not exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs as determined by the Commissioner.

(2) If the property is subject to an HFA-financed loan to be refinanced and such refinancing will result in the preservation of affordable housing, refinancing of these properties is permissible if project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months, and the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested. The HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, the cost of repairs and reasonable transaction costs as determined by the Commissioner. If a loan to be refinanced has been in default within the 12 months prior to application for refinancing, the HFA must assume not less than 50 percent of the risk.

(d) *Projects receiving Section 8 rental subsidies or other rental subsidies.* Projects receiving project-based housing assistance payments under section 8 of the U.S. Housing Act of 1937 or other rental subsidies and meeting the requirements of this part may be insured under this part only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project for which insurance is being requested.

(e) *SRO projects.* Single room occupancy (SRO) projects, as defined in § 266.5, are eligible for insurance under this part. Units in SRO projects must be subject to 30-day or longer leases; however, rent payments may be made on a weekly basis in SRO projects.

(f) *Board and care/assisted living facilities.* Board and care projects and assisted living facilities may be insured if the facilities meet the definition of those terms in § 266.5.

(g) *Elderly projects.* Projects or parts of projects specifically designed for the use and occupancy by elderly families. An elderly family means any household where the head or spouse is 62 years of age or older, and also any single person who is 62 years of age or older.

(h) *Zoning requirements.* Projects insured under this part must meet

applicable zoning and other State/local government requirements.

§ 266.205 Ineligible projects.

The following projects and facilities are not eligible for insurance under this part:

(a) *Transient housing or hotels.* Rental for transient or hotel purposes. For purposes of this part, rental for transient or hotel purposes means:

(1) Rental for any period less than 30 days, or

(2) Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, or valet service.

(b) *Projects in military impact areas.* A project located in a military impact area, as determined by HUD. A military impact area is generally a small or medium size metropolitan housing market area or a remote or isolated nonmetropolitan area where:

(1) Military-connected households comprise 25 percent or more of the total households in the market area. Military-connected households include active duty military personnel, civilian employees of the military service (Department of Defense) or other Federal agency at or in support of the installation, and employees of contractors and sub-contractors directly associated with the military installation, and their dependents. Unaccompanied active duty military personnel housed in military-controlled group quarters housing (barracks, BOQ's) are excluded; and

(2) There is concern about the continued stability of the current level of military strength and mission at the installation based on public announcements from the Department of Defense or the military service of impending changes; and

(3) The complete reduction of military-connected households living in nonmilitary rental housing over a 5 year period, at an annual average decline of 20 percent, would, taking into account growth in the civilian economy and normal changes in the housing inventory, cause an adverse impact on the private rental market resulting in an increase in the rental vacancy rate in the housing market of 10 percent or more at the end of that period.

(c) *Retirement service centers.* Projects designed for the elderly with extensive services and luxury accommodations that provide for central kitchens and dining rooms with food service or mandatory services.

(d) *Nursing homes or intermediate care facilities.* Nursing homes and intermediate care facilities licensed and regulated by State or local government and providing nursing and medical care.

§ 266.210 HUD-retained review functions.

Certain functions are retained by the Commissioner. The HFA must submit any information or certification required by the Commissioner to permit determination of compliance with requirements concerning:

(a) *Previous participation of principals.* Previous participation of the principals of the mortgagor, general contractor, consultant or management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218.

(b) *Environmental review requirements.* To determine compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities, the HUD Field Office will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 50 and for the related environmental criteria and standards in 24 CFR part 51. These requirements must be completed before HUD may issue the firm approval letter.

(c) *Intergovernmental review.* Intergovernmental review of Federal programs under Executive Order 12372, as implemented in 24 CFR part 52.

(d) *Subsidy layering.* The Commissioner, or Housing Credit Agencies through such delegation as may be in effect by regulation hereafter, shall review all projects receiving tax credits and some form of HUD assistance for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding guidelines.

(e) *Davis-Bacon Act.* The Commissioner shall obtain and provide to the HFA the appropriate Department of Labor wage rate determinations under the Davis-Bacon Act, where they apply under this part.

§ 266.215 Functions delegated by HUD to HFAs.

The following functions are delegated by HUD to the HFAs:

(a) *Affirmative Fair Housing Marketing Plan (AFHMP).* The HFA will perform information collection, reviews and ministerial activities associated with the review and approval of the AFHMP for all projects. (Enforcement of fair housing and equal opportunity laws is the responsibility of HUD.)

(b) *Labor standards and prevailing wage requirements.* The HFA will perform information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions regarding labor standards, in accordance with § 266.225(e). (Enforcement of Davis-Bacon prevailing wage requirements and labor standards is the responsibility of HUD.)

(c) *Insurance of advances.* In cases involving insured advances, the HFA will approve periodic advances of mortgage insurance proceeds during construction of the project subject to terms specified by the Commissioner.

(d) *Cost certification.* The HFA will perform cost certification functions on each insured loan subject to terms specified by the Commissioner.

(e) *Lead-Based Paint.* The HFA will perform functions related to Lead-Based Paint requirements subject to terms specified by the Commissioner.

§ 266.220 Nondiscrimination in housing and employment.

The mortgagor must certify to the HFA that, so long as the mortgage is insured under this part, it will:

(a) Not use tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes "housing for older persons" as defined in section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2));

(b) Not discriminate against any family because of the sex of the head of household;

(c) Comply with the Fair Housing Act (42 U.S.C. 3601-3619), as implemented by 24 CFR part 100; titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213), as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act (15 U.S C. 1691-1691f), as implemented by 12 CFR part 202; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958-1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), and implemented by 24 CFR part 107; Executive Order 11246 (3 CFR 1964-1965 Comp., p. 339), as implemented by 41 CFR part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C.

6101-6107), as implemented by 24 CFR part 146; and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

§ 266.225 Labor standards.

(a) *Applicability of Davis-Bacon.* (1) All laborers and mechanics employed oy contractors or subcontractors on a project insured under this part shall be paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), where the project meets all of the following conditions:

(i) Advances for the project are insured under this part;

(ii) The project involves new construction or substantial rehabilitation; and

(iii) The project will contain 12 or more dwelling units.

(2) Projects that do not meet these conditions are not subject to Davis-Bacon wage rates except to the extent required as a condition of other Federal assistance to the project.

(b) *Volunteers.* The provisions of this section shall not apply to volunteers under the conditions set out in 24 CFR part 70. In applying part 70, insurance under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(c) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall comply with all labor standards and provisions of 29 CFR parts 1, 3 and 5 that would be applicable to a mortgage insurance program to which Davis-Bacon wage rates are made applicable by statute.

(d) *Advances.* (1) No advance under a mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be eligible for insurance under this part unless the HFA determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was not, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant 29 CFR 5.12, issued by the Secretary of Labor.

(2) No advance under any mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be insured under this part unless there is filed with the application for the advance, and no such mortgage shall be insured under this part unless there is filed with the HFA after completion of the construction or substantial rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages determined by the Secretary of Labor to be prevailing in accordance with paragraph (a) of this section.

(e) *Responsibility for enforcement and administration.* The Commissioner retains responsibility for enforcement of labor standards under this section, but the Commissioner may delegate to the HFA information collection (*e.g.*, payroll review and routine interviews) and other routine administration and enforcement functions, subject to monitoring by the Commissioner. Where routine administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR part 1, any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. For example, failure of an HFA to supply or ensure inclusion of the proper contract clauses or wage determination in a contract or building loan agreement may require the HFA to fund increased compensation to a contractor as the result of increased wages attributable to incorporation of the proper clauses and wage determination.

Subpart D—Processing, Development, and Approval

§ 266.300 HFAs accepting 50 percent or more of risk.

(a) *Underwriting standards.* An HFA electing to take 50 percent or more of the risk on loans may use its own underwriting standards and loan terms and conditions (as disclosed and submitted with its application) to underwrite and approve loans without further review by HUD.

(b) *HFA responsibilities.* The HFA is responsible for the performance of all functions except those HUD-retained functions specified in §§ 266.210 and 266.225(e). After acceptance of an application for a loan to be insured under this part, the HFA must:

(1) Determine that a market for the project exists, taking into consideration any comments from the HUD Field Office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area.

(2) Establish the maximum insurable mortgage and review plans and specifications for compliance with HFA standards;

(3) Determine the acceptability of the proposed mortgagor and management agent;

(4) Approve the Affirmative Fair Housing Marketing Plan; and

(5) Make any other determinations necessary to ensure acceptability of the proposed project.

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210(a), (b), and (c), the HUD Field Office will issue a firm approval letter.

(d) *Inspections and other reviews.* The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, review and approval of cost certification, and closing of the loan.

(e) *Endorsement of mortgage note for insurance.* So long as the HFA is in good standing, and absent fraud or material misrepresentation on the part of the HFA, the Commissioner or designee will endorse the mortgage note for insurance upon presentation by the HFA of the Closing Docket and certifications required in § 266.420(b), subject to HUD's right to adjust under § 266.417.

§ 266.305 HFAs accepting less than 50 percent of risk.

(a) *Underwriting standards.* The underwriting standards and loan terms and conditions of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b)(2). These HFAs may assume 25 percent or 10 percent of the risk depending upon the loan-to-replacement-cost or loan-to-value ratios of the projects to be insured as specified in § 266.100(b)(2)(i) and (ii).

(b) *HFA responsibilities.* The HFA is responsible for the performance of all functions except those HUD-retained functions specified in § 266.210 and 266.225(e). After acceptance of an application for a loan to be insured under this part, the HFA must:

(1) Determine that a market for the project exists, taking into consideration any comments from the HUD Field Office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area;

(2) Establish the maximum insurable mortgage, and review plans and

specifications for compliance with HFA standards as approved by HUD;

(3) Determine the acceptability of the proposed mortgagor and management agent;

(4) Approve the Affirmative Fair Housing Marketing Plan; and

(5) Make any other determinations necessary to ensure acceptability of the proposed project.

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210 (a), (b), and (c), the HUD Field Office will issue a firm approval letter which, among other things, will apportion units and obligate credit subsidy to the project.

(d) *Inspections and other reviews.* The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, review and approval of cost certification, and closing of the loan.

(e) *Endorsement of mortgage note for insurance.* So long as the HFA is in good standing, and absent fraud or material misrepresentation on the part of the HFA, the Commissioner or designee will endorse the mortgage note for insurance upon presentation by the HFA of the Closing Docket and certifications required in § 266.420(b), subject to HUD's right to adjust under § 266.417.

§ 266.310 Insurance of advances or insurance upon completion; applicability of requirements.

(a) *General.* HUD will agree to insure periodic advances of mortgage proceeds or to insure the entire mortgage upon completion of construction for projects involving new construction or substantial rehabilitation. Existing projects without the need for substantial rehabilitation will be considered insurance upon completion cases. In insurance upon completion cases, only the permanent loan is insured and a single endorsement is required after satisfactory completion of construction, substantial rehabilitation or repairs. In periodic advances cases, progress payments approved by the HFA and both an initial and final endorsement on the mortgage are required.

(b) *Insurance of advances.* Periodic advances will be authorized by the HFA subject to terms specified by the Commissioner.

(c) *Insurance upon completion.* (1) *New construction and substantial rehabilitation.* An HFA may approve a loan that will be insured upon completion of construction of the project. The HFA approval must prescribe a designated period during which the mortgagor must start construction or substantial rehabilitation. If construction or rehabilitation is started as required, the approval will be valid for the period estimated by the HFA for construction and loan closing, including any extension approved by the HFA.

(2) *Existing projects with no substantial rehabilitation.* Existing projects with or without repairs are only insured upon completion, although HFAs may permit noncritical repairs to be completed after endorsement upon establishment of escrows acceptable to the HFA.

(d) *Requirements applicable to both periodic advances and insurance upon completion cases.*—(1) *Inspections.* The HFA must inspect projects under this part at such times during construction, substantial rehabilitation, or repairs as the HFA determines. The inspections must be conducted to assure compliance with plans and specifications, work write-ups, and other contract documents.

(2) *Approval of advances.* At all times, the loan must be kept in balance, and advances approved only if warranted by construction progress evidenced through HFA inspection, as well as in accord with plans, specifications, work write-ups and other contract documents. In approving advances, HFAs must make certain that other mortgageable items are supported with proper bills and/or receipts before funds can be approved and advanced for insurance.

(3) *Cost certification.* In order to ensure that the final amount for insurance is supported by certified costs:

(i) The mortgagor (and general contractor, if there is an identity of interest with the mortgagor) must execute a certificate of actual costs, in a form acceptable to the HFA, when all physical improvements are completed to the satisfaction of the HFA and before final endorsement; and

(ii) The cost certification provided by the mortgagor must be audited by an independent public accountant.

(4) *Contestability.* Although the HFA has authority to approve the mortgagor's (and general contractor's) certification of cost, the certification will be contestable by the Commissioner during the period up to and including final endorsement of the mortgage. After final endorsement, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor (and/or general contractor).

(5) *Assurance of completion.* The mortgagor must furnish assurance of completion of the project in accordance with any requirements of the HFA as to form and amount.

(6) *Latent defects escrow.* The mortgagor must furnish an escrow or other form of assurance required by the HFA to ensure that latent defects can be remedied within the time period required by the HFA.

(e) *Mortgagee of record.* The HFA must remain the mortgagee of record as long as mortgage insurance is in force.

§ 266.315 Recordkeeping requirements.

The mortgagor and the builder, if there is an identity of interest with the mortgagor, shall keep and maintain records of all costs of any construction or other cost items not representing work under the general contract and to make available such records for review by the HFA or HUD, if requested.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

§ 266.400 Property requirements—real estate.

The mortgage must be on real estate held:

(a) In fee simple;

(b) Under a renewable lease of not less than 99 years; or

(c) Under a lease executed by a governmental agency, or other lessor approved by the HFA, that has a term at least 10 years beyond the end of the mortgage term.

§ 266.402 Recordation.

At the time of initial endorsement in the case of insurance of advances or at the time of final endorsement in the case of insurance upon completion, the HFA shall make certain that the mortgage and the regulatory agreement are recorded.

§ 266.405 Title.

(a) *Eligibility of title.* Marketable title to the mortgaged property must be vested in the mortgagor on the date the mortgage is filed for record.

(b) *Title evidence.* The HFA must receive a title insurance policy that ensures that marketable title is vested in the mortgagor, that a survey acceptable to the HFA has been performed, and that no existing impediments to title concern, or exist on, the property.

§ 266.410 Mortgage provisions.

(a) *Form.* The mortgage and note must be executed on a form approved by the HFA for use in the jurisdiction in which the property is located.

(b) *Mortgagor.* The mortgage must be executed by a mortgagor determined eligible by the HFA.

(c) *First lien.* The mortgage must be a single first lien on property that has first

priority for payment and that conforms with property standards prescribed by the HFA.

(d) *Single asset mortgagor.* The mortgage must require that the mortgagor is a single asset mortgagor.

(e) *Amortization.* The mortgage must provide for complete amortization (*i.e.*, regularly amortizing) over the term of the mortgage.

(f) *Use restrictions.* The mortgage must contain a covenant prohibiting the use of the property for any purpose other than the purpose intended on the day the mortgage was executed. The conversion of a project from rental to cooperative is not a "change in use" as that term is employed in the mortgage since the property will continue to have a residential use both before and after conversion.

(g) *Hazard insurance.* The mortgage must contain a covenant, acceptable to the HFA, that binds the mortgagor to keep the property insured by one or more standard policies for fire and other hazards stipulated by the HFA. A standard mortgagee clause making loss payable to the HFA must be included in the mortgage. The HFA is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. The HFA must ensure that the insurance coverage is in an amount that will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment. If the mortgagor does not obtain the required insurance, the HFA must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the HFA retains an interest in the project and final claim settlement has not been completed or the contract of insurance has not been otherwise terminated.

(h) *Modification of terms.* The mortgage must contain a covenant requiring that, in the event that the HFA and owner agree to a modification of the terms of the mortgage (*e.g.*, to reflect a reduction of the interest rate if reductions are realized in the underlying bond rates for the project), Section 8 rents would be reduced in accordance with HUD guidelines.

(i) *Regulatory Agreement.* The mortgage must contain a provision incorporating the Regulatory Agreement by reference.

§ 266.415 Mortgage lien and other obligations.

(a) *Liens.* At the initial and final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that the property covered by the mortgage is free from all liens other than the lien of the insured mortgage, except that the property may be subject to such inferior lien or liens as approved by the HFA as long as the insured mortgage has first priority for payment.

(b) *Contractual obligations.* At the final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that all contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be of a lesser priority for payment than the obligation of the insured mortgage.

§ 266.417 Authority to adjust mortgage insurance amount.

In order to protect the mortgage insurance funds, the Commissioner has authority in his or her sole discretion, at any time prior to and including final endorsement, to adjust the amount of the mortgage insurance.

§ 266.420 Closing and endorsement by the Commissioner.

(a) *Closing.* Before disbursement of loan advances in periodic advances cases, and in all cases after completion of construction, repair or substantial rehabilitation, the HFA must hold a closing and submit a closing docket with required documentation to the Commissioner or the Commissioner's authorized Departmental representative for insurance of the mortgage by endorsement of the mortgage note. The note must provide that the mortgage is insured under section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth at 24 CFR part 266 in effect on the date of endorsement. The note must also specify the date of endorsement, *i.e.*, the date of HUD endorsement of the project mortgage, and the risk of loss assumed by the HFA and by HUD.

(b) *Closing docket.* The HFA's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 266.210, and certifications and information as follows:

(1) Information concerning the mortgage amount and term, location, number and type of units, income and expenses, rents, projects and market occupancy percentages, value/replacement cost, interest rate, and similar statistical information in accordance with the Commissioner's administrative procedures.

(2) Copies of the amortization schedule, Note and Risk-Sharing Agreement.

(3) Certification that the loan has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the project is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements (or where the mortgage is insured under Level II, in full compliance with the underwriting standards and loan terms and conditions as approved by HUD).

(4) At the time of final endorsement, a certification for periodic advances cases, if submitted for final endorsement, that advances were made proportionate to construction progress.

(5) A copy of the HFA-approved cost certification if the project is submitted for final endorsement.

(6) A certification that equal employment requirements are followed.

(7) A certification that the HFA has reviewed and approved the Affirmative Fair Housing Marketing Plan and found it acceptable.

(8) A certification that a dedicated account, if required, has been increased in accordance with § 266.110(b).

(9) Certifications required under § 266.415 concerning liens and contractual obligations.

(10) Copies of the Hazard Insurance Policy with a clause making the loss payable to the HFA.

(11) For projects subject to Davis-Bacon prevailing requirements under § 266.225, the certification and information concerning payment of prevailing wage rates required by § 266.225(d).

(12) Certified copies of mortgage (deed of trust) with attached regulatory agreement, and note for HUD files.

Subpart F—Project Management and Servicing

§ 266.500 General.

The HFA will have full responsibility for the administration of the provisions of this subpart and for managing and servicing projects insured under this part. The HFA is responsible for monitoring and determining the compliance of the project owner in accordance with the provisions of this subpart. HUD will monitor the performance of the HFA, not the project owner, to determine its compliance with the provisions covered under this subpart.

§ 266.505 Regulatory agreement requirements.

(a) *General.* (1) The HFA must execute a Regulatory Agreement, in recordable

form, between the mortgagor and the HFA to be in force for the duration of the insured mortgage and note or bond. The Regulatory Agreement must include a description of the property. The Regulatory Agreement must be incorporated by reference into the mortgage and recorded with the mortgage.

(2) The Regulatory Agreement executed between the HFA and the mortgagor must be binding upon the mortgagor and any of its successors and assigns and upon the HFA and any of its successors for so long as the mortgage is insured by HUD or HUD holds an HFA debenture issued in connection with a claim arising from the insured mortgage. The HFA may not assign the Regulatory Agreement.

(3) The HFA will enforce the Regulatory Agreement and take actions against any mortgagors who violate its provisions. Such actions may involve a declaration of default and application to any court for specific performance of the agreement.

(b) *Requirements.* The Regulatory Agreement must require the mortgagor to comply with the provisions of this part and obligate the mortgagor, among other things, to:

(1) Make all payments due under the mortgage and note/bond.

(2) Where necessary, establish a sinking fund for future capital needs.

(3) Maintain the project as affordable housing, as defined in § 266.5.

(4) Continue to use dwelling units for their original purposes.

(5) Comply with such other requirements as may be established by the HFA and set forth in the Regulatory Agreement.

(6) Maintain the project in good physical condition.

(7) Maintain complete books and records established solely for the project and provide the HFA with an audited financial statement based on these books and records and performed in accordance with standards for financial audits of the U. S. General Accounting Office's government auditing standards, issued by the Comptroller of the United States.

(8) Comply with the Affirmative Fair Housing Marketing Plan and all other fair housing and equal opportunity requirements.

(9) Operate as a single asset mortgagor.

(10) Make books and records available for HUD or General Accounting Office (GAO) review with appropriate notification.

(11) Permit HUD officials or employees to inspect the project upon request by the Commissioner.

(c) *Enforcement.* The Regulatory Agreement shall be enforced by the HFA.

§ 266.510 HFA responsibilities.

(a) *Inspections.* The HFA must perform annual physical inspections of the projects and provide a copy of the inspection report to HUD. If a project is not in safe and sanitary condition, the HFA must provide a summary to HUD of actions required, with target dates, to correct unresolved findings.

(b) *Annual audits of projects.* The HFA must analyze projects' annual audits and provide a copy to HUD along with a summary of unresolved findings and actions planned, with target dates, to correct unresolved findings.

(c) *HFA's annual financial statement.* The HFA must provide HUD with an annual audited financial statement in accordance with the requirements of 24 CFR part 44.

§ 266.515 Record retention.

(a) *Loan origination and servicing.* Records pertaining to the mortgage loan origination and servicing of the loan must be maintained for as long as the insurance remains in force.

(b) *Defaults and claims.* Records pertaining to a mortgage default and claim must be retained from the date of default through final settlement of the claim for a period of no less than three years after final settlement.

§ 266.520 Program monitoring and compliance.

HUD will monitor the performance of the HFA in accordance with the provisions covered under this subpart.

Subpart G—Contract Rights and Obligations

Mortgage Insurance Premiums

§ 266.600 Mortgage insurance premium: Insurance upon completion.

(a) *Initial premium.* For projects insured upon completion, on the date of the final closing, the HFA shall pay to the Commissioner an initial premium equal to the prescribed percentage, in the sliding scale chart that is shown in § 266.604(b), of the face amount of the mortgage.

(b) *Premium payable with first payment of principal.* On the date of the first payment of principal the HFA shall pay a second premium (calculated on a per annum basis) equal to the prescribed percentage of the average outstanding principal obligation of the mortgage from the final closing date to the year following the date of the first principal payment, less the amount paid on the date of the final closing.

(c) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, or partial claim payment under § 266.630, or prepayments, for the year following the date on which the premium becomes payable.

§ 266.602 Mortgage insurance premium: Insured advances.

(a) *Initial premium.* For projects involving insured advances, on the date of the initial closing, the HFA shall pay to the Commissioner an initial premium equal to the prescribed percentage, in the sliding scale chart that is shown in § 266.604(b), of the face amount of the mortgage.

(b) *Interim premium.* On each anniversary of the initial closing, the HFA shall pay an interim mortgage insurance premium equal to the prescribed percentage of the face amount of the mortgage. The HFA shall continue to pay the interim mortgage insurance premiums until the date of the first principal payment.

(c) *Premium payable with first payment of principal.* On the date of the first principal payment, the HFA shall pay a mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment. The HFA shall adjust this payment by deducting an amount equal to the portion of the last premium paid that is attributable to the months after the date of the first payment to principal. Any partial month is to be counted as a whole month. The HFA shall remit the net adjusted mortgage premium to the Commissioner and refund the amount of the adjustment (overpayment) to the mortgagor.

(d) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, prepayments, or a partial claim payment under § 266.630, for the year following the date on which the premium becomes payable.

§ 266.604 Mortgage insurance premium: Other requirements.

(a) *Premium calculations on or after first principal payment.* The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the amortization schedule prepared by the HFA for final closing and the prescribed percentage as set forth in the sliding scale chart in paragraph (b) of this section without taking into account delinquent payments or prepayments.

(b) *Prescribed percentages.* The following sliding scale chart provides the prescribed percentage, based upon the respective share of risk, that is to be used in calculating mortgage insurance premiums under this section:

Percentage share of risk		Prescribed percentage for calculating HFA's annual MIP
HUD	HFA	
90	10	.45
75	25	.375
50	50	.25
40	60	.2
30	70	.15
20	80	.1
10	90	.05

(c) *Closing information.* The HFA shall provide final closing information to the Commissioner within 15 days of the final closing in a format prescribed by the Commissioner. In addition, the HFA shall submit a copy of the amortization schedule. This amortization shall be used to compute and collect all future mortgage insurance premiums subject to § 266.600(c) or § 266.602(d). If the mortgage is modified, the HFA shall submit to the Commissioner a copy of the revised amortization schedule, which shall be used to compute and collect all future mortgage insurance premiums subject to § 266.600(c) or § 266.602(d).

(d) *Due date for premium payments.* Mortgage insurance premiums are due on the first day of the month of the anniversary of the first payment to principal. Any premium received by the Commissioner more than 15 days after the due date shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

§ 266.606 Mortgage insurance premium: Duration and method of paying.

(a) *Duration of payments.* Mortgage insurance premium payments must continue annually until one of the following occurs:

(1) The mortgage is paid in full;

(2) A deed to the HFA is filed for record;

(3) An application for initial claim payment is received by the Commissioner; or

(4) The Contract of Insurance is otherwise terminated.

(b) *Method of payment.* The HFA shall pay any mortgage insurance premium required by this part in cash.

§ 266.608 Mortgage insurance premium: Pro rata refund.

If the Contract of Insurance is terminated by payment in full or is terminated by the HFA on a form prescribed by the Commissioner, after the date of the first payment to principal, the Commissioner shall refund any mortgage insurance premium for the period after the effective date of the termination of insurance. The refund shall be mailed to the HFA for credit to the mortgagor's account. In computing the pro rata portion of the annual mortgage insurance premium, the date of termination of insurance shall be the last day of the month in which the mortgage is prepaid or the Commissioner receives a notification of termination, whichever is later. No refund shall be made if the insurance was terminated because of the submission of an application for initial claim payment or if the termination occurs before the date of the first payment to principal.

Insurance Endorsement

§ 266.612 Insurance endorsement.

(a) *Initial endorsement.* The Commissioner shall indicate his or her insurance of the mortgage by endorsing the original credit instrument.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all other applicable terms and conditions have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances that have been approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the HFA shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

Assignments

§ 266.616 Transfer of partial interest under participation agreement.

The HFA may not assign the mortgage. However, a partial interest in an insured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(a) Legal title to the insured mortgage or mortgages shall be held by the HFA; and

(b) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(1) The HFA shall remain mortgagee of record under the contract of mortgage insurance;

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and

(3) The mortgagor shall have no obligation to recognize or do business with any one other than the HFA or, if applicable, its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

Termination

§ 266.620 Termination of Contract of Insurance.

The Contract of Insurance shall terminate if any of the following occurs:

(a) The mortgage is paid in full;

(b) The HFA acquires the mortgaged property and notifies the Commissioner that it will not file an insurance claim;

(c) A party other than HFA acquires the property at a foreclosure sale;

(d) The HFA notifies the Commissioner of Termination of Insurance (voluntary termination);

(e) The HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage or while the Contract of Insurance is in existence;

(f) The receipt by the Commissioner of an Application for Final Claims Settlement;

(g) If the HFA acquires the mortgaged property and fails to make an initial claim.

§ 266.622 Notice and date of termination by the Commissioner.

The Commissioner shall notify the HFA that the Contract of Insurance has

been terminated and shall establish the effective date of termination. The termination shall be the last day of the month in which one of the events specified in § 266.620 occurs.

Claim Procedures

§ 266.626 Notice of default and filing an insurance claim.

(a) *Definition of default.* (1) A monetary default exists when the mortgagor fails to make any payment due under the mortgage.

(2) A covenant default exists when the mortgagor fails to perform any other covenant under the provision of the mortgage or the regulatory agreement, which is incorporated by reference in the mortgage. An HFA becomes eligible for insurance benefits on the basis of a covenant default only after the HFA has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

(b) *Date of default.* For purposes of this subpart, the date of default is:

(1) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(2) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 days, the HFA must notify the Commissioner within 10 days thereafter, unless the default is cured within the 30-day period. Unless waived by the Commissioner, the HFA must submit this notice monthly, on a form prescribed by the Commissioner, until the default has been cured or the HFA has filed an application for an initial claim payment. In cases of mortgage acceleration, the mortgagee must first give notice of the default.

(d) *Timing of claim filing.* Unless a written extension is granted by HUD, the HFA must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 days from the date of default and may do so as early as the first day of the month following the month for which a payment was missed. Upon request of the HFA, HUD may extend, up to 180 days from the date of default, the deadline for filing a claim. In those cases where the HFA certifies that the project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, HUD may extend the deadline for filing a claim beyond 180 days, not to exceed 360 days from the date of default.

§ 266.628 Initial claim payments.

(a) *Determination of initial claim amount.* (1) The initial claim amount is based on the unpaid principal balance of the mortgage note as of the date of default, plus interest at the mortgage note rate from date of default to date of initial claim payment. The mortgage note interest component of the initial claim amount is subject to curtailment as provided in paragraph (b) of this section.

(2) HUD shall make an initial claim payment to the HFA that is equal to the initial claim amount, less any delinquent mortgage insurance premiums, late charges and interest, assessed under § 266.604(d).

(3) The HFA must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 days of the retirement.

(b) *Curtailment of interest for late filings.* In determining the mortgage note interest component of the initial claim amount, if the HFA fails to meet any of the requirements of this section within the specified time (including any granted extension of time), HUD shall curtail the accrual of mortgage note interest by the number of days by which the required action was late.

(c) *Method of payment.* HUD shall pay the claim in cash.

§ 266.630 Partial payment of claims.

(a) *General.* When the Commissioner receives a claim for a partial payment under § 266.626(d), the Commissioner may make a partial payment of claim in accordance with the requirements of this section. If the HFA has not previously received a partial claim payment, the HFA may file a claim for a partial claim payment under § 266.630. Otherwise, the HFA must file for an initial claim payment under § 266.628.

(b) *HFA submission.* In addition to any other requirements set forth in administration instructions, the HFA must provide the following information with its application for a partial claim payment:

(1) The amount by which the HFA will reduce the principal on the insured mortgage and the amount of delinquent interest on the insured mortgage that the HFA will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured first mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment when considered with other resources available to the project are sufficient to restore the financial viability of the project;

(iii) The project is or can (at reasonable cost) be made structurally sound;

(iv) The management of the project is satisfactory;

(v) The default under the insured mortgage was beyond the control of the mortgagor.

(c) *Claim processing.*—(1) *Acceptable application.* If the HFA's application is acceptable, the Commissioner shall notify the HFA to process the partial payment, which will include the modification of the existing mortgage and the execution by the mortgagor of a second mortgage payable to the HFA. When the second mortgage is closed, the HFA shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the HFA, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the HFA of the information needed to make the application acceptable or return the application for further action. The HFA is granted an extension of 30 days from the date of any notification for further action.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to the amount of relief provided by the HFA in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of HUD's percentage of the risk of loss or 50 percent.

(3) *HFA second mortgage.* Repayment of the relief provided by the HFA must be secured by a second mortgage to the HFA. This second mortgage may provide for postponed amortization and may not be assigned by the HFA. This second mortgage is not insured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by HFA.* The HFA must remit to HUD a

percentage of all amounts collected on the HFA's second mortgage within 15 days of receipt by the HFA. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate.

(5) *Certified statements of amounts collected.* As long as the second mortgage remains of record, the HFA must submit to the Commissioner an annual certified statement of the amounts collected by the HFA. The HFA must submit a final certified statement within 30 days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 266.632 Withdrawal of claim.

In case of a default and subsequent filing of claim, the HFA shall determine the form of workout or modification and will inform HUD of the type of mortgage relief determined to be appropriate. If the default is cured after the claim is made but before the initial claim payment is paid by HUD, the HFA may, in writing, withdraw the claim, and insurance will continue as if the default had not occurred.

§ 266.634 Reinstatement of the contract of insurance.

(a) *Conditions for reinstatement.* After the initial claim payment, HUD may reinstate the contract of insurance on the following conditions:

(1) The HFA has not acquired the project;

(2) The mortgagor has cured the default; and

(3) The HFA requests that HUD reinstate the contract of insurance.

(b) *Notification of reinstatement.* If reinstatement is acceptable to HUD, HUD shall notify the HFA of the date the contract of insurance will be reinstated and shall advise the HFA of the payment needed to reinstate the contract of insurance.

(c) *Payment.* Within 30 days of the date of the notice under paragraph (b) of this section, the HFA shall pay HUD an amount equal to the initial claim amount, as determined under § 266.628(a)(1), plus an amount equal to the accrued and unpaid interest on the HFA Debenture through the reinstatement date, plus an amount equal to the mortgage insurance premium for the period from the date of reinstatement of the contract of insurance to the next anniversary date for payment of the mortgage insurance premium.

(d) *Cancellation of debenture.* Upon receipt from the HFA of the amount specified in paragraph (c) of this section, HUD shall return the HFA debenture for cancellation.

(e) *Continuation of contract of insurance.* Upon reinstatement, the contract of insurance shall continue as if the default had not occurred.

§ 266.636 Insuring new loans for defaulted projects.

The HFA may not make another loan that is insured under this part to the same owner in the same project if HUD has paid a claim under this part.

§ 266.638 Issuance of HFA Debenture.

(a) *Condition to initial claim payment.* The HFA must issue an instrument in the form of a debenture to HUD within 30 days of receiving the initial claim payment. The HFA Debenture shall meet the following requirements and shall be in a form that has been approved by HUD as part of the application approval process.

(b) *Term of HFA Debenture.* The HFA Debenture shall be dated the same date that the initial claim payment is issued. The HFA Debenture shall have a term of five years in order to afford the mortgagor ample time to cure the default or the HFA time to foreclose and/or resell the project. HUD may provide a written extension of the five year term if the HFA certifies and provides documentation that the project owner has filed bankruptcy and the HFA is taking action to have the project discharged from the bankruptcy. The HFA Debenture shall, during this extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment. Interest is due on the full face amount of the HFA Debenture through the term of the HFA Debenture or through the date an application for final claim payment is received by the Commissioner.

(c) *HFA Debenture amount.* (1) The HFA Debenture shall be for the full initial claim amount as determined under § 266.628(a)(1) (minus any excess funds returned to HUD under § 266.628(a)(3)).

(2) The full amount of the HFA Debenture shall be payable to HUD upon maturity, unless the HFA Debenture is canceled because of:

(i) A reinstatement of the contract of insurance under § 266.634; or

(ii) Final claim settlement under § 266.654.

(d) *HFA Debenture interest rate.* The HFA Debenture shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment and on the date of redemption when redeemed or canceled before an anniversary date. Interest shall be computed on the full face amount of the HFA Debenture through the term of the HFA Debenture.

(e) *Form of HFA Debenture.* The HFA Debenture should follow the standard form of a State/Municipal Debenture issued under the Uniform Commercial Code, where applicable, and shall be supported by the full faith and credit of the HFA. For HFAs that operate as departments or divisions of States or units of local government and where such HFAs cannot pledge the full faith and credit of the HFA, such HFAs may collateralize their obligation through a letter of credit, reinsurance, or other forms of credit acceptable to the Commissioner.

(f) *Debenture registration.* Unless otherwise required by law, including State or local laws, or other governing bodies, HUD will not require the HFA Debenture to be "Registered" (with the Securities and Exchange Commission) as it is a direct, or private, placement, and not a public offering, that is supported by the full faith and credit of the HFA.

§ 266.640 Foreclosure and acquisition.

The HFA is not required to foreclose the insured mortgage. It may accept a deed-in-lieu of foreclosure.

§ 266.642 Appraisals.

Where actions taken or caused to be taken by the HFA have the effect of the recovery of less than the face amount of the HFA Debenture held by HUD, an appraisal should be made to determine the value of the project. The appraisal should assume a willing buyer and a willing seller. The appraisal must be done within the 45-day period immediately preceding the date when the HFA files an application for final claim settlement. If at the time of final claim settlement the HFA has not sold the project, an appraisal should be made to determine the value of the project at its highest and best use.

§ 266.644 Application for final claim settlement.

The HFA shall file an application for final settlement in accordance with the Commissioner's administrative procedures not later than 30 days after any of the following:

(a) Sale of the property after foreclosure or after acquisition by deed-in-lieu of foreclosure; or

(b) Expiration of the term of the HFA debenture.

§ 266.646 Determining the amount of loss.

The amount of the total loss to be shared by HUD and the HFA is equal to:

(a) The amount of the initial claim payment;

(b) Plus all items set forth in § 266.648; and

(c) Less all items set forth in § 266.650.

§ 266.648 Items included in total loss.

In computing the total loss, the following items are added to the amount described in § 266.646(a):

(a) The amount of all payments that the HFA made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage; and

(2) Fire and hazard insurance on the property.

(b) A reasonable amount of acquisition costs actually paid by the HFA. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(c) Reasonable payments that the HFA made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the requirements of local laws;

(3) Expenses in connection with the sale of property; and

(4) Bankruptcy expenses approved by the Office of General Counsel.

(d) The amount of HFA Debenture interest paid by the HFA to HUD.

§ 266.650 Items deducted from total loss.

In computing insurance benefits, the following items are deducted from the amounts described in § 266.646(a) and (b):

(a) All amounts received by the HFA on account of the mortgage after the date of default;

(b) All cash, and/or funds related to the mortgaged property, including deposits and escrows made for the account of the mortgagor that the HFA holds (or to which it is entitled);

(c) The amount of any undrawn balance under a letter of credit that the HFA accepted in lieu of a cash deposit for an escrow agreement;

(d) Any net income from the mortgaged property/project that the HFA received after the date of default.

(e) The proceeds from the sale of the project or the appraised value of the project as provided in § 266.642 as follows:

(1) If the HFA disposes of the project through a negotiated sale, the amount deducted shall be the higher of the sales price or the appraised value.

(2) If the HFA disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted shall be the sales price, even if it is lower than the appraised value.

(3) If the HFA has not disposed of the project within 5 years from the date of issuance of the HFA Debentures (unless an extension has been granted pursuant to § 266.638), the amount deducted shall be the appraised value.

(f) Any and all claims that the HFA has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from canceled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

(g) The amount of daily HFA Debenture interest accrued but not paid from the anniversary date of the last HFA Debenture interest payment to the date an application for final claim payment is received by the Commissioner.

§ 266.652 Determining share of loss.

The total loss computed in § 266.646 shall be shared by HUD and the HFA in accordance with their respective percentage of risk as specified in the note and the addendum to the Risk-Sharing Agreement between HUD and the HFA.

§ 266.654 Final claim settlement and HFA Debenture redemption.

(a) *Final claim payment.* If the initial claim amount, as determined under § 266.628(a)(1), is less than HUD's share of the loss, HUD shall make a final claim payment to the HFA that is equal to the difference between HUD's share of the loss and the initial claim amount and shall return the HFA Debenture to the HFA for cancellation.

(b) *HFA reimbursement payment.* If the initial claim amount, as determined under § 266.628(a)(1), is more than HUD's share of the loss, the HFA shall, within 30 days of notification by HUD of the amount due, remit to HUD an amount that is equal to the difference between the initial claim amount and HUD's share of the loss. The funds must be remitted in a manner prescribed in the Commissioner's administrative procedures. The HFA Debenture will be considered redeemed upon receipt of the cash payment. A 5 percent penalty will be charged and interest at the debenture rate will begin to accrue if the cash payment is not received within the prescribed period. If an HFA is in default under an existing debenture and files a claim on another project under this part, HUD will charge the HFA's Dedicated Account for the amount owed the Department. In cases of top-tier or A-rated HFA's which are not required to maintain a Dedicated Account, HUD will inform the rating agencies of the HFA's failure to pay on their debt obligation and of its violation of the Risk-Sharing Agreement.

(c) *Losses.* Losses sustained as a consequence of the (sole) negligence of an HFA (*e.g.*, failure to acquire adequate hazard insurance where such insurance is available) shall be the sole obligation of the HFA, notwithstanding the risk apportionment otherwise agreed to by HUD and the HFA.

(d) *Supplemental claim.* Any supplemental claim must be filed within one year from date of final claim settlement.

§ 266.656 Recovery of costs after final claim settlement.

If, after final claim settlement, the HFA recovers additional sums as the result of the sale of the project or otherwise, the total amount of such recovery shall be shared by HUD and the HFA in accordance with the prescribed percentage of shared risk.

§ 266.658 Program monitoring and compliance.

HUD will monitor the performance of the HFA for compliance with the provisions of this subpart.

Dated: November 29, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–29835 Filed 12–2–94; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Monday
December 5, 1994

Part VII

Department of Education

Library Research and Demonstration Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.039D]

Library Research and Demonstration Program: Demonstration Project Making Federal Information and Other Databases Available For Public Use by Connecting a Multistate Consortium of Public and Private Colleges and Universities to a Public Library and an Historic Library Notice; Inviting Applications for a New Award for Fiscal Year (FY) 1995

Purpose of Program: The Library Research and Demonstration Program provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, including the promotion of economical and efficient delivery of information, cooperative efforts, developmental projects, education in library and information science, and dissemination of information derived from such projects. The competition announced in this notice is for a demonstration project making Federal information and other databases available for public use by connecting a multistate consortium of public and private colleges and universities to a public library and an historic library.

Eligible Applicants: Institutions of higher education that meet the definition of eligibility under the terms of 20 U.S.C. 1141(a) and other public or private agencies, institutions, and organizations.

Deadline for Transmittal of Applications: February 6, 1995.

Deadline for Intergovernmental Review: April 7, 1995.

Applications Available: December 7, 1994.

Available Funds: $1.5 million.

Estimated Average Size of Award: $1.5 million.

Estimated Number of Awards: One.

Project Period: Up to 24 months.

Budget Period: Same as project period.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, 86; and (b) the regulations for this program in 34 CFR Part 777.

Priority: Under 34 CFR 75.105(c)(3) and the FY 1995 Appropriations Act (Pub. L. 103–333), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

A demonstration project making Federal information and other databases available for public use by connecting a multistate consortium of public and private colleges and universities to a public library and an historic library.

SUPPLEMENTARY INFORMATION: Public Law 103–333, enacted September 30, 1994, provides FY 1995 appropriations for federally-assisted library programs. That legislation specifies that, of the total funds appropriated for federally-assisted library programs, $1.5 million shall be used to address the priority as stated above.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by Title II of the Higher Education Act (HEA) (20 U.S.C. 1021 et seq.) must be an eligible institution under the terms of 20 U.S.C. 1141(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Ms. Lois Moore, U.S. Department of Education, Office of Postsecondary Education, 600 Independence Avenue, SW, room 3522, ROB–3, Washington, DC 20202–5323.

For Applications or Information Contact: Christina Dunn, U.S. Department of Education, 555 New Jersey Avenue, NW, room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notice for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1033.

Dated: November 30, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–29857 Filed 12–2–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
December 5, 1994

Part VIII

The President

Executive Order 12941—Seismic Safety of Existing Federally Owned or Leased Buildings

Federal Register
Vol. 59, No. 232
Monday, December 5, 1994

Presidential Documents

Title 3—

The President

Executive Order 12941 of December 1, 1994

Seismic Safety of Existing Federally Owned or Leased Buildings

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the Earthquake Hazards Reduction Act of 1977, as amended by Public Law 101–614, which requires the President to adopt "standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards" (42 U.S.C. 7705b(a)), it is hereby ordered as follows:

Section 1. *Adoption of Minimum Standards. The Standards of Seismic Safety for Existing Federally Owned or Leased Buildings* (Standards), developed, issued, and maintained by the Interagency Committee on Seismic Safety in Construction (ICSSC), are hereby adopted as the minimum level acceptable for use by Federal departments and agencies in assessing the seismic safety of their owned and leased buildings and in mitigating unacceptable seismic risks in those buildings. The Standards shall be applied, at a minimum, to those buildings identified in the Standards as requiring evaluation and, if necessary, mitigation. Evaluations and mitigations that were completed prior to the date of this order under agency programs that were based on standards deemed adequate and appropriate by the individual agency need not be reconsidered unless otherwise stipulated by the Standards.

For the purposes of this order, buildings are defined as any structure, fully or partially enclosed, located within the United States as defined in the Earthquake Hazards Reduction Act of 1977, as amended, (42 U.S.C. 7703(5)), used or intended for sheltering persons or property, except for the exclusions specified in the Standards.

Sec. 2. *Estimating Costs of Mitigation.* Each agency that owns or leases buildings for Federal use shall, within 4 years of the issuance of this order, develop an inventory of their owned and leased buildings and shall estimate the costs of mitigating unacceptable seismic risks in those buildings. The cost estimate shall be based on the exemptions and evaluation and mitigation requirements in the Standards. Guidance for the development of the inventory and cost estimates will be issued by the ICSSC no later than 1 year after the signing of this order. Cost estimates with supporting documentation shall be submitted to the Director of the Federal Emergency Management Agency (FEMA) no later than 4 years after the signing of this order.

Sec. 3. *Implementation Responsibilities.* (a) The Federal Emergency Management Agency is responsible for (1) notifying all Federal departments and agencies of the existence and content of this order; (2) preparing for the Congress, in consultation with the ICSSC, no later than 6 years after the issuance of this order, a comprehensive report on how to achieve an adequate level of seismic safety in federally owned and leased buildings in an economically feasible manner; and (3) preparing for the Congress on a biennial basis, a report on the execution of this order.

(b) The National Institute of Standards and Technology is responsible for providing technical assistance to the Federal departments and agencies in the implementation of this order.

(c) Federal departments and agencies may request an exemption from this order from the Director of the Office of Management and Budget.

Sec. 4. *Updating Programs.* The ICSSC shall update the Standards at least every 5 years. It shall also update the Standards within 2 years of the publication of the first edition of FEMA's *Guidelines for Seismic Rehabilitation of Buildings and Commentary.*

Sec. 5. *Judicial Review.* Nothing in this order is intended to create any right to administrative or judicial review, or any other right, benefit, or trust responsibility, substantive or procedural, enforceable at law by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

William J. Clinton

THE WHITE HOUSE,
December 1, 1994.

[FR Doc. 94-30035
Filed 12-2-94; 9:26 am]
Billing code 3195-01-P

federal register

Monday
December 5, 1994

Part IX

The President

Memorandum of November 30—Locality-Based Comparability Payments

Federal Register
Vol. 59, No. 232
Monday, December 5, 1994

Presidential Documents

Title 3—

The President

Memorandum of November 30, 1994

Locality-Based Comparability Payments

Memorandum for the President's Pay Agent:
The Secretary of Labor
The Director of the Office of Management and Budget
The Director of the Office of Personnel Management

I have reviewed your report concerning recommended locality-based comparability payments for General Schedule employees, submitted in accordance with section 5304 of title 5, United States Code. I approve the recommended payments as set forth in Table 4 of the report, and I direct the Director of the Office of Personnel Management to implement those payments, effective as of the beginning of the first applicable pay period commencing on or after January 1, 1995. I further authorize and direct the Director of the Office of Personnel Management to ensure that this memorandum and a schedule of the attached comparability payment rates and localities be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 30, 1994.

[FR Doc. 94-30039
Filed 12-02-94; 10:07 am]
Billing code 6325-01-M

Locality-Based Comparability Payments Effective January 1995

Pay Locality	Comparability Payment
Atlanta MSA	4.66%
Boston CMSA	6.97%
Chicago CMSA	6.92%
Cincinnati CMSA	5.33%
Cleveland CMSA	4.23%
Columbus, OH, MSA	5.30%
Dallas CMSA	5.65%
Dayton MSA	5.19%
Denver CMSA	5.75%
Detroit CMSA	6.59%
Houston CMSA	8.53%
Huntsville MSA	4.39%
Indianapolis MSA	4.58%
Kansas City MSA	3.97%
Los Angeles CMSA [1]	7.39%
Miami CMSA	5.39%
New York CMSA	7.30%
Philadelphia CMSA	6.26%
Portland, OR, CMSA	4.71%
Richmond MSA	4.00%
Sacramento CMSA	5.27%
St. Louis MSA	4.28%
San Diego MSA	6.14%
San Francisco CMSA	8.14%
Seattle CMSA	5.84%
Washington CMSA [2]	5.48%
Rest of United States [3]	3.74%

NOTE: MSA means Metropolitan Statistical Area and CMSA means Consolidated Metropolitan Statistical Area, both as defined by the Office of Management and Budget (OMB) in OMB Bulletin Number 94–07, July 5, 1994.

[1] Pay locality also includes Santa Barbara County and Edwards Air Force Base, CA.
[2] Pay locality also includes St. Marys County, MD.
[3] Does not include Alaska, Hawaii, or U.S. territories or possessions.

Billing code 6325–01–M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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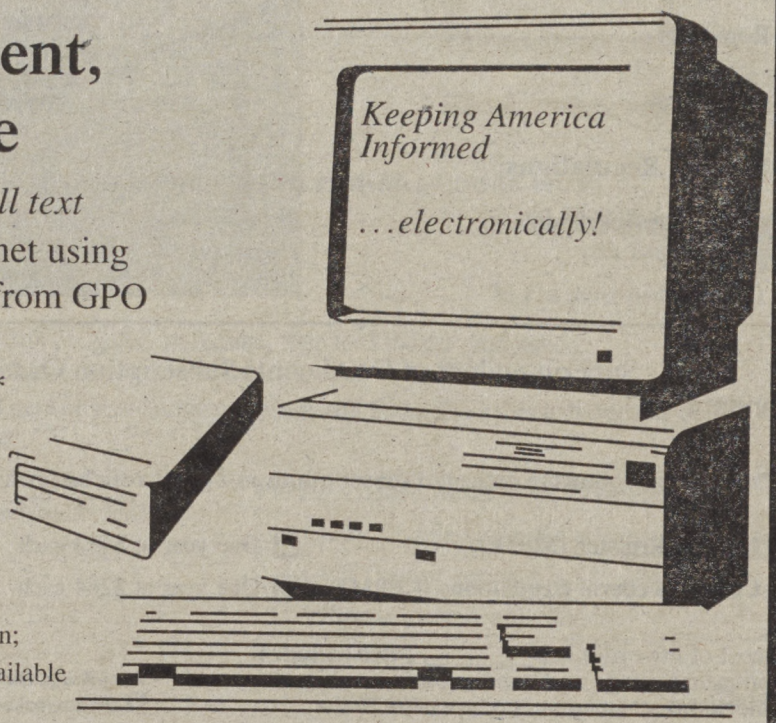
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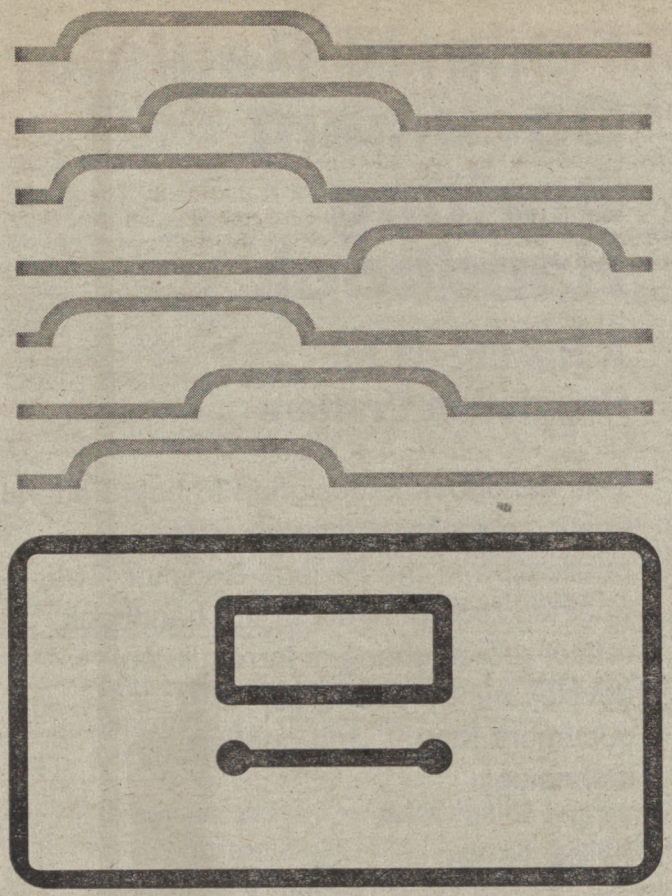
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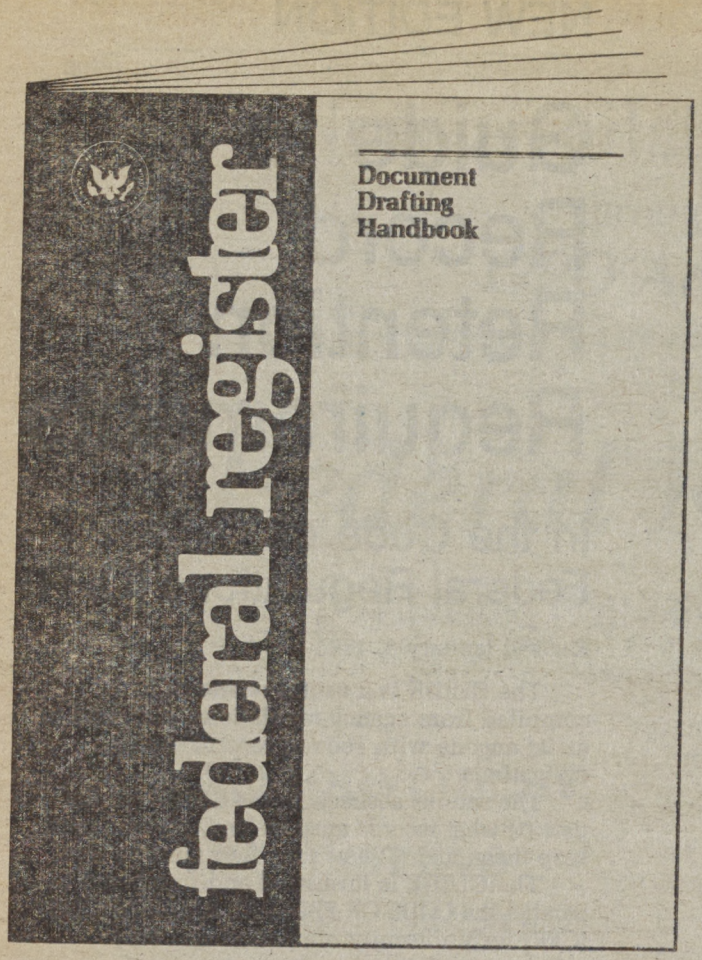
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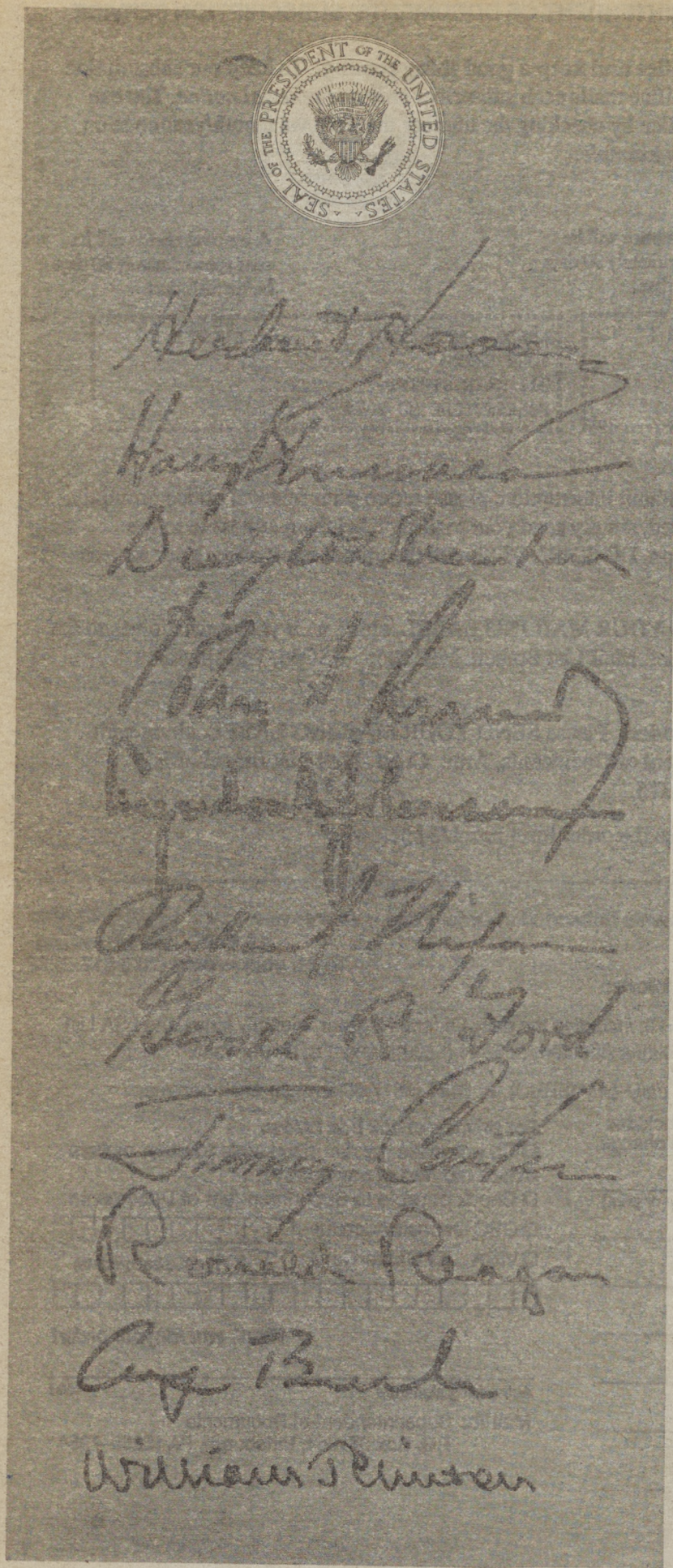
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