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Presidential Documents

Title 3—

The President

Executive Order 12942 of December 12, 1994

Addition to Level V of the Executive Schedule—Commissioner, Administration for Native Americans

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5317 of title 5, United States Code, and in order to place an additional position in Level V of the Executive Schedule, it is hereby ordered that section 1–102 of Executive Order No. 12154, as amended, is further amended by adding the following new subsection to section 1–102:

"(f) Commissioner, Administration for Native Americans"

William J. Clinton

THE WHITE HOUSE,
December 12, 1994.

[FR Doc. 94–30997
Filed 12–13–94; 2:49 pm]
Billing code 3195–01–P

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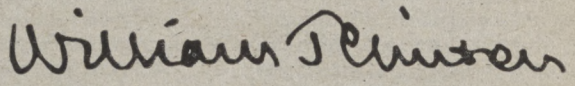
Executive Order 12943 of December 13, 1994

Further Amendment to Executive Order No. 11755

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with sections 3621 and 3622 of title 18, United States Code, and section 4301 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355, and in order to improve the acquisition of small cost items by the Federal Government, it is hereby ordered that Executive Order No. 11755, as amended, is further amended as follows: (a) by deleting the phrase "section 4082 of title 18 of the United States Code, the Attorney General" in the second paragraph of the preamble and inserting in lieu thereof the following phrase: "sections 3621 and 3622 of title 18, United States Code, the Bureau of Prisons" and

(b) by adding a new subsection (c) to section 1 of the order. The new subsection (c) is to read as follows:

"(c) The provisions of this order do not apply to purchases made under the micropurchase authority contained in section 32 of the Office of Federal Procurement Policy Act, as amended."



THE WHITE HOUSE,
December 13, 1994.

[FR Doc. 94–30998
Filed 12–13–94, 2:50 pm]
Billing code 3195–01–P

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV94-905-3-FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Repacked Citrus Fruit Shipment Exemption Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established exemption procedures governing shipments of repacked fresh citrus fruit grown in Florida. This rule permits repacking shippers to repack and ship previously inspected and certified citrus fruit exempt from further inspection and certification under specific conditions. This exemption enables repacking shippers to repack and ship fruit for specialty markets, without incurring the costs of having the fruit reinspected and recertified.

EFFECTIVE DATE: January 17, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: 202-720-2431; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 [7 CFR Part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act. The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility

There are about 100 Florida citrus fruit handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 11,970 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee) met on June 21, 1994, and unanimously recommended establishment of exemption procedures, for repacked previously inspected and certified citrus fruit. The committee meets prior to and during each season to review the rules and regulations effective on a continuous basis for each citrus fruit regulated under the order Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.80 [7 CFR Part 905.80] provides for the shipment of fruit not subject to grade and size regulations issued under § 905.52 [7 CFR Part 905.52], and inspection and certification required under § 905.53 [7 CFR Part 905.53], including types of shipments and fruit shipped for such purposes as the committee with approval of the Secretary may specify. Section 905.80 also provides that the committee shall, with approval of the Secretary, prescribe such rules, regulations, or safeguards as it may deem necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized. Such rules, regulations, and safeguards may include the requirements that handlers file applications with the committee for authorization to handle citrus fruit exempt from certain order requirements, and report such exempted shipments to the committee.

Section 905.53 provides that when the handling of citrus fruit is regulated under § 905.52, each handler shall, prior to handling any lot of such citrus fruit, cause such citrus fruit to be inspected and certified by the Federal or Federal/State Inspection Service (FSIS) as

meeting all applicable requirements of such regulation. Section 905.53 also provides that inspection and certification shall not be required for a particular lot of citrus fruit, if such lot has been previously inspected and certified by the FSIS as meeting the handling requirements issued under the authority of § 905.52.

However, prior to the interim final rule, if such citrus fruit was repacked prior to shipment from the production area, the repacking shipper was required to have the citrus fruit reinspected and recertified. This was because the citrus fruit loses its lot identity during the repacking process, and there was no way to demonstrate that the repacked citrus fruit was the same fruit as that which has already been inspected and certified as meeting order requirements.

The committee recommended establishment of the following exemption procedures to enable repacking shippers who only repack and ship previously inspected and certified citrus fruit to ship such fruit exempt from further inspection and certification under specific conditions. The exemption provisions enable repacking shippers to custom repack and ship previously inspected and certified citrus fruit in different types of containers that are more acceptable to certain buyers of specialty packs of citrus fruit, without incurring the cost of having the fruit reinspected and recertified as meeting order requirements. Eliminating the cost of having the citrus fruit reinspected and certified is expected to lower repacking costs for repacking shippers, thereby placing them on a more equal cost basis with repackers of Florida citrus fruit located outside of the production area, who are not subject to the order requirements. Finalizing this rule may result in greater quantities of Florida-grown citrus fruit being shipped into fresh market channels and increase returns to Florida citrus growers.

The committee also recommended the establishment of the following new rules and regulations under the order (§§ 905.161, 905.162, and 905.163) to govern the shipment of repacked citrus fruit under exemption, and to enable repacking shippers to ship repacked citrus fruit exempt from further inspection and certification. These rules and regulations are designed to provide safeguards to make sure that only citrus fruit repacked by repacking shippers under the conditions specified in §§ 905.161, 905.162, and 905.163 is shipped from the production area.

Section 905.161 defines a repacking shipper and establishes conditions under which such repacking shippers may repack and ship citrus fruit exempt from further inspection and certification under § 905.53, subject to meeting certain safeguard conditions. Under this definition, a repacking shipper is a person who repacks and ships citrus fruit grown in the production area in Florida which has been previously inspected and certified as meeting the requirements specified under § 905.52 of the order, and who has obtained a currently valid repacking certificate of privilege issued to him or her by the committee as specified in § 905.162. Under § 905.161, each repacking shipper, to qualify for a repacking certificate of privilege, must notify the committee 10 days prior to his or her first shipment of repacked citrus fruit during a particular fiscal period of his or her intent to ship such citrus fruit, submit an application on an Application for a Repacking Certificate of Privilege form supplied by the committee, and agree to other requirements as set forth in §§ 905.162 and 905.163 inclusive, with respect to such shipments. The repacking shipper shall certify that he or she will only handle previously inspected and certified citrus fruit.

Also under § 905.161, any repacking shipper who handles citrus fruit shipped under a repacking certificate of privilege must see to it that all such citrus fruit has previously been positive lot identified by the Federal or Federal/State Inspection Service and certified as meeting the applicable requirements for citrus fruit shipped to the domestic market (fruit shipped from the production area to any point outside thereof in the 48 contiguous States and the District of Columbia of the United States), prior to being repacked and shipped by the repacking shipper. Each such citrus fruit shipment shall be accompanied by a copy of the Federal-State manifest that certifies the grade and amount of each load of citrus fruit received, which shall be retained by the repacking shipper.

To prevent the packing of uninspected fruit from the field into repacked lots, repacking shippers may not utilize repacking facilities which have operable equipment for washing, brushing, waxing, or drying citrus fruit. This precludes the mixing of ungraded fruit from the field with previously inspected fruit. In addition, all citrus fruit handled by a repacking shipper shall be packed in approved Florida Department of Citrus fruit containers, and each container shipped with such citrus fruit shall be marked with the repacking shipper's repacking certificate of privilege number.

Section 905.162(a) establishes procedures under which repacking shippers who desire to repack and ship previously inspected and certified citrus fruit may apply to the committee to obtain a repacking certificate of privilege from the committee. Application for a repacking certificate of privilege by a repacking shipper shall be made on forms furnished by the committee. Each application shall contain, but need not be limited to, the name, address and Florida citrus fruit dealer license number of the applicant; approximate number of boxes to be handled during the season; the various types of containers to be used to ship the repacked citrus fruit; a certification to the Secretary of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or duly authorized agents for the purposes stated in § 905.161.

Section 905.162(b) also provides a procedure for the committee to follow in approving a repacking certificate of privilege. The committee or its duly authorized agents shall give prompt consideration to each application for a repacking certificate of privilege. Approval of an application based upon a determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a repacking certificate of privilege to the applicant. Each certificate shall expire at the end of the fiscal period.

Finally, § 905.162(c) provides procedural safeguards for the committee to follow when dealing with suspensions or denials of repacking shippers certificates of privilege.

Section 905.163 establishes procedures which require repacking shippers to report to the committee all shipments of repacked citrus fruit made under a repacking certificate of privilege. Under this section, each repacking shipper who handles citrus fruit under a repacking certificate of privilege shall supply the committee with reports on each shipment as requested by the committee, on forms supplied by the committee, showing the name and address of the repacking shipper; name and address of the handler supplying the inspected and certified citrus fruit for such shipment; number of packages; size and containers; brand or grade; certificate number; and any other information deemed necessary by the committee. Each repacking shipper of citrus fruit shall maintain on file a copy of the Federal-State manifest that certifies the grade and amount of each load of citrus fruit received. These manifests shall be made available to the committee upon

request. In addition, the repacking shipper shall promptly forward to the committee one copy of the Report of Shipments Under Certificate of Privilege form for each shipment, retain one copy of such form in his or her record files, and make sure one copy of such form accompanies the shipment. Failure to complete and return such forms shall be cause for the committee to suspend the repacking shipper's repacking certificate of privilege.

This rule reflects the committee's and the Department's appraisal of the need to establish the new rules and regulations governing the shipment of repacked fresh citrus fruit, as specified. The Department's view is that this rule has a beneficial impact on producers and handlers of fresh Florida citrus fruit, since it will permit repacking shippers to repack and ship previously inspected and certified citrus fruit exempt from further inspection and certification.

The interim final rule concerning this action was published in the September 23, 1994, **Federal Register** [59 FR 48780], with a 30-day comment period ending October 24, 1994. No comments were received.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval and have been assigned OMB No. 0581–0094. The committee estimates that about 10 repacking shippers of Florida citrus fruit will use the Application for a Repacking Certificate of Privilege form once each year, and that it will require an average of 0.116 hours for them to complete each such form. The committee also estimates that about 10 repacking shippers of Florida citrus fruit will use the Report of Shipments Under Certificate of Privilege form 50 times each year, and that it will require an average of 0.116 hours for them to complete each such form. Thus, this rule increases the total information collection burden under the order by 59.2 hours. The committee also estimates that the recordkeeping burden on the 10 repacking shippers who are required to file and maintain a copy of the Federal-State manifest that certifies the grade and amount of each load of citrus fruit received at 50 hours annually (500 forms times an average of 0.1 hour required to file each form), and a copy of the Reports of Shipments Under Repacking Certificate of Privilege form filed with the committee at 50 hours annually (500 forms times an average of 0.1 hour required to file each form).

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule without change, as published in the **Federal Register** [59 FR 48780] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. Accordingly, the interim final rule amending 7 CFR Part 905 which was published at 59 FR 48780 on September 23, 1994, is adopted as a final rule without change.

Dated: December 9, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–30785 Filed 12–14–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 959

[Docket No. FV94–959–1IFR; Amendment 1]

Onions Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Onion Committee (Committee) under M.O. No. 959. This interim final rule increases the level of authorized expenses and establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1994, through July 31, 1995. Comments received by January 17, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1994–95 fiscal period, which began August 1, 1994, and ends July 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom Such

handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 47 producers of South Texas onions under this marketing order, and approximately 34 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $80,000 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $80,000 were published in the **Federal Register** as an interim final rule August 12, 1994 (59 FR 41382). That interim final rule added § 959.235, authorizing expenses for the Committee, and provided that interested persons could file comments through September 12, 1994. No comments were filed.

The Committee subsequently met on November 8, 1994, and unanimously recommended increases of $8,900 for personnel expenses, $2,300 for office expenses and $126,000 for compliance activities in the recently approved 1994–95 budget. The compliance increase will provide for funds to operate road guard stations surrounding the production area. The Committee also unanimously recommended $164,450 in market development activities and $88,028 in production research. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Office salaries, $22,000 ($15,600), insurance, $6,250 ($5,250), accounting and audit, $2,600 ($2,300), rent and utilities, $5,000 ($4,000), field travel, $6,000 ($5,000), onion breeding research, $88,028 ($88,000), and $4,450 for Canadian onion promotion for which no funding was budgeted last year. Items which have decreased compared to the amount budgeted for 1993–94 (in parentheses) are: Market development program, $150,000 ($200,000) and $7,000 for screening for resistance and tolerance to purple blotch, $2,000 for leaf wetness, $2,600 for variety evaluation, $4,000 for thrips monitoring and control, and $2,000 for the Integrated Pest Management program, for which no funding was budgeted this year. All other items are budgeted at last year's amounts.

The initial 1994–95 budget, published on August 12, 1994, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.04 per 50-pound container or equivalent of onions, $0.06 less than last year's assessment rate. This rate, when applied to anticipated shipments of approximately 5,000,000 million 50-pound containers or equivalents, will yield $200,000 in assessment income, which, along with $269,678 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of October 31, 1994, were $607,767, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to that taken for the 1993–94 fiscal period; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.235 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 959.235 Expenses and assessment rate.

Expenses of $469,678 by the South Texas Onion Committee are authorized and an assessment rate of $0.04 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1995. Unexpended funds may be carried over as a reserve

Dated: December 9, 1994

Eric M. Forman,

Deputy Director Fruit and Vegetable Division

[FR Doc. 94–30786 Filed 12–14–94, 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1250

[Docket No. PY–94–002]

RIN 0581–AB32

Amendment to Egg Research and Promotion Order To Increase the Rate of Assessment

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This rule amends the Egg Research and Promotion Order to increase the assessment rate from 5 cents to 10 cents per 30-dozen case of commercial eggs. The increase is authorized by amendments to the Egg Research and Consumer Information Act, which were enacted December 14, 1993, and approved by egg producers voting in a referendum. This rule also makes a conforming amendment to regulations.

EFFECTIVE DATE: February 1, 1995.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–720–3506.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778

This rule is exempt from Executive Order 12866 review.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 14 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provisions of such order or any obligations imposed in connection with such order are not in accordance with law, and requesting a modification of the order or an exemption therefrom. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The exemption level was increased by regulation from 30,000 to 75,000 laying hens on August 1, 1994 (59 FR 38875). This action was authorized by amendments to the Egg Research and Consumer Information Act (7 U.S.C. 2711). Exempted were 253 small egg producers who represented 41 percent of the egg producers currently paying assessments, but only 4 percent of AEB's total assessment income. Therefore, this change in the assessment rate affects only egg producers owning more than 75,000 laying hens.

There are an estimated 365 producers in this category. Previously, egg producers paid a mandatory assessment of 5 cents per 30-dozen case of eggs marketed to fund the research and promotion activities authorized by the Act. The 5-cent assessment is equivalent to approximately 0.231 percent of the wholesale price of a 1-dozen carton of Large eggs. An assessment rate of 10 cents per 30-dozen case is equivalent to approximately 0.463 percent of the wholesale price of a 1-dozen carton of Large eggs. This is based on the Economic Research Service's 3-year average wholesale price for New York City Grade A Large cartoned eggs (1991–93) of 72 cents per dozen. AEB collected approximately $7.5 million annually from the 5-cent assessment, and it will collect approximately $14 million from the 10-cent assessment. It is estimated that any additional costs will be offset by the benefits to be derived from strengthened research and promotion programs.

Paperwork Reduction

Information collection requirements and recordkeeping provisions contained in 7 CFR Part 1250 have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

No additional recordkeeping requirements would be imposed as a result of this rule.

Background and Proposed Changes

On December 14, 1993, the Egg Research and Consumer Information Act (7 U.S.C. 2711) was amended (Pub. L. 103–188) to increase the maximum rate of assessment, raise the exemption level, and provide for research project funding.

Under the amended section 8 of the Act, the maximum rate of assessment was raised from 10 cents to 20 cents per case of commercial eggs. The actual assessment rate is prescribed by the Egg Research and Promotion Order and is currently 5 cents per case.

The Act amendments allowed AEB to recommend an increase in the assessment rate to the Secretary, provided the recommendation was based on a scientific study, marketing analysis, or other evidence demonstrating a need for the increase. At the March 17, 1994, Board meeting, AEB members voted to recommend that the assessment rate be increased from 5 cents to 10 cents per 30-dozen case of commercial eggs, and that such study be presented to the Secretary with a request that a referendum be held on the increase.

Subsequently, a proposed rule to increase the assessment rate in the Order was published in the **Federal Register** on June 17, 1994 (59 FR 31174). Comments were solicited from interested persons through August 16, 1994. Two comments were received; one from a major egg producer organization in support and one from an egg producer in opposition to the increase. Comments were addressed in a proposed rule and notice of referendum published in the **Federal Register** on September 13, 1994 (59 FR 46936).

In accordance with the procedures for the conduct of referenda (7 CFR 1250.200 et seq.), a referendum was held September 26–October 14, 1994, to determine whether producers favored the increase to 10 cents per case as proposed.

Section 9 of the Act requires approval by eligible egg producers engaged in commercial egg production during the representative period and at the time of voting. The representative period for the conduct of the referendum was determined to be May 1, 1994, through July 31, 1994.

During the week of September 19 1994, ballot packages were mailed to 382 eligible commercial egg producers

on record with the American Egg Board as owning more than 75,000 laying hens. An additional seven ballots were mailed in response to phone requests. The referendum was widely publicized through USDA's news service, the trade press, industry organizations, and the national referendum task force. Of the total number of ballots mailed, 62 percent were returned.

For the Order amendment to be approved, it had to be favored by at least two-thirds of the producers voting in this referendum or by a majority of the producers voting if such majority represented not less than two-thirds of the commercial eggs produced by all voters.

Of the producers voting, 66.4 percent favored the increased assessment. Producers voting affirmatively represented 70.9 percent of the May–July 1994 egg production of all those voting. Therefore, the favorable vote, through volume of production, exceeded the statutory requirement for passage.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, CFR Part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of Part 1250 is revised to read as follows:

Authority: 7 U.S.C. 2701–2718.

2. Section 1250.347 is revised to read as follows:

§ 1250.347 Assessments.

Each handler designated in § 1250.349 and pursuant to regulations issued by the Board shall collect from each producer, except for those producers specifically exempted in § 1250.348, and shall pay to the Board at such times and in such manner as prescribed by regulations issued by the Board an assessment at a rate not to exceed 10 cents per 30-dozen case of eggs, or the equivalent thereof, for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs.

3. In section 1250.514, the first sentence is revised to read as follows:

§ 1250.514 Levy of assessments.

An assessment rate of 10 cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer. * * *

Dated: December 9, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 94–30834 Filed 12–13–94; 8:45 am]

BILLING CODE 3410–02–U

FEDERAL ELECTION COMMISSION

11 CFR Part 8

[Notice 1994–19]

National Voter Registration Act

AGENCY: Federal Election Commission.

ACTION: Technical Amendment, final rule.

SUMMARY: The Federal Election Commission is publishing a technical amendment to the final rules addressing Commission responsibilities under the National Voter Registration Act of 1993 ("NVRA" or "the Act"). The amendment clarifies what information shall be included in the State reports to be filed with the Commission on March 31, 1995.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 23, 1994, the Commission published final rules addressing its responsibilities under the National Voter Registration Act of 1993, Public Law 103–31, 197 Stat. 77, 42 U.S.C. 1973gg–1 *et seq.* 59 FR 32311. See 11 CFR part 8. Under 42 U.S.C. 1973gg–7(a), the Commission shall submit to Congress no later than June 30 of each odd-numbered year, beginning June 30, 1995, a report assessing the impact of the Act and recommending improvements in Federal and state procedures, forms, and other matters affected by the Act.

The information requested from the states to assist the Commission in preparing these reports is set forth at 11 CFR 8.7(b)(1)–(10). This information is due by the March 31 preceding each June 30 due date. 11 CFR 8.7(a).

11 CFR 8.7(c) requests more limited information for the report due on June 30, 1995. Since the NVRA will not take effect until January 1, 1995, it will not be possible to "assess its impact" in this initial report. The Commission is therefore requesting that, for this report only, states provide only the number of registered voters statewide in the most recent federal general election, along with a brief narrative or general description of the state's implementation of the NVRA.

The specific request for information on the number of registered voters statewide in the most recent federal general election if found at 11 CFR 8.7(b)(2). However, section 8.7(c) incorrectly references paragraph 8.7 (b)(1), which information is not needed for the initial report. It is necessary, therefore, to change the reference in 11 CFR 8.7(c) from "paragraph (b)(1) of this section" to "paragraph (b)(2) of this section." The accompanying State of Basis and Purpose provides the correct information. 59 FR 32370.

Because this is a technical amendment, it is not a substantive rule requiring notice and comment under the Administrative Procedure Act, 5 U.S.C. 553. This amendment is, therefore, made effective on December 15, 1994.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are directly affected by these rules.

List of Subjects in 11 CFR Part 8

Elections, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 8 of chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

PART 8—NATIONAL VOTER REGISTRATION ACT (42 U.S.C. 1973gg–1 et seq.)

1. The authority citation for Part 8 continues to read as follows:

Authority: 42 U.S.C. 1973gg–1 *et seq.*

2. Section 8.7 is amended by revising paragraph (c) to read as follows:

§ 8.7 Contents of reports from the states.

* * * * *

(c) For the State report due March 31 1995, the chief state election official need only provide the information described in paragraph (b)(2) of this section and a brief narrative or general description of the state's implementation of the NVRA.

Dated: December 12, 1994.

Trevor Potter,

Chairman, Federal Election Commission.

[FR Doc. 94–30875 Filed 12–14–94; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 94–22]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0764]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB15

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 94–152]

RIN 1550–AA59

Risk-Based Capital Standards; Concentration of Credit Risk and Risks of Nontraditional Activities

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: The OCC, the Board, the FDIC and the OTS (collectively "the agencies") are issuing this final rule to implement the portions of section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) that require the agencies to revise their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of concentration of credit risk and the risks of nontraditional activities. The final rule amends the risk-based capital standards by explicitly identifying concentration of credit risk and certain risks arising from nontraditional activities, as well as an institution's ability to manage these risks, as important factors in assessing an institution's overall capital adequacy.

EFFECTIVE DATE: January 17, 1995.

FOR FURTHER INFORMATION CONTACT: OCC: For issues relating to concentration of credit risk and the risks of nontraditional activities, Roger Tufts, Senior Economic Advisor (202/874–5070), Office of the Chief National Bank Examiner. For legal issues, Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division (202/874–4460), Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

Board: For issues related to concentration of credit risk, David Wright, Supervisory Financial Analyst, (202/728–5854) and for issues related to the risks of nontraditional activities, William Treacy, Supervisory Financial Analyst, (202/452–3859), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), Gregory A. Baer, Managing Senior Counsel (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Daniel M. Gautsch, Examination Specialist (202/898–6912), Stephen G. Pfeifer, Examination Specialist (202/898–8904), Division of Supervision, or Fred S. Carns, Chief, Financial Markets Section, Division of Research and Statistics (202/898–3930). For legal issues, Pamela E. F LeCren, Senior Counsel (202/898–3730) or Claude A. Rollin, Senior Counsel (202/898–3985), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: John Connolly, Senior Program Manager, Capital Policy (202) 906–6465; Dorene Rosenthal, Senior Attorney, Regulations, Legislation and Opinions Division (202) 906–7268, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The risk-based capital standards adopted by the agencies tailor an institution's minimum capital requirement to broad categories of credit risk embodied in its assets and off-balance-sheet instruments. These standards require institutions to have total capital equal to at least 8 percent of their risk-weighted assets.[1] Institutions with high or inordinate levels of risk are expected to operate above minimum capital standards. Currently, each agency addresses capital adequacy through a variety of supervisory actions and considers the risks of credit concentrations and nontraditional activities in taking those varied supervisory actions.

Section 305(b) of FDICIA, Pub. L. 102–242 (12 U.S.C. 1828 note), requires the agencies to revise their risk-based capital standards for insured depository institutions to ensure that those standards take adequate account of interest rate risk, concentration of credit risk and the risks of nontraditional activities. This final rule addresses concentration of credit risk and the risks of nontraditional activities. The agencies are addressing interest rate risk through separate rulemakings. *See* OCC, Board and FDIC joint notice of proposed rulemaking, 58 FR 48206 (September 14, 1993) and OTS final rulemaking, 58 FR 45799 (August 31, 1993). In addition, the agencies issued separate final rules to implement the section 305 requirement that risk-based capital standards reflect the actual performance and expected risk of loss of multifamily mortgages.

For the risks related to concentration of credit and nontraditional activities, the agencies published a joint notice of proposed rulemaking on February 22, 1994. *See* 59 FR 8420. The agencies received 54 comments, including duplicate comments among the agencies. A description of the joint proposed rule along with a discussion of the comments follows.

II. Concentration of Credit Risk

A. Proposed Approach

In the joint proposed rule, the agencies stated that it was not currently feasible to quantify the risk related to concentrations of credit for use in a formula-based capital calculation. Although most institutions can identify and track large concentrations of credit risk by individual or related groups of borrowers, and some can identify concentrations by industry, geographic area, country, loan type or other relevant factors, there is no generally accepted approach to identifying and quantifying the magnitude of risk associated with concentrations of credit. In particular, definitions and analyses of concentrations are not uniform within the industry and are based in part on the subjective judgments of each institution using its experience and knowledge of its specific borrowers, market areas and products.

Nonetheless, techniques do exist to identify broad classes of concentrations

[1] As defined, risk-weighted assets include credit exposures contained in off-balance-sheet instruments.

and to recognize significant exposures. The effective tracking and management of such risk is important to ensuring the safety and soundness of financial institutions. Institutions with significant concentrations of credit risk require capital above the regulatory minimums. As new developments in identifying and measuring concentration of credit risk emerge, the agencies will consider potential refinements to the risk-based capital standards.

Accordingly, the agencies proposed to take account of concentration of credit risk in their risk-based capital guidelines or regulations by amending the standards to explicitly cite concentrations of credit risk and an institution's ability to monitor and control them as important factors in assessing an institution's overall capital adequacy. The joint proposed rule contemplated that in addition to reviewing concentrations of credit risk pursuant to section 305, the agencies also may review an institution's management of concentrations of credit risk for adequacy and consistency with safety and soundness standards regarding internal controls, credit underwriting or other relevant operational and managerial areas to be promulgated pursuant to section 132 of FDICIA.

B. Comments

The vast majority of commenters supported the agencies' decision not to propose any quantitative formula or standard. Many commenters, however, expressed a general concern as to how the agencies would implement and interpret the joint proposed rule. Commenters noted with approval the agencies' observation that rulemaking in this area could inadvertently create false incentives or unintended consequences that might decrease the safety and soundness of the banking and thrift industries or unnecessarily reduce the availability of credit to potential borrowers. Several commenters, particularly smaller banks, agreed with the agencies that, while portfolio diversification is a desirable goal, it may also increase an institution's overall risk if accomplished by lending in unfamiliar market areas to out-of-territory borrowers or by rapid expansion of new loan products for which the institution does not have adequate expertise.

A significant number of commenters went further, however, suggesting that any requirement for institutions to hold additional capital for significant concentrations of credit risk, including the case-by-case approach proposed by the agencies, would hurt small banks with limited portfolios and would encourage unhealthy diversification. Under the "Qualified Thrift Lender" test, for example, thrifts must hold 65 percent of their assets in qualifying categories. This requirement necessarily "concentrates" a thrift's portfolio in certain types of assets. Agricultural banks described their position as similar, and therefore opposed any requirement of additional capital in order to compensate for exposures to concentrations of credit.

One commenter felt that the potential risk of loss from concentrations of credit should be reflected in the allowance for loan and lease losses (ALLL). As described in the December 21, 1993 Interagency Policy Statement regarding the ALLL, the current amount of the loan and lease portfolio that is not likely to be collected should be reflected in the ALLL. In making a determination as to the appropriate level for the ALLL, the policy statement identifies concentrations of credit risk as one of several factors to be taken into account by an institution. While both the ALLL and capital serve as a cushion against losses, the difference between the ALLL and capital is that the ALLL should be maintained at a level that is adequate to absorb estimated losses, while capital is meant to provide an additional cushion for unexpected future losses. Because the magnitude and timing of losses from concentrations are hard to predict and therefore come unexpectedly, institutions with significant levels of concentrations of credit risk should hold capital above the regulatory minimums. At the same time, institutions with concentrations of credit that are experiencing a deterioration in credit quality and collectability should reflect the increased risk in those concentrations in the ALLL. Any identifiable loan and lease losses should be recognized immediately by reducing the asset's value and the ALLL.

C. Final Rules

After careful consideration of all the comments, the agencies have decided to adopt the proposed rules on concentration of credit risk without modification. The agencies believe that there is not currently an acceptable method to add a quantitative formula to the risk-based capital standards in order to measure concentration of credit risk. However, the agencies also believe that institutions identified through the examination process as having significant exposure to concentration of credit risk or as not adequately managing concentration risk, should hold capital in excess of the regulatory minimums.

The agencies have reached this conclusion for two reasons. First, although the agencies recognize that in some cases concentrations of credit are inevitable, they nonetheless can pose important risks. Other things being equal, an institution that is not diversified faces risks that a diversified institution does not, and accordingly presents risks to the deposit insurance fund that a diversified institution does not. Second, Congress in section 305 of FDICIA clearly mandated that these risks be taken into account in determining an institution's capital adequacy. OTS, however, does not believe it is appropriate to, and will not, implement section 305 in a way that penalizes thrift institutions for complying with the statutory Qualified Thrift Lender test. In addition, the agencies are not encouraging out-of-territory lending as a response to diversification concerns.

III. Risks of Nontraditional Activities

A. Proposed Approach

The agencies proposed to take account of the risks posed by nontraditional activities by ensuring that, as members of the industry began to engage in, or significantly expand their participation in, a nontraditional activity, the risks of that activity would be promptly analyzed and the activity given appropriate capital treatment. The agencies also proposed to amend their risk-based capital standards to explicitly cite the risks arising from nontraditional activities, and management's ability to monitor and control these risks, as important factors to consider in assessing an institution's overall capital adequacy.

New developments in technology and financial markets have introduced significant changes to the banking industry, and in some cases have led institutions to engage in activities not traditionally considered part of their business. Both in the risk-based capital regulations and guidelines adopted by the agencies in 1989 and in subsequent revisions and interpretations, the agencies have adopted measures to take adequate account of the risks of nontraditional activities under the risk-based capital standards. For example, the FRB, FDIC and the OCC have recently published for comment a proposal to change the way that the counterparty credit risks are measured and incorporated into a risk-based capital ratio for equity index, commodity, and precious metals off-balance sheet instruments. These

proposed changes were unique for each of the distinct products. The OTS intends to issue a parallel proposal in the near future. As nontraditional activities develop in the future, the agencies will address each activity on a case-by-case basis. Thus, to the extent that section 305 constitutes a mandate to the agencies to make certain that risk-based capital standards are kept current with industry practices, the agencies have been acting consistently with the intent of section 305.

B. Comments and Final Rules

While most comments focused on concentration of credit risk rather than nontraditional activities, some commenters noted their approval of the agencies' approach with regard to both parts of the rulemaking. Only a few commenters criticized the agencies' proposal on nontraditional activities, expressing concern that the agencies' proposals were too vague for examiners to apply or that the proposals were too inflexible.

After careful consideration of all the comments, the agencies are adopting the joint proposed rule on nontraditional activities without modification. The agencies believe that this final rule appropriately recognizes that the effect of a nontraditional activity on an institution's capital adequacy depends on the activity, the profile of the institution, and the institution's ability to monitor and control the risks arising from that activity. The agencies will continue their efforts to incorporate nontraditional activities into risk-based capital. In addition, to the extent appropriate, the agencies will issue examination guidelines on new developments in nontraditional activities or concentrations of credit to ensure that adequate account is taken of the risks of these activities.

IV. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act Statement

Each agency hereby certifies pursuant to section 605b of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions; nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation.

VI. Executive Order 12866

The OCC and OTS have determined that this final rule does not constitute "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Chapter I

For the reasons set out in the joint preamble, 12 CFR part 3 is amended as set forth below:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. Section 3.1 is revised to read as follows:

This part is issued under the authority of 12 U.S.C. 1 *et seq.*, 93a, 161, 1818, 3907 and 3909.

3. Section 3.10 is revised to read as follows:

§ 3.10 Applicability.

The OCC may require higher minimum capital ratios for an individual bank in view of its circumstances. For example, higher capital ratios may be appropriate for:

(a) A newly chartered bank;

(b) A bank receiving special supervisory attention;

(c) A bank that has, or is expected to have, losses resulting in capital inadequacy;

(d) A bank with significant exposure due to interest rate risk, the risks from concentrations of credit, certain risks arising from nontraditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;

(e) A bank with significant exposure due to fiduciary or operational risk;

(f) A bank exposed to a high degree of asset depreciation, or a low level of liquid assets in relation to short-term liabilities;

(g) A bank exposed to a high volume of, or particularly severe, problem loans;

(h) A bank that is growing rapidly, either internally or through acquisitions; or

(i) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

Dated: November 18, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

For the reasons set forth in the joint preamble, 12 CFR Part 208 is amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

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

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318.

2. Appendix A to Part 208 is amended by revising the fifth and sixth paragraphs under *"I. Overview"* to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

I. Overview

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk although the framework for assigning assets and off-balance-sheet items to risk categories

does incorporate elements of transfer risk as well as limited instances of interest rate and market risk The framework incorporates risks arising from traditional banking activities as well as risks arising from nontraditional activities The risk-based ratio does not however incorporate other factors that can affect an institution's financial condition These factors include overall interest rate exposure, liquidity, funding and market risks, the quality and level of earnings, investment, loan portfolio, and other concentrations of credit risk, certain risks arising from nontraditional activities, the quality of loans and investments, the effectiveness of loan and investment policies, and management s overall ability to monitor and control financial and operating risks, including the risks presented by concentrations of credit and nontraditional activities

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of those factors, including, in particular the level and severity of problem and classified assets For this reason, the final supervisory judgement on a bank's capital adequacy may differ significantly from conclusions that might be drawn solely from the level of its risk-based capital ratio.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 9, 1994

Barbara R. Lowrey,

Associate Secretary of the Board

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

For the reasons set forth in the joint preamble, 12 CFR Part 325 is amended as follows.

PART 325—CAPITAL MAINTENANCE

1 The authority citation for part 325 is revised to read as follows:

Authority: 12 U S C 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1828 note, 1831n note, 1831o, 3907, 3909

§ 325.3 [Amended]

2 Section 325 3(a) is amended in the fourth sentence by adding "significant risks from concentrations of credit or nontraditional activities," immediately after "funding risks," and by adding "will take these other factors into account in analyzing the bank's capital adequacy and" immediately after 'FDIC" and before "may"

3 The fifth paragraph of the introductory text of Appendix A to Part 325 is revised to read as follows

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk, however, the ratio does not take account of many other factors that can affect a bank's financial condition These factors include overall interest rate risk exposure, liquidity funding and market risks, the quality and level of earnings, investment loan portfolio, and other concentrations of credit risk, certain risks arising from nontraditional activities, the quality of loans and investments, the effectiveness of loan and investment policies, and management's overall ability to monitor and control financial and operating risks, including the risk presented by concentrations of credit and nontraditional activities. In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the bank's risk-based capital ratio.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of August 1994

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary

OFFICE OF THRIFT SUPERVISION

12 CFR Chapter V

For the reasons set forth in the joint preamble, 12 CFR Part 567 is amended as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.3 is amended by revising paragraphs (b)(3) and (b)(9) to read as follows:

§ 567.3 Individual minimum capital requirements.

* * * * *

(b) * * *

(3) A savings association that has a high degree of exposure to interest rate risk, prepayment risk, credit risk, concentration of credit risk, certain risks arising from nontraditional activities, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit;

* * * * *

(9) A savings association that has a record of operational losses that exceeds the average of other, similarly situated savings associations; has management deficiencies, including failure to adequately monitor and control financial and operating risks, particularly the risks presented by concentrations of credit and nontraditional activities, or has a poor record of supervisory compliance

* * * * *

Dated August 12, 1994

By the Office of Thrift Supervision

Jonathan L. Fiechter,

Acting Director

[FR Doc. 94-30771 Filed 12-14-94, 8:45 am]

BILLING CODES: OCC 4810-33-P; Board 6210-01-P; FDIC 6714-01-P; OTS 6720-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-66-AD; Amendment 39-9095; AD 94-25-11]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires installation of additional venting between the flight deck and the passenger compartment. This amendment is prompted by results of an engineering analysis that revealed there was insufficient venting in the forward stowage and wardrobe assembly. The actions specified by this AD are intended to prevent injury to the crew resulting from structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression.

DATES: Effective January 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. 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 certain Jetstream Model 4101 airplanes was published in the **Federal Register** on July 15, 1994 (59 FR 36096). That action proposed to require installation of additional venting between the flight deck and the passenger compartment.

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

The commenter supports the proposed rule.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour The economic impact information below has been revised to reflect this increase in the specified hourly labor rate.

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 this AD.

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

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided 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 $24,000, or $2,400 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:

94–25–11 Jetstream Aircraft Limited: Amendment 39–9095. Docket 94–NM–66–AD.

Applicability: Model 4101 airplanes, constructors numbers 41005 through 41015 inclusive, 41019 through 41024 inclusive, 41028, and 41029; 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 injury to the crew resulting from structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression, accomplish the following:

(a) Within 525 hours time-in-service after the effective date of this AD, install additional decompression vents in the left and right stowage and the right forward wardrobe assembly bulkhead between the flight deck and passenger compartment, in accordance with Jetstream Service Bulletin J41–25–018, dated March 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 §§ 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 Jetstream Service Bulletin J41–25–018, dated March 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 Jetstream Aircraft, Inc , P O Box 16029, Dulles International Airport, Washington, DC 20041–6029 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 17, 1995

Issued in Renton, Washington, on December 5, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc 94–30397 Filed 12–14–94, 8 45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–87–AD; Amendment 39–9090; AD 94–25–06]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model DC–9–80 series airplanes and Model MD–88 airplanes, that requires modification of the engine nose cowls. This amendment is prompted by several in-flight incidents in which the engine nose cowl separated or nearly separated from the airplane. The actions specified by this AD are intended to prevent separation of the engine nose cowl from the airplane during severe vibration of the engine.

DATES: Effective January 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. 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 FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210.

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 Model DC–9–80 series airplanes and Model MD–88 airplanes series airplanes was published in the **Federal Register** on July 27, 1994 (59 FR 38147). That action proposed to require modification of the left and right engine nose cowls.

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

One commenter supports the propose rule.

Several commenters request that the compliance time for the accomplishment of the modification be extended from the proposed 8 months to 12 or 18 months. These commenters state that they would have to special schedule their fleet of airplanes to accomplish this modification within the proposed compliance time. This would entail considerable additional expenses and schedule disruptions. The FAA concurs. The FAA's intent was that the modification be accomplished during a regularly scheduled maintenance for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenters, the FAA now recognizes that 12 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. Paragraph (a) of the final rule has been revised to reflect a compliance time of 12 months. The FAA does not consider that this extension of an additional 4 months for compliance will adversely affect safety

Two commenters state that, during accomplishment of the modification, they found an interference condition on the engine cowls being modified that prevents installation of bolt heads facing forward. One commenter states that the final rule of this AD should not be released until the McDonnell Douglas MD–80 Alert Service Bulletin A71–61 is revised to correct procedures relative to this interference condition. The FAA infers from these commenters that they would like the proposed rule to be revised to cite the latest revision of McDonnell Douglas MD–80 Alert Service A71–61 The FAA concurs Since issuance of the proposed rule, the FAA has reviewed and approved Revision 1, of McDonnell Douglas Alert Service Bulletin, dated October 4, 1994. Revision 1 allows the installation of bolts from the engine flange side when interference with the Hi-Lok bolts exist. The FAA has revised paragraph (a) of the final rule to reflect the latest revision to the alert service bulletin as an additional source of service information

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that 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 the 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 the final rule to clarify this requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,062 McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 540 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 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 $100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $248,400, or $460 per airplane.

The FAA has been advised that 74 U.S.-registered airplanes have been modified in accordance with the requirement of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now only $214,360.

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:

94–25–06 McDonnell Douglas: Amendment 39–9090. Docket 94–NM–87–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Alert Service Bulletin A71–61, Revision 1, dated October 4, 1994; 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 the engine nose cowl separating from the airplane during severe engine vibration, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the left and right engine nose cowls in accordance with McDonnell Douglas MD–80 Alert Service Bulletin A71–61, dated May 18, 1994, or Revision 1, dated October 4, 1994.

Note 2: Modification in accordance with either Figure 1, Figure 2, or Figure 3 of the alert service bulletin is acceptable for compliance with this paragraph.

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(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 modification shall be done in accordance with McDonnell Douglas MD–80 Alert Service Bulletin A71–61, dated May 18, 1994, or McDonnell Douglas MD–80 Alert Service Bulletin, Revision 1, dated October 4, 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention. Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW , Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; or at the Office of the Federal Register, 800 North Capitol Street, NW , suite 700, Washington, DC.

(e) This amendment becomes effective on January 17, 1995.

Issued in Renton, Washington, on December 2, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–30144 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–29; Amendment 39–9088; AD 94–25–04]

Airworthiness Directives; Precision Airmotive Corporation (Formerly Facet Aerospace Products and Marvel-Schebler) Model HA–6 Series Carburetors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Precision Airmotive Corporation (formerly Facet Aerospace Products and Marvel-Schebler) Model HA–6 series carburetors, that requires a modification in those carburetors not equipped with a mixture control retainer clip. This amendment is prompted by eight reports of excessive retention screw wear causing rough engine operation or engine power loss on engines equipped with a Model HA–6 series carburetor between January 1986 and August 1992 The actions specified by this AD are

intended to prevent the interruption of fuel flow to the engine caused by the mixture control shaft moving out of position because of excessive wear of the mixture control shaft retention screw.

DATES: Effective February 13, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 1995

ADDRESSES: The service information referenced in this AD may be obtained from Precision Airmotive Corporation, 3220 -100th Street Southwest, Suite E, Everett, WA 98204; telephone (206) 353–8181, fax (206) 348–3545. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon A. Regimbal, Aerospace Engineer, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (206) 227–2687, fax (206) 227–1181.

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 Precision Airmotive Corporation (formerly Facet Aerospace Products and Marvel-Schebler) Model HA–6 series carburetors was published in the **Federal Register** on December 21, 1993 (58 FR 67381). That action proposed to require installation of a retainer clip, replacement screw, and washer to prevent movement of the existing mixture control shaft in the event of excessive wear of the mixture control shaft retainer screw, in accordance with Marvel-Schebler/Tillotson Service Bulletin (SB) No. A1–78, dated September 1978.

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

The commenter (the manufacturer) states that only certain part numbers of HA–6 series carburetors should be affected by the AD. The affected carburetors were manufactured prior to 1979, after which a modification to address mixture control shaft retention problems was introduced and the part numbers were changed. The Federal Aviation Administration (FAA) concurs. The applicability of this final rule has been revised to include only carburetors identified by certain part numbers. In addition, the manufacturer has issued Precision Airworthiness Corporation Mandatory SB No. MSA–6, dated April 6, 1994, that includes the revised effectivity limited by part numbers. This final rule adds this SB as an additional means of compliance to the original Marvel-Schebler/Tillotson SB. Finally, the economic analysis has been revised to show the lower number of affected carburetors.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 5,000 carburetors of the affected design in the worldwide fleet, but the number of carburetors installed on aircraft of U.S. registry that will be affected by this AD is unknown. The FAA estimates that it will take approximately 1 work hour per carburetor to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $34 per carburetor. Based on these figures, the total cost impact of the AD on worldwide operators is estimated to be $445,000.

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:

94–25–04 Precision Airmotive Corporation (formerly Facet Aerospace Products and Marvel-Schebler): Amendment 39–9088. Docket 93–ANE–29.

Applicability: Precision Airmotive Corporation (formerly Facet Aerospace Products and Marvel-Schebler) Model HA–6 series carburetors with part numbers 10–5092, 10–5180, 10–5189, 10–5200, 10–5200–1, 10–5201–11, 10–5206, 10–5206–1, 10–5210, 10–5211, 10–5211–1, 10–5214, 10–5215, 10–5221, 10–5227. These carburetors are installed on but not limited to reciprocating engine powered aircraft manufactured by Beech, Cessna, Piper, and Mooney.

Compliance: Required as indicated, unless accomplished previously.

To prevent the interruption of fuel flow to the engine caused by the mixture control shaft moving out of position because of excessive wear of the mixture control shaft retention screw, accomplish the following:

(a) For affected carburetors not equipped with a mixture control shaft retainer clip (P/N 55–A239), screw (P/N 15–B395), and washer (P/N 78–A292), install these items within 12 months after the effective date of this airworthiness directive (AD) in accordance with Marvel-Schebler/Tillotson Service Bulletin (SB) No. A1–78, dated September 1978, or Precision Airmotive Corporation SB No. MSA–6, dated April 6, 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, Seattle Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle Aircraft Certification Office.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with the following service bulletins:

Document No.	Pages	Date
Marvel Schebler/ Tillotson SB No. A1–78. Total Pages: 2.	1–2	September 1978
Precision Airmotive Corporation SB No. MSA–6. Total Pages: 3.	1–3	April 6, 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 Precision Airmotive Corporation, 3220 -100th Street Southwest, Suite E, Everett, WA 98204; telephone (206) 353–8181, fax (206) 348–3545. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 13, 1995.

Issued in Burlington, Massachusetts, on December 1, 1994.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–30179 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–78; Amendment 39–9092; AD 94–25–08]

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Turbomeca Arriel 1 series turboshaft engines, that currently requires a gearbox chip detector inspection prior to further flight, subsequent inspection at designated intervals, and if necessary, removal of the gearbox, and also requires modification of the gearbox if not accomplished previously. This amendment requires modification to the intermediate gear that would constitute terminating action to the repetitive chip detector inspections. On certain engines this amendment requires immediate modification of the intermediate gear prior to further flight. This amendment is prompted by the availability of design improvements to the intermediate gear. The actions specified by this AD are intended to prevent damage to the aircraft resulting from engine debris following an uncontained engine failure.

DATES: Effective January 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca Engine Corporation, 2709 Forum Drive, Grand Prairie, TX 75051. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 92–24–08, Amendment 39–8413 (57 FR 54293, November 18, 1992), which is applicable to Turbomeca Arriel 1B, 1D, 1D1, 1A with TU13, and 1A1 with TU13, turboshaft engines, was published in the **Federal Register** on March 15, 1994 (59 FR 11944). That action proposed to require removing gearboxes that were overhauled prior to June 1, 1992, within 30 days after the effective date of that AD. Those gearboxes have intermediate gears that are prone to gear teeth wear due to mixing of used gear train components with new components. That proposed AD would also require immediate modification of certain engines to the TU39 which introduces a thicker web intermediate gear that is more resistant to high cycle fatigue (HCF) failure. Finally, that proposed AD would also continue to require repetitive inspections of the chip detector for evidence of metal chips until installation of modification TU232 to the intermediate gear at the next overhaul or repair of the reduction gearbox. Installation of modification TU232 would constitute terminating action to the inspection requirements of that AD. The actions would be required to be accomplished in accordance with Turbomeca Service Bulletin (SB) No. 292 72 0157, Update No. 2, dated July 30, 1993, and Turbomeca SB No. 292 72 0169, dated July 12, 1993.

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

One commenter (the manufacturer) states that the economic analysis in the proposed rule is incorrect, and provides revised economic information. The FAA concurs and has revised the economic analysis of this final rule accordingly.

One commenter states that the provision to allow the pilot to perform the chip detector inspection that was specified in AD 92–24–08 should be included in this AD. The FAA concurs and the compliance section has been revised to include this provision.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 270 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $4,222 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,199,340.

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 removing Amendment Section 39.13 is amended by removing amendment 39–8413 (57 FR 54293, November 18, 1992) and by adding a new airworthiness directive, Amendment 39–9092, to read as follows:

94–25–08 Turbomeca: Amendment 39–9092. Docket 93–ANE–78. Supersedes AD 92–24–08, Amendment 39–8413.

Applicability: Turbomeca Arriel Model 1B, 1D, 1D1, 1A with TU13, and 1A1 with TU13, turboshaft engines installed on but not limited to Aerospatiale AS–350B helicopters.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aircraft resulting from engine debris following an uncontained engine failure, accomplish the following:

(a) For the following Turbomeca Arriel engine models: 1D not modified to TU232, 1D1 not modified to TU232, 1B modified to TU39 but not modified to TU232, 1A with TU13 modified to TU39 but not modified to TU232, and 1A1 with TU13 modified to TU39 but not modified to TU232, accomplish the following:

(1) Except for those engines that have been inspected in accordance with AD 92–24–08 within 8 hours time in service (TIS) prior to the effective date of this AD, prior to further flight remove and inspect the reduction gearbox chip detector for evidence of metal chips.

(2) Remove from service reduction gearbox modules that do not meet the return to service criteria described in Turbomeca SB No. 292 72 0157, Update No. 2, dated July 30, 1993, and replace with a serviceable part.

(3) Thereafter, at intervals not to exceed 8 hours TIS since the last inspection, accomplish the following:

(i) Remove and inspect the reduction gearbox chip detector in accordance with paragraph (a)(1) of this AD.

(ii) Remove from service, if necessary, the reduction gearbox module in accordance with paragraph (a)(2) of this AD, and replace with a serviceable part.

(4) At the next overhaul or repair of the reduction gearbox module after the effective date of this AD, incorporate modification TU232 in accordance with Turbomeca SB No. 292 72 0169, dated July 12, 1993. Incorporation of modification TU232 constitutes terminating action to the inspections, and replacement, if necessary, required in paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(b) For the following Turbomeca Arriel engine models: 1B not modified to TU39, 1A with TU13 not modified to TU39, and 1A1 with TU13 not modified to TU39, prior to further flight replace reduction gearbox module No. 5 with a reduction gearbox module No. 5 modified to standard TU39.

(c) For the following Turbomeca Arriel engine models: 1B, 1A with TU13, and 1A1 with TU13, with reduction gearbox modules identified by serial numbers specified in paragraph C.(c) of Turbomeca SB No. 292 72 0157, Update No. 2, dated July 30, 1993, that were overhauled prior to June 1, 1992, but not overhauled between that date and the effective date of this AD, and with less than 200 hours TIS since overhaul, remove from service and return for overhaul within 30 days after the effective date of this AD, in accordance with Turbomeca Service Bulletin (SB) No. 292 72 0157, Update No. 2, dated July 30, 1993.

(d) The checks required by paragraphs (a)(1) and (a)(3)(i) of this AD may be performed by the pilot holding at least a private pilot certificate as an exception to the requirements of part 43 of the Federal Aviation Regulations (14 CFR part 43). The checks must be recorded in accordance with Sections 43.9 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR 43.9 and 14 CFR 91.417(a)(2)(v)), and the records must be maintained as required by the applicable Federal Aviation Regulation.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(f) 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 aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following service bulletins:

Document No.	Pages	Update	Date
Turbomeca SB No. 292 72 0157 ..... Total pages: 5.	1–5	2	July 30, 1993.
Turbomeca SB No. 292 72 0169 ..... Total pages: 5.	1–5	Original ..	July 12, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca Engine Corporation, 2709 Forum Drive, Grand Prairie, TX 75051. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 17, 1995.

Issued in Burlington, Massachusetts, on December 2, 1994.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–30180 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–13–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 420

Water Supply Charges; Amendments to Comprehensive Plan and Basin Regulations

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its December 7, 1994 business meeting, the Delaware River Basin Commission amended its Comprehensive Plan and Basin Regulations—Water Supply Charges concerning the transfer of Certificates of Entitlement. Holders of Certificates of Entitlement are exempted from the payment of water charges until such Certificates are transferred. The amendments define "transfer"; delete two categories of exemptions from the existing general rule that terminates Certificates of Entitlement upon transfer; and revise a third such category

EFFECTIVE DATE: December 7, 1994.

ADDRESSES: Copies of the Commission's Basin Regulations—Water Supply Charges are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 ext. 203

SUPPLEMENTARY INFORMATION: As noticed in the August 5, 1994 (59 FR 39991) and October 19, 1994 (59 FR 52766) issues of the **Federal Register**, the Commission held a public hearing on the proposed amendments on October 26, 1994. At that hearing, the comment period was extended to include written statements received through November 9, 1994. Based upon testimony received and considerable deliberation, the Commission has amended its Comprehensive Plan and Basin Regulations—Water Supply Charges.

List of Subjects in 18 CFR Part 420

Water supply.

PART 420—[AMENDED]

1. The authority citation for 18 CFR Part 420 is revised to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688

2. In section 420.31 paragraphs (d) and (f) are revised to read as follows:

§ 420.31 Certificate of entitlement.

* * * * *

(d) A certificate of entitlement is not transferable, except as provided in paragraphs (e) and (f) of this section. For the purposes of this section, "transfer" shall mean any sale or other conveyance by a holder of a certificate of entitlement involving a specific facility and shall include any transfer which results in a change of ownership and/or control of the facility or of the stock, or other indicia of ownership of a corporation which holds title to the facility.

* * * * *

(f) A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:

(1) Whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation; that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation; or

(2) Where such transfer is merely a result of a change of the name, identify, internal corporate structure or place of organization of a corporate holder of a certificate of entitlement and does not affect ownership and/or control.

Dated: December 9, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–30821 Filed 12–14–94; 8:45 am]

BILLING CODE 6360–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 135

[Docket No. 88P–0251]

Frozen Desserts: Removal of Standards of Identity for Ice Milk and Goat's Milk Ice Milk; Amendment of Standards of Identity for Ice Cream and Frozen Custard and Goat's Milk Ice Cream; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 14, 1995, for compliance with the final rule that appeared in the **Federal Register** of September 14, 1994 (59 FR 47072), that amended the frozen desserts standards of identity. Among other things, the amendments removed the standard of identity for ice milk and amended the standard of identity for ice cream and frozen custard to provide for the use, in these foods, of safe and suitable sweeteners; skim milk that may be concentrated, and from which part or all of the lactose has been removed by a safe and suitable procedure; and hydrolyzed milk proteins as stabilizers. This rule also removed the standard of identity for goat's milk ice milk and made comparable changes in the standard of identity for goat's milk ice cream, which cross-references the standard of identity for ice cream and frozen custard. The rule also required that all sweeteners other than nutritive carbohydrate sweeteners used in ice cream and frozen custards be declared as part of the name of the food until September 14, 1998.

DATES: Effective September 14, 1995, for all products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Compliance with this rule may have begun on September 14, 1994. All sweeteners other than nutritive carbohydrate sweeteners used in ice cream and frozen custard products must be declared as part of the name of the food until September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0002, 202–205–5099.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of September 14, 1994 (59 FR 47072), FDA amended the standards of identity for frozen desserts: (1) To remove the standards of identity for ice milk (§ 135.120 (21 CFR 135.120)) and goat's milk ice milk (§ 135.125 (21 CFR 135.125)); and (2) to amend the standards of identity for ice cream and frozen custard (§ 135.110 (21 CFR 135.110)), and, by cross-reference, goat's milk ice cream (§ 135.115 (21 CFR 135.115)), to provide for the use in these foods, of safe and suitable sweeteners and to allow for the use of skim milk that may be concentrated, and from which part or all of the lactose has been removed by a safe and suitable procedure, in the food. FDA also amended the standard of identity for ice cream and frozen custard to provide for the optional use of hydrolyzed milk proteins as stabilizers in the food at a level not to exceed 3 percent by weight to ice cream mix containing not less that 20 percent total milk solids, provided that any whey and modified whey products used contribute, singly or in combination, not more than 25 percent by weight of the total nonfat milk solids content of the finished food.

FDA also amended the standard of identity for ice cream and frozen custard (§ 135.110) to provide for the use of sweeteners other than nutritive carbohydrate sweeteners. When such sweeteners are used in the food, their presence must be declared as part of the name of the food until September 14,

1998, to ensure that consumers will have an opportunity to become familiar with these new food products. After that time, the use of these sweeteners in ice cream will have to be reflected only in the ingredient statement on the label of the food.

FDA gave interested persons until October 14, 1994, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of September 14, 1994, should be confirmed.

List of Subjects in 21 CFR Part 135

Food grades and standards, Food labeling, Frozen foods, Ice cream.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 403, 409, 701, 721 (21 U.S.C. 321, 341, 343, 348, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that the amendments of part 135 that were set forth in the **Federal Register** of September 14, 1994 (59 FR 47072) become effective September 14, 1995. Compliance with the amendments may have begun on September 14, 1994.

Dated: December 1, 1994.

F. Edward Scarbrough,

Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–30869 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8572]

RIN 1545–AT07

Cash Reporting by Court Clerks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the information reporting requirements of court clerks upon receipt of more than $10,000 in cash as bail for any individual charged with a specified criminal offense. The regulations reflect changes to the Internal Revenue Code made by section 20415 of the Violent Crime Control and Law Enforcement Act of 1994 (the Act). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Susie K. Bird at (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1449. The time estimates for the reporting requirements contained in this regulation are reflected in the burden estimates for Form 8300.

For further information concerning this collection of information, where to submit comments on the collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 602) under section 6050I of the Internal Revenue Code of 1986 (Code). Section 6050I generally requires persons engaged in a trade or business to report cash receipts of more than $10,000. Section 6050I(g), which was enacted on September 13, 1994, by section 20415 of the Act, requires court clerks to report certain cash receipts of more than $10,000. Section 20415(c) of the Act provides that the Secretary of the Treasury or the Secretary's delegate shall prescribe temporary regulations relating to section 6050I(g) of the Code within 90 days of enactment of the Act. Thus, these temporary regulations are required by statute in order to set forth the time, form, and manner of reporting under section 6050I(g).

Explanation of Provisions

The temporary regulations reflect the statutory requirement that any clerk of a Federal or State court who receives more than $10,000 in cash as bail for any individual charged with a specified criminal offense must make a return with respect to the receipt of that cash. For this purpose, a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail.

The temporary regulations define the term cash as coin and currency of the United States or of any other country, and a cashier's check, bank draft, traveler's check, or money order having a face amount of $10,000 or less. The term "specified criminal offense" is defined in the temporary regulations as (a) a Federal criminal offense involving a controlled substance (as defined in section 802 of title 21 of the United States Code), provided the offense is described in Part D of Subchapter I or Subchapter II of title 21 of the United States Code; (b) racketeering (as defined in section 1951, 1952, or 1955 of title 18 of the United States Code); (c) money laundering (as defined in section 1956 or 1957 of title 18 of the United States Code); and (d) any state criminal offense substantially similar to an offense described above. The IRS welcomes comments on what constitutes a state criminal offense that is substantially similar to one of the federal specified criminal offenses described in the temporary regulations.

The temporary regulations provide that the required information must be reported on Form 8300 and must be filed with the IRS by the 15th day after the date the cash bail is received. The information return must be filed with the IRS office designated in the instructions for Form 8300 and must contain: (a) The name, address, and taxpayer identification number (TIN) of the individual charged with the specified criminal offense; (b) the name, address, and TIN of each person posting the bail, other than a person posting bail who is licensed as a bail bondsman; (c) the amount of cash received; (d) the date the cash was received; and (e) any other information required by Form 8300 or its instructions.

The temporary regulations also require the furnishing of a written statement to the United States Attorney for the jurisdiction in which the individual charged with the specified criminal offense resides and the jurisdiction in which the specified criminal offense occurred (applicable United States Attorney(s)). The written statement must be filed with the applicable United States Attorney(s) by the 15th day after the date the cash bail is received. The written statement must include the information required to be included on the Form 8300 filed with

the IRS, and a copy of the Form 8300 may be used to satisfy this requirement.

The temporary regulations also require the furnishing of a written statement to each person posting bail (payor of bail) whose name is set forth in a Form 8300 required to be filed with the IRS. The statement must be furnished to such a payor of bail on or before January 31 of the year following the year in which the cash is received. The statement must contain: (a) The name and address of the clerk's office making the return; (b) the aggregate amount of reportable cash received during the calendar year by the clerk required to file the Form 8300 in all cash transactions relating to the payor of bail; and (c) a legend stating that the information contained in the statement has been reported to the IRS and the applicable United States Attorney(s).

The temporary regulations apply to cash received by court clerks on or after February 13, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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 Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Susie K. Bird of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6050I–2T is issued under 26 U.S.C. 6050I. * * *

Par. 2. Sections 1.6050I–0T and 1.6050I–2T are added to read as follows:

§ 1.6050I–0T Table of contents (temporary).

This section lists the major captions that appear in §§ 1.6050I–1 and 1.6050I–2T.

§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.

(a) Reporting requirement.
(1) In general.
(2) Cash received for the account of another.
(3) Cash received by agents.
(i) General rule.
(ii) Exception.
(iii) Example.
(b) Multiple payments.
(1) Initial payment in excess of $10,000.
(2) Initial payment of $10,000 or less.
(3) Subsequent payments.
(4) Example.
(c) Meaning of terms.
(1) Cash.
(i) Amounts received prior to February 3, 1992.
(ii) Amounts received on or after February 3, 1992.
(iii) Designated reporting transaction.
(iv) Exception for certain loans.
(v) Exception for certain installment sales.
(vi) Exception for certain down payment plans.
(vii) Examples.
(2) Consumer durable.
(3) Collectible.
(4) Travel or entertainment activity.
(5) Retail sale.
(6) Trade or business.
(7) Transaction.
(8) Recipient.
(d) Exceptions to the reporting requirements of section 6050I.
(1) Receipt of cash by certain financial institutions.
(2) Receipt of cash by certain casinos having gross annual gaming revenue in excess of $1,000,000.
(i) In general.
(ii) Casinos exempt under 31 CFR 103.45(c).
(iii) Reporting of cash received in a nongaming business.
(iv) Example.
(3) Receipt of cash not in the course of the recipient's trade or business.
(4) Receipt is made with respect to a foreign cash transaction.
(i) In general.
(ii) Example.
(e) Time, manner, and form of reporting.
(1) Time of reporting.
(2) Form of reporting.
(3) Manner of reporting.
(i) Where to file.
(ii) Verification.
(iii) Retention of returns.
(f) Requirement of furnishing statements.
(1) In general.
(2) Form of statement.
(3) When statement is to be furnished.
(g) Cross-reference to penalty provisions.
(1) Failure to file correct information return.
(2) Failure to furnish correct statement.
(3) Criminal penalties.

§ 1.6050I–2T Returns relating to cash in excess of $10,000 received as bail by court clerks (temporary).

(a) Reporting requirement.
(b) Meaning of terms.
(c) Time, form, and manner of reporting.
(1) Time of reporting.
(2) Form of reporting.
(3) Manner of reporting.
(i) Where to file.
(ii) Verification of identity.
(d) Requirement to furnish statements.
(1) Information to federal prosecutors.
(i) In general.
(ii) Form of statement.
(2) Information to payors of bail.
(i) In general.
(ii) Form of statement.
(e) Cross-reference to penalty provisions.
(f) Effective date.

§ 1.6050I–2T Returns relating to cash in excess of $10,000 received as bail by court clerks (temporary).

(a) *Reporting requirement.* Any clerk of a Federal or State court who receives more than $10,000 in cash as bail for any individual charged with a specified criminal offense must make a return of information with respect to that cash receipt. For purposes of this section, a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail.

(b) *Meaning of terms.* The following definitions apply for purposes of this § 1.6050I–2T—

Cash means—

(1) The coin and currency of the United States, or of any other country that circulate in and are customarily used and accepted as money in the country in which issued; and

(2) A cashier's check (by whatever name called, including *treasurer's check* and *bank check*), bank draft, traveler's check, or money order having a face amount of not more than $10,000.

Specified criminal offense means—

(1) A Federal criminal offense involving a controlled substance (as defined in section 802 of title 21 of the United States Code), provided the offense is described in Part D of Subchapter I or Subchapter II of title 21 of the United States Code;

(2) Racketeering (as defined in section 1951, 1952, or 1955 of title 18 of the United States Code);

(3) Money laundering (as defined in section 1956 or 1957 of title 18 of the United States Code); and

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(4) Any State criminal offense substantially similar to an offense described in paragraph (b)(2)(i), (ii), or (iii) of this section.

(c) *Time, form, and manner of reporting*—(1) *Time of reporting.* The information return required by this section must be filed with the Internal Revenue Service by the 15th day after the date the cash bail is received.

(2) *Form of reporting.* A report required by paragraph (a) of this section must be made on Form 8300 and must contain the following information—

(i) The name, address, and taxpayer identification number (*TIN*) of the individual charged with the specified criminal offense;

(ii) The name, address, and TIN of each person posting the bail (payor of bail), other than a person posting bail who is licensed as a bail bondsman in the jurisdiction in which the bail is received;

(iii) The amount of cash received;

(iv) The date the cash was received; and

(v) Any other information required by Form 8300 or its instructions.

(3) *Manner of reporting*—(i) *Where to file.* Returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 8300. A copy of the information return required to be filed under this section must be retained for five years from the date of filing.

(ii) *Verification of identity.* A clerk required to make an information return under this section must, in accordance with § 1.6050I–1(e)(3)(ii), verify the identity of each payor of bail listed in the return.

(d) *Requirement to furnish statements*—(1) *Information to federal prosecutors*—(i) *In general.* A clerk required to make an information return under this section must furnish a written statement to the United States Attorney for the jurisdiction in which the individual charged with the specified crime resides and the United States Attorney for the jurisdiction in which the specified criminal offense occurred (applicable United States Attorney(s)). The written statement must be filed with the applicable United States Attorney(s) by the 15th day after the date the cash bail is received.

(ii) *Form of statement.* The written statement must include the information required by paragraph (c)(2) of this section. This paragraph (d)(1)(ii) requirement will be satisfied if the clerk provides to the applicable United States Attorney(s) a copy of the Form 8300 that is filed with the Internal Revenue Service pursuant to this section.

(2) *Information to payors of bail*—(i) *In general.* A clerk required to make an information return under this section must furnish a written statement to each payor of bail whose name is set forth in a return required by this section. A statement required under this paragraph (d)(2) must be furnished to a payor of bail on or before January 31 of the year following the calendar year in which the cash is received. A statement shall be considered to be furnished to a payor of bail if it is mailed to the payor of bail's last known address.

(ii) *Form of statement.* The statement required by this paragraph (d)(2) need not follow any particular format, but it must contain the following information—

(A) The name and address of the clerk's office making the return;

(B) The aggregate amount of reportable cash received during the calendar year by the clerk who made the information return required by this section in all cash transactions relating to the payor of bail; and

(C) A legend stating that the information contained in the statement has been reported to the Internal Revenue Service and the applicable United States Attorney(s).

(e) *Cross-reference to penalty provisions.* See sections 6721 through 6724 for penalties relating to the failure to comply with the provisions of this section.

(f) *Effective Date.* This section applies with respect to cash received by court clerks on or after February 13, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding the entry for "1.6050I–2T .....1545–1449" in numerical order in the table.

Approved:

Cynthia G. Beerbower,

Deputy Assistant Secretary of the Treasury

Margaret Milner Richardson,

Commissioner of Internal Revenue

[FR Doc. 94–30774 Filed 12–12–94, 8:45 am]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) by adding a new Table I–95 to appendix D. Table I–95 applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 1995, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW , Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation ("PBGC") on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c) plans wishing to terminate in a distress termination must value guaranteed benefits and benefits liabilities under the plan using formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Under § 2619.46, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date

Subpart D of part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in appendix D. The first set, Selection of Retirement Rate Category (I–79 through I–94), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I–79 through I–94 in appendix D establish retirement rate categories for the calendar years 1979 through 1994. The table for each year applies only to plans with valuation dates in that year. The PBGC updates these tables annually to reflect changes in the cost of living, etc. This document amends appendix D to add Table I–95 in order to provide an updated correlation, appropriate for calendar year 1995, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–95 will be used to value benefits in plans with valuation dates that occur during calendar year 1995.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1995, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1995. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because it will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, appendix D to part 2619 of subchapter C of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 2619 is amended by adding Table I–95 as follows:

Appendix D—Tables Used To Determine Expected Retirement Age

* * * * *

TABLE I–95.—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 1994, and before January 1, 1996]

Participant reaches NRA in year—	Participant's Retirement Rate Category is—			
	Low[1] if monthly benefit at NRA is less than—	Medium[2] if monthly benefit at NRA is		High[3] if monthly benefit at NRA is greater than—
		From	To	
1996	389	389	1,637	1,637
1997	402	402	1,691	1,691
1998	416	416	1,748	1,748
1999	430	430	1,808	1,808
2000	444	444	1,869	1,869
2001	459	459	1,933	1,933
2002	475	475	1,998	1,998
2003	491	491	2,066	2,066
2004	508	508	2,137	2,137
2005 or later	525	525	2,209	2,209

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

Issued at Washington, DC, this 12th day of December 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–30856 Filed 12–14–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in January 1995, and to multiemployer plans with valuation dates in January 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the January 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619), the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during January 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during January 1995

For annuity benefits, the interest rates will be 7.50% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 6.00% for the period during which benefits are in pay status, 5.25% during the seven-year period directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. In comparison with the annuity assumptions in effect during December 1994, the above annuity assumptions reflect a reduction by 5 years of the period during which the initial rate applies (from a period of 25 years following the valuation date to a period of 20 years following the valuation date); during the reduced period, the initial rate is unchanged. The ultimate rate, in effect thereafter, represents an increase of .50% over the previous ultimate rate. The lump sum interest assumptions represent a decrease (from those in effect for December 1994) of 25 percent for the period during which benefits are in pay status and the fifteen years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits single-employer plans whose termination dates fall during January 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during January 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C 601(2)

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 15 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0,n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
15	1–1–95	2–1–95	6.00	5.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0,n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_1	for t =	i_2	for t =	i_3	for t =
*	*	*	*	*	*	*
January 1995	.0750	1–20	.0575	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 US.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 15 is added to Table I, and a new entry is added to Table II, as et forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0,n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the fomulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$

years, interest rate i_1 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
15	1–1–95	2–1–95	6.00	5.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0}{}_{n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, , and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
January 1995	.0750	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 12th day of December 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–30857 Filed 12–14–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2621

Limitation on Guaranteed Benefits in Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends appendix A of the Limitation on Guaranteed Benefits regulation of the Pension Benefit Guaranty Corporation ("PBGC") by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 1995. The maximum guaranteeable benefit is computed in accordance with the formula in section 4022(b)(3) of the Employee Retirement Income Security Act of 1974, which provides that the maximum guaranteeable benefit is based on the contribution and benefit base determined under section 230 of the Social Security Act. The latter number is adjusted annually, and that adjustment automatically changes the dollar amount of the maximum guaranteeable benefit paid by PBGC. The effect of this amendment is to advise plan participants and beneficiaries of the increased maximum guaranteeable benefit for 1995.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974, *as amended*, ("ERISA") provides for certain limitations on benefits guaranteed by the Pension Benefit Guaranty Corporation ("PBGC") in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations set forth in section 4022(b)(3) is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant by the PBGC. Subparagraph (B) of section 4022(b)(3) provides that the amount of monthly benefit payable in the form of a life annuity beginning at age 65 shall not exceed "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]". This formula is also set forth in § 2621.3(a)(2) of the PBGC's regulation entitled Limitation on Guaranteed Benefits in Single-Employer Plans (29 CFR Part 2621).

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions. The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $45,300 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 1995. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 2621.3(a)(2) is: $750 multiplied by

$45,300/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 1995 is $2,573.86 per month in the form of a life annuity beginning at age 65. If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount will be the actuarial equivalent of $2,573.86 per month.

Appendix A to part 2621 lists the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in each year from 1974 through 1994. This amendment updates appendix A for plans that terminate in 1995.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and this amendment makes no change in its method of calculation but simply lists the 1995 maximum guaranteeable benefit amount for the public's knowledge, general notice of proposed rulemaking is not required. Moreover, because the 1995 maximum guaranteeable benefit is effective, under the statute, at the time that the Social Security contribution and benefit base is effective, *i.e.*, January 1, 1995, and is not dependent on the issuance of this regulation, the PBGC finds that good cause exists for making this amendment effective less than 30 days after publication (5 U.S.C. 553).

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because it will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR 2621

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2621 of subchapter C, chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2621—LIMITATION ON GUARANTEED BENEFITS IN SINGLE-EMPLOYER PLANS

1. The authority citation for Part 2621 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b.

2. Appendix A to part 2621 is amended by adding a new entry to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix A to Part 2621 Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 2621.3(a)(2) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
* * * * *	
1995	2,573.86

Issued at Washington, DC this 12th day of December, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–30858 Filed 12–14–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CDG11–94–005]

RIN 2115–AA98

Anchorage Ground; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and Connecting Waters, CA

AGENCY: Coast Guard, DOT

ACTION: Final rule.

SUMMARY: This final rule amends informational notices indicating the VHF–FM radio frequencies monitored by the Vessel Traffic Service San Francisco applicable to vessels at anchor within San Francisco Bay The purpose of this amendment is to conform the anchorage regulations to existing regulations designating VTS frequencies in use within San Francisco Bay. Recent changes in these existing regulations have made this amendment necessary

EFFECTIVE DATE: This regulation becomes effective on December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Sean Regan, Marine Safety Office San Francisco, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for the regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest because the designated frequencies referred to in this rulemaking are already in use, and because the amended "Notes" are published for informational purposes only and are being revised to conform to recently changed existing regulatory requirements.

Drafting Information

The drafters of these regulations are Lieutenant (junior grade) Sean Regan, Marine Safety Office San Francisco, Project Officer, and Lieutenant Commander C. M. Jucknies, Eleventh Coast Guard District Legal Office, Project Attorney

Discussion of Regulation

Changes to regulations mandating procedures for Vessel Traffic Service (VTS) San Francisco have been published and will become effective on October 13, 1994 (33 CFR Part 161). The radio communications portion of these regulations provide for a change in the VTS San Francisco inshore working frequency to VHF–FM Channel 14 (156.70 MHz). Vessels wishing to communicate with VTS should contact them on the appropriate channel. VTS will continue to monitor Channel 13 (156.65 MHz), VHF–FM but vessels communicating with VTS on channel 13 (156.65 MHz) will be instructed to switch to a working frequency

The "NOTE" section following 33 CFR 110.224(a)(15) currently reads that the VTS guards VHF–FM Channels 13 (156.65 MHz) and 16 (156.8 MHz). VTS now monitors Channel 13 and 14 for inshore vessels.

The "Notes" section (a), following 33 CFR Table 110.224(d)(1), currently requires specified vessels to maintain a continuous radio watch on Channels 13 and 16 when sustained winds are in excess of 25 knots. Covered vessels should now maintain a continuous radio watch on Channels 13 and 14.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 25, 1979). The Coast Guard expects the impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulation: In consideration of the foregoing, subpart B of part 110 of title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In Section 110.224, the "Note" following paragraph (a)(15) and the "Note" labeled "a" following Table 110.224(d)(1) are revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, CA.

(a) * * *

(15) * * *

Note: Vessel Traffic Service guards VHF–FM Channel 13 (156.65 MHz) and Channel 14 (156.70 MHz).

* * * * *

(d) * * *

Table 110.224(d)(1) * * *

Notes: a. When sustained winds are in excess of 25 knots each vessel greater than 300 gross tons using this anchorage shall maintain a continuous radio watch on VHF channel 13 (156.65 MHz) and VHF channel 14 (156.70 MHz). This radio watch must be maintained by a person who fluently speaks the English language.

* * * * *

Dated: October 19, 1994.

R.A. Applebaum,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 94–30478 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 60 and 63

[AD–FRL–5115–6]

RIN 2060–AD99

National Emission Standards for Hazardous Air Pollutants Final Standards for Hazardous Air Pollutant Emissions From Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates final standards that limit the emissions of hazardous air pollutants (HAP) from existing and new magnetic tape manufacturing operations that are located at major sources. These final standards implement section 112(d) and 112(h) of the Clean Air Act as amended in 1990 (the Act). The purpose of this final rule is to protect the public by requiring all new and existing major sources to control emissions to the level corresponding to the maximum achievable control technology (MACT).

The EPA is also finalizing performance specifications for continuous emission monitors (CEM's) for volatile organic compounds (VOC) and gas chromatographic CEM's.

DATES: Effective Date. December 15, 1994.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of national emission standards for hazardous air pollutants (NESHAP) is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES:

Docket

Docket No. A–91–31, containing information considered by the EPA in developing the promulgated NESHAP for magnetic tape manufacturing operations is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, Room M1500, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

Background Information Document

A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U. S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777; or from National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to "Hazardous Air Pollutant Emissions from Magnetic Tape Manufacturing Operations—Background Information for Promulgated Standards" (EPA–453/R–94–074b). The BID contains a summary of the public comments made on the proposed magnetic tape manufacturing standard and EPA responses to the comments.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Lacy of the Coatings and Consumer Products Group, Emission Standards Division (MD–13), U S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5261. For more information on Performance Specifications 8 and 9 contact Mr. Bill Grimley of the Source Characterization B Group, telephone (919) 541–1065, and Ms. Rima Dishakjian of the Source Characterization A Group, telephone (919) 541–0443, respectively, in the Emissions, Monitoring and Analysis Division (MD–14), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background
II. Summary

A. Summary of Promulgated Standards
B. Summary of Major Changes Since Proposal
III. Summary of Environmental, Energy, Cost, and Economic Impacts
A. Environmental and Energy Impacts
B. Cost Impacts
C. Economic Impacts
IV Public Participation
V Significant Comments and Responses
A. Applicability of Standard
B. Selection of Compliance Dates
C. Selection of Emission Limits and Equipment/Work Practice Specifications
D. Regulation of Wastewater
E. Selection of Test Methods and Monitoring Requirements
F. Alternative Compliance Plans and Selection of the Affected Source
G. Performance Specifications
VI. Administrative Requirements
A. Docket
B. Executive Order 12286
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Miscellaneous

I. Background

Section 112(b) of the Act lists 189 HAP and requires the EPA to establish national emission standards for all major sources and some area sources emitting those HAP. On July 16, 1992 (57 FR 31576), EPA published a list of major and area sources for which NESHAP are to be promulgated, and on December 3, 1993 (58 FR 83941), EPA published a schedule for promulgating those standards. The magnetic tape manufacturing source category is included in the list of major sources to be regulated for which the EPA is to establish national emission standards by November 1994.

This NESHAP was proposed in the **Federal Register** on March 11, 1994 (59 FR 11662). A public hearing on the proposed rule was held on April 13, 1994. In addition, 17 letters commenting on the proposed rule were received.

II. Summary

A. Summary of Promulgated Standards

The final rule applies to major sources performing magnetic tape manufacturing operations, which is the affected source subject to these standards. The standards do not apply to research and laboratory facilities or to owners or operators whose magnetic tape production on a coating line is 1 percent or less of total production from that coating line (in terms of square footage coated) in any 12-month period.

Table 1 summarizes the standards for magnetic tape manufacturing operations. In general, an overall HAP control efficiency of at least 95 percent is required for emissions from each storage tank, piece of mix preparation equipment, coating operation, waste handling device, and condenser vent in solvent recovery. If an owner or operator uses an incinerator to control these emission points, an outlet HAP concentration of no greater than 20 parts per million by volume (ppmv) by compound may be met instead of achieving 95 percent control, as long as the efficiency of the capture system is 100 percent. If a coating with a HAP content no greater than 0.18 kilograms per liter (kg/L) of coating solids is used for a coating operation, that coating operation does not require further control. Owners or operators may choose to control HAP emissions from all coating operations at a source by an overall HAP control efficiency of at least 97, 98, or 99 percent in lieu of controlling 10, 15, or 20 HAP solvent storage tanks, respectively, that do not exceed 20,000 gallons each in capacity

TABLE 1.—SUMMARY OF THE STANDARD

Emission point	Standards
Each solvent storage tank	§63.703(c)(1): Overall (i.e., capture × control devide efficiency) HAP control efficiency of ≥95 percent; or §63.703(c)(2): For incinerators an alternate outlet HAP concentration of ≤20 ppmv; or §63.704(c)(4): Do not control but control coating operations at higher efficiencies specified in rule; or §63.703(i): Establish an alternate maximum HAP outlet concentration monitored with CEM to demonstrate compliance during periods when coaters are not operating.
Each piece of mix preparation equipment	§63.703(c)(1): Overall HAP control efficiency of ≥95 percent; or §63.703(c)(2): For incinerators an alternate outlet HAP concentration of ≤20ppmv; or §63.703(i): Establish an alternate maximum HAP outlet concentration monitored with CEM to demonstrate compliance during periods when coaters are not operating.
Each coating operation	§63.703(c)(1): Overall HAP control efficiency of ≥95 percent; or §63.703(c)(2): For incinerators an alternate outlet HAP concentration of ≤20 ppmv; or §63.703(c)(4): Control all coating operations at specified higher efficiencies instead of storage tanks; or §63.703(c)(5): Use coating with HAP content no greater than 0.18 kg/L coating solids.
Each waste handling device	§63.703(c)(1): Overall HAP control efficiency of ≥95 percent; or §63.703(c)(2): For incinerators an alternate outlet HAP concentration of ≤20 ppmv; or §63.703(i): Establish an alternate maximum HAP outlet concentration to demonstrate compliance during periods when coaters are not operating.
Each condenser vent insolvent recovery[a]	§63.703(c)(1): Overall HAP control efficiency of ≥95 percent; or §63.703(c)(2): For incinerators an alternate outlet HAP concentration of ≤20 ppmv; or §63.703(i): Establish an alternate maximum HAP outlet concentration to demonstrate compliance during periods when coaters are not operating.
Each particulate transfer operation	§63.703(d)(1): Use enclosed transfer; or §63.703(d)(2): Vent to baghouse/fabric filter that exhibits no visible emissions while controlling particulate HAP transfer.
Each wash sink for cleaning removable parts	§63.703(e)(1)(i): Overall HAP control efficiency of ≥percent; or §63.703(e)(1)(ii): Minimum freeboard ratio of 75 percent; or §63.703(i): Establish an alternate maximum HAP outlet concentration to demonstrate compliance during periods when coaters are not operating.
Each piece of equipment for flushing fixed lines	§63.703(f)(1)(i): Overall HAP control efficiency of ≥95 percent; or §63.703(f)(i)(ii): Use closed system; or §63.703(i): Establish an alternate maximum HAP outlet concentration to demonstrate compliance during periods when coaters are not operating.

TABLE 1.—SUMMARY OF THE STANDARD—Continued

Emission point	Standards
Each wastewater treatment operation	§63.703(g): Treat to remove HAP by the fraction removed specified in Table 9 of 40 CFR part 63, subpart G or so that total VOHAP concentration at exit is <50 ppmw.

*Except the vent on the condenser serving as an add-on air pollution control device.

Owners or operators of existing affected sources are required to comply with these standards within 2 years after the effective date, unless a new control device is needed to comply with the requirements of § 63.703 (c) or (g). If a new control device is needed, an owner or operator of an existing affected source must comply within 3 years of the effective date. All new and reconstructed sources must comply immediately upon startup.

Owners or operators of affected sources must demonstrate initial compliance following the test methods and procedures of § 63.705 unless the criteria of § 63.705(a) (1), (2) or (3) are met. Continuous compliance is demonstrated by conducting monitoring in accordance with § 63.704(c). Continuous compliance monitoring requirements are summarized in Table 2. Compliant monitoring parameter values are established in accordance with § 63 704(b), which also contains procedures to determine the compliant outlet HAP concentration during periods when coating operations are not occurring.

TABLE 2.—SUMMARY OF CONTINUOUS MONITORING REQUIREMENTS

Control/capture technique	Monitoring requirements
Any add-on air pollution control device (APCD)	§63.704(c)(3): Continuously inlet and outlet HAP or VOC concentration or continuously monitor outlet HAP or VOC concentration; or See below: If using condenser or incinerator as APCD, can perform alternate monitoring. §63.704(c)(10): Monitor bypass lines that could divert flow from APCD, or install car-seal or lock-and-key.
Solvent recovery device controlling only coating operations	§63.704(c)(9): Perform material balance over each 7-day period.
Condenser	§63.704(c)(4): Continuously monitor temperature of condenser vapor exhaust stream.
Thermal incinerator	§63.704(c)(5) Continuously monitor combustion temperature.
Catalytic incinerator	§63.704(c)(6): Continuously monitor gas temperature upstream and temperature across the catalyst bed.
Capture system	§63.704(c)(7): Continuously monitor site-specific operating parameter established according to §63.704(b)(6)
Steam stripper	§63.704(d)(1): Continuously monitor steam-to-feed radio.
Steam stripper/other control technique	§63.704(d)(2): Monthly monitoring of VOHAP concentration.
Baghouse/fabric filter	§63.704(e): Continuously monitor ventilation airflow rate and daily visible emission testing.
Low-HAP coating	§63.704(c)(8): Determine HAP content of coating used.
Other control techniques	§63.704(f): Submit monitoring plan to Administrator for approval.

Owners or operators of affected sources shall maintain records and submit reports in accordance with §§ 63.706 and 63.707. Records are consistent with those required by subpart A, and also include records associated with freeboard ratio measurement, bypass valve monitoring, material balance calculations, and demonstrating compliance with the low-HAP coating limit. Reports include an initial notification, a notification of compliance status, compliance summary reports, a report to establish an alternate HAP outlet concentration limit for periods when the coating operations are not occurring, performance test results, and alternate compliance and monitoring reports.

The final rule also includes provisions, in § 63.703 (b) and (h) that an owner or operator of a magnetic tape manufacturing operation may choose to be subject to in order to obtain a Federally enforceable limit on their potential to emit HAP. These provisions do not preclude an owner or operator from using avenues other than this subpart to limit their potential to emit HAP. Moreover, this subpart does not apply to any plant that is already an area source without these provisions. The provisions would require limits on the usage of HAP in the magnetic tape manufacturing operation over 12-month periods as surrogates for potential emissions. Recordkeeping and reporting would be required to demonstrate compliance with the usage limits.

B. Summary of Major Changes Since Proposal

In response to public comments received and additional analysis performed by EPA, the following major changes have been made to the final rule since proposal:

1. The rule does not apply to research and laboratory facilities or to owners or operators whose magnetic tape production on a coating line is 1 percent or less of total production from that line in terms of square footage coated in any 12-month period.

2. Leader tape production is not included as part of magnetic tape manufacturing operations.

3. The rule does not apply when nonmagnetic tape products are manufactured in affected sources.

4. The applicability and intent of the HAP usage limits have been clarified in § 63.703 (b) and (h).

5. The final rule (§ 63.703(c)(4)) allows owners or operators of affected sources the option of controlling coating operations more stringently in lieu of controlling HAP emissions from solvent storage tanks.

6. The final rule includes an alternative standard to control HAP from particulate transfer; it requires venting particulate HAP to a baghouse or fabric filter that has no visible emissions.

7. The test methods and procedures for determining compliance with wastewater provisions have been clarified. The percent removal required

for HAP has been changed from 99 percent to values found in 40 CFR part 63 subpart G, the Hazardous Organic NESHAP for the synthetic organic chemical manufacturing industry (hereafter called the HON). Any control technique may be used to meet the treatment requirements. Also, monthly monitoring of the wastewater concentration is allowed to demonstrate continuous compliance.

8. The compliance time for existing affected sources has been changed to 2 years after the effective date, unless a new control device is needed to comply with § 63.703 (c) or (g). If a new control device is needed, an owner or operator of an existing affected source must comply within 3 years of the effective date.

9. The final rule (§§ 63.703(i) and 63.704(b)(11)) contains procedures for establishing an alternate HAP concentration limit to demonstrate compliance with the standards when coating operations are not occurring.

10. The material balance averaging time was changed in the final rule. The averaging time is now 7 days to determine compliance with the standard.

11. The definition of affected source was changed from each coating line, piece of mix equipment, storage tank, etc., to the entire magnetic tape manufacturing operation.

12. A low-HAP content coating standard has been added to the final rule. A facility that uses a coating with a HAP content of no greater than 0.18 kg/L of coating solids for a coating operation is not required to further control that coating operation.

The rationale for the above changes is discussed in detail in section V of this preamble, which summarizes the major comments received on the proposed rule and EPA's responses to these comments.

III. Summary of Environmental, Energy, Cost, and Economic Impacts

A. Environmental and Energy Impacts

The environmental and energy impacts for this rule were not affected by changes made to the rule between proposal and promulgation.

B. Cost Impacts

Several commenters provided comments on the estimate of nationwide compliance costs for the standard. The commenters stated that actual compliance costs could be as much as 15 times the costs estimated by the Agency. The EPA's evaluation of industry compliance costs was based on a careful analysis of information provided by industry during development of the proposed regulation. The costs are estimates and may be higher for some facilities and lower for others. Additionally, costs are based on the least expensive method for controlling emissions; sources that choose to utilize more expensive methods for control will find that their compliance costs are higher than those estimated for the standard.

The Agency did revise facility specific cost impacts between proposal and promulgation based on information received from one facility. The revised industrywide annual costs to comply with the standards are $822,000/yr. This cost includes the annual cost of control ($596,120/yr), annual compliance costs including initial performance tests and ongoing monitoring ($115,638/yr), and annual reporting and recordkeeping costs ($110,240/yr). The total industrywide capital investment is estimated to be $5,206,920. The associated cost effectiveness is $390 per megagram (Mg) of HAP controlled ($354/ton HAP).

The costs for new sources are unchanged from proposal. New source costs vary depending on whether a carbon adsorber or an incinerator is used as the control device but either system requires a total capital investment of approximately $500,000. Total annual costs for new sources are $349,360/yr if carbon adsorption is used and $270,367/yr if incineration is used, with associated cost effectivenesses of $2,470/Mg ($2,250/ton) and $1,910/Mg ($1,740/ton), respectively. New source costs were calculated assuming six new coating lines constructed within the first 5 years of the standard.

C. Economic Impacts

The economic impacts of this rule were recalculated to reflect a revision in the estimated industrywide annual costs associated with this rule. Despite the cost revisions, the conclusion of the economic impact analysis remains the same. The economic impacts of this rule are not considered to be significant. Under this rule, the average price of magnetic tape products would only need to increase by 0.03 percent in order for the magnetic tape industry to fully recover the new annualized costs.

IV. Public Participation

Prior to proposal of the magnetic tape manufacturing rule, a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) was held to discuss the development of the draft rule for magnetic tape manufacturing operations. That meeting was held on November 17–18, 1992. The meeting was open to the public, and each attendee was given an opportunity to comment on the draft rule.

The proposed rule was published in the **Federal Register** on March 11, 1994 (59 FR 11662). The preamble to the proposal discussed the availability of the proposal BID (Hazardous Air Pollutants from Magnetic Tape Manufacturing— Background Information for Proposed Standards (EPA–453/R–93–059)), which describes in detail the regulatory alternatives considered and the impacts associated with those alternatives. Public comments were solicited at the time of proposal, and copies of the proposal BID were made available to interested parties.

The public comment period ended on April 25, 1994. A public hearing was held on April 13, 1994 and the docket remained open until May 13, 1994 for submission of rebuttal and supplementary information. Altogether, 17 comment letters were received. The comments were carefully considered, and, where determined by the Administrator to be appropriate, changes were made in the final rule.

V. Significant Comments and Responses

Comments on the proposed rule were received from magnetic tape manufacturers, State and local air pollution control agencies, and environmental organizations. A detailed discussion of these comments and responses can be found in the promulgation BID (see **ADDRESSES** section). The summary of comments and responses in the promulgation BID serves as the basis for the revisions that have been made to the rule between proposal and promulgation. The major comments and responses are summarized in this preamble.

A. Applicability of Standards

1. HAP Usage Cutoff

Although all comments on the HAP usage exemption in § 63.701(a) of the proposed rule generally supported it, the commenters questioned the applicability and intent of the exemption. The commenters stated that an exemption in terms of utilization ignores actual emissions that may emanate from a magnetic tape operation. One of these commenters pointed out that the exemption is not available to facilities that have installed control devices (and now have the potential to emit less than 10 tons/yr of HAP) yet can be used by uncontrolled facilities that emit less than 10 tons/yr of HAP; therefore, the exemption penalizes those

that have installed controls. Commenters maintained that if potential to emit is used as the basis for the exemption, magnetic tape coating operations can choose to become exempt from the regulation by installing control devices or accepting Federally enforceable permit conditions to limit their emissions to below the stated threshold.

Three commenters stated that with the HAP usage exemption, it was not clear whether the proposed standard applied to area source magnetic tape manufacturing operations that are located at major sources.

Two commenters suggested allowing sources subject to the control requirements to use the HAP usage exemption at a later date if, for example, sources do not exceed the low HAP usage threshold for several consecutive years. The reason given was to encourage pollution prevention.

The EPA agrees with the commenters that the proposed HAP usage cutoff requires clarification in the final rule. The first clarification is that only magnetic tape manufacturing operations at major sources of HAP emissions are required to comply with subpart EE. However, the owner or operator of any stationary source with magnetic tape manufacturing may choose to be subject to the HAP usage limits in subpart EE to obtain a Federally enforceable limit on the potential to emit HAP from magnetic tape manufacturing operations. Essentially, the HAP usage limits are a surrogate for the potential to emit HAP. A reason the owner or operator may want to use this mechanism in subpart EE is if the stationary source would be a major source, unless it had the potential to emit limit established by this subpart. The owner or operator could use the potential to emit established for magnetic tape manufacturing operations (determined by the HAP usage limit), in conjunction with the potential to emit from the other HAP emission points at the stationary source, to be an area source. Note that the determination of whether a stationary source is major or area is dependent on the potential emissions from all points within the stationary source, or group of stationary sources located within a contiguous area and under common control.

Subpart EE does not preclude the determination of potential to emit, considering controls, by other mechanisms. For example, without controls, the potential to emit HAP could be low because the solvents used in coating are not HAP. An operation that has emission controls may have its potential to emit established by a Federally enforceable State operating permit. The definition of "Federally enforceable" in the General Provisions, subpart A of part 63, includes other examples of limits that are federally enforceable. The EPA did not include specific provisions in subpart EE to create enforceable limits for controls because, for this source category, very detailed and complex provisions would be required. The HAP usage limits, by comparison, are straightforward to determine, record, and can be easily confirmed by regulatory authorities. Because of the availability of the other mechanisms and the few plants in this source category, the EPA decided to include in this subpart only the HAP usage limits.

If a stationary source becomes an area source by subjecting its magnetic tape manufacturing operations to the HAP usage limits in subpart EE, then the control requirements of subpart EE would not apply. Furthermore, for purposes of section 112 of the Act, it would not be a regulated area source that would be required to have an operating permit under 40 CFR part 70. In other words, being subject to the HAP usage limits in the rule does not in and of itself make the facility subject to part 70. However, there may be other reasons that the stationary source is required to comply with part 70. For example, it may be a major source of emissions of volatile organic compounds.

The HAP usage limits at magnetic tape manufacturing operations have been changed from their proposed values of 10 tons/yr of an individual HAP and 25 tons/yr of combined HAP to take into account the potential emissions from other emission points at the stationary source. In the final rule, the HAP usage limits for the magnetic tape manufacturing operation are to be the values that, when summed with the values of the potential to emit each HAP from emission points other than magnetic tape manufacturing operations at the stationary source, are less than 10 tons/yr of an individual HAP and 25 tons/yr of combined HAP.

To illustrate how the HAP usage limits would be determined, three example situations have been developed. The first example is a stationary source at which the only HAP emission points are in the magnetic tape manufacturing operations. Since no other points go into the calculation in this case, the limits would be less than 10 tons/yr of an individual HAP and less than 25 tons/yr of a combination of HAP.

The second example is a stationary source at which the only HAP emission points are the magnetic tape operation and a boiler. Assume that the boiler, without controls, has the potential to emit 1 ton/yr of HAP, and that the HAP from the boiler are different from those emitted from magnetic tape manufacturing. The limits on HAP usage in the magnetic tape manufacturing operation would be to not exceed 10 tons/yr for each individual HAP and 24 tons/yr for the combination of HAP (i.e., the 25 tons/yr major source threshold minus the 1 ton/yr potential to emit of the boiler).

The third example is a stationary source in which the HAP emission points, except those associated with magnetic tape, have controls with Federally enforceable emission limits, such as a new source performance standard (NSPS) under section 111 of the Act. Assume that these Federally enforceable limits have the effect of limiting the potential HAP emissions from these emission points to 4 tons/yr of a solvent that is also used in magnetic tape manufacturing (e.g., toluene). The limit on the magnetic tape manufacturing HAP usage for toluene would be to not exceed 6 tons/yr, for other individual HAP to not exceed 10 tons/yr, and for the combination of HAP to not exceed 21 tons/yr.

Two commenters remarked that a 12-month period is too long for determining if the threshold had been exceeded; the commenters suggested a 12-month rolling total. The EPA agrees, the final rule requires that the HAP usage be calculated monthly.

In the final rule, the EPA has removed the proposed requirement that after a source has been subject to the control requirements of the maximum achievable control technology (MACT) standard, the owner or operator can not take advantage of the HAP usage limit anymore. The points made by the commenters who suggested this change are being considered as part of a general policy on the timing aspects of limitations on potential to emit, which is beyond the scope of this rulemaking. Therefore, this rulemaking does not include any specific requirements of this nature.

One commenter suggested that the HAP usage cutoff be defined in terms of net usage to encourage onsite solvent recovery and reuse. The EPA agrees that net usage encourages pollution prevention by subtracting out the amount that is recycled at the facility Therefore, the definition of "utilize" has been changed to incorporate this concept into the final rule by allowing the owner or operator to determine utilization as the HAP inventory for the magnetic tape manufacturing operation at the beginning of a 12-month period

plus the amount purchased during the 12 month period minus the amount in inventory at the end of the 12-month period. However, the proposed definition is also included as a choice, because owners or operators of a plant that uses HAP for other purposes may not keep their inventory of HAP bought for the magnetic tape manufacturing operations separate. Therefore, they may prefer a record based on the amount of HAP actually put into the process.

The proposed rule stated that when a source exceeded the HAP usage limit, the owner or operator would be required to comply with the control requirements of the rule by 1 year after the exceedance; this time had been selected to be consistent with the period given for existing sources to comply after the effective date. In the final rule, the EPA has clarified that the source shall be required to comply with the control requirements for major sources only if the owner or operator chooses to no longer be subject to the HAP usage limits and, in doing so, becomes a major source. In such a case, the owner or operator would be required to notify the Administrator or delegated State of this intent The owner or operator would then have the same amount of time to comply with the control requirements as would an existing source, according to § 63 6(c)(5) of the General Provisions. The HAP usage limits would continue to apply until the control requirements were met.

An exceedance of a HAP usage limit would be a violation of the HAP usage provisions of subpart EE. If the source also has exceeded the major source definition thresholds by exceeding the HAP usage limit, and the source does not have an operating permit for major sources under 40 CFR part 70, the source potentially could be found in violation of the requirements of part 70 as well.

Another clarifying change in the rule is that the owner or operator is not required to include 12 months of HAP usage data in the initial notification report required by the General Provisions; this requirement would have required sources to keep records before the effective date of the rule. Instead, the owner or operator is required to submit the values of the limits on the amount of HAP utilized, as determined in § 63.703(b)(2), along with supporting calculations, with the initial notification.

As in the proposed rule, the owner or operator would be required to submit an annual report on HAP usage, with the first one covering the 12-month period before the compliance date of the rule which, in the final rule, would be 2 years after the effective date, instead of the proposed 1 year). Because the final HAP usage limits are calculated monthly on a rolling 12-month basis, the final rule would require a report within 30 days of any exceedance of a HAP usage limit. It would be unreasonable to allow the owner or operator to wait until the annual report to report an exceedance.

2. Regulation of Leader Tape and Other Nonmagnetic Tape Products

Two commenters suggested deleting § 63.701(c) of the proposed rule that specifies that nonmagnetic tape manufacturing operations that take place using an affected source also are subject to the rule. The commenters argued (1) that by including nonmagnetic tape operations additional controls and solvent recovery equipment may be needed; (2) there may be conflicts with future MACT standards for the "paper and other webs" source category; (3) the nonmagnetic tape process was not considered in developing the MACT floor or impacts associated with the standard; and (4) the standard likely exceeds the MACT floor for nonmagnetic tape manufacturing. One of the commenters also suggested deleting "leader tape" from the definition of magnetic tape manufacturing operation for the same reasons. Upon review of the comments, the EPA has decided not to regulate HAP emissions from leader tape production and from nonmagnetic tape products manufactured using affected sources. Although there may be configurations for which controlling leader tape and nonmagnetic tape products is feasible, the EPA has chosen not to regulate either under subpart EE. There may be instances in which the solvents used to manufacture magnetic products and the solvents used to manufacture nonmagnetic and leader tape products are incompatible with respect to a solvent recovery device. The regulation of leader tape and nonmagnetic tape products manufacturing would be considered when the MACT standard for paper and other webs is promulgated; leader tape and nonmagnetic tape products should be covered by that standard. The EPA agrees that it did not adequately consider leader tape in the analysis of the floor for this source category. The comments brought to EPA's attention that leader tape manufacture is not necessarily as similar to magnetic tape manufacture as was originally anticipated.

3. Regulation of Research and Laboratory Facilities

Four commenters stated that research and laboratory activities should be exempt from the standard, regardless of whether they are collocated at a production facility. One commenter cited section 112(c)(7) of the Act as rationale, which states that EPA is directed to "* * * establish a separate category covering research or laboratory facilities to assure equitable treatment of such facilities." Commenters noted that traditional controls cannot reasonably be applied to research facilities because of the wide variety and small amounts of materials that are used, the batch nature of research operations, and the different methods of research operations. Commenters also noted that requiring control devices for research and laboratory facilities dramatically reduces the amount of research that can be conducted and impacts competition.

The proposed rule used the definition of research and laboratory facilities from section 112 (c)(7) of the Act. This section provides that "research or laboratory facility" means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

Three commenters responded to EPA's request for information on the definition of de minimis manufacture of products for commercial sale from a research and laboratory coating line. One commenter recommended that the standard adopt the definition of research or laboratory facility as proposed and not try to further define de minimis, because de minimis may vary by the nature of product being produced or the concurrent level of research activities. Two commenters suggested defining the de minimis sale of products produced at research and laboratory facilities according to the percent of time the facility is used for commercial activities, and suggested less than 50 percent of total operating time as de minimis. One commenter suggested that de minimis be defined in terms of the HAP emission level; e.g., no more than 5 tons/yr of any one HAP or 10 tons/yr of any combination of HAP could be emitted from research and laboratory facilities.

The EPA had proposed regulation of research and laboratory facilities collocated with production lines because the EPA believed that the

primary control device used to control HAP emissions from coating operations could also be used to control HAP emissions from the research lines. The EPA agrees that under section 112(c)(7) of the Act, a separate category would need to be established to cover research and laboratory facilities to assure the equitable treatment of such facilities. Based on the information received at proposal, the EPA has concluded that in many instances control of HAP emissions from research and laboratory facilities is not technically feasible using the same pieces of control equipment used to control manufacturing lines. This is primarily due to the batch nature of operating the research and laboratory lines, the types of emission points (such as laboratory bench-scale equipment), and the fact that the solvents used in research could differ from those used in production. This latter problem is of specific concern when a solvent recovery device is used, because the solvent recovery device (and associated distillation operations) are designed for recovery of specific solvents. Therefore, in the final rule, research and laboratory facilities are not regulated.

In the final rule, the definition of research or laboratory facility remains unchanged from the proposed definition, which is identical to the definition in section 112(c)(7) of the Act. The EPA disagrees with the two commenters who suggested that the phrase in the definition of research or laboratory facility "not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner" be interpreted as not engaged in commercial manufacture for more than 50 percent of its operating time. The EPA does not believe that this is a reasonable interpretation of "de minimis manner." However, the Agency did not receive sufficient information that "de minimis manner" could be defined for this source category.

The EPA has evaluated the types of activities it considers to fit the Act's definition of a research facility for this source category. Research activities include those activities that are employed to develop a new coating, substrate, or end product, and may also include activities devoted to optimizing the manufacture of a new material. For example, a magnetic tape facility may have laboratory research operations directed to developing new coatings. Once a promising coating is developed, the research activity may move to a laboratory-scale or pilot plant coating line to determine if it can be properly applied, dried, etc. Some marketing may take place at this stage to determine the viability of the product in the market place. For example, is there a demand for this type of product? Can it meet the customer's specifications? If the facility wishes to further pursue the coating, it may be moved to a line that operates the same as a production line to determine how the coating could be manufactured on a full-scale basis. The EPA believes that all of these activities are research because their intention is to develop new products or processes.

Once a facility determines that the manufacture of this product is viable, however, the EPA believes that additional activities are likely to be beyond the research phase. For example, the adjustment and optimization of a process or product that is already operating on a production line should not be considered research. Likewise, if a product is being manufactured on a full-size production line and introduced in a retail environment, even on a limited basis, the product is likely to be fully developed. It could be argued that research is continuing even beyond this point in that the facility is testing to determine the correct market segment, price, advertising, etc. The EPA believes, however, that this type of "research" is beyond what was intended by the Act. The company is obviously planning eventual full-scale production; the development of the new product and process is over.

4. Overlap of Subpart EE With Future Standards

One commenter stated that the broad definition of magnetic tape encompasses operations that should be considered as part of other source categories. For example, although the commenter's facility manufactures a product that contains magnetic particles, the actual content of magnetic particles in the product is small. The overwhelming majority of products manufactured at this facility, in terms of square footage, are products that would be considered paper and other webs. The commenter noted that only 1 percent of its annual production in square feet would meet the definition of magnetic tape. Thus, the commenter believes that it would be more appropriate to regulate this facility under a standard for paper and other webs than under the magnetic tape rule. The commenter suggested that EPA use primary product rationale to distinguish between magnetic tape facilities and facilities more appropriately classified as manufacturing paper and other webs. The commenter alternatively suggested that EPA change the definition of magnetic tape to be based on the percent of solids in the coating mix to distinguish between source categories.

The Agency has considered the request made by the commenter and agrees that a primary product distinction should be made in some cases to avoid including coating lines under the magnetic tape NESHAP that have such a small amount of magnetic tape production that it is more appropriate to regulate them exclusively under paper and other web coatings, rather than subpart EE. Therefore, the final rule specifies that if, based on the annual square footage, 1 percent or less of all products manufactured on a coating line are magnetic tape products, then that coating line is not subject to subpart EE. A cutoff of 1 percent, rather than a higher percentage number was selected to minimize potentially uncontrolled emissions from magnetic tape production on a coating line that would otherwise be regulated under the paper and other webs source category. The definition of magnetic tape was not changed due to the uncertain nature of product development. The percent composition of magnetic particles may change with the development of new magnetic tape products, and a change in the definition of magnetic tape might limit the effectiveness of subpart EE to control emissions from magnetic tape manufacturing in the future.

B. Selection of Compliance Dates

Seven commenters stated that the compliance time of 1 year from the date of promulgation is too short. Three commenters stated that a minimum of approximately 2 years would be required to adequately plan, design, fund, purchase, and install the required new equipment. The commenters pointed out that some States require up to 10 months to issue construction permits alone. Two commenters also remarked that the 1-year compliance period did not allow adequate time for sources to apply for extensions, which must be submitted 12 months in advance of the compliance date. One of the commenters suggested the regulation distinguish between sources currently subject to the new source performance standards (NSPS) for magnetic tape manufacturing (40 CFR part 60, subpart SSS) and sources not subject to the NSPS, and allow sources not subject to the NSPS 3 years to comply.

After reviewing the comments received, the Agency recognizes that a 1-year compliance period for affected sources may be inadequate for some facilities to install a new control device or expand existing controls. In addition, because this rule covers a wider range

of emission points than the NSPS, some facilities that are subject to the NSPS also may need additional time to retrofit the emission controls necessary to comply with the MACT standard. Therefore, the Agency has increased the compliance period to 3 years for existing affected sources that will need to install a new control device to meet the requirements of § 63.703(c) or (g). All other existing affected sources will have to comply with the standards within 2 years of the effective date. The Agency believes that these compliance timeframes will allow facilities sufficient time to bring affected sources into compliance with the rule while ensuring implementation of emission control in a timely fashion. In addition, the increase in the compliance time period allows additional time for State agencies to implement title V permitting programs, and allows owners and operators of affected sources at least 1 year to evaluate the need and apply for an extension in accordance with § 63.6(i) of subpart A.

C. Selection of Emission Limits and Equipment/Work Practice Specifications

1. Emission Limits When Coating Operations Are Down

At proposal, the EPA noted that a 95 percent control efficiency may not be feasible when the inlet HAP concentration to the control device is low, such as when the coating operations are down. This is especially a problem for owners or operators using solvent recovery devices that continuously monitor percent efficiency or HAP outlet concentration to demonstrate compliance with the standards. The rule already contains an alternative HAP outlet concentration for owners or operators of incinerators. The EPA, therefore, requested comment on alternate continuous compliance requirements for solvent recovery devices operating under low-inlet loading situations. Commenters agreed this was a problem, but were not in agreement on the best way to address the problem. Several commenters suggested extending the averaging period to 30 days to account for low inlet conditions. Commenters did not support the option of an owner or operator establishing an alternate outlet concentration requirement for periods of low inlet conditions. Primarily, the reasons cited were that it would be costly to simulate all possible modes of operation during an initial performance test, and outlet conditions are source-specific and depend greatly on highly variable inlet conditions. The EPA recognizes that it could be costly to simulate all possible modes of operation during one performance test. Given the site-specific nature of outlet conditions, it would be unfounded for EPA to set such an outlet concentration to apply to the entire industry during periods of low inlet condition, as EPA currently has no data to support such a limit. The EPA does not believe that a 30-day averaging period is an acceptable alternative, and no data were submitted to support that this is the minimum averaging time that is technically feasible.

The EPA believes that compliance with an alternate outlet concentration is the best way to establish compliance during those periods when the inlet HAP concentration to the control device is low. However, the Agency currently has no data to identify a limit. The EPA has chosen to address this problem in the final rule by allowing facilities to determine a site-specific outlet concentration during periods of low inlet conditions. Owners or operators may conduct a performance test during which the coating operations are not occurring, and the control device is operated according to good control practices and in the same manner as it was operated to achieve the emission limits for coating operations. Alternatively, to minimize the burden on affected facilities, the final rule also allows sources to establish this number using CEM data collected under such conditions as noted above. The final rule (§ 63.704(b)(11)(ii)) allows owners or operators 6 months after the compliance date to collect these data and submit a proposed limit to the Administrator or permitting authority, as appropriate. To support the alternate concentration limit, the owner or operator must also fulfill the reporting requirements in § 63.707(k).

2. Standard for Particulate HAP

One commenter recommended that EPA allow the use of manual charging of particulate HAP into kettles with the use of a 99 percent efficient dust collector as an equivalent method to enclosed transfer. The commenter estimates a 99.975 percent control efficiency for its own facilities. The commenter also claims that additional costs to convert to enclosed transfer would be excessive compared to the resulting emission reductions. The commenter noted that enclosed transfer systems all have some purge capability usually associated with a fabric filter that would vent to the atmosphere. Therefore, the ultimate difference between enclosed transfer and open transfer with control would be minimal.

Another commenter agreed, recommending that the proposed rule be amended to require capture and control of at least 95 percent of particulate emissions or the use of an enclosed transfer method. The commenter stated that performance standards are almost always superior to design standards, which are used only as a last resort when performance standards are not possible. Their facility vents the particulate HAP unloading area to a baghouse with greater than 99 percent control of particulate emission greater than 1 micron in diameter, which they believe is at least as efficient as the enclosed transfer method.

The final rule allows owners or operators to control emissions of particulate HAP by venting the transfer operation to a baghouse or fabric filter that operates with no visible emissions. The owner or operator will also have to demonstrate that the ventilation rate is sufficient to capture the particulate HAP through engineering calculations (§ 63.707(h)). Guidance for determining a suitable ventilation rate may be found in the Industrial Ventilation Manual of Recommended Practice, published by the American Conference of Governmental Industrial Hygienists (ACGIH). The final rule contains test methods and procedures for demonstrating that there are no visible emissions from the baghouse or dust collector (§ 63.705(g)), as well as monitoring provisions for demonstrating continuous compliance (§ 63.704(e)). In addition, the definition of an enclosed transfer device was left as a broad definition so as not to exclude equipment that could achieve enclosed transfer. Supersack containers described by one commenter appear to meet this definition as would mechanical systems such as augers and conveyors. The final rule references such equipment.

3. Low-HAP Coating Limit

Three commenters recommended that EPA allow an equivalent compliance limit for reductions in HAP for facilities that use water-based coatings or reduce the amount of HAP applied per unit of tape manufactured. The commenters stated that this would be consistent with the NSPS, and would encourage pollution prevention. One commenter also suggested that emissions be averaged on a monthly basis, not a 3-day rolling average, which it claims is not practical.

The EPA recognizes the advantages of a low-HAP coating limit and has therefore included such a limit in the final rule as a means of encouraging pollution prevention. The final rule includes a HAP coating limit, whereby

owners or operators are exempt from requirements for coating operations if a coating containing less than 0.18 kg of HAP per L of coating solids is used. This limit was calculated using the same methodology used to establish the alternate limit for the NSPS. The low-HAP coating limit in subpart EE was calculated by applying a 95 percent efficiency to a typical coating containing 0.8 gallons of solvent per 0.2 gallons of solids, and that has a coating density of 7.5 pounds of solvent per gallon of coating. Data collected from industry to support the NSPS found the typical magnetic tape coating to be 80 percent solvent and 20 percent solids, and these coating parameters were used in developing the low-VOC coating for the NSPS (0.25 kg solvent/L coating solids). In the case of subpart EE, all solvent is considered HAP; whereas in the NSPS, all solvent was considered VOC because VOC's are regulated by the NSPS.

Owners or operators that opt to comply with the low-HAP limit must determine the HAP content of each batch of coating used, following the procedures of § 63.705(c)(5) of the final rule. Thus, an averaging period is not necessary. If a coating with an identical formulation is subsequently used, the original calculations can be used to demonstrate compliance. Section 63.706(f) requires the owner or operator using a low-HAP coating to maintain records of the HAP content of each batch of coating applied, and records of the formulation data that support the HAP content calculations. In accordance with § 63.707(i)(2), these calculated HAP contents for each batch of coating are reported as the monitored operating parameter value in the excess emissions and continuous monitoring system performance report and summary report required by § 63.10(e) of subpart A.

D Regulation of Wastewater

One commenter stated that condensate from the carbon adsorption system should not be considered a wastewater stream because steam strippers are part of a solvent purification process, not a wastewater treatment system. The commenter further stated that only the water stream exiting the solvent purification stripping column should be considered wastewater, and because volatilization of HAP from this stream is negligible, this stream should not be considered an emission point.

The commenter is correct in that the steam stripper may be considered a purification process to remove additional solvent from the water phase after a carbon adsorption system is steam desorbed. However, this interpretation of the process does not change the fact that the water phase from steam desorption of the carbon adsorption system is a potential HAP emission source. If a steam stripper or some other treatment is not used to remove solvent from this water phase, volatile HAP solvents could be emitted to the air. Based on EPA's data, of the three existing major sources that use steam to desorb their carbon beds, all three treat the resultant water with a steam stripper. The MACT floor for this emission source was, therefore, selected as treatment that achieves the same control level as a steam stripper

One commenter maintained that EPA does not have sufficient data to set the concentration limit for wastewater streams from the steam stripper at 50 parts per million by weight (ppmw) of volatile organic HAP. The commenter noted that the data to support the limit was not obtained by Method 305 of appendix A to 40 CFR part 63. However, the commenter did not supply any other data to support his comment. Another commenter noted that the removal efficiency and outlet concentration is highly dependent on the type of HAP compound present in the wastewater. Therefore, EPA should either (1) limit the rule only to methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), and toluene and make an adjustment for the removal efficiency for MEK described in the HON (95 percent); or (2) conduct another MACT floor evaluation to include all HAP and repropose this portion of the rule.

One commenter stated that facilities that do not use steam stripping should not have to seek EPA approval to use reliable technologies with demonstrated efficiencies in treating wastewater. The commenter noted that heated distillation columns reliably remove organics to less than 50 ppmw, and carbon adsorption is a reliable and common method to remove trace amounts of VOC from wastewater.

The wastewater provisions in the final rule differ slightly from those at proposal. The EPA agrees the rule should not limit the treatment methods to steam stripping for removing HAP from wastewater. Therefore, the final standards are expressed in terms of performance limits, not technology; an owner or operator must achieve the reference control efficiency for a given HAP or must achieve a total volatile organic HAP outlet concentration of 50 ppmw The standard is clear that an owner or operator is required to meet only one of these requirements; the outlet concentration or the removal efficiency. Any technology can be used to meet these limits as long as it is demonstrated to meet the standards in accordance with the test methods and procedures in the rule, and as long as continuous compliance monitoring is proposed, approved, and conducted.

At proposal, the EPA explained that the removal efficiency and outlet HAP concentration limits were based on data gathered from this industry, and further supported by data gathered during development of the HON (40 CFR part 63, subpart G). In the proposed HON rule, the removal efficiency for all HAP solvents typically used in magnetic tape manufacturing was 99 percent. In the final HON, the value for MEK was changed to 95 percent. The EPA agrees that the percent removals in subpart EE should be the same as in the HON. Furthermore, the EPA does not mean to limit subpart EE to only MEK, MIBK and toluene. Therefore, § 63.703(g) of subpart EE requires the removal efficiency specified in Table 9 of the 40 CFR part 63, subpart G of the HON for HAP compounds that may be present in wastewater. The final rule also specifies that the HAP that must be removed are only those that are from magnetic tape manufacturing operations. Thus, if methanol is in the wastewater stream due to magnetic tape manufacturing, it must be removed by 31 percent as specified in Table 9 in 40 CFR part 63, subpart G. If the methanol is not from magnetic tape manufacturing operations, subpart EE does not require a specific removal efficiency.

The test method to be used to demonstrate compliance with the removal efficiency is unchanged from proposal. In the final rule, owners or operators may demonstrate compliance with the outlet concentration or removal efficiency by analyzing the wastewater for volatile organic HAP using Method 305. However, the proposed rule lacked specification regarding calculations related to Method 305. This specification, which is consistent with the HON, has been added to the final subpart EE. Also, alternate test methods may be used if they are validated through Method 301 of 40 CFR part 63, appendix A.

E. Selection of Test Methods and Monitoring Requirements

Section 114(a)(3) of the amended Act requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitation or standard with sufficient representativeness, accuracy,

precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring.

Four commenters submitted comments concerning the establishment of operating parameters for monitoring purposes. Commenters noted that the monitoring parameter values that correspond to compliance with the standard will vary based on varying inlet conditions, age of the device, or other factors. For example, two commenters stated that, in the case of catalytic incinerators, the temperature rise across the catalyst bed varies according to the VOC concentration of the inlet gas stream. Another commenter pointed out that the steam-to-feed ratio of a stripping column would differ greatly over the range of feed rates, depending on the age and performance of the activated carbon used in the carbon system.

One commenter suggested that § 63.704(c)(7) of the proposed rule, which requires installation and operation of equipment to measure the site-specific operating parameters of an enclosure for the capture of HAP emissions, include a provision for a 5 percent variation of the operating parameter used to determine compliance. The commenter claimed that a 5 percent variation would satisfy the requirements for maintaining a total enclosure, and, because the rule would then be consistent with the NSPS, redundant recordkeeping would be avoided and confusion between the two standards would be minimized.

The final rule (§ 63.704(b)(11)(i)) allows owners or operators to conduct multiple tests to establish site-specific operating parameters. Thus, for example, when catalytic incinerator inlet conditions vary, the owner or operator will have a range of appropriate temperatures for compliance determinations. Similarly, the final rule allows owners or operators using a steam stripper the option of conducting multiple tests to determine the appropriate range of steam-to-feed ratios that are appropriate for a variety of operating conditions. Because the final rule allows affected sources to conduct multiple tests to establish site-specific values for various operating parameters, the Agency does not believe that specifying a variance in operating parameter values is warranted.

One commenter requested that EPA establish alternative monitoring other than the monitoring of steam-to-feed ratio because a stripper can operate at a wide range of steam-to-feed ratios and still be operating properly. As noted above, the owner or operator could develop different steam-to-feed ratios for different conditions. Furthermore, EPA has included alternative monitoring requirements in the final rule to demonstrate compliance with the wastewater standard. As an alternative to monitoring steam-to-feed ratio, the final rule allows monthly monitoring of the volatile organic HAP (VOHAP) concentration in the wastewater from the outlet of the control device to demonstrate continuous compliance with the 50 ppmw standard. Because the wastewater stream is not expected to be greatly variable, monthly monitoring of the concentration was determined to be an adequate frequency for determining continuous compliance.

Two commenters suggested changing the material balance averaging period from 3 days to 30 days. The first commenter stated that a 30-day averaging period is consistent with the NSPS, and a 3-day averaging period would not be feasible for solvent recovery systems with long adsorption cycles. The solvent used in 1 day would not necessarily be recovered in the same day and may result in incomplete balances over a 3-day averaging period. The second commenter stated that a 3-day rolling average is impractical and unreasonable, with overly burdensome recordkeeping requirements. The commenter further stated that any facility that approaches 95 percent control would probably not use a material balance mechanism to demonstrate compliance because of this burden.

The EPA has increased the material balance averaging time period from 3 days to 7 days in the final rule. The EPA agrees that a 3-day average may not be able to adequately account for variability in recovered solvent due to changes in production and the adsorption cycle of the solvent recovery device as noted by the commenters. However, the EPA does not believe that 30 days is necessary to achieve this, and that 7 days is a reasonable averaging period for most facilities. Model VOC rules developed for reasonably available control technology (RACT) in State Implementation Plans require a 7-day rolling period for material balance calculation of the overall emission reduction efficiency of a solvent recovery control system (e.g., carbon adsorber). The EPA does not agree with the commenters that a 7-day averaging period will be more burdensome than a 30-day averaging period because the records necessary to compute a material balance are of an ongoing nature. The only significant difference is that the overall efficiency will be calculated on a 7-day cycle rather than a 30-day cycle An owner or operator who does not believe that 7 days is an adequate averaging period given their specific solvent recovery circumstances, and who wishes to use alternate compliance techniques may provide their reasoning in a petition to the Administrator in accordance with § 63.705(j) of subpart EE and § 63.7(f) of subpart A. Also, the final rule offers other compliance provisions for users of solvent recovery devices.

Three commenters requested that the rule include specific monitoring provisions for the use of innovative control technologies, such as biofiltration, which may perform better than traditional control technologies. One commenter stated that the proposed requirements requesting approval of monitoring techniques for innovative technologies discourage their use

At proposal, the Agency was not aware of any biofiltration units in place to control HAP or VOC emissions from magnetic tape manufacturing operations. Further research on this technology at this time could potentially delay promulgation of the final rule. However, § 63.704(f) of the final rule allows owners or operators of affected sources to submit compliance monitoring provisions for alternate control technologies to the Administrator for approval. The EPA believes that an owner or operator of an affected source that is exploring the use of biofiltration or other innovative control techniques will be more informed and better able to propose appropriate testing and monitoring. Furthermore, the EPA believes that the extended compliance timeframe of 3 years in the final rule will allow owners or operators of existing affected sources adequate time to propose alternative testing and monitoring requirements.

F. Alternative Compliance Plans and Selection of the Affected Source

At proposal, in discussing the selection of the affected source definition, the EPA noted that a broad definition of affected source would be needed if emissions averaging provisions were contained in the rule The proposed rule did not contain emissions averaging provisions because the EPA believes that there is very little opportunity for emissions averaging in this source category. However, the EPA solicited comments and information on emissions averaging for this source category.

Three commenters recommended that EPA allow emissions averaging. One commenter stated that controlling

emissions from solvent storage tanks with the same primary control device used to control other emissions at a facility would not be cost effective. The commenter noted that storage tanks may be located a considerable distance from the main facility for safety and insurance reasons and controlling the low level of emissions from storage tanks would not be cost effective given the amount of ductwork that would be required to connect them to the primary control device. The commenter also stated that compliance with the regulation through control of storage tanks with a dedicated small carbon canister would be very difficult and extremely expensive particularly if installation of a CEM on the carbon canister is necessary The commenter believes that allowing emissions averaging in the standard would alleviate these difficulties by not requiring emission control and CEM's on all emission units. This commenter suggested creating a simplified version of the emissions trading scheme included in the HON final rule (59 FR 19402). The commenter stated that EPA could disallow trading between HAP of varying risk factors and require a slight excess HAP reduction of 10 percent to overcompensate for any measurement inaccuracies. The commenter stated that the drawbacks of emissions averaging regarding weighting factors would not be an issue in this industry, because the solvent HAP used by this industry all have the same weighting factor The EPA also could eliminate requirements for air emission monitoring, modeling, and risk assessment since no trades between HAP of different risk factors would be allowed.

The commenter further suggested that EPA eliminate the restriction that excludes HAP emission reductions beyond the control device reference technology control level in emission trading. The commenter stated that a facility will normally operate its control device at a level above the compliance limit to ensure compliance, even though this practice results in higher operating costs; because this additional control is usually achieved solely for compliance reasons, the Agency should allow it to be included in emissions averaging calculations.

The second commenter also pointed out that some emission points contribute more than others and suggested a prioritization scheme that evaluates the relative contribution of each individual source relative to the total emissions from the entire magnetic tape operation. According to the commenter, prioritization would allow cost effective control and could exempt from control emission points that in the aggregate contribute no more than 5 percent of the total emissions. For the remaining emissions, the commenter suggested 95 percent reduction. As an alternative to this prioritization scheme, the commenter suggested an emissions averaging scheme to achieve 95 percent control of emissions from the entire operation.

The third commenter suggested averaging emissions from an entire mix/coat operation so that more efficient emissions control achieved from the coating line can offset less efficient control of the VOC-dilute mix room exhaust. The commenter suggested that a group of emission points collocated and ducted to a common abatement device within a facility (e.g., all mix room equipment, or coating operations) be treated as a single affected source. The commenter argued that under this approach, environmental protection will be equal to, if not greater than that with the narrower definition of affected source, and domestic producers would not be further disadvantaged by the burden of regulatory costs.

One commenter recommended that EPA not consider emissions averaging any further. The commenter stated that emissions averaging most often results in increased emissions of toxic chemicals that are more difficult to control and may include HAP. Also, emissions averaging programs have been difficult to administer, with burdensome compliance and recordkeeping requirements, and have been difficult to enforce.

The prioritization scheme suggested by one of the commenters would achieve less control than the main standard because it would exempt 5 percent of the uncontrolled emissions, and only require 95 percent control of the nonexempted emissions. Furthermore, this plan would not account for the fact that the underlying standard is not 95 percent control for all emission points. Therefore, it was not considered further by the EPA.

Several of the comments on emissions averaging for magnetic tape manufacturing appear to involve concerns about compliance demonstrations, rather than a need for emissions averaging. For example, a commenter suggested that all emission sources vented to the same control device be allowed to be "averaged" so that only the common control device has to be monitored (such as the tanks in the mix room and the coating operations). It is the EPA's intent that when several sources are vented to a common control, the control device itself is monitored; each emission point does not have to be monitored separately This point has been clarified in the final regulation.

This commenter also alluded to the problem for the primary control device of achieving 95-percent control when the coating operations are down because the other streams vented to the device have low flow rates and low concentrations. The EPA has included in the final rule an alternative standard in which the owner or operator would determine, during a period when the control device is properly operated and maintained, a concentration level for the control device when the coating operations are not operating properly

Another commenter expressed concern that the proposed regulation would have required continuous emission monitors (CEM's) on carbon canisters, which might be used to control storage tanks far from the main control device. The EPA recognizes that the proposed rule had not adequately considered monitoring for such situations and is including alternative monitoring for nonregenerative carbon adsorbers in the final rule.

One particular problem area that was mentioned in other comments as well as in those on emissions averaging was the control of storage tanks. Commenters noted that emissions from storage tanks are small and may be cost ineffective to control in comparison with other control costs imposed by this rule. This could be true particularly for those that are sited away from the main coating operation (and the primary control device) for safety or insurance reasons. As discussed in section 2.6.2 of the background information document, based on available information, there is no basis for subcategorizing among storage tanks based on size or distance from the control device However, the EPA agrees that storage tanks could be cost ineffective to control if far from the main control device and that the emissions are small. The estimated uncontrolled HAP emissions from all the storage tanks at a small facility total 0.01 ton/yr and at a large facility total 1.2 tons/yr

To meet this concern, the EPA developed an alternative compliance option that would allow the owner or operator not to control certain storage tanks in return for achieving more control of the largest emissions source at magnetic tape manufacturing facilities. Under this option, in exchange for accepting a requirement of 97 percent reduction (instead of 95 percent as required by the basic standard) for all the coating operations, the owner or operator may leave uncontrolled up to 10 storage tanks with a maximum

individual capacity of 20,000 gallons. There are also two additional tiers: To control all coating operations by 98 percent in lieu of controlling 15 such storage tanks; or 99 percent in lieu of controlling 20 such storage tanks. Available information indicates that this range of options is adequate to cover the range of plants.

This alternative compliance option might appear at first to be inconsistent with provisions of the HON (which is the first MACT standard that provides for emissions averaging) in that the HON does not permit a plant operator to gain averaging credit for using reference control technology (the technology assumed in the development of the standard) at a higher-than-required percentage reduction. However, there are clear factual differences which distinguish the two situations.

Emission limitations under the HON are applicable to emission points whose characteristics equal or exceed specified cut-offs and are based on the use of reference control technology. Emissions averaging under the HON responds to concern that it may be unusually expensive to apply reference controls to some of the covered emission points (such as emission points located far from a control device). The HON emissions averaging provisions allow a plant operator to avoid control of some covered emission points (a) by applying the reference control technology to exempt emission points (points whose characteristics are below the cut-offs) or (b) by applying controls that are inherently more effective than the reference control technology to other covered emission points. Except for reductions achieved by pollution prevention measures, the substituted controls must produce at least 110 percent of the emission reductions that would have been achieved at the emission points that will no longer be controlled. In addition, the permitting authority must conclude that risk or hazard is not increased by the averaging.

As stated above, the HON does not permit the plant operator to gain averaging credit for using the reference technology at a higher-than-required percentage reduction. Credits for operating a control technology better than its rated control efficiency are not allowed for two main reasons. One is the fact that in the development of the standard, the rated efficiency of the reference technology was set on a lowest-common-denominator basis. Due to the variable nature of the pollutant streams encountered among plants subject to the HON (variations from plant to plant in the mix of pollutants, operating rates, and other factors), the selection of a single percentage reduction applicable to each control technology in all circumstances required a lowest-common-denominator approach, and in many cases such equipment will achieve substantially higher percentage reductions under normal design and operating conditions. If credit were allowed for this differential, a plant operator would gain an undeserved windfall due to the manner in which the rated control efficiencies were derived.

In the case of magnetic tape manufacturing, the EPA is considering a much simpler situation than in the HON. Magnetic tape facilities have generally smaller variability in the plant-to-plant mix of pollutants, operating rates, and other factors. Rather than including any emission point as in the HON, only two types of emissions points are eligible for the alternative compliance plan for magnetic tape operations: the coating operations and the storage tanks. Because of the simpler nature of magnetic tape processes and the magnitude of the additional emissions control, EPA concludes that the emissions from the uncontrolled storage tanks are adequately offset by additional control at the coating operations. The required two percent additional increase in control efficiency at the largest emission point at magnetic tape manufacturing plants creates additional emissions reductions of as much as 0.35 ton/yr at a small facility and 190 tons/yr at a large facility. Under the alternative compliance option, some storage tanks may remain uncontrolled. However, the emissions from these points are very small in comparison to the additional potential emission benefit accruing from the coating operations. At small plants, 0.01 ton/yr remain uncontrolled; at larger plants, 1.2 tons/yr. As in the HON, there is variability in operating conditions and pollutant streams. Thus, EPA is unable to quantify precisely how much additional emissions benefit can be attributed to the required increase in control efficiency. The EPA is confident that the emissions from the uncontrolled points are adequately offset by additional reductions.

The other reason the HON does not allow credit for operating a device greater than its reference control efficiency is a concern over enforcement problems. The variable mix of pollutants and operating conditions seen at HON sources means that the amount by which emission reductions exceed rated levels is difficult to determine reliably. The data tracking for each point and device would be extremely complex. Use of a reference control efficiency for each reference control technology allows the implementing agency inspectors to check that the equipment is in place and operating as planned. Then the implementing agency can check records to examine the calculation of debits and credits on each of the emission points in order to make a compliance determination.

The alternative compliance approach discussed above for magnetic tape manufacturing would not pose these same enforcement problems. The required control efficiency for the coating operations would be the same for all plants taking advantage of this approach. Continuous monitoring is required to determine ongoing compliance with the emission standard. For carbon adsorbers, the most common control device in the industry, CEM's are required. (Note that CEM's are not required for nonregenerative carbon adsorbers, as discussed above. Such adsorbers would not be used on coating operations.) For incinerators and condensers, the owner or operator would be required to determine during the initial performance test a temperature that corresponds to at least 97 percent control (instead of the 95 percent control of coating operations required by the basic standard) Therefore, the additional emission reduction would be ensured.

In summary, the EPA believes that it can address the commenters' main concerns without a general emissions averaging scheme, such as in the HON The clarifications and changes in compliance determinations discussed above and the alternative compliance option for storage tanks and coating operations are sufficient. Under these circumstances, the EPA believes that permitting credit for operating a control device better than its rated control efficiency for the alternative compliance option for the magnetic tape industry is distinguishable from the HON and justifiable.

Four parties commented on the proposed definition of the affected source, which was each emission point. One agreed with the proposed narrow definition, stating that it makes the rule easily enforceable. Three commented that a broad definition is more appropriate. Several reasons related to arguments discussed above on emissions averaging. An additional reason was the interaction with the General Provisions, 40 CFR part 63 subpart A. For example, for the startup shutdown, and malfunction plan required by subpart A, it would be burdensome to have a separate plan for

each emission point, rather than the entire facility.

The EPA has changed the definition of the affected source to the entire magnetic tape manufacturing operation. It agrees that one startup, shutdown, and malfunction plan for the operation would be reasonable. Furthermore, more flexibility would be offered to the States in requesting alternative requirements under 40 CFR part 63 subpart E, since that subpart requires the alternative requirements be equivalent in stringency for each affected source. The comments related to emissions averaging have been addressed above.

G. Performance Specifications

The enhanced monitoring rule, proposed as 40 CFR part 64 (58 FR 54648, October 22, 1993), included two proposed performance specifications (PS's) for CEM's in appendix A. They were PS 101 for VOC CEM's and PS 102 for gas chromatographic CEM's. The proposed NESHAP for magnetic tape manufacturing operations included a proposed requirement for CEM's to follow PS 101 and 102. The EPA has decided to promulgate these two performance specifications in 40 CFR part 60 with revised title numbers, rather than in part 64, at the same time as promulgating the magnetic tape NESHAP. The proposed PS 101 and 102 from part 64 are being promulgated as PS 8 and PS 9 in appendix B of part 60, respectively. Comment letters that included comments on these performance specifications are in Docket No. A–91–52, the docket for the enhanced monitoring rule. This docket is located in the Air and Radiation Docket and Information Center described in the Addresses section of this notice. Pages of the comment letters that specifically address these performance specifications have been placed in Docket No. A–91–31, which is the docket for the magnetic tape NESHAP. Summaries of these comments and EPA's responses are located in the BID (EPA–453/R–94–074b) described in the Addresses section. Comments originally addressed to the docket for PS 101 and PS 102 are hereafter discussed in terms of PS 8 and PS 9, for the sake of clarity.

Comments received on PS 8 indicated a general need to revise it to eliminate confusion between its content and that of the existing performance specifications in appendix B to 40 CFR part 60. Also, certain specifications in PS 8 were inconsistent with the previously accepted approach of judging the merit of a CEM based on a comparison with a reference test method. Therefore, PS 8 has been revised to insure consistency with the existing performance specifications in appendix B. The PS definitions, installation and measurement location specifications, test procedures, data reduction procedures, and reporting requirements are all now the same as those in PS 2, and will be familiar to those persons who have applied the existing performance specifications.

Most of the comments on PS 9 dealt with issues of clarity in terms of the wording. These comments have been addressed, and many of the sections have been rewritten for clarity. More equations have been added to make the specification easier to use. Some commenters were confused when certain sections of PS 9 referred to other appendices of the proposed enhanced monitoring rule. Any references to the other appendices of the enhanced monitoring rule have been deleted and PS 9 is now all-inclusive; portions of other appendices have been incorporated into PS 9. These changes should make PS 9 easier to use.

One commenter objected to the high temperature requirement of 150 °C for the sampling system. The purpose of the heated sampling system is to prevent moisture condensation. The temperature requirement has been changed to a more workable 120 °C, which should still prevent condensation. Several commenters noted that the calibration requirements for the analyzer should be clarified. The calibration requirements have been rewritten for clarity, and an allowance for gas dilution systems has also been added.

VI. Administrative Requirements

A. Docket

The docket for this rulemaking is A–91–31. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act). The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. 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 Office of Management and Budget (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

C. Paperwork Reduction Act

Information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0326. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1678.02), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA 2136, Washington, DC 20460, or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 5 hours per respondent in the first year, 1,620 hours per respondent in the second year and 729 hours per respondent in the third year. This includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U. S. Environmental Protection Agency 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that a Regulatory Flexibility Analysis be performed for all rules that have "significant impact on a substantial number of small entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines define an economic impact as significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

(4) Regulatory requirements are likely to result in closures of small entities.

The results of the economic impact analysis (EIA) indicate that the first and fourth criteria are satisfied for one of the three small businesses in the regulated portion of the magnetic tape industry.

The EIA calculated facility and product-specific price increases based on the assumption that each facility would need to recoup fully its control costs through a price increase. The results indicated that one facility (a small business) would require a price increase of approximately 5 percent. In addition, an evaluation of postregulation facility earnings indicated that the same facility would experience a decline of approximately 36 percent in earnings if it is required to comply with the regulation.

The combination of satisfying the significant price increase criterion as well as satisfying the significant impact on postregulation earnings criterion indicate that one small entity is expected to experience a significant economic impact due to implementation of the regulation.

The small business administration's size standards were used to identify 3 facilities out of the 14 regulated facilities as being small businesses. Due to the significant impacts expected to be experienced by one of the small facilities, a regulatory flexibility analysis was conducted to assess the feasibility of providing additional flexibility to small businesses complying with the regulation.

For small businesses in general, one mechanism that was identified as potentially helpful was the HAP usage cutoff described earlier in this document. However, any small business whose HAP usage exceeds the cutoff level will have operations similar to those located at large businesses, and therefore will have the same potential to emit HAP as the large businesses. All three small businesses identified as being subject to the regulation have HAP usage levels above the cutoff level. Due to the above reasoning, there are no technical reasons for examining different requirements for small businesses as opposed to large businesses.

For the small business with significant economic impacts, monitoring is the least costly activity that would achieve the requirements of the Clean Air Act. The recommended recordkeeping and reporting requirements of the rule are also the minimum contained in the General Provisions for the NESHAP program. The facility could minimize its recordkeeping and reporting burden by continuing to stay in compliance with the regulation. More detailed reporting is necessary for deviations from compliance.

E. Miscellaneous

In accordance with section 117 of the Act, publication of this promulgated rule was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 60

Environmental protection, Air pollution control, Volatile organic compounds.

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: November 22, 1994.

Carol M. Browner,

Administrator

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—[AMENDED]

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

Authority: 7 U.S C. 135 *et seq.*, 135–136y; 15 U S.C. 2001, 2003, 2005, 2006, 2601–2671, 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975; Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories:	
* * * * *	
63.703–63.707	2060–0326
* * * * *	

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix B—[Amended]

2. Part 60 is amended by adding performance specifications 8 and 9 to appendix B to read as follows:

Appendix B—Performance Specifications

* * * * *

Performance Specification 8

Performance Specifications for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 Applicability.

1.1.1 This specification is to be used for evaluating a continuous emission monitoring

system (CEMS) that measures a mixture of volatile organic compounds (VOC's) and generates a single combined response value. The VOC detection principle may be flame ionization (FI), photoionization (PI), nondispersive infrared absorption (NDIR), or any other detection principle that is appropriate for the VOC species present in the emission gases and that meets this performance specification. The performance specification includes procedures to evaluate the acceptability of the CEMS at the time of or soon after its installation and whenever specified in emission regulations or permits. This specification is not designed to evaluate the installed CEMS performance over an extended period of time, nor does it identify specific calibration techniques and other auxiliary procedures to assess the CEMS performance. However, it is the responsibility of the source owner or operator, to calibrate, maintain, and operate the CEMS properly Under section 114 of the Act, the Administrator may require the operator to evaluate the CEMS performance by conducting CEMS performance evaluations in addition to the initial test. See section 60.13(c).

The definitions, installation and measurement location specifications, test procedures, data reduction procedures, reporting requirements, and bibliography are the same as in PS 2, sections 2, 3, 5, 6, 8, 9, and 10, and also apply to VOC CEMS's under this specification. The performance and equipment specifications and the relative accuracy (RA) test procedures for VOC CEMS do not differ from those for SO_2 and NO_x CEMS, except as noted below.

1 1.2 In most emission circumstances, most VOC monitors can provide only a relative measure of the total mass or volume concentration of a mixture of organic gases, rather than an accurate quantification. This problem is removed when an emission standard is based on a total VOC measurement as obtained with a particular detection principle. In those situations where a true mass or volume VOC concentration is needed, the problem can be mitigated by using the VOC CEMS as a relative indicator of total VOC concentration if statistical analysis indicates that a sufficient margin of compliance exists for this approach to be acceptable. Otherwise, consideration can be given to calibrating the CEMS with a mixture of the same VOC's in the same proportions as they actually occur in the measured source. In those circumstances where only one organic species is present in the source, or where equal incremental amounts of each of the organic species present generate equal CEMS responses, the latter choice can be more easily achieved.

1.2 Principle. Calibration drift and relative accuracy tests are conducted to determine the adherence of the CEMS to specifications given for those items. The performance specifications include criteria for installation and measurement location, equipment and performance, and procedures for testing and data reduction.

2. Performance and Equipment Specifications

2.1 VOC CEMS Selection. When possible, select a VOC CEMS with the detection principle of the reference method specified in the regulation or permit (usually either FI, NDIR, or PI). Otherwise, use knowledge of the source process chemistry, previous emission studies, or gas chromatographic analysis of the source gas to select an appropriate VOC CEMS. Exercise extreme caution in choosing and installing any CEMS in an area with the potential for explosive hazards.

2.2 Data Recorder Scale. Same as section 4.1 of PS 2.

2.3 Calibration Drift. The CEMS calibration must not drift by more than 2.5 percent of the span value.

2.4 CEMS Relative Accuracy Unless stated otherwise in the regulation or permit, the RA of the CEMS must be no greater than 20 percent of the mean value of the reference method (RM) test data in terms of the units of the emission standard, or 10 percent of the applicable standard, whichever is greater.

3. Relative Accuracy Test Procedure

3.1 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, Number of RM Tests, and Calculations. Follow PS 2, sections 7.1, 7.2, 7.3, and 7.5, respectively

3.2 Reference Method. Use the method specified in the applicable regulation or permit, or any approved alternative, as the RM.

Performance Specification 9

Specifications and Test Procedures for Gas Chromatographic Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 Applicability. These requirements apply to continuous emission monitoring systems (CEMS) that use gas chromatography (GC) to measure gaseous organic compound emissions. The requirements include procedures intended to evaluate the acceptability of the CEMS at the time of its installation and whenever specified in regulations or permits. Quality assurance procedures for calibrating, maintaining, and operating the CEMS properly at all times are also given in this procedure.

1.2 Principle. Calibration precision, calibration error, and performance audit tests are conducted to determine conformance of the CEMS with these specifications. Daily calibration and maintenance requirements are also specified.

2. Definitions

2.1 Gas Chromatograph (GC). That portion of the system that separates and detects organic analytes and generates an output proportional to the gas concentration. The GC must be temperature controlled.

Note: The term "temperature controlled" refers to the ability to maintain a certain temperature around the column. Temperature-programmable GC is not required for this performance specification, as long as all other requirements for precision, linearity, and accuracy listed in this performance specification are met. It should be noted that temperature programming a GC will speed up peak elution, thus allowing increased sampling frequency.

2.1.1 Column. An analytical column capable of separating the analytes of interest.

2.1.2 Detector. A detection system capable of detecting and quantifying all analytes of interest.

2.1.3 Integrator. That portion of the system that quantifies the area under a particular sample peak generated by the GC.

2.1.4 Data Recorder. A strip chart recorder, computer, or digital recorder capable of recording all readings within the instrument's calibration range.

2.2 Calibration Precision. The error between triplicate injections of each calibration standard.

3. Installation and Measurement Location Specifications

Install the CEMS in a location where the measurements are representative of the source emissions. Consider other factors, such as ease of access for calibration and maintenance purposes. The location should not be close to air in-leakages. The sampling location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs. The location should be at least 0.5 diameter upstream from the exhaust or control device. To calculate equivalent duct diameter, see section 2.1 of Method 1 (40 CFR part 60, appendix A). Sampling locations not conforming to the requirements in this section may be used if necessary upon approval of the Administrator.

4. CEMS Performance and Equipment Specifications

4.1 Presurvey Sample Analysis and GC Selection. Determine the pollutants to be monitored from the applicable regulation or permit and determine the approximate concentration of each pollutant (this information can be based on past compliance test results). Select an appropriate GC configuration to measure the organic compounds. The GC components should include a heated sample injection loop (or other sample introduction systems), separatory column, temperature-controlled oven, and detector. If the source chooses dual column and/or dual detector configurations, each column/detector is considered a separate instrument for the purpose of this performance specification and thus the procedures in this performance specification shall be carried out on each system. If this method is applied in highly explosive areas, caution should be exercised in selecting the equipment and method of installation.

4.2 Sampling System. The sampling system shall be heat traced and maintained at a minimum of 120 °C with no cold spots. All system components shall be heated, including the probe, calibration valve, sample lines, sampling loop (or sample introduction system), GC oven, and the detector block (when appropriate for the type of detector being utilized, e.g., flame ionization detector).

4.3 Calibration Gases. Obtain three concentrations of calibration gases certified by the manufacturer to be accurate to within 2 percent of the value on the label. A gas

dilution system may be used to prepare the calibration gases from a high concentration certified standard if the gas dilution system meets the requirements specified in Test Method 205, 40 CFR part 51, appendix M. The performance test specified in Test Method 205 shall be repeated quarterly, and the results of the Method 205 test shall be included in the report. The calibration gas concentration of each target analyte shall be as follows (measured concentration is based on the presurvey concentration determined in section 4 1).

Note: If the low level calibration gas concentration falls at or below the limit of detection for the instrument for any target pollutant, a calibration gas with a concentration at 4 to 5 times the limit of detection for the instrument may be substituted for the low-level calibration gas listed in section 4.3 1

4 3 1 Low-level. 40–60 percent of measured concentration.

4 3 2 Mid-level. 90–110 percent of measured concentration.

4 3 3 High-level. 140–160 percent of measured concentration, or select highest expected concentration.

4 4 Performance Audit Gas. A certified EPA audit gas shall be used, when possible. A Protocol 1 gas mixture containing all the target compounds within the calibration range may be used when EPA performance audit materials are not available. The instrument relative error shall be ≤10 percent of the certified value of the audit gas.

4 5 Calibration Error (CE). The CEMS must allow the determination of CE at all three calibration levels. The average CEMS calibration response must not differ by more than 10 percent of calibration gas value at each level after each 24-hour period of the initial test.

4.6 Calibration Precision and Linearity. For each triplicate injection at each concentration level for each target analyte, any one injection shall not deviate more than 5 percent from the average concentration measured at that level. The linear regression curve for each organic compound at all three levels shall have an $r^2 \geq 0.995$ (using Equation 1).

4.7 Measurement Frequency The sample to be analyzed shall flow continuously through the sampling system. The sampling system time constant (T) shall be ≤5 minutes or the sampling frequency specified in the applicable regulation, whichever is less. Use Equation 3 to determine T The analytical system shall be capable of measuring the effluent stream at the frequency specified in the appropriate regulation or permit.

5. Performance Specification Test (PST) Periods

5.1 Pretest Preparation Period. Using the procedures described in Method 18 (40 CFR part 60, appendix A), perform initial tests to determine GC conditions that provide good resolution and minimum analysis time for compounds of interest. Resolution interferences that may occur can be eliminated by appropriate GC column and detector choice or by shifting the retention times through changes in the column flow rate and the use of temperature programming.

5.2 7-Day CE Test Period. At the beginning of each 24-hour period, set the initial instrument setpoints by conducting a multipoint calibration for each compound. The multipoint calibration shall meet the requirements in section 4.7 Throughout the 24-hour period, sample and analyze the stack gas at the sampling intervals prescribed in the regulation or permit. At the end of the 24-hour period, inject the three calibration gases for each compound in triplicate and determine the average instrument response. Determine the CE for each pollutant at each level using the equation in section 6.2. Each CE shall be ≤10 percent. Repeat this procedure six more times for a total of 7 consecutive days.

5.3 Performance Audit Test Periods. Conduct the performance audit once during the initial 7-day CE test and quarterly thereafter. Sample and analyze the EPA audit gas(es) (or the Protocol 1 gas mixture if an EPA audit gas is not available) three times. Calculate the average instrument response. Report the audit results as part of the reporting requirements in the appropriate regulation or permit (if using a Protocol 1 gas mixture, report the certified cylinder concentration of each pollutant).

6. Equations

6.1 Coefficient of Determination. Calculate r^2 using linear regression analysis and the average concentrations obtained at three calibration points as shown in Equation 1

$$r^2 = \left(\frac{n\Sigma x_i y_i - (\Sigma x_i)(\Sigma y_i)}{\sqrt{(n\Sigma y_i^2 - \Sigma y_i \Sigma y_i)(n\Sigma x_i^2 - \Sigma x_i \Sigma x_i)}} \right)^2 \quad \text{Eq. 1}$$

Where.

r^2=Coefficient of determination.

n=Number of measurement points.

x=CEMS response.

y=Actual value of calibration standard.

6.2 Calibration Error Determination. Determine the percent calibration error (CE) at each concentration for each pollutant using the following equation.

$$CE = \frac{C_m - C_a}{C_a} \times 100 \qquad \text{(Eq. 2)}$$

where

C_m=average instrument response, ppm.

C_a=cylinder gas value, ppm.

6.3 Sampling System Time Constant (T).

$$T = \frac{F}{V} \qquad \text{(Eq. 3)}$$

where:

F=Flow rate of stack gas through sampling system, in liters/min.

V=Sample system volume, in Liters, which is the volume inside the sample probe and tubing leading from the stack to the sampling loop.

7 Daily Calibration

7 1 Initial Multipoint Calibration. After initial startup of the GC, after routine maintenance or repair, or at least once per month, conduct a multipoint calibration of the GC for each target analyte. The multipoint calibration for each analyte shall meet the requirements in section 4.7.

7.2 Daily Calibration. Once every 24 hours, analyze the mid-level calibration standard for each analyte in triplicate. Calculate the average instrument response for each analyte. The average instrument response shall not vary more than 10 percent from the certified concentration value of the cylinder for each analyte. If the difference between the analyzer response and the

cylinder concentration for any target compound is greater than 10 percent, immediately take corrective action on the instrument if necessary, and conduct an initial multipoint calibration as described in section 7.1.

8. Reporting

Follow the reporting requirements of the applicable regulation or permit. If the reporting requirements include the results of this performance specification, summarize in tabular form the results of the CE tests. Include all data sheets, calculations, CEMS data records, performance audit results, and calibration gas concentrations and certifications.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart EE to read as follows:

Subpart EE—National Emission Standards for Magnetic Tape Manufacturing Operations

63.701 Applicability.
63.702 Definitions.
63.703 Standards.
63.704 Compliance and monitoring requirements.
63.705 Performance test methods and procedures to determine initial compliance.
63.706 Recordkeeping requirements.
63.707 Reporting requirements.
63.708 Delegation of authority.

Subpart EE—National Emission Standards For Magnetic Tape Manufacturing Operations

§ 63.701 Applicability.

(a) Except as specified in paragraph (b) of this section, the provisions of this subpart apply to:

(1) Each new and existing magnetic tape manufacturing operation located at a major source of hazardous air pollutant (HAP) emissions; and

(2) A magnetic tape manufacturing operation for which the owner or operator chooses to use the provisions of § 63.703(b) and (h) to obtain a Federally enforceable limit on its potential to emit HAP.

Explanatory Note: A reason the owner or operator would make the choice described in paragraph (a)(2) of this section is if the plant site, without this limit, would be a major source. The owner or operator could use this limit, which would establish the potential to emit from magnetic tape manufacturing operations, in conjunction with the potential to emit from the other HAP emission points at the stationary source, to be an area source. Note, however, that an owner or operator is not required to use the provisions in § 63.703(b) and (h) to determine the potential to emit HAP from magnetic tape manufacturing operations

(b) This subpart does not apply to the following:

(1) Research or laboratory facilities; and

(2) Any coating operation that produces a quantity of magnetic tape that is 1 percent or less of total production (in terms of total square footage coated) from that coating operation in any 12-month period.

(c) The affected source subject to this standard is the magnetic tape manufacturing operation, as defined in § 63.702.

(d) An owner or operator of an existing affected source subject to the provisions of this subpart shall comply according to the following schedule:

(1) Within 3 years after the effective date of the standard, if the owner or operator is required to install a new add-on air pollution control device to meet the requirements of § 63.703(c) or (g); or

(2) Within 2 years after the effective date of the standard, if a new add-on air pollution control device is not needed to comply with § 63.703(c) or (g) of these standards.

(e) The compliance date for an owner or operator of a new affected source subject to the provisions of this subpart is immediately upon startup of the affected source.

(f) The provisions of this subpart apply during periods of startup and shutdown, and whenever magnetic tape manufacturing operations are taking place.

(g) Owners or operators of affected sources subject to the provisions of this subpart shall also comply with the requirements of subpart A as identified in Table 1, according to the applicability of subpart A to such sources.

(h) In any title V permit for an affected source, all research or laboratory facilities that are exempt from the requirements of this subpart shall be clearly identified.

§ 63.702 Definitions.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the Clean Air Act and in subpart A of this part.

Add-on air pollution control device means equipment installed at the end of a process vent exhaust stack or stacks that reduces the quantity of a pollutant that is emitted to the air. The device may destroy or secure the pollutant for subsequent recovery. Examples are incinerators, condensers, carbon adsorbers, and biofiltration units. Transfer equipment and ductwork are not considered in and of themselves add-on air pollution control devices.

Bag slitter means a device for enclosed transfer of particulates. A bag of raw materials is placed in a hopper, the hopper is closed, and an internal mechanism slits the bag, releasing the particulates into either a closed conveyor that feeds the mix preparation equipment or into the mix preparation equipment itself.

Base substrate means the surface, such as plastic or paper, to which a coating is applied.

Capture efficiency means the fraction of all organic vapors or other pollutants generated by a process that are directed to an add-on air pollution control device.

Capture device means a hood, enclosed room, or other means of collecting HAP vapors or other pollutants into a duct that exhausts to an add-on air pollution control device.

Carbon adsorber vessel means one vessel in a series of vessels in a carbon adsorption system that contains carbon and is used to remove gaseous pollutants from a gaseous emission source.

Car seal means a seal that is placed on a device that is used either to open a closed valve or close an opened valve so that the position of the valve cannot be changed without breaking the seal.

Closed system for flushing fixed lines means a system in which the line to be flushed is disconnected from its original position and connected to two closed containers, one that contains cleaning solvent and one that is empty. Solvent is flushed from the container with cleaning solvent, through the line, and into the empty containers.

Coater or coating applicator means the apparatus used to apply a coating to a continuous base substrate.

Coating application means the process by which the coating mix is applied to the base substrate.

Coating operation means any coater, flashoff area, and drying oven located between a base substrate unwind station and a base substrate rewind station that coats a continuous base substrate.

Control device efficiency means the ratio of the emissions collected or destroyed by an add-on air pollution control device to the total emissions that are introduced to the control device, expressed as a percentage.

Day means a 24-consecutive-hour period.

Drying oven means a chamber that uses heat to bake, cure, polymerize, or dry a surface coating; if the coating contains volatile solvents, the volatile portion is evaporated in the oven.

Enclosed transfer method means a particulate HAP transfer method that uses an enclosed system to prevent particulate HAP from entering the atmosphere as dust. Equipment used for

this purpose may include vacuum injection systems or other mechanical transfer systems, bag slitters, or supersacks.

Equivalent diameter means four times the area of an opening divided by its perimeter.

Facility means all contiguous or adjoining property that is under common ownership or control in which magnetic tape manufacturing is performed. The definition includes properties that are separated only by a road or other public right-of-way.

Flashoff area means the portion of a coating operation between the coater and the drying oven where solvent begins to evaporate from the coated base substrate.

Flushing of fixed lines means the flushing of solvent through lines that are typically fixed and are not associated with the cleaning of a tank, such as the line from the mix room to the coater.

Freeboard ratio means the vertical distance from the surface of the liquid to the top of the sink or tank (freeboard height) divided by the smaller of the length or width of the sink or tank evaporative area.

Magnetic coatings means coatings applied to base substrates to make magnetic tape. Components of magnetic coatings may include: Magnetic particles, binders, dispersants, conductive pigments, lubricants, solvents, and other additives.

Magnetic particles means particles in the coating mix that have magnetic properties. Examples of magnetic particles used in magnetic tape manufacturing are: y-oxide, doped iron oxides, chromium dioxide, barium ferrite and metallic particles that usually consist of elemental iron, cobalt, and/or nickel.

Magnetic tape means any flexible base substrate that is covered on one or both sides with a coating containing magnetic particles and that is used for audio recording, video recording, or any type of information storage.

Magnetic tape manufacturing operation means all of the emission points within a magnetic tape manufacturing facility that are specifically associated with the manufacture of magnetic tape. These include, but are not limited to:

(1) Solvent storage tanks;

(2) Mix preparation equipment;

(3) Coating operations;

(4) Waste handling devices;

(5) Particulate transfer operations;

(6) Wash sinks for cleaning removable parts;

(7) Cleaning involving the flushing of fixed lines;

(8) Wastewater treatment systems; and

(9) Condenser vents associated with distillation and stripping columns in the solvent recovery area, but not including the vent on a condenser that is used as the add-on air pollution control device.

Mill means the pressurized equipment that uses the dispersing action of beads, combined with the high shearing forces of the centrifugal mixing action, to disperse the aggregates of magnetic particles thoroughly without reducing particle size

Mix preparation equipment means the vessels, except for mills, used to prepare the magnetic coating.

Natural draft opening means any opening in a room, building, or total enclosure that remains open during operation of the facility and that is not connected to a duct in which a fan is installed. The rate and direction of the natural draft through such an opening is a consequence of the difference in pressures on either side of the wall containing the opening.

Nonregenerative carbon adsorber means a carbon adsorber vessel in which the spent carbon bed does not undergo carbon regeneration in the adsorption vessel.

Operating parameter value means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Overall HAP control efficiency means the total efficiency of the control system, determined by the product of the capture efficiency and the control device efficiency.

Particulate means any material, except uncombined water, that exists as liquid or solid particles such as dust, smoke, mist, or fumes at standard conditions (760 millimeters of mercury, 0 degrees celsius).

Particulate HAP transfer means the introduction of a particulate HAP into other dry ingredients or a liquid solution.

Removable parts cleaning means cleaning of parts that have been moved from their normal position to a wash tank or sink containing solvent for the purpose of cleaning.

Research or laboratory facility means any stationary source whose primary purpose is to conduct research and development to develop new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner

Separator means a device in the wastewater treatment system in which immiscible solvent is physically separated from the water with which it is mixed.

Solvent storage tanks means the stationary tanks that are associated with magnetic tape operations and that store virgin solvent, spent solvent, cleaning solvent, solvent at any stage of the solvent recovery process, or any volatile compound. They do not serve a process function.

Solvent recovery area means the collection of devices used to remove HAP emissions from process air, to recover the HAP, and to purify the HAP. Typically, this area contains a control device such as a carbon adsorber or condenser, the wastewater treatment system, and the distillation columns.

Solvent recovery device means, for the purposes of this subpart, an add-on air pollution control device in which HAP is captured rather than destroyed. Examples include carbon adsorption systems and condensers.

Supersack means a container of particulate from the manufacturer or supplier with attached feed tubes and that is used to transfer particulate under the following conditions: the feed tubes are attached directly to the mix preparation equipment, the attachment interface is sealed, and all openings on the mix transfer equipment are closed to the atmosphere.

Temporary total enclosure means a total enclosure that is constructed for the sole purpose of measuring the fugitive emissions from an affected source. A temporary total enclosure must be constructed and ventilated (through stacks suitable for testing) so that it has minimal impact on the performance of the permanent capture system. A temporary total enclosure will be assumed to achieve total capture of fugitive emissions if it conforms to the requirements found in § 63.705(c)(4)(i) and if all natural draft openings are at least four duct or hood equivalent diameters away from each exhaust duct or hood. Alternatively, the owner or operator may apply to the Administrator for approval of a temporary enclosure on a case-by-case basis.

Total enclosure means a structure that is constructed around a gaseous emission source so that all gaseous pollutants emitted from the source are collected and ducted through a control device, such that 100 percent capture efficiency is achieved. There are no fugitive emissions from a total enclosure. The only openings in a total enclosure are forced makeup air and exhaust ducts and any natural draft openings such as those that allow raw

materials to enter and exit the enclosure for processing. All access doors or windows are closed during routine operation of the enclosed source. Brief, occasional openings of such doors or windows to accommodate process equipment adjustments are acceptable, but if such openings are routine or if an access door remains open during the entire operation, the access door must be considered a natural draft opening. The average inward face velocity across the natural draft openings of the enclosure must be calculated including the area of such access doors. The drying oven itself may be part of the total enclosure. A permanent enclosure that meets the requirements found in § 63.705(c)(4)(i) is a total enclosure.

Utilize means the use of HAP that is delivered to mix preparation equipment for the purpose of formulating coatings, the use of any other HAP (e.g., dilution solvent) that is added at any point in the manufacturing process, and the use of any HAP for cleaning activities. Alternatively, annual HAP utilization can be determined as net usage; that is, the HAP inventory at the beginning of a 12-month period, plus the amount of HAP purchased during the 12-month period, minus the amount of HAP in inventory at the end of a 12-month period.

Vacuum injection system means a system in which a vacuum draws particulate from a storage container into a closed system that transfers particulates into the mix preparation equipment.

Volatile organic compound (VOC) means any organic compound that participates in atmospheric photochemical reactions or that is measured by EPA Test Methods 18, 24, or 25A in appendix A of part 60 or an alternative test method as defined in § 63.2.

Volatile organic hazardous air pollutant (VOHAP) concentration means the concentration of an individually-speciated organic HAP in a wastewater discharge that is measured by Method 305 of appendix A to 40 CFR part 63.

Waste handling means processing or treatment of waste (liquid or solid) that is generated as a by-product of either the magnetic tape production process or cleaning operations.

Waste handling device means equipment that is used to separate solvent from solid waste (e.g., filter dryers) or liquid waste (e.g., pot stills and thin film evaporators). The solvents are recovered by heating, condensing, and collection.

Wastewater discharge means the water phase that is discharged from the separator in a wastewater treatment system.

Wastewater treatment system means the assortment of devices in which the solvent/water mixture, generated when the carbon bed in the carbon adsorber is desorbed by steam, is treated to remove residual organics in the water.

(b) The nomenclature used in this subpart is defined when presented or has the meaning given below:

(1) A_k = the area of each natural draft opening (k) in a total enclosure, in square meters.

(2) C_{aj} = the concentration of HAP or VOC in each gas stream (j) exiting the emission control device, in parts per million by volume.

(3) C_{bi} = the concentration of HAP or VOC in each gas stream (i) entering the emission control device, in parts per million by volume.

(4) C_{di} = the concentration of HAP or VOC in each gas stream (i) entering the emission control device from the affected source, in parts per million by volume.

(5) C_{fk} = the concentration of HAP or VOC in each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected source, in parts per million by volume.

(6) C_{gv} = the concentration of HAP or VOC in each uncontrolled gas stream entering each individual carbon adsorber vessel (v), in parts per million by volume. For the purposes of calculating the efficiency of the individual carbon adsorber vessel, C_{gv} may be measured in the carbon adsorption system's common inlet duct prior to the branching of individual inlet ducts to the individual carbon adsorber vessels.

(7) C_{hv} = the concentration of HAP or VOC in the gas stream exiting each individual carbon adsorber vessel (v), in parts per million by volume.

(8) E = the control device efficiency achieved for the duration of the emission test (expressed as a fraction).

(9) F = the HAP or VOC emission capture efficiency of the HAP or VOC capture system achieved for the duration of the emission test (expressed as a fraction).

(10) FV = the average inward face velocity across all natural draft openings in a total enclosure, in meters per hour.

(11) G = the calculated mass of HAP per volume of coating solids (in kilograms per liter) contained in a batch of coating.

(12) H_v = the individual carbon adsorber vessel (v) efficiency achieved for the duration of the emission test (expressed as a fraction).

(13) H_{sys} = the efficiency of the carbon adsorption system calculated when each carbon adsorber vessel has an individual exhaust stack (expressed as a fraction).

(14) L_{si} = the volume fraction of solids in each batch of coating (i) applied as determined from the formulation records at the affected source.

(15) M_{ci} = the total mass in kilograms of each batch of coating (i) applied, or of each coating applied at an affected coating operation during a 7-day period, as appropriate, as determined from records at the affected source. This quantity shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or if ingredients are added after the mass of the coating has been determined, appropriate adjustments shall be made to account for them.

(16) M_r = the total mass in kilograms of HAP or VOC recovered for a 7-day period.

(17) Q_{aj} = the volumetric flow rate of each gas stream (j) exiting the emission control device in either dry standard cubic meters per hour when EPA Method 18 in appendix A of part 60 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(18) Q_{bi} = the volumetric flow rate of each gas stream (i) entering the emission control device, in dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(19) Q_{di} = the volumetric flow rate of each gas stream (i) entering the emission control device from the affected source in either dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(20) Q_{fk} = the volumetric flow rate of each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected source in either dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(21) Q_{gv} = the volumetric flow rate of each gas stream entering each individual carbon adsorber vessel (v) in either dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet

basis) when EPA Method 25A is used to measure HAP or VOC concentration. For purposes of calculating the efficiency of the individual carbon adsorber vessel, the value of Q_{gv} can be assumed to equal the value of Q_{hv} measured for that carbon adsorber vessel.

(22) Q_{hv} = the volumetric flow rate of each gas stream exiting each individual carbon adsorber vessel (v) in either dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(23) Q_{in} i = the volumetric flow rate of each gas stream (i) entering the total enclosure through a forced makeup air duct in standard cubic meters per hour (wet basis).

(24) Q_{out} j = the volumetric flow rate of each gas stream (j) exiting the total enclosure through an exhaust duct or hood in standard cubic meters per hour (wet basis).

(25) R = the overall HAP or VOC emission reduction achieved for the duration of the emission test (expressed as a percentage).

(26) RS_i = the total mass in kilograms of HAP or VOC retained in the coated substrate after oven drying for a given magnetic tape product.

(27) V_{ci} = the total volume in liters of each batch of coating (i) applied as determined from records at the affected source.

(28) W_{oi} = the weight fraction of HAP or VOC in each batch of coating (i) applied, or of each coating applied at an affected coating operation during a 7-day period, as appropriate, as determined by EPA Method 24 or formulation data. This value shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or if ingredients are added after the weight fraction of HAP or VOC in the coating has been determined, appropriate adjustments shall be made to account for them.

§ 63.703 Standards.

(a) Each owner or operator of any affected source that is subject to the requirements of this subpart shall comply with the requirements of this subpart on and after the compliance dates specified in § 63.701.

(b)(1) The owner or operator subject to § 63.701(a)(2) shall determine limits on the amount of HAP utilized (see definition) in the magnetic tape manufacturing operation as the values for the potential to emit HAP from the magnetic tape manufacturing operation.

(2) The limits on the amount of HAP utilized in the magnetic tape manufacturing operations shall be determined in the following manner.

(i) The potential to emit each HAP from each emission point at the stationary source, other than those from magnetic tape manufacturing operations, shall be calculated and converted to the units of Mg/yr (or tons/yr).

(ii) The limits on the HAP utilized in the magnetic tape manufacturing operation shall be determined as the values that, when summed with the values in paragraph (b)(2)(i) of this section, are less than 9.1 Mg/yr (10 tons/yr) for each individual HAP and 22.7 Mg/yr (25 tons/yr) for the combination of HAP.

(3) The limits on the HAP utilized determined in paragraph (b)(2) of this section shall be in terms of Mg/yr (or tons/yr), calculated monthly on a rolling 12-month average. The owner or operator shall not exceed these limits.

(4) An owner or operator subject to paragraph (b) of this section shall meet the requirements in paragraph (h) of this section.

(5) A magnetic tape manufacturing operation that is subject to paragraph (b) of this section and is located at an area source is not subject to paragraphs (c) through (g) of this section.

(c) Except as provided by § 63.703(b), each owner or operator of an affected source subject to this subpart shall limit gaseous HAP emitted from each solvent storage tank, piece of mix preparation equipment, coating operation, waste handling device, and condenser vent in solvent recovery as specified in paragraphs (c)(1) through (c)(5) of this section:

(1) Except as otherwise allowed in paragraphs (c)(2), (3), (4), and (5) of this section, each owner or operator shall limit gaseous HAP emitted from each solvent storage tank, piece of mix preparation equipment, coating operation, waste handling device, and condenser vent in solvent recovery by an overall HAP control efficiency of at least 95 percent.

(2) An owner or operator that uses an incinerator to control emission points listed in paragraph (c)(1) of this section may choose to meet the overall HAP control efficiency requirement of paragraph (c)(1) of this section, or may operate the incinerator such that an outlet HAP concentration of no greater than 20 parts per million by volume (ppmv) by compound on a dry basis is achieved, as long as the efficiency of the capture system is 100 percent.

(3) An owner or operator may choose to meet the requirements of paragraph (c)(1) or (2) of this section by venting the room, building, or enclosure in which the HAP emission point is located to an add-on air pollution control device, as long as the required overall HAP control efficiency of this method is sufficient to meet the requirements of paragraph (c)(1) or (2) of this section.

(4) In lieu of controlling HAP emissions from each solvent storage tank to the level required by paragraph (c)(1) of this section, an owner or operator of an affected source may:

(i) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 97 percent in lieu of controlling 10 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(ii) Control HAP emissions from all coating operations by an over HAP control efficiency of at least 98 percent in lieu of controlling 15 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity; or

(iii) Control HAP emissions from all coating operations by an overall HAP control efficiency of at least 99 percent in lieu of controlling 20 HAP solvent storage tanks that do not exceed 20,000 gallons each in capacity.

(iv) Owners or operators choosing to meet the requirements of paragraphs (c)(4)(i), (ii), or (iii) of this section are also subject to the reporting requirement of § 63.707(k).

(5) In lieu of controlling HAP emissions from a coating operation to the level required by paragraph (c)(1) of this section, owners or operators may use magnetic coatings that contain no greater than 0.18 kilograms of HAP per liter of coating solids for that coating operation. For the requirements of this paragraph, §§ 63.6(e)(3), 63.6(f) (1) and (2), 63.8(b) (2) and (3), 63.8(c), 63.8(d), 63.8(e), 63.8(g), 63.9 (e) and (g), 63.10(c), 63.10(d) (2), (3), and (5), 63.10(e) (1) and (2), and 63.11 of subpart A do not apply

(d) *Particulate transfer operations.* Except as stipulated by § 63.703(b), each owner or operator of an affected source subject to this subpart shall:

(1) Use an enclosed transfer method to perform particulate HAP transfer; or

(2) Direct emissions from particulate HAP transfer through a hood or enclosure to a baghouse or fabric filter that exhibits no visible emissions while controlling HAP emissions from particulate HAP transfer.

(e) *Wash sinks for cleaning removable parts.* (1) Except as stipulated by § 63.703(b), each owner or operator of an affected source subject to this subpart shall limit gaseous HAP emissions from each wash sink containing HAP:

(i) So that the overall HAP control efficiency is no less than 88 percent; or

(ii) By maintaining a minimum freeboard ratio of 75 percent in the wash sink at all times when the sink contains HAP.

(2) Owners or operators may meet the requirements of paragraph (e)(1)(i) of this section by venting the room, building, or enclosure in which the sink is located, as long as the overall HAP control efficiency of this method is demonstrated to be at least 88 percent using the test methods in § 63.705(e).

(3) Wash sinks subject to the control provisions of subpart T of this part are not subject to paragraph (e)(1) or (e)(2) of this section.

(f) *Equipment for flushing fixed lines.* (1) Except as stipulated by § 63.703(b), each owner or operator of an affected source subject to this subpart shall limit gaseous HAP emissions from each affected set of equipment for flushing fixed lines:

(i) So that the overall HAP control efficiency is at least 95 percent; or

(ii) By using a closed system for flushing fixed lines.

(2) Owners or operators may meet the requirements of paragraph (f)(1)(i) of this section by venting the room, building, or enclosure in which the fixed lines are located, as long as the overall HAP control efficiency of this method is demonstrated to be at least 95 percent using the test methods in § 63.705(f).

(g) *Wastewater treatment systems.* (1) Except as stipulated by § 63.703(b), each owner or operator of an affected source subject to this subpart shall:

(i) Treat the wastewater discharge to remove each HAP from magnetic tape manufacturing operations that is present in the wastewater discharge by at least the fraction removed (F_R) specified in Table 9 of 40 CFR part 63, subpart G; or

(ii) Treat (other than by dilution) the HAP from magnetic tape manufacturing operations that are present in the wastewater discharge such that the exit concentration is less than 50 ppmw of total VOHAP

(2) The treatment method used to meet the requirements of paragraph (g)(1) of this section shall not transfer emissions from the water to the atmosphere in an uncontrolled manner.

(h)(1) Magnetic tape manufacturing operations that are subject to § 63.703(b) and are not at major sources are not subject to §§ 63.6(e), 63.6(f), 63.6(g), 63.6(i)(4), 63.7, 63.8, 63.9 (c) through (h), 63.10(b)(2), 63.10(c), 63.10(d) (2) through (5), 63.10(e), and 63.11 of subpart A.

(2) Magnetic tape manufacturing operations subject to § 63.703(b) shall fulfill the recordkeeping requirements of § 63.706(e) and the reporting requirements of § 63.707 (b), (c), and (j).

(3) An owner or operator of a magnetic tape manufacturing operation subject to § 63.703(b) who chooses to no longer be subject to § 63.703(b) shall notify the Administrator or delegated State of such change. If by no longer being subject to § 63.703(b), the source at which the magnetic tape manufacturing operation is located would become a major source, the owner or operator shall meet the following requirements, starting from the date of such notification:

(i) Comply with paragraphs (c) through (g) of this section, and other provisions of this subpart within the timeframe specified in § 63.6(c)(5); and

(ii) Comply with the HAP utilization limits in § 63.703(b) until the requirements of paragraph (h)(3)(i) of this section are met.

(i) For any solvent storage tank, piece of mix preparation equipment, waste handling device, condenser vent in solvent recovery, wash sink for cleaning removable parts, and set of equipment for flushing of fixed lines, the owner or operator may, instead of meeting the requirements of paragraphs (c)(1), (e)(1)(i), or (f)(1)(i) of this section, vent the gaseous HAP emissions to an add-on air pollution control device other than an incinerator that, in conjunction with capture equipment or ductwork, is designed to achieve an overall HAP control efficiency of at least 95 percent for the emissions from the coating operation, and achieve an alternate outlet concentration limit when coating operations are not occurring, as determined in § 63.704(b)(11)(ii)

(j) The requirements of this subpart do not preclude the use of pressure relief valves and vacuum relief valves for safety purposes.

§ 63.704 Compliance and monitoring requirements.

(a) For owners or operators of an affected source that are using add-on air pollution control equipment or a steam stripper to comply with § 63.703, paragraph (b) of this section identifies the operating parameter to be monitored to demonstrate continuous compliance. For all owners or operators subject to § 63.703, except § 63.703(b) and (h), regardless of the type of control technique used, paragraph (c) of this section identifies the procedures that must be followed to demonstrate continuous compliance with § 63.703.

(b) *Establishing a limit under § 63.703(i) and operating parameter values.* The owner or operator of an affected source subject to § 63.703 except § 63.703(b) and (h), shall establish the operating parameter value to be monitored for compliance as required by paragraph (c) of this section in accordance with paragraphs (b)(1) through (b)(11) of this section. An owner or operator subject to § 63 703(i) shall establish a limit as required in paragraph (b)(11)(ii) of this section

(1) Except as allowed by paragraphs (b)(2), (3), (4), (5), or (9) of this section for each add-on air pollution control device used to control solvent HAP emissions, the owner or operator shall fulfill the requirements of paragraph (b)(1)(i) or (ii) of this section

(i) The owner or operator shall establish as a site-specific operating parameter the outlet total HAP or VOC concentration that demonstrates compliance with § 63 703(c)(1), (c)(2) (c)(4), (e)(1)(i), (f)(1)(i), or (i) as appropriate, or

(ii) The owner or operator shall establish as the site-specific operating parameter the control device efficiency that demonstrates compliance with § 63 703(c)(1), (c)(4), (e)(1)(i), and (f)(1)(i)

(iii) When a nonregenerative carbon adsorber is used to comply with § 63 703(c)(1), the site-specific operating parameter value may be established as part of the design evaluation used to demonstrate initial compliance (§ 63 705(c)(6)) Otherwise, the site-specific operating parameter value shall be established during the initial performance test conducted according to the procedures of § 63 705(c)(1), (2) (3), or (4)

(2) For each condenser used as the add-on air pollution control device to comply with § 63 703(c), (e)(1)(i), (f)(1)(i) or (i), in lieu of meeting the requirements of § 63 704(b)(1), during the initial performance test conducted according to the procedures of § 63.705(c)(1), (2), or (4), the owner or operator may establish as a site-specific operating parameter the maximum temperature of the condenser vapor exhaust stream and shall set the operating parameter value that demonstrates compliance with § 63.703(c), (e)(1)(i), (f)(1)(i) or (i) as appropriate;

(3) For each thermal incinerator, in lieu of meeting the requirements of § 63.704(b)(1), during the initial performance test conducted according to the procedures of § 63.705(c)(1), (2), or (4), the owner or operator may establish as a site-specific operating parameter the minimum combustion temperature and set the operating parameter value that demonstrates compliance with § 63.703(c), (e)(1)(i), or (f)(1)(i), as appropriate.

(4) For each catalytic incinerator, in lieu of meeting the requirements of § 63.704(b)(1), during the initial performance test conducted according to the procedures of § 63.705(c)(1), (2), or (4), the owner or operator may establish as site-specific operating parameters the minimum gas temperature upstream of the catalyst bed and the minimum gas temperature difference across the catalyst bed, and set the operating parameter values that demonstrate compliance with § 63.703(c), (e)(1)(i), or (f)(1)(i), as appropriate.

(5) For each nonregenerative carbon adsorber, in lieu of meeting the requirements of § 63.704(b)(1), the owner or operator may establish as the site-specific operating parameter the carbon replacement time interval, as determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system. The carbon replacement time interval shall be established either as part of the design evaluation to demonstrate initial compliance (§ 63.705(c)(6)), or during the initial performance test conducted according to the procedures of § 63.705(c)(1), (2), (3), or (4).

(6) Each owner or operator venting solvent HAP emissions from a source through a room, enclosure, or hood, to a control device to comply with § 63.703(c), (e)(1)(i), (f)(1)(i), or (i) shall:

(i) Submit to the Administrator with the compliance status report required by § 63.9(h) of the General Provisions a plan that:

(A) Identifies the operating parameter to be monitored to ensure that the capture efficiency measured during the initial compliance test is maintained;

(B) Discusses why this parameter is appropriate for demonstrating ongoing compliance; and

(C) Identifies the specific monitoring procedures;

(ii) Set the operating parameter value, or range of values, that demonstrate compliance with § 63.703(c), (e)(1)(i), (f)(1)(i), or (i), as appropriate; and

(iii) Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(7) For each baghouse or fabric filter used to control particulate HAP emissions in accordance with § 63.703(d)(2), the owner or operator shall establish as the site-specific operating parameter the minimum ventilation air flow rate through the inlet duct to the baghouse or fabric filter that ensures that particulate HAP are being captured and delivered to the control device. The minimum ventilation air flow rate is to be supported by the engineering calculations that are considered part of the initial performance test, as required by § 63.705(g)(2).

(8) Owners or operators subject to § 63.704(b)(1), (2), (3), (4), (5), (6), or (7) shall calculate the site-specific operating parameter value, or range of values, as the arithmetic average of the maximum and/or minimum operating parameter values, as appropriate, that demonstrate compliance with § 63.703(c), (d), (e), (f) or (i) during the multiple test runs required by § 63.705(b)(2) and (b)(1), or during the multiple runs of other tests conducted as allowed by paragraph § 63.704(b)(11).

(9) For each solvent recovery device used to comply with § 63.703(c), in lieu of meeting the requirements of paragraph (b)(1) of this section, the results of the material balance calculation conducted in accordance with § 63.705(c)(1) may serve as the site-specific operating parameter that demonstrates compliance with § 63.703(c).

(10) Owners or operators complying with the provisions of § 63.703(g) shall establish the site-specific operating parameter according to paragraph (b)(10)(i) or (ii) of this section.

(i) Owners or operators using a steam stripper shall establish the steam-to-feed ratio as the site-specific operating parameter, except as allowed in paragraph (b)(10)(ii) of this section, according to the following criteria:

(A) The minimum operating parameter value shall correspond to at least the fraction removed specified in § 63.703(g)(1)(i) and be submitted to the permitting authority for approval with the design specifications required by § 63.705(h)(1); or

(B) The minimum operating parameter value shall be that value that corresponds to a total VOHAP outlet concentration in the wastewater of less than 50 ppmw as determined through tests conducted in accordance with § 63.705(b)(9) and (h)(2); or

(C) The minimum operating parameter value shall be the value that corresponds to at least the fraction removed specified in § 63.705(g)(1)(i), as demonstrated through tests conducted in accordance with § 63.705(b)(9) and (h)(3).

(ii) Owners or operators complying with § 63.703(g) through the use of a steam stripper or any other control technique may establish as a site-specific operating parameter the outlet total VOHAP concentration according to the following criteria:

(A) The minimum operating parameter value shall correspond to at least the fraction removed specified in § 63.703(g)(1)(i) and be submitted to the permitting authority for approval with the design specifications required by § 63.705(h)(1); or

(B) The minimum operating parameter value shall be a total VOHAP outlet concentration in the wastewater of less than 50 ppmw, as required by § 63.703(g)(1)(ii), and as determined through tests conducted in accordance with § 63.705 (b)(9) and (h)(2); or

(C) The minimum operating parameter value shall be the value that corresponds to at least the fraction removed specified in § 63.705(g)(1)(i), as demonstrated through tests conducted in accordance with § 63.705 (b)(9) and (h)(3).

(11) *Compliance provisions for nonrepresentative operating conditions.* (i) The owner or operator of an affected source may conduct multiple performance tests to establish the operating parameter value, or range of values, that demonstrates compliance with the standards in § 63.703 during various operating conditions.

(ii) To establish an alternate outlet concentration limit as provided in § 63.703(i), the owner or operator, when the coating operation is not occurring, shall conduct a performance test using the methods in § 63.705 for determining initial compliance with § 63.703 (c)(1), (e)(1)(i) or (f)(1)(i), or shall collect data from continuous emission monitors used to determine continuous compliance as specified in § 63.704 (b) and (c). During the period in which this limit is being established, the control device shall be operated in accordance with good air pollution control practices and in the same manner as it was operated to achieve the emission limitation for coating operations. Owners or operators choosing to establish such an alternative shall also comply with paragraphs (b)(11)(ii) (A) and (B) of this section.

(A) The owner or operator shall submit the alternate outlet HAP concentration limit within 180 days after the compliance demonstration required by § 63.7 of subpart A, to the Administrator, as required by § 63.707(k)(1).

(B) The Administrator will approve or disapprove the limit proposed in accordance with paragraph (b)(11)(ii)(A) of this section within 60 days of receipt of the report required by § 63.707(k)(1), and any other supplemental information requested by the Administrator to support the alternate limit.

(c) *Continuous compliance monitoring.* Following the date on

which the initial compliance demonstration is completed, continuous compliance with the standards shall be demonstrated as outlined in paragraphs (c), (d), (e), or (f) of this section.

(1)(i) Each owner or operator of an affected source subject to § 63.703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i) of this subpart shall monitor the applicable parameters specified in paragraphs (c)(3), (4), (5), (6), (7), or (9) of this section depending on the type of control technique used, and shall monitor the parameters specified in paragraph (c)(10) of this section.

(ii) Each owner or operator of an affected source subject to § 63.703(c)(5) of this subpart shall demonstrate continuous compliance as required by paragraph (c)(8) of this section.

(iii) Each owner or operator of an affected source subject to § 63.703(d)(2) of this subpart shall demonstrate continuous compliance as required by paragraph (e) of this section.

(iv) Each owner or operator of an affected source subject to § 63.703(g) of this subpart shall demonstrate continuous compliance as required by paragraph (d) of this section.

(2) Compliance monitoring shall be subject to the following provisions.

(i) Except as allowed by paragraph (c)(3)(i)(C) of this section, all continuous emission monitors shall comply with performance specification (PS) 8 or 9 in 40 CFR part 60, appendix B, as appropriate depending on whether volatile organic compound (VOC) or HAP concentration is being measured. The requirements in appendix F of 40 CFR part 60 shall also be followed. In conducting the quarterly audits required by appendix F, owners or operators must challenge the monitors with compounds representative of the gaseous emission stream being controlled.

(ii) All temperature monitoring equipment shall be installed, calibrated, maintained, and operated according to the manufacturer's specifications. The thermocouple calibration shall be verified or replaced every 3 months. The replacement shall be done either if the owner or operator chooses not to calibrate the thermocouple, or if the thermocouple cannot be properly calibrated.

(iii) If the effluent from multiple emission points are combined prior to being channeled to a common control device, the owner or operator is required only to monitor the common control device, not each emission point

(3) Owners or operators complying with § 63.703(c), (e)(1)(i), (f)(1)(i), or (i) through the use of a control device and establishing a site-specific operating parameter in accordance with § 63.704(b)(1) shall fulfill the requirements of paragraphs (c)(3)(i) of this section and paragraph (c)(3)(ii), (iii), (iv), or (v) of this section, as appropriate.

(i) The owner or operator shall install, calibrate, operate, and maintain a continuous emission monitor.

(A) The continuous emission monitor shall be used to measure continuously the total HAP or VOC concentration at both the inlet and the outlet whenever HAP from magnetic tape manufacturing operations are vented to the control device, if continuous compliance is demonstrated through a percent efficiency calculation (§ 63.704(b)(1)(ii)); or

(B) The continuous emission monitor shall be used to measure continuously the total outlet HAP or VOC concentration whenever HAP from magnetic tape manufacturing operations are vented to the control device, if the provisions of § 63.704(b)(1)(i) are being used to determine continuous compliance.

(C) For owners or operators using a nonregenerative carbon adsorber, in lieu of using continuous emission monitors as specified in paragraph (c)(3)(i) (A) or (B) of this section, the owner or operator may use a portable monitoring device to monitor total HAP or VOC concentration at the inlet and outlet, or outlet of the carbon adsorber, as appropriate.

(1) The monitoring device shall be calibrated, operated, and maintained in accordance with the manufacturer's specifications.

(2) The monitoring device shall meet the requirements of part 60, appendix A, method 21, sections 2, 3, 4.1, 4.2, and 4.4. For the purposes of paragraph (c)(3)(i)(C) of this section, the words "leak definition" in method 21 shall be the outlet concentration determined in accordance with § 63.704(b)(1). The calibration gas shall either be representative of the compounds to be measured or shall be methane, and shall be at a concentration associated with 125 percent of the expected organic compound concentration level for the carbon adsorber outlet vent.

(3) The probe inlet of the monitoring device shall be placed at approximately the center of the carbon adsorber outlet vent. The probe shall be held there for at least 5 minutes during which flow into the carbon adsorber is expected to occur The maximum reading during that period shall be used as the measurement.

(ii) If complying with § 63.703 (c)(1), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i) through the use of a carbon adsorption system with a common exhaust stack for all of the carbon vessels, the owner or operator shall not operate the control device at an average control efficiency less than that required by § 63.703 (c)(1), (c)(3), (c)(4), (e)(1)(i), or (f)(1)(i) or at an average outlet concentration exceeding the site-specific operating parameter value or that required by § 63.703(i), for three consecutive adsorption cycles. Operation in this manner shall constitute a violation of § 63.703 (c)(1), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i).

(iii) If complying with § 63.703 (c)(1), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i) through the use of a carbon adsorption system with individual exhaust stacks for each of the multiple carbon adsorber vessels, the owner or operator shall not operate any carbon adsorber vessel at an average control efficiency less than that required by § 63.703 (c)(1), (c)(3), (c)(4), (e)(1)(i), or (f)(1)(i), or at an average outlet concentration exceeding the site-specific operating parameter value or that required by § 63.703(i), as calculated daily using a 3-day rolling average. Operation in this manner shall constitute a violation of § 63.703 (c)(1), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i).

(iv) If complying with § 63.703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i) through the use of any control device other than a carbon adsorber, the owner or operator shall not operate the control device at an average control efficiency less than that required by § 63.703 (c)(1), (c)(3), (c)(4), (e)(1)(i), or (f)(1)(i), or at an average outlet concentration exceeding the site-specific operating parameter value or that required by § 63.703(c)(2) or (i), as calculated for any 3-hour period. Cperation in this manner shall constitute a violation of § 63.703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i).

(v) If complying with § 63.703(c)(1) through the use of a nonregenerative carbon adsorber, in lieu of the requirements of paragraphs (c)(3) (ii) or (iii) of this section, the owner or operator may:

(A) monitor the VOC or HAP concentration of the adsorber exhaust daily or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater; operation of the control device at a HAP or VOC concentration greater than that determined in accordance with § 63.704(b)(1)(iii) shall constitute a violation of § 63.703 (c)(1), (e)(1)(i), or (f)(1)(i); or

(B) replace the carbon in the carbon adsorber system with fresh carbon at a regular predetermined time interval as determined in accordance with § 63.704(b)(5); failure to replace the carbon at this predetermined time

interval shall constitute a violation of § 63 703 (c)(1), (e)(1)(i), or (f)(1)(i).

4) Owners or operators complying with § 63 703 (c)(1), (c)(3), (c)(4), e)(1)(i), (f)(1)(i), or (i) through the use of a condenser as the add-on air pollution control device, and demonstrating compliance in accordance with § 63 704(b)(2), shall install calibrate, operate, and maintain a thermocouple to measure continuously the temperature of the condenser vapor exhaust stream whenever HAP from magnetic tape manufacturing operations are vented to the control device Operation of the control device at an average vapor exhaust temperature greater than the site specific operating parameter value or values established in accordance with § 63 704(b)(2) for any 3-hour period shall constitute a violation of § 63.703 c)(1), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i) or i)

(5) Owners or operators complying with § 63 703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), or (f)(1)(i) through the use of a thermal incinerator and demonstrating compliance in accordance with § 63 704(b)(3) shall install, calibrate, operate, and maintain a thermocouple to measure continuously the combustion temperature whenever HAP from magnetic tape manufacturing operations are vented to the control device. Operation of the control device at an average combustion temperature less than the operating parameter value or values established in accordance with § 63 704(b)(3) for any 3-hour period shall constitute a violation of § 63.703 (c)(1) (c)(2), (c)(3), (c)(4), (e)(1)(i), or f)(1)(i)

(6) Owners or operators complying with § 63 703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), or (f)(1)(i) through the use of a catalytic incinerator and demonstrating compliance in accordance with § 63 704(b)(4) shall install, calibrate, operate, and maintain a thermocouple to measure continuously the gas temperature both upstream and downstream of the catalyst bed whenever HAP from magnetic tape manufacturing operations are vented to the control device. Operation of the control device at an average upstream gas temperature, or at an average gas temperature difference across the catalyst bed, less than the operating parameter values established in accordance with § 63 704(b)(4) for any 3-hour period shall constitute a violation of § 63 703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), or (f)(1)(i).

(7) Owners or operators complying with § 63 703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i) by capturing emissions through a room, enclosure, or hood shall install, calibrate, operate, and maintain the instrumentation necessary to measure continuously the site-specific operating parameter established in accordance with § 63 704(b)(6) whenever HAP from magnetic tape manufacturing operations are vented through the capture device. Operation of the capture device at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.704(b)(6) for any 3-hour period shall constitute a violation of § 63.703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i).

(8) The owner or operator of an affected source complying with § 63.703(c)(5) shall demonstrate continuous compliance by using a coating that has a HAP content of no greater than 0.18 kilograms of HAP per liter of coating solids, as measured in accordance with § 63.705(c)(5), and by maintaining and reporting the records required by §§ 63.706(f) and 63.707(e) and (i)(2).

(9) For owners or operators complying with § 63.703 (c)(1), (c)(3), or (c)(4) through the use of a solvent recovery device and demonstrating initial compliance in accordance with the provisions of § 63 705(c)(1), continuous compliance shall be demonstrated using procedures in § 63 705(c)(1) and through the recordkeeping and reporting requirements of §§ 63 706(d), 63.707(d), and 63.707(i)(5). The provisions of § 63.8(b) (2) and (3), (c), (d), (e), (f), and (g) (1), and (2) of subpart A do not apply

(10) The owner or operator of an affected emission point using a vent system that contains bypass lines (not including equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes) that could potentially divert a vent stream away from the control device used to comply with § 63.703 (c)(1), (c)(2), (c)(3), (c)(4), (e)(1)(i), (f)(1)(i), or (i) shall.

(i) Install, calibrate, maintain, and operate a flow indicator that provides a record of vent stream flow at least once every 15 minutes; records shall be generated as specified in § 63.706(c)(1); and the flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

(ii) Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration; a visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line; or

(iii) Ensure that any bypass line valve is in the closed position through continuous monitoring of valve position, the monitoring system shall be inspected at least once every month to ensure that it is functioning properly; or

(iv) Use an automatic shutdown system in which any HAP-emitting operations are ceased when flow from these operations is diverted away from the control device to any bypass line; the automatic system shall be inspected at least once every month to ensure that it is functioning properly.

(d) Owners or operators complying with § 63.703(g) shall demonstrate continuous compliance in accordance with paragraph (d)(1) or (d)(2) of this section.

(1) An owner or operator that established the steam-to-feed ratio as the site-specific operating parameter in accordance with § 63.704(b)(10)(i) shall continuously measure the steam-to-feed ratio whenever HAP-containing wastewater from magnetic tape manufacturing operations is being fed to the steam stripper. Operation of the steam stripper at a steam-to-feed ratio less than the operating parameter value or values established in accordance with § 63.704(b)(10)(i) for any 3-hour period shall constitute a violation of § 63.703(g).

(2) An owner or operator that established the total outlet VOHAP concentration of the wastewater discharge as the site-specific operating parameter in accordance with § 63.704(b)(10)(ii) shall measure the total VOHAP concentration of the wastewater discharge once per month. Operation of the control device at an outlet VOHAP concentration greater than the operating parameter value or values established in accordance with § 63.704(b)(10)(ii) for any month shall constitute a violation of § 63.703(g).

(e) Owners or operators complying with § 63.703(d)(2) of this subpart through the use of a baghouse or fabric filter shall perform visible emission testing each day that particulate HAP transfer occurs, using the procedures in § 63.705(b)(10). Owners or operators shall also install, calibrate, and operate the instrumentation necessary to continuously monitor the ventilation air flow rate in the inlet duct to the baghouse or fabric filter whenever particulate HAP transfer occurs. The occurrence of visible emissions shall constitute a violation of § 63.703(d)(2), and the operation of the baghouse or fabric filter at a flow rate less than the value or values established in accordance with § 63.704(b)(7) for any

3-hour period shall constitute a violation of § 63.703(d)(2).

(f) An owner or operator who uses an air pollution control device not listed in § 63.704 to comply with § 63.703(c), (e)(1)(i), (f)(1)(i), or (i), or a device other than a steam stripper to comply with § 63.703(g) shall submit to the Administrator a description of the device, test data verifying the performance of the device, and appropriate site-specific operating parameters that will be monitored to demonstrate continuous compliance with the standard. The monitoring plan submitted by an owner or operator in accordance with this paragraph is subject to approval by the Administrator.

§ 63.705 Performance test methods and procedures to determine initial compliance.

(a) Except as specified in § 63.705(a)(1) through (3), to determine initial compliance with the emission limits under § 63.703 (c), (d)(2), (e)(1), (f)(1), and (g), the owner or operator shall conduct an initial performance demonstration as required under § 63.7 using the procedures and test methods listed in § 63.7 and § 63.705. If multiple emission points are vented to one common control device to meet the requirements of § 63.703 (c), (d)(2), (e)(1), and (f)(1), only one performance test is required to demonstrate initial compliance for that group of emission points. This section also contains initial compliance demonstration procedures (other than testing) for owners or operators subject to § 63.703 (c), (d)(1), (e)(1)(ii), (f)(1)(ii), and (g).

(1) A control device (not enclosure) used to comply with § 63.703 (c), (e), or (f) does not need to be tested if each of the following criteria are met:

(i) It is used to control gaseous HAP emissions from an existing affected source;

(ii) It is operating prior to March 11, 1994;

(iii) It is equipped with continuous emission monitors for determining inlet and outlet total HAP or VOC concentration, such that a percent efficiency can be calculated; and

(iv) The continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.704(c)(3)(i).

(2) The owner or operator is not required to conduct an initial performance test if the requirements of § 63.7(e)(2)(iv) or § 63.7(h) are met

(3) An owner or operator is not required to conduct an initial performance test for a capture device when:

(i) The room, enclosure, or vent was previously tested to demonstrate compliance with subpart SSS of part 60; and

(ii) Sufficient data were gathered during the test to establish operating parameter values in accordance with § 63.704(b)(6) (i), (ii), and (iii).

(b) When an initial compliance demonstration is required by this subpart, the procedures in paragraphs (b)(1) through (b)(10) of this section shall be used in determining initial compliance with the provisions of this subpart.

(1) EPA Method 24 of appendix A of part 60 is used to determine the VOC content in coatings. If it is demonstrated to the satisfaction of the Administrator that plant coating formulation data are equivalent to EPA Method 24 results, formulation data may be used. In the event of any inconsistency between an EPA Method 24 test and an affected source's formulation data, the EPA Method 24 test will govern. For EPA Method 24, the coating sample must be a 1-liter sample taken into a 1-liter container at a location and time such that the sample will be representative of the coating applied to the base substrate (i.e., the sample shall include any dilution solvent or other VOC added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOC added after the sample is taken must be measured and accounted for in the calculations that use EPA Method 24 results.

(2) Formulation data is used to determine the HAP content of coatings.

(3) Either EPA Method 18 or EPA Method 25A of appendix A of part 60, as appropriate to the conditions at the site, shall be used to determine HAP or VOC concentration of air exhaust streams as required by § 63.705(c). The owner or operator shall submit notice of the intended test method to the Administrator for approval along with the notification of the performance test required under § 63.7(b). Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (b)(3) (i) and (ii) of this section, the test shall consist of three separate runs, each lasting a minimum of 30 minutes.

(i) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual carbon adsorber vessels pursuant to § 63.705(c) (2) or (4), the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all of the individual carbon adsorber vessels.

(ii) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel pursuant to § 63.705(c) (3) or (4), each carbon adsorber vessel shall be tested individually. The test for each carbon adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(4) EPA Method 1 or 1A of appendix A of part 60 is used for sample and velocity traverses.

(5) EPA Method 2, 2A, 2C, or 2D of appendix A of part 60 is used for velocity and volumetric flow rates.

(6) EPA Method 3 of appendix A of part 60 is used for gas analysis.

(7) EPA Method 4 of appendix A of part 60 is used for stack gas moisture.

(8) EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(9) Wastewater analysis shall be conducted in accordance with paragraph (b)(9)(i) or (b)(9)(ii) of this section.

(i) Use Method 305 of 40 CFR part 63, appendix A and the equations in paragraphs (b)(9)(i) (A) and (B) of this section to determine the total VOHAP concentration of a wastewater stream.

(A) The following equation shall be used to calculate the VOHAP concentration of an individually speciated HAP

$$C_i = \left(C_C * \frac{MW}{24.055} * \frac{P_i}{760} * \frac{293}{T_i} * t * L * 10^3 \right) / M_s$$

where:

C_i = VOHAP concentration of the individually-speciated organic HAP in the wastewater, parts per million by weight.

C_c = Concentration of the organic HAP (i) in the gas stream, as measured by Method 305 of appendix A of this part, parts per million by volume on a dry basis.

M_s = Mass of sample, from Method 305 of appendix A of this part, milligrams.

MW = Molecular weight of the organic HAP (i), grams per gram-mole.

24.055 = Ideal gas molar volume at 293° Kelvin and 760 millimeters of mercury, liters per gram-mole.

P = Barometric pressure at the time of sample analysis, millimeters mercury absolute.

760 = Reference or standard pressure, millimeters mercury absolute.

293 = Reference or standard temperature, °Kelvin.

T_i = Sample gas temperature at the time of sample analysis, °Kelvin.

t = Actual purge time, from Method 305 of appendix A of this part, minutes.

L = Actual purge rate, from Method 305 of appendix A of this part, liters per minute.

10^3 = Conversion factor, milligrams per gram.

(B) Total VOHAP concentration (stream) can be determined by summing the VOHAP concentrations of all individually speciated organic HAP in the wastewater

$$C_{stream} = \sum_{i=1}^{n} C_i$$

where:

C_{stream}=Total VOHAP concentration of wastewater stream.

n=Number of individual organic HAP (i) in the wastewater stream.

C_i=VOHAP concentration of individual organic HAP (i) calculated according to the procedures in paragraph (b)(9)(i)(A) of this section.

(ii) Use a test method or results from a test method that measures organic HAP concentrations in the wastewater, and that has been validated according to section 5.1 or 5.3 of Method 301 of appendix A of this part. The specific requirement of Method 305 of appendix A of this part to collect the sample into polyethylene glycol would not be applicable.

(A) If measuring the total VOHAP concentration of the exit stream in accordance with §§ 63.703(g)(1)(ii) and 63.705(h)(2), the concentrations of the individual organic HAP measured in the water shall be corrected to their concentrations had they been measured by Method 305 of appendix A of this part. This is done by multiplying each concentration by the compound-specific fraction measured factor (F_M) listed in table 34 of 40 CFR part 63, subpart G.

(B) If measuring the total HAP concentration of an inlet and outlet wastewater stream to demonstrate compliance with § 63.703(g)(1)(i) and following the procedures of § 63.705(h)(3), the concentrations of the individual organic HAP measured in the water do not need to be corrected.

(10) EPA Method 22 of appendix A of part 60 is used to determine visible emissions. Visible emissions testing shall be conducted for a minimum of 6 minutes during a time when particulate HAP transfer, as defined in this subpart, is occurring.

(c) *Initial compliance demonstrations.* Except as stipulated in § 63.705(a), each owner or operator subject to the requirements of § 63.703(c) must demonstrate initial compliance with the requirements of this subpart by following the procedures of paragraphs (c)(1), (2), (3), (4), (5), or (6) and paragraph (d) of this section, as applicable. Each owner or operator subject to § 63.703(d), (e), (f), and (g) must demonstrate initial compliance with the requirements of this subpart by following the procedures of paragraphs (e), (f), (g), and (h) of this section, as appropriate.

(1) To demonstrate initial and continuous compliance with § 63.703(c)(1), (c)(3), or (c)(4) when emissions from only the affected coating operations are controlled by a dedicated solvent recovery device, each owner or operator of the affected coating operation may perform a liquid-liquid HAP or VOC material balance over rolling 7-day periods in lieu of demonstrating compliance through the methods in paragraphs (c)(2), (c)(3), or (c)(4) of this section. Results of the material balances calculation performed to demonstrate initial compliance shall be submitted to the Administrator with the notification of compliance status required by § 63.9(h) and § 63.707(d). When demonstrating compliance by this procedure, § 63.7(e)(3) of subpart A does not apply. The amount of liquid HAP or VOC applied and recovered shall be determined as discussed in paragraph (c)(1)(iii) of this section. The overall HAP or VOC emission reduction (R) is calculated using equation 1

$$R = \frac{M_r}{\sum_{i=1}^{n}\left[W_{oi}M_{cf} - RS_i\right]} \times 100 \qquad \text{(Eq. 1)}$$

(i) The value of RS_i is zero unless the owner or operator submits the following information to the Administrator for approval of a measured RS_i value that is greater than zero:

(A) Measurement techniques; and

(B) Documentation that the measured value of RS_i exceeds zero.

(ii) The measurement techniques of paragraph (c)(1)(i)(A) of this section shall be submitted to the Administrator for approval with the notification of performance test required under § 63.7(b).

(iii) Each owner or operator demonstrating compliance by the test method described in paragraph (c)(1) of this section shall:

(A) Measure the amount of coating applied at the coater;

(B) Determine the VOC or HAP content of all coating applied using the test method specified in § 63.705(b) (1) or (2);

(C) Install, calibrate, maintain, and operate, according to the manufacturer's specifications, a device that indicates the amount of HAP or VOC recovered by the solvent recovery device over rolling 7-day periods; the device shall be certified by the manufacturer to be accurate to within ± 2.0 percent, and this certification shall be kept on record;

(D) Measure the amount of HAP or VOC recovered; and

(E) Calculate the overall HAP or VOC emission reduction (R) for rolling 7-day periods using Equation 1.

(iv) Compliance is demonstrated if the value of R is equal to or greater than the overall HAP control efficiency required by § 63.703 (c)(1), (c)(3), or (c)(4).

(2) To demonstrate initial compliance with § 63.703 (c)(1), (c)(2), (c)(3), or (c)(4) when affected HAP emission points are controlled by an emission control device other than a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel, each owner or operator of an affected source shall perform a gaseous emission test using the following procedures.

(i) Construct the overall HAP emission reduction system so that all volumetric flow rates and total HAP or VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 63.705(b) (3) through (8).

(ii) Determine capture efficiency from the HAP emission points by capturing, venting, and measuring all HAP emissions from the HAP emission

points. During a performance test, the owner or operator of affected HAP emission points located in an area with other gaseous emission sources not affected by this subpart shall isolate the affected HAP emission points from all other gaseous emission points by one of the following methods:

(A) Build a temporary total enclosure (see § 63.702) around the affected HAP emission point(s); or

(B) Shut down all gaseous emission points not affected by this subpart and continue to exhaust fugitive emissions from the affected HAP emission points through any building ventilation system and other room exhausts such as drying ovens.

All ventilation air must be vented through stacks suitable for testing.

(iii) Operate the emission control device with all affected HAP emission points connected and operating.

(iv) Determine the efficiency (E) of the control device using equation 2:

$$E = \frac{\sum_{i=1}^{n} Q_{bi} C_{bi} - \sum_{j=1}^{p} Q_{aj} C_{aj}}{\sum_{i=1}^{n} Q_{bi} C_{bi}} \quad \text{(Eq. 2)}$$

(v) Determine the efficiency (F) of the capture system using equation 3:

$$F = \frac{\sum_{i=1}^{n} Q_{di} C_{di}}{\sum_{i=1}^{n} Q_{di} C_{di} + \sum_{k=1}^{p} Q_{fk} C_{fk}} \quad \text{(Eq. 3)}$$

(vi) For each HAP emission point subject to § 63.703, compliance is demonstrated if either of the following conditions are met:

(A) The product of (E)×(F) is equal to or greater than the overall HAP control efficiency required by § 63.703(c)(1), (c)(3), or (c)(4); or

(B) When the owner or operator is subject to § 63.703(c)(2), the value of F is equal to 1 and the value of C_{aj} at the outlet of the incinerator is demonstrated to be no greater than 20 ppmv by compound, on a dry basis.

(3) To demonstrate compliance with § 63.703(c)(1), (c)(3), or (c)(4) when affected HAP emission points are controlled by a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel, each owner or operator of an affected source shall perform a gaseous emission test using the following procedures:

(i) Construct the overall HAP emission reduction system so that each volumetric flow rate and the total HAP emissions can be accurately determined by the applicable test methods and procedures specified in § 63.705(b) (3) through (8);

(ii) Assure that all HAP emissions from the affected HAP emission point(s) are segregated from gaseous emission points not affected by this subpart and that the emissions can be captured for measurement, as described in § 63.705(c)(2)(ii) (A) and (B);

(iii) Operate the emission control device with all affected HAP emission points connected and operating;

(iv) Determine the efficiency (H_v) of each individual carbon adsorber vessel (v) using equation 4:

$$H_v = \frac{Q_{gv} C_{gv} - Q_{hv} C_{hv}}{Q_{gv} C_{gv}} \quad \text{(Eq. 4)}$$

(v) Determine the efficiency of the carbon adsorption system (H_{sys}) by computing the average efficiency of the individual carbon adsorber vessels as weighted by the volumetric flow rate (Q_{hv}) of each individual carbon adsorber vessel (v) using equation 5:

$$H_{sys} = \frac{\sum_{v=1}^{q} H_v Q_{hv}}{\sum_{v=1}^{q} Q_{hv}} \quad \text{(Eq. 5)}$$

(vi) Determine the efficiency (F) of the capture system using equation (3).

(vii) For each HAP emission point subject to § 63.703(c), compliance is demonstrated if the product of (H_{sys})×(F) is equal to or greater than the overall HAP control efficiency required by § 63.703(c)(1), (c)(3), or (c)(4).

(4) An alternative method of demonstrating compliance with § 63.703(c)(1) through (c)(4) is the installation of a total enclosure around the affected HAP emission point(s) and the ventilation of all HAP emissions from the total enclosure to a control device with the efficiency or outlet concentration specified in paragraph (c)(4)(iii) of this section. If this method is selected, the compliance test methods described in paragraphs (c)(1), (c)(2), and (c)(3) of this section are not required. Instead, each owner or operator of an affected source shall:

(i) Demonstrate that a total enclosure is installed. An enclosure that meets the requirements in paragraphs (c)(4)(i) (A) through (D) of this section shall be considered a total enclosure. The owner or operator of an enclosure that does not meet these requirements may apply to the Administrator for approval of the enclosure as a total enclosure on a case-by-case basis. The enclosure shall be considered a total enclosure if it is demonstrated to the satisfaction of the Administrator that all HAP emissions from the affected HAP emission point(s) are contained and vented to the control device. The requirements for automatic approval are as follows:

(A) Total area of all natural draft openings shall not exceed 5 percent of the total surface area of the total enclosure's walls, floor, and ceiling;

(B) All sources of emissions within the enclosure shall be a minimum of four equivalent diameters away from each natural draft opening,

(C) Average inward face velocity (FV) across all natural draft openings shall be a minimum of 3,600 meters per hour as determined by the following procedures:

(1) All forced makeup air ducts and all exhaust ducts are constructed so that the volumetric flow rate in each can be accurately determined by the test methods and procedures specified in § 63.705(b) (4) and (5) volumetric flow rates shall be calculated without the adjustment normally made for moisture content; and

(2) determine FV by equation 6

$$FV = \frac{\sum_{j=1}^{n} Q_{out\,j} - \sum_{i=1}^{p} Q_{in\,i}}{\sum_{k=1}^{q} A_k} \quad \text{(Eq. 6)}$$

(D) the air passing through all natural draft openings shall flow into the enclosure continuously. If FV is less than or equal to 9,000 meters per hour, the continuous inward flow of air shall be verified by continuous observation

using smoke tubes, streamers, tracer gases, or other means approved by the Administrator over the period that the volumetric flow rate tests required to determine FV are carried out. If FV is greater than 9,000 meters per hour, the direction of airflow through the natural draft openings shall be presumed to be inward at all times without verification.

(ii) Determine the control device efficiency using equation (2) or equations (4) and (5), as applicable, and the test methods and procedures specified in § 63.705(b) (3) through (8).

(iii) Be in compliance if either of the following criteria are met:

(A) The installation of a total enclosure is demonstrated and the value of E determined from equation (2) (or the value of H_{sys} determined from equations (4) and (5), as applicable) is equal to or greater than the overall HAP control efficiency required by § 63.703 (c)(1), (c)(3), or (c)(4); or

(B) When the owner or operator is subject to § 63.703(c)(2), the installation of a total enclosure is demonstrated and the value of C_{aj} at the outlet of the incinerator is demonstrated to be no greater than 20 ppmv by compound, on a dry basis.

(5) To demonstrate initial and continuous compliance with § 63.703(c)(5), each owner or operator of an affected source shall determine the mass of HAP contained in the coating per volume of coating solids applied for each batch of coating applied, according to the procedures of paragraphs (c)(5) (i) through (iii) of this section. If a batch of coating is identical to a previous batch of coating applied, the original calculations can be used to demonstrate the compliance of subsequent identical batches. The calculation of the HAP content of the coating used to demonstrate initial compliance with § 63.703(c)(5) shall be submitted to the Administrator with the notification of compliance status required by § 63.9(h) and § 63.707(e). When demonstrating compliance by this procedure, § 63.7(e)(3) of subpart A does not apply.

(i) Determine the weight fraction of HAP in each coating applied using formulation data as specified in § 63.705(b)(2);

(ii) Determine the volume of coating solids in each coating applied from the facility records; and

(iii) Compute the mass of HAP per volume of coating solids by equation 7:

$$G = \frac{W_{oi} M_{ci}}{L_{si} V_{ci}} \qquad \text{(Eq. 7)}$$

(iv) The owner or operator of an affected source is in compliance with § 63.703(c)(5) if the value of G is less than or equal to 0.18 kilogram of HAP per liter of coating solids applied.

(6) When nonregenerative carbon adsorbers are used to comply with § 63.703(c)(1), the owner or operator may conduct a design evaluation to demonstrate initial compliance in lieu of following the compliance test procedures of paragraph (c) (1), (2), (3), or (4) of this section. The design evaluation shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and the emission point operating schedule.

(d)(1) To demonstrate initial compliance with § 63.703(c) when hard piping or ductwork is used to direct HAP emissions from a HAP source to the control device, each owner or operator shall demonstrate upon inspection that the criteria of paragraph (d)(1)(i) and paragraph (d)(1) (ii) or (iii) are met

(i) The equipment must be vented to a control device.

(ii) The control device efficiency (E or H_{sys}, as applicable) determined using equation (2) or equations (4) and (5), respectively, and the test methods and procedures specified in § 63.705(b) (3) through (8), must be equal to or greater than the overall HAP control efficiency required by § 63.703 (c)(1), (c)(3), or (c)(4), or the outlet concentration must be no greater than 20 ppmv by compound, on a dry basis, as required by § 63.703(c)(2).

(iii) When a nonregenerative carbon adsorber is used, the ductwork from the affected emission point(s) must be vented to the control device and the carbon adsorber must be demonstrated, through the procedures of § 63.705(c) (1), (2), (3), (4), or (6) to meet the requirements of § 63.703(c)(1).

(2) To demonstrate initial compliance with provisions for mix preparation equipment, owners or operators shall, in addition to paragraph (d)(1) of this section, ensure that covers are closed at all times except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with the cover in place. Such activities shall be carried out through ports of the minimum practical size.

(e) To demonstrate initial compliance with § 63.703(e), the owner or operator of a wash sink subject to the provisions of this standard shall:

(1) If complying with § 63.703(e)(1)(ii), maintain at least the required minimum freeboard ratio at all times; or

(2) If complying with § 63.703(e)(1)(i), the owner or operator of an existing wash sink that vents emissions from the wash sink to a control device prior to March 11, 1994 must demonstrate that the control device is at least 95-percent efficient in accordance with § 63.705(c) (2), (3), (4), or (6); or

(3) If complying with § 63.703(e)(1)(i), each owner or operator that vents emissions from the wash sink, through a capture device, and to a control device starting on or after March 11, 1994, must demonstrate that the overall HAP control efficiency is at least 88 percent using the test methods and procedures in § 63.705(c) (2), (3), (4), or (6).

(f) To demonstrate initial compliance with § 63.703(f), the owner or operator shall:

(1) If complying with § 63.703(f)(1)(ii), install and use a closed system for flushing fixed lines; or

(2) If complying with § 63.703(f)(1)(i), each owner or operator that vents emissions from the flushing operation, through a capture device, and to a control device must demonstrate that the overall HAP control efficiency is at least 95 percent using the test methods and procedures in § 63.705(c) (2), (3), (4), or (6).

(g) To demonstrate initial compliance with § 63.703(d), the owner or operator shall:

(1) If complying with § 63.703(d)(1), install an enclosed transfer device for conveying particulate HAP, and use this device, following manufacturer's specifications or other written procedures developed for the device; or

(2) If complying with § 63.703(d)(2):

(i) Test the baghouse or fabric filter to demonstrate that there are no visible

emissions using the test method in § 63.705(b)(10); and

(ii) provide engineering calculations in accordance with § 63.707(h) of this subpart with the performance test results required by § 63.7(g)(1) and § 63.9(h) of subpart A, to demonstrate that the ventilation rate from the particulate transfer activity to the control device is sufficient for capturing the particulate HAP.

(h) To demonstrate initial compliance with § 63.703(g), the owner or operator of an affected source shall follow the compliance procedures of either paragraph (h)(1), paragraph (h)(2), or paragraph (h)(3) of this section.

(1) The owner or operator shall submit to the permitting authority with the notification of compliance status required by § 63.9(h) and § 63.707(f) the design specifications demonstrating that the control technique meets the required efficiency for each HAP compound. For steam strippers, these specifications shall include at a minimum: feed rate, steam rate, number of theoretical trays, number of actual trays, feed composition, bottoms composition, overheads composition, and inlet feed temperature.

(2) The owner or operator shall demonstrate the compliance of a treatment process with the parts per million by weight (ppmw) wastewater stream concentration limits specified in § 63.703(g)(1)(ii) by measuring the concentration of total VOHAP at the outlet of the treatment process using the method specified in § 63.705(b)(9) (i) or (ii). A minimum of three representative samples of the wastewater stream exiting the treatment process, which are representative of normal flow and concentration conditions, shall be collected and analyzed. Wastewater samples shall be collected using the sampling procedures specified in Method 25D of appendix A of part 60. Where feasible, samples shall be taken from an enclosed pipe prior to the wastewater being exposed to the atmosphere. When sampling from an enclosed pipe is not feasible, a minimum of three representative samples shall be collected in a manner that minimizes exposure of the sample to the atmosphere and loss of organic HAP prior to analysis.

(3) The owner or operator shall demonstrate the compliance of a treatment process with the HAP fraction removed requirement specified in § 63.703(g)(1)(i) by measuring the concentration of each HAP at the inlet and outlet of the treatment process using the method specified in § 63.705(b)(9) (i) or (ii) and the procedures of paragraphs (h)(3) (i) through (iii) of this section.

(i) The same test method shall be used to analyze the wastewater samples from both the inlet and outlet of the treatment process.

(ii) The HAP mass flow rate of each individually speciated HAP compound entering the treatment process (E_b) and exiting the treatment process (E_a) shall be determined by computing the product of the flow rate of the wastewater stream entering or exiting the treatment process, and the HAP concentration of each individual HAP compound of the entering or exiting wastewater streams, respectively.

(A) The flow rate of the entering and exiting wastewater streams shall be determined using inlet and outlet flow meters, respectively.

(B) The average HAP concentration of each individual HAP of the entering and exiting wastewater streams shall be determined according to the procedures specified in either paragraph (b)(9)(i)(A) or (b)(9)(ii)(B) of this section. If measuring the VOHAP concentration of an individual HAP in accordance with § 63.705(b)(9)(i)(A), the concentrations of the individual organic VOHAP measured in the water shall be corrected to a HAP concentration by dividing each VOHAP concentration by the compound-specific fraction measured factor (F_M) listed in table 34 of 40 CFR part 63, subpart G.

(C) Three grab samples of the entering wastewater stream shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of three runs.

(D) Three grab samples of the exiting wastewater stream shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of three runs conducted over the same 3-hour period at which the total HAP mass flow rate entering the treatment process is determined.

(E) The HAP mass flow rates of each individual HAP compound entering and exiting the treatment process are calculated as follows

$$E_b = \frac{K}{n \times 10^6}\left(\sum_{p=1}^{n} V_{bp} C_{bp}\right)$$

$$E_a = \frac{K}{n \times 10^6}\left(\sum_{p=1}^{n} V_{ap} C_{ap}\right)$$

where:

E_b = HAP mass flow rate of an individually speciated HAP compound entering the treatment process, kilograms per hour

E_a = HAP mass flow rate of an individually speciated HAP compound exiting the treatment process, kilograms per hour.

K = Density of the wastewater stream, kilograms per cubic meter.

V_{bp} = Average volumetric flow rate of wastewater entering the treatment process during each run p, cubic meters per hour.

V_{ap} = Average volumetric flow rate of wastewater exiting the treatment process during each run p, cubic meters per hour.

C_{bp} = Average HAP concentration of an individually speciated HAP in the wastewater stream entering the treatment process during each run p, parts per million by weight.

C_{ap} = Average HAP concentration of an individually speciated HAP in the wastewater stream exiting the treatment process during each run p, parts per million by weight

n = Number of runs.

(iii) The fraction removed across the treatment process for each individually speciated HAP compound shall be calculated as follows:

$$F_R = \frac{E_b - E_a}{E_b}$$

where.

F_R = Fraction removed for an individually speciated HAP compound of the treatment process

E_b = HAP mass flow rate of an individually speciated HAP compound entering the treatment process, kilogram per hour

E_a = HAP mass flow rate of an individually speciated HAP compound exiting the treatment process, kilograms per hour.

(i) Startups and shutdowns are normal operation for this source category Emissions from these activities are to be included when determining if the standards specified in § 63.703 are being attained.

(j) An owner or operator who uses compliance techniques other than those specified in this subpart shall submit a description of those compliance procedures, subject to the Administrator's approval, in accordance with § 63.7(f) of subpart A.

§ 63.706 Recordkeeping requirements.

(a) Except as stipulated in § 63.703 (b), (c)(5), and (h) the owner or operator of a magnetic tape manufacturing

operation subject to this subpart shall fulfill all applicable recordkeeping requirements in § 63.10 of subpart A, as outlined in Table 1.

(b) The owner or operator of an affected source subject to this subpart that is also subject to the requirements of § 63.703(e)(1)(ii) (a minimum freeboard ratio of 75 percent), shall record whether or not the minimum freeboard ratio has been achieved every time that HAP solvent is added to the wash sink. A measurement of the actual ratio is not necessary for each record as long as the owner or operator has a reliable method for making the required determination. For example, the record may be made by comparing the HAP solvent level to a permanent mark on the sink that corresponds to a 75 percent freeboard ratio. A HAP solvent level in the sink higher than the mark would indicate the minimum ratio has not been achieved.

(c) The owner or operator of an affected source subject to this subpart that is subject to the requirements of § 63.704(c)(10) shall:

(1) If complying with § 63.704(c)(10)(i), maintain hourly records of whether the flow indicator was operating and whether flow was detected at any time during the hour, as well as records of the times and durations of all periods when the vent stream is diverted from the control device or the monitor is not operating;

(2) If complying with § 63.704(c)(10)(ii), (iii), or (iv), maintain a record of monthly inspections, and the records of the times and durations of all periods when:

(i) Flow was diverted through any bypass line such that the seal mechanism was broken;

(ii) The key for a lock-and-key type lock had been checked out;

(iii) The valve position on any bypass line changed to the open position; or

(iv) The diversion of flow through any bypass line caused a shutdown of HAP-emitting operations.

(d) The owner or operator of an affected source that is complying with § 63.703(c) by performing a material balance in accordance with § 63.705(c)(1) shall:

(1) Maintain a record of each 7-day rolling average calculation; and

(2) Maintain a record of the certification of the accuracy of the device that measures the amount of HAP or VOC recovered.

(e) The owner or operator of a magnetic tape manufacturing operation subject to the provisions of § 63 703 (b) and (h) shall maintain records of the calculations used to determine the limits on the amount of HAP utilized as specified in § 63.703(b)(2), and of the HAP utilized in each month and the sum over each 12-month period.

(f) The owner or operator of an affected source subject to the provisions of § 63.703(c)(5) shall keep records of the HAP content of each batch of coating applied as calculated according to § 63.705(c)(5), and records of the formulation data that support the calculations. When a batch of coating applied is identical to a previous batch applied, only one set of records is required to be kept.

(g) The owner or operator of an affected source that is complying with § 63.703(c)(1) through the use of a nonregenerative carbon adsorber and demonstrating initial compliance in accordance with § 63.705(c)(6) shall maintain records to support the outlet VOC or HAP concentration value or the carbon replacement time established as the site-specific operating parameter to demonstrate compliance.

(h) In accordance with § 63.10(b)(1) of subpart A, the owner or operator of an affected source subject to the provisions of this subpart shall retain all records required by this subpart and subpart A for at least 5 years following their collection.

§ 63.707 Reporting requirements.

(a) Except as stipulated in § 63.703(b), (c)(5), and (h), the owner or operator of a magnetic tape manufacturing operation subject to this subpart shall fulfill all applicable reporting requirements in § 63.7 through § 63.10, as outlined in Table 1 to this subpart. These reports shall be submitted to the Administrator or delegated State.

(b) The owner or operator of an existing magnetic tape manufacturing operation subject to § 63.703(b) and (h) shall include the values of the limits on the amount of HAP utilized as determined in § 63.703(b)(2), along with supporting calculations, in the initial notification report required by § 63.9(b).

(c) The owner or operator of a new magnetic tape manufacturing operation subject to § 63.703(h) shall include the values of the limits on the amount of HAP utilized as determined in § 63.703(b)(2), along with supporting calculations, and the amount of HAP expected to be utilized during the first consecutive 12-month period of operation in the initial notification report required by § 63.9(b).

(d) The owner or operator subject to § 63.703(c) and following the compliance provisions of § 63.705(c)(1) (material balance calculation) shall include with the notification of compliance status required by § 63.9(h) the results of the initial material balance calculation.

(e) The owner or operator subject to § 63.703(c)(5) and following the compliance provisions of § 63.705(c)(5) (low-HAP coating) shall include with the notification of compliance status required by § 63.9(h) the results of the initial low-HAP coating demonstration.

(f) The owner or operator subject to the provisions of § 63.703(g) and demonstrating compliance in accordance with § 63.705(h)(1) shall submit to the permitting authority with the notification of compliance status required by § 63.9(h) the design specifications demonstrating that the control technique meets the required efficiency. For steam strippers, these specifications shall include at a minimum: feed rate, steam rate, number of theoretical trays, number of actual trays, feed composition, bottoms composition, overheads composition, and inlet feed temperature.

(g) The owner or operator of an affected source that is complying with § 63.703(c)(1) through the use of a nonregenerative carbon adsorber and demonstrating initial compliance in accordance with § 63.705(c)(6) shall submit to the permitting authority with the notification of compliance status required by § 63.9(h) the design evaluation.

(h) The owner or operator of an affected source that is complying with § 63.703(d) through the use of a baghouse or fabric filter and demonstrating initial compliance in accordance with § 63.705(g)(2) shall submit to the permitting authority with the notification of compliance status required by § 63.9(h) the engineering calculations that support the minimum ventilation rate needed to capture HAP particulates for delivery to the control device.

(i) Excess emissions and continuous monitoring system performance report and summary reports shall be submitted as required by § 63.10(e).

(1) The owner or operator of an affected source subject to § 63.704 shall include deviations of monitored values from the operating parameter values required by § 63.704(c) in the reports. In the case of exceedances, the report must also contain a description and timing of the steps taken to address the cause of the exceedance.

(2) The owner or operator of an affected source subject to § 63.703(c)(5) shall report the HAP content of each batch of coating applied as the monitored operating parameter value in the reports.

(3) The owner or operator of an affected source subject to

§ 63.703(e)(1)(ii) and maintaining a minimum freeboard ratio of 75 percent shall report violations of the standard (freeboard ratio is less than 75 percent) in the reports.

(4) The owner or operator of an affected source subject to § 63.704(c)(10) of this subpart shall include records of any time period and duration of time that flow was diverted from the control device, as well as the results of monthly inspections required by § 63.704(c)(10)(ii), (iii), and (iv) in the reports.

(5) The owner or operator of an affected source complying with § 63.703(c) by performing a material balance calculation in accordance with § 63.705(c)(1) shall report any exceedances of the standard, as demonstrated through the calculation, in the reports.

(j) The owner or operator of a magnetic tape manufacturing operation subject to the provisions of § 63.703(h) shall report the amount of HAP utilized in each 12-month period in an annual report to the Administrator according to the following schedule:

(1) For existing sources, the first report shall cover the 12-month period prior to the source's compliance date and shall be submitted to the Administrator no later than 30 days after the compliance date; and

(2) For new sources, the first report shall include the quantity of HAP that is expected to be utilized during the first 12 months of operation and shall be submitted to the Administrator no later than 30 days after the compliance date;

(3) Annual reports shall be submitted to the Administrator no later than 30 days after the last 12-month period included in the report; and

(4) A report shall also be submitted no later than 30 days after monthly records required to be maintained by § 63.706(e) indicate that any limit on the amount of HAP utilized has been exceeded. The report shall indicate the amount by which the limit has been exceeded.

(k) The owner or operator establishing an alternate HAP outlet concentration limit in accordance with §§ 63.703(i) and 63.704(b)(11)(ii) shall:

(1) To support the proposed limit, submit the following within 180 days following completion of the performance test required by § 63.7:

(i) The performance test or CEM data collected to establish the limit;

(ii) Records of when coating operations were down;

(iii) The rationale for the alternate proposed limit; and

(iv) A statement signed by a responsible official of the company that the control device was operated in accordance with good air pollution control practices and in the same manner it was operated to achieve compliance with the emission limitation for coating operations; and

(2) In the excess emissions and continuous monitoring system performance report and summary report required by § 63.10(e)(3), include parameter or CEM data to demonstrate compliance or noncompliance with the alternate outlet HAP concentration established in accordance with §§ 63.703(i) and 63.704(b)(11)(ii) once the limit is approved.

§ 63.708 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(b) of the Clean Air Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: no restrictions.

TABLE 1 TO SUBPART EE.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EE

Reference	Applies to subpart EE	Comment
63.1(a)(1)	Yes	Additional terms defined in § 63.702(a); when overlap between subparts A and EE occurs, subpart EE takes precedence.
63.1(a)(2)–(14)	Yes.	
63.1(b)(1)–(3)	Yes.	
63.1(c)(1)	Yes	Subpart EE specifies the applicability of each paragraph in subpart A to sources subject to subpart EE.
63.1(c)(2)	No	The applicability of §§ 63.701(a)(2) and 63.703 (b) and (h) to a source does not in and of itself make a source subject to part 70.
63.1(c)(4)–(5)	Yes.	
63.1(e)	Yes.	
63.2	Yes	Additional terms defined in § 63.702(a); when overlap between subparts A and EE occurs, subpart EE takes precedence.
63.3	Yes	Units specific to subpart EE are defined in subpart EE.
63.4(a)(1)–(3)	Yes.	
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)	Yes.	
63.5(b)(1)	Yes.	
63.5(b)(3)–(6)	Yes.	
63.5(d)	Yes.	
63.5(e)	Yes.	
63.5(f)	Yes.	
63.6(a)	Yes.	
63.6(b)(1)–(5)	Yes.	
63.6(b)(7)	Yes.	
63.6(c)(1)–(2)	Yes.	
63.6(c)(5)	Yes.	
63.6(e)(1)–(2)	Yes.	
63.6(e)(3)	Yes	Owners or operators of affected sources subject to subpart EE do not need to address startups and shutdowns because the emission limitations apply during these times.
63.6(f)(1)	No	§ 63.701(f) of subpart EE specifies when the standards apply.
63.6(f)(2)(i)–(ii)	Yes.	
63.6(f)(2)(iii)	Yes	§ 63.705(a)(3) of subpart EE includes additional circumstances under which previous capture device demonstrations are acceptable to show compliance

TABLE 1 TO SUBPART EE.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EE—Continued

Reference	Applies to subpart EE	Comment
63.6(f)(2)(iv)–(v)	Yes.	
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)(1)	No	§ 63.701(f) of subpart EE specifies when the standards apply.
63.6(h)(2)(i)	Yes.	
63.6(h)(2)(iii)	Yes.	
63.6(h)(4)	Yes	This requirement applies only for the visible emission test required under § 63.705(g)(2).
63.6(h)(5)(i)–(iii)	Yes.	
63.6(h)(5)(v)	No.	
63.6(h)(6)	Yes.	
63.6(h)(7)	No.	
63.6(h)(8)	Yes.	
63.6(h)(9)	No.	
63.6(i)(1)–(14)	Yes	§ 63.703(c)(4) of subpart EE shall not be considered emissions averaging for the purposes of § 63.6(i)(4)(i)(B).
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)(i)–(vi)	Yes.	
63.7(a)(2)(ix)	Yes.	
63.7(a)(3)	Yes.	
63.7(b)	Yes.	
63.7(c)	Yes.	
63.7(d)	Yes.	
63.7(e)	Yes	§ 63.7(e) establishes the minimum performance test requirements. This section does not preclude owners or operators from conducting multiple test runs under alternate operating conditions to establish an appropriate range of compliance operating parameter values in accordance with § 63.704(b)(11)(i) of subpart EE. Also as required in § 63.701(f) of subpart EE, the emissions standards apply during startup and shutdown.
63.7(f)	Yes.	
63.7(g)(1)	Yes.	
63.7(g)(3)	Yes.	
63.7(h)	Yes.	
63.8(a)(1)–(2)	Yes.	
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	§ 63.704 of subpart EE specifies monitoring locations; when multiple emission points are tied to one central control device, the monitors are located at the central control device.
63.8(b)(3)	Yes.	
63.8(c)(1)–(3)	Yes.	
63.8(c)(4)	Yes	Provisions related to COMS, however, do not apply.
63.8(c)(5)	No.	
63.8(c)(6)–(8)	Yes.	
63.8(d)	Yes.	
63.8(e)	Yes.	
63.8(f)(1)–(6)	Yes.	
63.8(g)(1)–(5)	Yes.	
63.9(a)	Yes.	
63.9(b)	Yes.	
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	Yes.	
63.9(f)	Yes.	
63.9(g)(1)	Yes.	
63.9(g)(2)	No.	
63.9(g)(3)	Yes.	
63.9(h)(1)–(3)	Yes.	
63.9(h)(5)–(6)	Yes.	
63.9(i)	Yes.	
63.9(j)	Yes.	
63.10(a)	Yes.	
63.10(b)(1)	Yes.	
63.10(b)(2)	Yes	Except information on startup and shutdown periods is not necessary because the standards apply during these time periods.
63.10(b)(3)	Yes.	
63.10(c)(1)	Yes.	
63.10(c)(5)–(8)	Yes	Except information on startup and shutdown periods is not necessary because the standards apply during these times.
63.10(c)(10)–(15).	Yes	Except information on startup and shutdown periods is not necessary because the standards apply during these times
63.10(d)(1)–(2)	Yes	
63.10(d)(3)	Yes	This requirement applies only for the visible emissions test required under § 63.705(g)(2). The results of visible emissions tests under § 63.704(e) shall be reported as required in § 63.10(e)(3).

TABLE 1 TO SUBPART EE.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EE—Continued

Reference	Applies to subpart EE	Comment
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except information on startup and shutdown periods is not necessary because the standards apply during these times.
63.(10)(e)(1)	Yes.	
63.10(e)(2)(i)	Yes.	
63.10(e)(2)(ii)	No.	
63.10(e)(3)(i)–(v)	Yes.	
63.10(e)(3)(vi)–(viii).	Yes	Except emissions/CMS performance during startup and shutdown do not need to be specified because the standards apply during startup and shutdown.
63.10(e)(4)	No.	
63.10(f)	Yes.	
63.11–63.15	Yes.	

[FR Doc. 94–30502 Filed 12–14–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–44–1–6671; FRL–5121–7]

Transportation Conformity; Approval of Petition for Exemption From Nitrogen Oxides Provisions, Victoria County, Texas

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

ACTION: Correction.

SUMMARY: This document contains a correction to the withdrawal document concerning the State of Texas' NO_x exemption request for Victoria County, published Tuesday, October 11, 1994 (59 FR 51381). The direct final rule being withdrawn by the October 11, 1994 document, was erroneously cited in the October 11, 1994 **Federal Register** notice as 59 FR 41416. The correct citation to the direct final rule should have been noted as 59 FR 41408. The last sentence in the first paragraph of the Summary of the October 11, 1994 withdrawal document and the last sentence of the document, both on page 51381, third column, are therefore corrected by this document to cite page 41408 as the first page of the EPA's direct final rule being withdrawn.

EFFECTIVE DATE: October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Charles M. Cote at (214) 665–7219.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 6, 1994.

Jane N. Saginaw,

Regional Administrator (6A).

[FR Doc. 94–30739 Filed 12–14–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7107

[CO–932–1430–01; COC–28515; COC–28792]

Partial Revocation of Secretarial Order Dated May 25, 1921, and Transfer of Jurisdiction; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a withdrawal for Public Water Reserve No. 77 on a 40-acre parcel of public land and permanently transfers administrative jurisdiction of the parcel to the Secretary of Agriculture, Forest Service, for management as a part of the Picket Wire Canyonlands. This land was inadvertently omitted from Public Law 101–510, which transferred lands from the Secretary of the Army to the Secretary of Agriculture, and created the Picket Wire Canyonlands for inclusion in the Comanche National Grassland. This land will be closed to operation of all the land laws, including the mining and the mineral leasing laws, to protect and conserve paleontological, archaeological, wildlife, vegetative, aquatic, and other natural resources.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order of May 25, 1921, which created Public Water Reserve No. 77, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 28 S., R. 55 W.,
Sec. 17, SE¼NW¼.

The area described contains 40 acres in Las Animas County.

2. The administrative jurisdiction of the land described in paragraph 1 is hereby permanently transferred to the Department of Agriculture, Forest Service, to be managed as a part of the Picket Wire Canyonlands. The Picket Wire Canyonlands are closed to operation of the mining, mineral leasing, and other mineral entry laws of the United States as established by Public Law 101–510.

Dated: December 1, 1994

Bob Armstrong,

Secretary of the Interior

[FR Doc. 94–30810 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–JB–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–38; RM–8451]

Television Broadcasting Services; Sioux City, Iowa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF–TV Channel 44 to Sioux City, Iowa, as that community's fifth television service. Although Independent Communications, Inc., proposed the allotment of Channel 39 to Sioux City, a Commission engineering analysis indicates the allotment of Channel 44 provides a larger area from which an applicant may search for a transmitter site. *See* 59 FR 28047, May 31, 1994. Channel 44 can be allotted to Sioux City consistent with the minimum distance

separation requirements of Sections 73.610 and 73.698 of the Commission's Rules without the imposition of a site restriction. The coordinates for Channel 44 at Sioux City are 42–29–30 and 96–23–30. The allotment at Sioux City is not affected by the temporary freeze on new television allotments in certain metropolitan areas. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–38, adopted November 29, 1994, and released December 8, 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, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Iowa, is amended by adding Channel 44 at Sioux City.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–30699 Filed 12–14–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Endangered or Threatened Status for Five Plants and the Morro Shoulderband Snail From Western San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973 (Act), as amended, for four plants and one land snail: *Cirsium fontinale* var. *obispoense* (Chorro Creek bog thistle), *Clarkia speciosa* ssp. *immaculata* (Pismo clarkia), *Eriodictyon altissimum* (Indian Knob mountainbalm), *Suaeda californica* (California sea-blite), and the Morro shoulderband snail (*Helminthoglypta walkeriana*); and threatened status for one plant: *Arctostaphylos morroensis* (Morro manzanita). All six species are found along the coast of San Luis Obispo County, California. The five plant taxa are threatened by one or more of the following: Residential development, road maintenance activities, competition from alien plants, recreational activities, grazing, water diversions, dredging, and stochastic (i.e., random) extinction by virtue of the small and isolated nature of the remaining populations. The Morro shoulderband snail is threatened by destruction of habitat, competition with a common garden snail, and perhaps stochastic extinction. This rule implements the Federal protection and recovery provisions afforded by the Act for these five plants and the Morro shoulderband snail.

EFFECTIVE DATE: January 17, 1995.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Ave., Suite 100, Ventura, California, 93003.

FOR FURTHER INFORMATION CONTACT: Constance Rutherford, botanist, at the above address, or at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

Arctostaphylos morroensis, Cirsium fontinale var. *obispoense, Clarkia speciosa* ssp. *immaculata, Eriodictyon altissimum, Suaeda californica,* and the Morro shoulderband snail are endemic to the western portion of San Luis Obispo County, California. *A. morroensis* and *E. altissimum* occur as components of several coastal plant communities, referred to as central coastal scrub, central maritime chaparral, and coast live oak woodland by Holland (1986). *Cirsium fontinale* var. *obispoense* is found primarily on more inland sites, near seeps associated with serpentine soils. *Clarkia speciosa* ssp. *immaculata* is a component of grasslands that form a mosaic with chaparral and oak woodlands. *S. californica* is found in association with the northern coastal salt marsh community (Holland 1986) around Morro Bay. The Morro shoulderband snail is found within the central coastal dune scrub community (Holland 1986) on the south end of Morro Bay These communities have also been described by Holland and Keil (1990), MacDonald (1988), Griffin (1988), Hanes (1988), Barbour and Johnson (1988), and Mooney (1988).

The natural communities of western San Luis Obispo County have undergone a number of changes resulting from both human-caused activities and natural occurrences. The rapid urbanization of communities around Morro Bay, the San Luis Obispo area, and the Pismo Beach area has already eliminated the plants and the snail in portions of their ranges. Starting in the 1940's, the configuration of Morro Bay itself was altered by construction of a breakwater that resulted in the connection of Morro Rock to the mainland north of the Bay, construction of a marina, deposition of sediments from two watersheds (Los Osos Creek and Chorro Creek), and dredging of waterways within the Bay (Gerdes *et al* 1974). Since 1935, the spit that envelops the southern portion of Morro Bay has also been displaced 90 feet landward as a result of windblown sand into the interior of the Bay (Josselyn *et al* 1989) Further urban development and other activities such as recreation, grazing, and utility construction threaten the remaining occurrences of these plants and the snail.

Arctostaphylos morroensis (Morro manzanita) was first described by Wieslander and Schreiber (1939) based on a specimen collected in Hazard Canyon, south of Morro Bay, which is now within the boundaries of Montana de Oro State Park. This name has been conserved by McMinn (1939), Abrams (1944), Munz (1968), and Hoover (1970).

This shrub of the heath family (Ericaceae) reaches 1.5 to 4.0 meters (m) (5 to 13 feet (ft)) high and has oblong to ovate leaves grey-green to olive-green, 2.5 to 4.0 centimeters (cm) (1 to 1.5 inches (in)) long, with petioles 2 to 6 millimeters (mm) (0.08 to 0.20 in) long. The white to pinkish flowers are 5 to 8 mm (0.2 to 0.3 in) long and form orange-brown fruits 8 to 13 mm (0.3 to 0.5 in) in diameter. A. morroensis is distinguished from other manzanitas in the area by the following characters: the bark of the trunk is a shaggy grey to brown, and the leaf blades are cuneate to rounded or truncate at the base, with the lower surface paler and usually somewhat tomentose (short woolly hairs). Occasional specimens of

Arctostaphylos morroensis have exhibited an auriculate leaf base and a leaf petiole short to lacking—characters more representative of the rare *A. cruzensis* (Arroyo de la Cruz manzanita). Recent work by Holland *et al.* (1990) has clarified the distinctness of the taxon and its relation to *A. cruzensis*.

The distribution of *Arctostaphylos morroensis* has been tied to the presence of soils derived from ancient sand dunes. These soils are referred to as Baywood fine sands, which were deposited during the Pleistocene epoch when sea levels 300 feet lower than current levels allowed large volumes of sand to blow inland into the Los Osos Valley. *A. morroensis* is found in association with coastal dune scrub, maritime chaparral, and coast live oak woodland communities in sites with no or low to moderate slopes. On steeper slopes, particularly on the north-facing slopes of the Irish Hills, *A. morroensis* occurs in almost pure stands. At the time the proposal was published (December 23, 1991; 56 FR 66400), the total number of individuals of *A. morroensis* was estimated to be 2,000 (McLeod 1991a). Since that time, additional surveys have resulted in population estimates ranging from 86,000 to 153,000 (McGuire and Morey 1992, LSA Associates 1992).

Based on the distribution of Baywood fine sands in the Morro Bay area, the historic habitat was estimated at between 800 and 1100 hectares (ha) (2,000 and 2,700 acres (ac)). Much of the area covered by Baywood fine sands and with no to low slopes have been subject to urban development, primarily by the communities of Los Osos, Baywood Park, and Cuesta-by-the-Sea on the south and east sides of Morro Bay. Some development, however, has also occurred on the steeper north-facing slopes of the Irish Hills. Approximately 340 to 360 ha (840 to 890 ac) of *Arctostaphylos morroensis* remain (LSA Associates 1992); half of this consists of small or low density patches that remain in and around developed areas of Los Osos and Baywood Park, and half consists of more continuous and more dense (at least 50 percent cover by this species) stands of manzanita. *A. morroensis* was recently observed to be reseeding in parcels that had previously supported high densities of manzanita that had been mechanically cleared (LSA Associates 1992). The process of clearing may have provided the scarification required to trigger seed germination.

Approximately 65 percent of the remaining *Arctostaphylos morroensis* habitat is within private ownership; the bulk of this is habitat with high densities of manzanita. Approximately 35 percent of the plant's habitat is on publicly owned lands within Montana de Oro State Park and two small preserves managed by California Department of Fish and Game (CDFG); most of this habitat supports low densities of *A. morroensis* (McGuire and Morey 1992).

Cirsium fontinale var. *obispoense* (Chorro Creek bog thistle) is one of two rare subspecies of *Cirsium fontinale*, which was first described by Edward L. Greene in 1886 as *Cnicus fontinalis*. Six years later, he transferred the plant to the genus *Carduus*, and, in 1901, Jepson transferred the plant to the genus *Cirsium*. In 1938, J.T. Howell described the variety *obispoense* based on plants collected at Chorro Creek two years earlier (Abrams and Ferris 1960).

Cirsium fontinale var. *obispoense* is a rugged short-lived perennial herb of the aster family (Asteraceae). First year plants form a rosette that reaches up to a meter (3.3 ft) in diameter; in the second or third year, the plant produces a branching stalk up to 2 m (6.6 ft) in height and bearing numerous heads of whitish to pinkish-lavender tinged flowers. Its nodding flower heads and glandular hairs on the leaves separate it from other thistles that occur in the area.

Cirsium fontinale var. *obispoense* is restricted to open seep areas on serpentine soil outcrops. It is known from only nine locations; eight are to the south and west of San Luis Obispo, and one is 48 kilometers (km) (30 miles (mi)) to the northwest near San Simeon. The type locality was surveyed for in 1985; the thistle was not located and is assumed to be extirpated, probably by cattle grazing (Rocco 1981). At the time of the last range-wide surveys in 1986, the total number of individuals numbered less than 3,000 (Friedman 1987). Two populations comprise approximately 1,000 individuals each; the remaining seven comprise from 50 to several hundred individuals each. Extant populations are threatened by trampling from cattle, proposed water diversions, and road maintenance and may also be declining due to several years of drought conditions. A recent status report also indicated that two non-native species, *Cytisus monspessulanus* (European broom) and *Eucalyptus* sp. (Eucalyptus) may be invading bog thistle habitat at several sites (Wikler and Morey 1992).

Eriodictyon altissimum (Indian Knob mountainbalm) was first collected on Indian Knob by Philip V. Wells in 1960 and described two years later (Wells 1962). This diffusely branched evergreen shrub of the waterleaf family (Hydrophyllaceae) reaches a height of 2 to 4 m (6.6 to 13 ft). The sticky leaves are long (6 to 9 cm (2.4 to 3.5 in)) and narrow (2 to 4 mm (0.08 to 0.20 in)); the lavender flowers (1.1 to 1.5 cm (0.4 to 0.6 in) long) are arranged in coiled clusters and produce numerous tiny (0.4 mm (0.02 in) long) seeds. As with other fire-adapted chaparral plants, *E. altissimum* produces new growth primarily from rhizomatous suckers. Only two other narrow-leaved *Eriodictyon* occur in southern California; *E. angustifolium* occurs in the New York Mountains in the eastern Mojave Desert and has much smaller flowers. The other, *E. capitatum*, is restricted to a few locations in coastal Santa Barbara County and has a distinctly capitate inflorescence.

Eriodictyon altissimum occurs within coastal maritime chaparral and oak woodlands and co-occurs with *Arctostaphylos morroensis* in several locations. Vanderwier (1987) did a detailed study of chaparral and oak woodland communities at the type locality for *E. altissimum*. Only six stands are known, which range from the south end of Morro Bay to Indian Knob, between San Luis Obispo and Arroyo Grande. The rugged terrain in the Irish Hills (between Morro Bay and Indian Knob) has precluded extensive botanical surveying that may have identified other stands of *E. altissimum*. With discovery of an extension of the stand at Indian Knob two years ago, the largest known stand comprises 350 individuals (Lynn Dee Oyler, botanical consultant, pers. comm., 1991). Currently, the total number of individuals of *E. altissimum* is less than 600 (Bittman 1985, Lynn Oyler, *in litt.*, 1992).

Clarkia speciosa ssp. *immaculata* (Pismo clarkia), a member of the four o'clock family (Onagraceae), was first collected in Carpenter Canyon by Frank Harlan Lewis and Margaret Ensign Lewis in 1947. Lewis and Lewis (1955) published a monograph on the genus *Clarkia* that described the plant for the first time. The plant is an erect or decumbent herb, with branched stems up to 5 decimeters (dm) (20 in) long; the petals are white or cream-colored at the base, streaking into pinkish or reddish-lavender in the upper part and 1.5 to 2.5 cm (0.6 to 1.0 in) long. It is distinguished from the subspecies *speciosa* by its larger flowers and the pattern of petal color. In his flora of San Luis Obispo County, Hoover (1970) notes the geographical separation between *Clarkia speciosa* ssp. *immaculata* and the subspecies *speciosa*, with the latter occurring north

of San Luis Obispo from the Santa Lucia range to the Salinas River drainage.

Clarkia speciosa ssp. *immaculata* is found on pockets of dry sandy soils, possibly ancient sand dunes, within grassy openings in chaparral and oak woodlands. The five extant populations are located between San Luis Obispo and the Nipomo Mesa area and together support less than 4,000 individuals (Myers 1987; Oyler, *in litt.*, 1992). At least one historical population has been extirpated by residential development, and extant populations are threatened by continuing development, road maintenance activities, and possibly grazing.

Suaeda californica (California sea-blite) is a succulent-leaved perennial plant of the goosefoot family (Chenopodiaceae). It was first described by Sereno Watson in 1874 based on a collection made in the salt marshes of San Francisco Bay. Amos Heller published the name *Dondia californica* in 1898, recognizing the genus name used by Michel Adanson in 1763; however, the name *Suaeda* has been conserved by the International Rules of Nomenclature (Abrams 1944). Munz (1959) recognized several previously recognized taxa as subspecies of *S. californica*. With this treatment, he described the range of *S. californica* as extending from San Francisco Bay south to Lower (Baja) California. Ferren and Whitmore (1983) noted that much of what had been identified as *S. californica* in southern California and Baja California is a distinct taxon, which they named *Suaeda esteroa*. Although both species occur in the upper intertidal zone, *S. californica* is a shrub with radially symmetrical flowers belonging to the section *Limbogermen*, and *S. esteroa* is an herbaceous perennial with bilaterally symmetrical flowers belonging to the section *Heterosperma*. Further study revealed that the only extant populations of *Suaeda* that resemble the type specimen of *S. californica* are those that occur in the vicinity of Morro Bay. In his revision of the genus, Ferren (1993) recognized *S. californica* as a full species.

Suaeda californica occurs along the perimeter of Morro Bay, where it is restricted to the upper intertidal zone within coastal marsh habitat. The shrubs are discontinuously distributed in a narrow band around the Bay adjacent to other marsh plants including *Salicornia* sp. (pickleweed), *Distichlis spicata* (saltgrass), *Juncus acutus* (rush), *Jaumea carnosa* (Jaumea), and *Frankenia salina* (Frankenia) and the federally endangered *Cordylanthus maritimus* ssp. *maritimus* (salt marsh birds-beak). The distribution of *S. californica* around Morro Bay was recently mapped (Hillaker 1992). On the east side of the bay, colonies occur adjacent to the communities of Morro Bay, Baywood Park and Cuesta by-the-sea, though it apparently is absent from the more interior portion of the marshlands that are created by Chorro Creek runoff. On the west side of the bay, *S. californica* is found along most of the length of the spit excepting the northern flank adjacent to the mouth of the bay. Elkhorn Slough in Monterey Bay is the only other remaining location considered to be potential habitat for *S. californica* on the California coast (Dirk Walters, botanical consultant, pers. comm., 1991), but this area has not been recently surveyed.

Suaeda californica's colonial habit make it difficult to determine the total number of individuals comprising the species. One estimate places the number of individuals at no more than 500 (McLeod 1991b). Because the plant occupies such a narrow band in the intertidal zone, *S. californica* is threatened by any natural processes or human activities that alter the microtopographic gradient of this habitat. Such threats include: increased sedimentation of Morro Bay, the encroachment of sand on the east side of the spit, and dredging projects within the channel or the bay. The plant's restricted range and limited number of individuals threaten it with stochastic extinction.

The Morro shoulderband snail (*Helminthoglypta walkeriana*) is a member of the land snail family Helminthoglyptidae. The Morro shoulderband snail was first described as *Helix walkeriana* by Hemphill (1911) based on collections made "near Morro, California". He also described a subspecies of *Helix walkeriana*, *Helix* var. *morroensis*, from "near San Luis Obispo City" based on sculptural features of the shell (Roth 1985). Field (1930) transferred the taxon to the genus *Helminthoglypta*, and Roth (1985) considers *morroensis* to be an infrasubspecific form not warranting nomenclatural recognition.

The Morro shoulderband snail is most closely related to the surf shoulderband (*Helminthoglypta fieldi* Pilsbry, 1930), which occurs in coastal dune habitats south of the San Luis Range to Point Arguello and is, therefore, disjunct from the Morro shoulderband snail. Shell features used to separate the two species include papillation over most of the body whorl, a more domed spire, and half or more of the umbilicus being covered by the apertural lip in the Morro shoulderband snail (Roth 1985).

The Morro shoulderband snail occurs with another helminthoglyptid snail, the Big Sur shoulderband (*Helminthoglypta umbilicata* Pilsbry, 1897). The more globose shape and incised spiral grooves distinguish the Morro shoulderband snail from this species (Roth 1985). The brown garden snail (*Helix aspersa*) also occurs with the Morro shoulderband snail, but the former has a marbled pattern on its shell that distinguishes it from the Morro shoulderband snail, which has a single narrow band.

The Morro shoulderband snail is restricted to sandy soils of coastal dune and coastal sage scrub communities near Morro Bay. The species has also been reported from San Luis Obispo (type locality for "*morroensis*") and 4.8 km (3 mi) south of Cayucos (Roth 1973) no specimens have been collected from those localities since 1946 (Roth 1985) Surveys by Roth (1985) resulted in the discovery of only six live Morro shoulderband snails, while empty shells were much more numerous. While cautioning that not enough data were available to make a more accurate estimate, Roth (1985) speculated that as few as several hundred individuals then existed in the remaining population of Morro shoulderband snails. Roth (malacological consultant, pers. comm., 1993) conducted a limited search for the snail in April 1992 and found no living individuals. However, Roth believed that even though no live snails were found, the limited nature of the survey along with the drought of the previous 4 years would preclude him from concluding the species was extinct (Roth, pers. comm., 1993)

Previous Federal Action

Federal government actions on three of the five plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Arctostaphylos morroensis* as threatened and *Eriodictyon altissimum* and *Clarkia speciosa* ssp. *immaculata* as endangered. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein The above three

taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act; *Eriodictyon altissimum* was included in this document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The 1978 Amendments to the Endangered Species Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals that would otherwise expire within one year of the passage of the 1978 amendments. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Arctostaphylos morroensis, Clarkia speciosa* ssp. *immaculata* and *Eriodictyon altissimum* as category 1 species and *Cirsium fontinale* var. *obispoense* as a category 2 species. 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, while category 2 species are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *A. morroensis* and *E. altissimum* were included in both of these revisions as category 1 species; *Clarkia speciosa* ssp. *immaculata* and *Cirsium fontinale* var. *obispoense* were included as category 2 species. On February 21, 1990, (55 FR 6184) the plant notice was again revised, and *A. morroensis, Clarkia speciosa* ssp. *immaculata* and *E. altissimum* were all included as category 1 species, and *Cirsium fontinale* var. *obispoense* was included as a category 2 species.

Section 4(b)(3)(a) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982 be treated as having been newly submitted on that date. This was the case for *Arctostaphylos morroensis, Clarkia speciosa* ssp. *immaculata* and *Eriodictyon altissimum*, because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petitioned listing of *A. morroensis, Clarkia speciosa* ssp. *immaculata* and *E. altissimum* was warranted but precluded by other higher priority listing actions. Publication of the proposed rule in the **Federal Register** on December 23, 1991 (56 FR 66400), constituted the final finding for the petitioned actions.

The portions of this rule concerning *Suaeda californica* are largely based on scientific and commercial information on the species, unpublished reports by Wayne Ferren, unpublished reports from the CDFG (1991), and information gathered from several botanists, including Mr. Dirk Walters and Mr. Malcolm McLeod.

A reevaluation of the existing data on the status of *Cirsium fontinale* var. *obispoense* and threats to its continued existence provided sufficient information to support proposing this species for listing as endangered.

The Service entered into a contract with the Sierra Club Foundation, San Francisco, California, to investigate the status of California land snails. A final report dated August 25, 1975, contained data indicating that several of the snails studied were either threatened or endangered species candidates. On April 28, 1976, the Service proposed endangered or threatened status for 32 land snails in the **Federal Register** (41 FR 17742); this proposal included the Morro shoulderband snail (under the common name "banded dune snail") as endangered. The proposed rulemaking that included proposed endangered status for the Morro shoulderband snail was withdrawn December 10, 1979, (44 FR 70796) because of the 1978 amendments to the Act, which required the withdrawal of proposals over 2 years old.

The Service undertook a status review of the mollusc in 1984, which resulted in the report by Roth (1985). Based on that information, the Morro shoulderband snail appeared as a category 1 species in the Animal Notices of Review of May 22, 1984 (40 FR 675); January 6, 1989 (54 FR 554); and November 21, 1991 (56 FR 58820).

On December 23, 1991, the Service published a proposed rule in the **Federal Register** (56 FR 66400) to list the five plants and the Morro shoulderband snail as endangered. In that proposed rule and associated notifications, all interested parties were requested to submit factual reports or information relevant to a final decision on the listing proposal. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. No requests for a public hearing were received. To allow for additional comment, the comment period was reopened from June 8 to July 8, 1992. Notice of reopening of the comment period was published in the **Federal Register** on June 8, 1992, (57 FR 24221) and, along with a summary of the proposal, in the San Luis Obispo County Telegram Tribune on June 17, 1992.

Summary of Comments and Recommendations

During the comment periods, the Service received written and oral comments from 13 parties. The CDFG, the California Department of Parks and Recreation (CDPR), The Nature Conservancy, the Center for Plant Conservation, and the California Native Plant Society were among the eight commenters expressing support for the listing proposal. Four commenters were neutral; three of these provided additional information on potential project impacts, and one expressed concern over the implications of listing for private landowners. One commenter initially was neutral, but apparently shifted to opposing the listing proposal. Results of additional surveys for the plants (Oyler, *in litt.*, 1992; CDFG 1991; LSA Associates 1992) and additional biological information that was submitted to the Service since publication of the proposal have been incorporated into this final rule.

Opposing comments and other comments questioning the rule have been organized into specific issues. The California Fish and Game Commission (Commission) was considering the State listing of *Arctostaphylos morroensis* during the same period covered by the Service's comment period. The Service obtained several documents directed to the Commission that included comments opposing the State listing of *A. morroensis*. Because these comments are germane both to the State and the Federal listing of this species, they have been incorporated into the issues. The Service's response to each issue is summarized below:

Issue 1: One commenter stated that the population estimate of 2,000 individuals for *Arctostaphylos morroensis* that appeared in the

proposal was too low and that the population is more likely closer to 150,000 individuals. Furthermore, this large population size makes the likelihood of imminent extinction a low probability.

Service Response: The Service acknowledges that the number of individuals of *Arctostaphylos morroensis* is much higher than the estimate that was available when the proposal was prepared. The Service agrees that because this species is a long-lived perennial, combined with the higher population estimates, the probability of imminent extinction is low. However, mapping by Mullany (1990) and others (LSA Associates 1992) indicates that *A. morroensis* currently occupies less than 365 ha (900 ac) of habitat. Of this, two thirds is in private ownership with no legal protection and where a number of proposed projects will further destroy and fragment the habitat. The remaining third is in public ownership, comprised primarily of stands with low densities of manzanita that may represent only 20 percent or less of the total individuals. However, the restricted range and narrow habitat requirements of *A. morroensis*, coupled with continuing alteration, destruction, and fragmentation of habitat, make it vulnerable to becoming endangered in the near future and, thus, meet the definition of "threatened." The Service, therefore, has determined that threatened status is more appropriate than endangered status and has made this change in the final rule.

Issue 2: One commenter estimated current manzanita habitat losses to development to be 63 percent of the "low productivity" habitat, 25 percent of the "moderate productivity" habitat, and only 9 percent of the "high productivity" habitat. Therefore, development has had a disproportionately low impact on *Arctostaphylos morroensis* and does not represent a trend toward imminent extinction.

Service Response: Even though most of the development has occurred within habitat supporting low densities of *Arctostaphylos morroensis*, the biological importance of this habitat to the species should not be dismissed. Development has fragmented remaining *A. morroensis* habitat in the northern and central portions of its range, leaving small pockets or individual shrubs on vacant lots and in back yards. The viability of these fragments, and their contribution toward maintaining viability of the species as a whole, is unknown. Furthermore, the effects of development in habitat with higher densities of *A. morroensis* may have been understated by the commenter, because the "productivity" of the habitat was calculated based on the distribution of Baywood fine sands within each slope class, rather than the actual distribution of *A. morroensis* within each slope class. One development has been built within an area that previously supported high density *A. morroensis* habitat. Two developments planned within adjacent habitat support intermediate to high densities of *A. morroensis*. These two developments could affect up to 60 ha (150 ac) of manzanita habitat.

In addition to direct removal of habitat, development has had secondary effects on quality of adjacent remaining habitat, such as fragmentation, deterioration of habitat due to increased recreational activity, and the introduction of non-native species. Although the Service agrees that the extinction of *A. morroensis* is not imminent (see Service Response 1 above), past development appears to be a major cause of past habitat loss, and pending development proposals represent significant potential losses and degradation of additional habitat.

Issue 3: One commenter believes that current trends to protect *Arctostaphylos morroensis* make listing unnecessary. These trends include tougher local land use regulations, greater protection of the plants in Montana de Oro State Park, and the future public acquisition of more habitat such as open space and more parklands.

Service Response: Although local land use regulations may have been strengthened, their primary purpose is not to protect *Arctostaphylos morroensis* or other sensitive species. For instance, current restrictions on building on slopes over a certain grade may reduce the number of units that can be constructed on a parcel over what may have been allowed previously. Constructing fewer units per parcel, however, does not ensure the integrity of any *Arctostaphylos morroensis* habitat that may have been spared on steeper, unbuildable slopes. Protection of *A. morroensis* habitat within Montana de Oro State Park accounts for only one-third of the acreage of habitat and only 20 percent of the number of individuals. Efforts to acquire additional habitat are currently underway for 37 ha (90 ac) of *A. morroensis* habitat. These efforts, however, are still in progress, and even if habitat is acquired, do not ensure that management and protection of this habitat will be effective in maintaining the long-term viability of *A. morroensis* at this location. The Service therefore concludes that current trends to protect *A. morroensis* habitat do not preclude the need to list the species.

Issue 4: One commenter stated that *Eucalyptus* poses no imminent threat of extinction to *Arctostaphylos morroensis*, because the acreage of *A. morroensis* habitat currently occupied by *Eucalyptus* is low, the rate of *Eucalyptus* spread appears slow, and removal programs are underway.

Service Response: The only *Eucalyptus* removal program the Service is aware of is that being conducted by Montana de Oro State Park. This effort has focused on removing *Eucalyptus* seedlings from outside the bounds of the original groves and not specifically from *Arctostaphylos morroensis* habitat. While the Park's efforts are to be commended, the acreage of *A. morroensis* habitat enhanced by these efforts is small. However, *Eucalyptus* is recognized as only one of several, and certainly not the largest, threats to the continued existence of *A. morroensis*.

Issue 5: One commenter stated that brushing (mechanical clearing) is an effective technique for regenerating senescent stands of *Arctostaphylos morroensis*. Therefore, the inability to maintain natural fire cycles within urban neighborhoods adjacent to manzanita stands could not be perceived as a threat.

Service Response: Some evidence shows that mechanical clearing may serve to scarify *Arctostaphylos morroensis* seed, a process that would typically be provided by natural fire cycles in wildland chaparral communities. However, regeneration of *A. morroensis* on mechanically cleared parcels has not been shown to achieve full restoration of ecosystem processes present within an intact chaparral community. The role of fire within chaparral communities may serve other purposes, such as nutrient cycling, that cannot be duplicated by mechanical clearing. Further research may indicate that mechanical clearing may be a tool in managing fragmented manzanita habitat within urban neighborhoods where risk associated with controlled burns is considered unacceptable. The intent of the Endangered Species Act, however, is to protect species and the natural habitats upon which they depend. The opportunity to maintain selected sites with mechanical clearing does not reduce the need to maintain habitat using natural ecosystem processes, such as controlled burns.

Issue 6: One commenter was concerned that the listing of *Eriodictyon altissimum* would limit his rights as a private property owner.

Service Response: Listing of *E. altissimum*, as well as the other species

in this rule, under the Endangered Species Act will trigger the protective measures under section 9 of the Act, prohibiting the collection, destruction, or damaging of these species on any area if it is in violation of any State law (see the Available Conservation Measures section of this rule for a complete discussion). In addition, the Act requires that Federal agencies insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species, or destroy or adversely modify its critical habitat, if any is designated. Any activity on private land that requires Federal involvement (such as a section 404 permit under the Clean Water Act) and that may affect these species would have to be reviewed by the Service to ensure that the continued existence of the species would not be jeopardized. If the Service determines that an activity may jeopardize the continued existence of the species, the Service is required to provide reasonable and prudent alternatives to the applicant. These alternatives should accommodate the applicant, but avoid jeopardy to the species. In a non-jeopardy situation, the Service would provide recommendations, in the form of reasonable and prudent measures, which would allow the activity to proceed without jeopardizing the species existence.

Recovery planning for the species may include recommendations for land acquisition or easements involving private landowners. These efforts would be undertaken only with the cooperation of the landowner. In the majority of cases, presence of an endangered or threatened species does not preclude private landowners from utilizing their land in the manner originally intended.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Arctostaphylos morroensis* Wies. & Schreib. (Morro manzanita) be classified as threatened and *Cirsium fontinale* var. *obispoense* J. T. Howell (Chorro Creek bog thistle), *Clarkia speciosa* ssp. *immaculata* Lewis & Lewis (Pismo clarkia), *Eriodictyon altissimum* Wells (Indian Knob mountainbalm), *Suaeda californica* Wats. (California sea-blite), and the Morro shoulderband snail (*Helminthoglypta walkeriana*) should be classified as endangered species. Procedures found at Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Arctostaphylos morroensis* Wies. & Schreib. (Morro manzanita), *Cirsium fontinale* var. *obispoense* J. T. Howell (Chorro Creek bog thistle), *Clarkia speciosa* ssp. *immaculata* Lewis & Lewis (Pismo clarkia), *Eriodictyon altissimum* Wells (Indian Knob mountainbalm), *Suaeda californica* Wats. (California sea-blite), and the Morro shoulderband snail (*Helminthoglypta walkeriana*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Arctostaphylos morroensis is scattered within coastal maritime chaparral and oak woodland communities, ranging from the northeast side of Morro Bay to the south end of Montana de Oro State Park—a distance of less than 16 km (10 mi). The distribution of *A. morroensis* around Morro Bay has been tied to the distribution of Baywood fine sands (ancient wind-blown beach sands) that are also habitat for the endangered Morro Bay kangaroo rat (*Dipodomys heermannii* ssp. *morroensis*). Approximately a third of *A. morroensis* habitat is owned and managed by the CDPR (Montana de Oro State Park) but is still subject to alteration. Groves of non-native *Eucalyptus* trees that were planted in the early 1900's have encroached on nearby stands of *A. morroensis* (Holland *et al.* 1990). The CDPR initiated a stand containment project in 1989, which removed seedling trees that were established beyond the perimeter of the original groves. Current efforts are focused upon removal within the Hazard Canyon riparian corridor. If the containment project is not maintained, however, new expansion of the *Eucalyptus* into *A. morroensis* habitat can be anticipated. Recent installment of a trans-Pacific telephone cable resulted in the removal of approximately 300 plants in Hazard Canyon within the boundaries of the Park (CDPR, *in litt.*, 1992).

With the exception of two parcels owned by CDFG, the remaining habitat for *Arctostaphylos morroensis* is in private ownership on lands that surround the communities of Morro Bay, Baywood Park, and Los Osos. Expansion of these communities has extirpated some *A. morroensis* habitat, and much of what remains is slated for residential development (LSA Associates 1990; Keil 1990; Holland 1990; San Luis Obispo County 1991) and sewage treatment ponds (Morro Group 1989).

Eriodictyon altissimum, like *Arctostaphylos morroensis*, is scattered within coastal maritime chaparral and oak woodland communities, primarily near Morro Bay. Five of six extant stands occur within several or more square kilometers (few square miles) of each other, from the south side of the community of Los Osos to the north end of Montana de Oro State Park. Each of these stands comprises less than 50 plants. The sixth and largest stand, comprised of 350 individuals, is found 24 km (15 mi) to the southeast on Indian Knob, between San Luis Obispo and Arroyo Grande. Two of the Morro Bay stands are on lands owned and managed by Montana de Oro State Park and co-occur with *A. morroensis* in Hazard Canyon. Careful planning prior to the recent installation of a trans-Pacific telephone cable avoided potential impacts to individuals of the mountainbalm (CDPR, *in litt.*, 1992).

Other stands in the Morro Bay area occur on private land threatened by residential development. One stand occurs on a parcel used by the community of Los Osos to evaporate sewage sludge and is being closely monitored by local botanists (Bittman 1985). Surface mining of tar sands was proposed for the Indian Knob area several years ago (Vanderwier 1987). Although the proposal is not currently being pursued, economic incentive may exist to do so in the future. The parcel is currently grazed by livestock. As with other members of this genus, *Eriodictyon altissimum* is thought to be adapted to ecologic disturbance, specifically to periodic fire within the chaparral community. Field botanists have noted that most stands of *E. altissimum* are mature to senescent in age and that appropriate management may be needed to revitalize the stands (Bittman 1985).

Cirsium fontinale var. *obispoense* is restricted to open seep areas in serpentine soil outcrops. It probably has never been abundant due to its narrow habitat requirements. Most of *C. fontinale* var. *obispoense* is distributed between Morro Bay and San Luis Obispo. One of the two largest populations is found on Pennington Creek, a tributary of Chorro Creek, on lands managed as a biological reserve by California Polytechnic University, San Luis Obispo. Despite the University's objective to maintain the reserve in its natural state, illegal grazing from an adjacent cattle allotment has occurred (V.L. Holland, California Polytechnic University, San Luis Obispo, pers. comm., 1991). The type locality for

Cirsium fontinale var *obispoense* was surveyed for the plant in 1986; no plants were found, and the population is presumed to be extirpated (Friedman 1987). The other large population is found near Laguna Lake in the upper Los Osos Valley watershed, on lands partially owned by the City of San Luis Obispo. This population has been subjected to cattle grazing. Nearby urbanization has resulted in increased recreational use and an increase in alien plant species. In 1991, the city fenced off a small portion of the habitat to remove grazing pressures on *C. fontinale* var. *obispoense* (Tina Hall, The Nature Conservancy, pers. comm., 1991). Five other small populations occur within 8 km (5 mi) of Laguna Lake. Three of these are remote enough that few human-induced threats currently exist, but the other two are on lands that are slated for development (Friedman 1987; Morro Group 1988). One disjunct population occurs along San Simeon Creek, approximately 48 km (30 mi) northwest of the Pennington Creek population. This population occurs on private lands that are grazed. Developments proposed for adjacent parcels may remove water from the San Simeon Creek watershed (San Luis Obispo County 1991). Since *Cirsium fontinale* var. *obispoense* depends on moisture from seeps, it would be threatened by any proposal to divert water from the watershed above the seeps.

Clarkia speciosa ssp. *immaculata* is restricted to pockets of dry sandy soils within chaparral and oak woodlands south of San Luis Obispo, between the town of Edna and the Nipomo Mesa area. All five extant populations are located on private lands. The most recent surveys revealed that the two largest populations, each supporting about 2,000 individuals, were subject to cattle grazing and to road grading where the plant occurs along roadsides (CDFG 1991). A third small population from the type locality consists of less than 100 individuals and is subject to the effects of roadside traffic, road grading and herbicide spraying. A fourth population was reduced to about 100 individuals by residential development. A fifth population was discovered in 1992 in the Nipomo Mesa area during construction of a sedimentation basin. About 25 percent of the 800 individuals comprising the population were destroyed during pre-construction grading (Oyler, *in litt.*, 1992). Of four other historical locations, two were extirpated by residential development, and two were extirpated by undetermined causes, most likely mowing and other secondary impacts associated with urban development (Myers 1987).

Suaeda californica is discontinuously distributed around the narrow upper intertidal zone of Morro Bay where it is concentrated in three stands. One stand is located on tidal flats within Morro Bay State Park. A second stand, consisting of only six plants, is located within Sweet Springs Marsh. The third population is located within Montana de Oro State Park. All three stands are threatened by recreational activity on the tidal flats and erosion from changing hydrologic conditions in the intertidal zone. Sedimentation of the Bay from the Los Osos Creek and Chorro Creek watersheds has altered the abundance and distribution of marsh habitat on the east side of the bay. Dredging of the Bay may alter subsurface currents and affect shoreline stability. The CDPR is currently developing a proposal to dredge the marina at Morro Bay State Park; this activity will likely result in the removal of a dozen individual plants (U.S. Fish and Wildlife Service 1993). *S. californica* was collected from a fourth location just north of Morro Bay but has not been seen there since 1929 (Wayne Ferren, pers. comm. 1991). The type locality, on Alameda Island in San Francisco Bay, has long since been altered by urbanization as has much of coastal marsh habitat along the central California coast.

The following discussion of habitat and range of the Morro shoulderband snail is summarized from the report by Roth (1985). The Morro shoulderband snail formerly occupied primarily coastal dune scrub habitat along approximately 8 km (5 mi) of dunes extending into Morro spit, at Baywood Park, San Luis Obispo, sites between Morro Bay and Cayucos and probably along Morro Bay in the vicinity of Cuesta-by-the Sea. The snail and its habitat have been eliminated by residential and other development from Baywood Park, Cuesta-by-the-Sea, San Luis Obispo, and the sites between Cayucos and Morro Bay. Evidence of living Morro shoulderband snails in the past decade has been found only at a few sites within 3 km (2 mi) of one another in coastal dune scrub habitat. This habitat has been degraded by off-road vehicle activity and maturation of the dune vegetation.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for the five plants; but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this final rule. The Morro shoulderband snail's extremely limited range and numbers and its taxonomic distinctness make it highly vulnerable to recreational or scientific collectors.

C. Disease or Predation

In efforts to control alien species of thistle, the San Luis Obispo County Agriculture Department introduced the seed-head weevil (*Rhinocyllus conicus*) to several sites in San Luis Obispo County in the early 1980's. Initial reports from field botanists indicated that the seed-head weevils were foraging upon *Cirsium fontinale* var. *obispoense* However, more recent observations indicate that since the length of the flowering season of the thistle far exceeds the egg-laying period of the weevil, predation probably accounts for only a small reduction in seed availability (Charles Turner, Agricultural Research Services, U.S. Dept. Agriculture, pers. comm., 1991). No data exist on the effects of disease or predation on the other plant taxa.

Livestock grazing is believed to have caused the extirpation of *Cirsium fontinale* var. *obispoense* at the type locality on Chorro Creek (Rocco 1981). Half of the eight extant sites are on private lands that are grazed. *Clarkia speciosa* ssp. *immaculata* has been subject to livestock grazing at two of the four extant locations. Unlike *C. fontinale* var. *obispoense*, however, observations of field botanists indicate that *Clarkia speciosa* ssp. *immaculata* may be able to sustain a certain amount of grazing by livestock (T Dunn, The Nature Conservancy, *in litt.* 1987).

During his survey for Morro shoulderband snails, Hill (1974) noted that many of the empty large subadult shells contained vacant sarcophagid fly puparia, which suggested to Roth (1985) that "mortality from parasitoid infestation often occurs before *H. walkeriana* reaches breeding condition" (Roth 1985). Roth (1985) also documented one snail that had been recently killed by a rodent

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (chapter 1.5 section 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (chapter 1.5 section 2050 *et seq.*), the California Fish and Game Commission has listed *Clarkia speciosa* ssp. *immaculata*, *Eriodictyon altissimum*, and *Cirsium fontinale* var. *obispoense* as endangered. Though both statutes prohibit the "take"

of State-listed plants (chapter 1.5 section 1908 and section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the CDFG notifies a landowner that a State-listed plant grows on his or her property State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant." (chapter 1.5 section 1913).

In 1991, the California Fish and Game Commission (Commission) was petitioned to list *Arctostaphylos morroensis* as a threatened species. However, the Commission decided that ecosystem-based regional planning efforts could provide adequate safeguards for the survival of *A. morroensis*. In 1993, while recognizing that "substantial losses to Morro Bay manzanita habitat have occurred, and that the long-term survival of Morro Bay manzanita remains precarious," the Commission made a finding that listing was not warranted. In contribution to the regional planning efforts, the California Coastal Conservancy granted funding to the Land Conservancy of San Luis Obispo County to develop conservation strategies for the State and federally endangered Morro Bay kangaroo rat, as well as sensitive species, including *A. morroensis*, in the Morro Bay area. The strategies are to be developed in conjunction with the CDFG, the CDPR, local and county planning agencies, and local landowners (Land Conservancy of San Luis Obispo 1993). Efforts to date have been hampered by a conflict in goals of the participating entities. Legally binding conservation measures that would afford protection to *A. morroensis* have yet to be developed.

The Morro shoulderband snail is not specifically protected under State or local law. However, State park policy for Montana de Oro State Park calls for management programs to be prepared and implemented to perpetuate this and other taxa of special concern. Collection of this species is prohibited on State Park land except by permit. This protection applies only to individuals and does not prevent the effects of indirect human disturbance, such as recreational activities, from harming this species and its habitat.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The introduction and invasion by alien plants into coastal sage scrub and maritime chaparral communities has adversely affected native flora and fauna, including *Arctostaphylos morroensis* and the Morro shoulderband snail. Williams and Williams (1984) tracked changes in abundance and frequency of 16 taxa in a coastal dune scrub community over a 10-year period on the sand spit of Morro Bay. They observed that differences in successional patterns in wind, lee, and ridge habitats were correlated with wind conditions, stabilization of dunes over time, and seed dispersal strategies of certain taxa. At the same time, they noted that the alien *Mesembryanthemum chilense* (seafig) had increased in both wind and lee positions on the spit and suggested that over time, *M. chilense* would supplant native species throughout the dune system.

Another alien species, *Ehrharta calcina* (veldt grass), has spread to the Morro Bay region, probably from the area between Lompoc and the Nipomo Mesa, where it was planted to stabilize sandy soils (Smith 1976). *E. calcina* invades not only disturbed areas, such as vacant lots, road cuts, and utility corridors in the Morro Bay region, it is also becoming naturalized within native plant communities, including chaparral containing *Arctostaphylos morroensis* in Montana de Oro State Park (C. Rutherford, U.S. Fish and Wildlife Service, pers. obs., 1993). On one vacant lot, seedlings of *A. morroensis* appear to be competing favorably with *Ehrharta* (LSA Associates 1992). While *Ehrharta* more likely competes for resources with herbaceous species than with perennials such as *A. morroensis*, the long-term effects of this species on the dynamics of native communities are not understood.

Stands of *Arctostaphylos morroensis* within Montana de Oro State Park are being overtopped by spreading *Eucalyptus* plantations that were planted in the early 1900's. *A. morroensis* is not able to survive such encroachment, due to reduction in available soil moisture, increased shading, and the effects of growth-inhibiting terpenes that are released from the *Eucalyptus* (Holland *et al.* 1990). The General Plan for Montana de Oro State Park (CDPR 1988) calls for the removal of exotic species, including *Eucalyptus*, but a removal program has only been partially implemented.

As mentioned under Factor "A", *Cirsium fontinale* var. *obispoense* occurs in several areas grazed by livestock. Grazing and trampling by livestock, coupled with mesic to hydric conditions around seeps, favors growth of alien plants, once they have become established. Unlike alien thistle taxa, *C. fontinale* var. *obispoense* is probably not able to compete with other alien plants.

The Morro shoulderband snail may be experiencing competition from the brown garden snail (*Helix aspersa*). The brown garden snail, presumed to be an escapee from an adjacent golf course and housing development, has established feral populations on the spit of Morro Bay. Roth (1985) discussed several factors that may be the basis for such competition. While estivation sites and food preferences for the two snails differ, competition for shelter sites may limit the numbers of Morro shoulderband snails. The coastal dune scrub community within the survey area is mature to the point that lower limbs of the large older shrubs may be too far off the ground to offer good shelter. Roth (1985) found both snails occasionally using alien *M. chilense*, as well as pieces of particleboard for shelter sites, and suggested that more preferred shelter sites were unavailable. Increasing development surrounding the State Parks will increase threats from this and other exotic animals and plants that disperse from developed areas.

At least several Morro shoulderband snails have been killed as a result of controlled burning of coastal scrub that was carried out to improve habitat for the endangered Morro Bay kangaroo rat within Montana de Oro State Park. Park staff are aware of the presence of the snails, have conducted pre-burn searches for them, but have not detected any in the areas that have been burned since Roth's first reported fire-caused mortalities (Vince Cicero, Montana de Oro State Park, pers. comm. 1991). Drought and/or heat may have contributed to egg mortality in the Morro shoulderband snail (Roth 1985). Other snail taxa that occur within California's areas of Mediterranean climate copulate, oviposit, and undergo an active growth phase during the rainy season. Roth (1985) found intact but desiccated *Helminthoglypta* eggs "scattered in considerable numbers" within the survey area, though the species could not be determined. Roth (1985) suggested that this represented several years' accumulation of egg deposits whose viability may have been lowered by drought and/or heat conditions.

Several of the plants and the Morro shoulderband snail are also threatened with stochastic (i.e., random) extinction due to the small size and isolation of the remaining populations. 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 of these species. Depressed seed viability has recently been documented by Holland *et al.*

(1990) in some stands of *Arctostaphylos morroensis*. Annual plants, such as *Clarkia speciosa* ssp. *immaculata*, and short-lived perennial plants, such as *Cirsium fontinale* var. *obispoense*, are subject to wide fluctuations in population numbers from year to year. Such taxa may have difficulty in maintaining a viable population size after a series of poor seed production years. While *Suaeda californica* is a perennial plant, the low number of individuals and restricted range of the plant within the widely fluctuating hydrologic conditions in Morro Bay also subject it to stochastic extinction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to issue this final rule. These six taxa are vulnerable to one or more of the following threats: habitat destruction, residential development, road maintenance activities, competition from alien plants or the common garden snail, recreational activities, grazing, water diversions, dredging, and perhaps stochastic extinction. Based on the Service's evaluation of the status and threats facing these species, the preferred action is to list *Cirsium fontinale* var. *obispoense*, *Clarkia speciosa* ssp. *immaculata*, *Eriodictyon altissimum*, *Suaeda californica*, and the Morro shoulderband snail as endangered. Though population sizes for *Arctostaphylos morroensis* are larger than were known at the time of the proposal, the specific substrate requirements limit the amount of suitable habitat. Much of the historic habitat has already been destroyed, with over half of that remaining on private lands and lacking permanent protection or active management for the conservation of the species. The preferred action is to list *A. morroensis* as threatened. For the reasons discussed below, the Service is not proposing to designate critical habitat for these species at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is imperiled by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

In the case of *Arctostaphylos morroensis*, *Cirsium fontinale* var. *obispoense*, *Clarkia speciosa* ssp. *immaculata*, *Eriodictyon altissimum*, *Suaeda californica*, and the Morro shoulderband snail, the second criterion is met. Most populations of these species are found on state or private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 consultation process. Since section 7 would not apply to land-use activities occurring within critical habitat, its designation would not appreciably benefit the species. Protection of these species' habitats will be addressed through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm of the shoulderband snail and 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 or threatened 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)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 such a 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.

The U.S. Army Corps of Engineers (Corps) may become involved with *Arctostaphylos morroensis* through its permitting authority as described under section 404 of the Clean Water Act. By regulation, nationwide or individual permits cannot be issued where a federally listed endangered or threatened species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Act. The proposal to dredge the marina at Morro Bay State Park is likely to involve the Corps. The Corps will also be involved with the removal of unexploded ordnance at Montana de Oro State Park, which may potentially affect habitat for *A. morroensis*, *Eriodictyon altissimum*, and the Morro shoulderband snail. Construction of new sewage treatment facilities are being contemplated by the communities surrounding Morro Bay. If any Federal funding or permits are required during the expansion or construction of new treatment facilities, those Federal agencies would also be subject to the requirements of section 7 of the Act. The range of the Morro Bay kangaroo rat, a federally listed endangered species, overlaps that of *A. morroensis* and the Morro shoulderband snail. Should the Service issue any permits under section 10(a)(1)(A) or 10(a)(1)(B) of the Act for activities related to the recovery of the Morro Bay kangaroo rat, the Service would be required to do an internal section 7 consultation to assess what potential adverse effects the permitting action would have on other listed species and to identify measures to avoid or minimize such impacts.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and at 50 CFR 17.71 and 17.72 for threatened plants set forth a series of general prohibitions and exceptions that apply to all threatened or endangered plants. With respect to the four plant taxa being listed as endangered, all trade 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; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; or to remove and reduce to

possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, or 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

Arctostaphylos morroensis, herein being listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538 (a)(2)(E); 50 CFR 17.71). Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon, 97232–4181 (Telephone 503/231–2063, Facsimile 503/231–6243).

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Nearly all the presently known locations for these five plants are on private lands. Collection, damage or destruction of these species on public lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of State law or regulations, including State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9

Permits also may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17 22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and economic hardship under certain circumstances.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. With respect to the Morro shoulderband snail, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

As indicated above, it is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within a species' range. During the public comment period inquiries were made as to the effect listing would have on development and private landowner activities. The Service believes that, based on the best available information, the following action will not result in a violation of section 9 with respect to the Morro shoulderband snail: momentary moving of individual snails out of danger (e.g., road, path).

Activities that the Service believes could potentially result in the take of the Morro shoulderband snail, include, but are not limited to, unauthorized collecting or capture of the species, except as noted above to momentarily move an individual out of harm's way; introduction of exotic species (e.g., other species of snails); unauthorized destruction or alteration of the species' habitat (e.g., dredging, filling, channelization, discharge of fill material, operation of any vehicles); violations of discharge or withdrawal permits; pesticide applications in violation of label restrictions; or other illegal discharges or dumping of toxic chemicals, silt, or other pollutants into the habitat supporting the species.

Other unauthorized activities not identified in the above two paragraphs will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may have occurred with respect to this snail. The Service does not consider these lists to be exhaustive and provides them for the information of the public.

The Service anticipates that few trade permits would ever be sought or issued for any of the five plants or the Morro shoulderband snail.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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 is available upon request from the Ventura Field Office (See **ADDRESSES** above).

Authors

The primary authors of this final rule are Constance Rutherford (plants), Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (805/644–1766) and Steven M. Chambers (snail), Albuquerque Regional Office, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended, as set forth below:

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. Amend § 17.11(h) by adding the following, in alphabetical order under SNAILS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * *	* * *	*	*	*	*	*	
SNAILS							
* * *	* * *	*	*	*	*	*	
Snail, Morro shoulderband (=banded dune).	Helminthoglypta walkeriana	U.S.A. (CA)	NA	E	567	NA	NA
* * *	* * *	*	*	*	*	*	

3. Amend § 17.12(h) 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							
* * *	* * *	*	*	*	*	*	
Arctostaphylos morroensis.	Morro manzanita	U.S.A. (CA)	Ericaceae	T	567	NA	NA
* * *	* * *	*	*	*	*	*	
Cirsium fontinale var. *obispoense.*	Chorro Creek bog thistle.	U.S.A. (CA)	Asteraceae	E	567	NA	NA
* * *	* * *	*	*	*	*	*	
Clarkia speciosa ssp. *immaculata.*	Pismo clarkia	U.S.A. (CA)	Onagraceae	E	567	NA	NA
* * *	* * *	*	*	*	*	*	
Eriodictyon altissimum.	Indian Knob mountainbalm.	U.S.A. (CA)	Hydrophyllaceae ..	E	567	NA	NA
* * *	* * *	*	*	*	*	*	
Suaeda californica	California sea-blite ..	U.S.A. (CA)	Chenopodiaceae	E	567	NA	NA
* * *	* * *	*	*	*	*	*	

Dated: November 14, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–30860 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 59, No. 240
Thursday, December 15, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[FV94–985–5PR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1995–96 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1995–96 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by January 17, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204; telephone: (503) 326–2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 [7 CFR Part 985], regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah). This marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1995–96 marketing year, which begins on June 1, 1995. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the marketing order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) oil allotment base, and approximately 145 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000. A minority of producers and handlers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 75 percent of the annual U.S. production of spearmint oil

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the marketing order, the Committee recommended the salable quantities and allotment percentages for the 1995–96 marketing year at its October 5, 1994, meeting. The Committee recommended

the establishment of a salable quantity and allotment percentage for Scotch spearmint oil by a unanimous vote, and a seven to one vote, respectively. The member voting in opposition favored the establishment of a higher salable quantity that would have resulted in a higher allotment percentage. The Committee also recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil by a unanimous vote.

This proposed rule would establish a salable quantity of 908,531 pounds and an allotment percentage of 51 percent for Scotch spearmint oil, and a salable quantity of 906,449 pounds and an allotment percentage of 46 percent for Native spearmint oil. This rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1995–96 marketing year, which begins on June 1, 1995. Salable quantities and allotment percentages have been placed into effect each season since the marketing order's inception in 1980.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1995–96 marketing year is based upon the Committee's recommendation and the following data and estimates:

(1) Class 1 (Scotch) Spearmint Oil—

(A) Estimated carry-in on June 1, 1995—57,325 pounds. This number is derived by subtracting the estimated 1994–95 marketing year trade demand of 900,000 pounds from the revised 1994–95 marketing year total available supply of 957,325 pounds.

(B) Estimated trade demand (domestic and export) for the 1995–96 marketing year—950,000 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1993, handler estimates, Far West percentage of the North American market share, and information provided by producers and buyers.

(C) Salable quantity required from 1995–96 regulated producttion—892,675 pounds. This number is the difference between the estimated 1995–96 marketing year trade demand and the estimated carry-in on June 1, 1995.

(D) Total allotment base for the 1995–96 marketing year—1,781,433 pounds.

(E) Computed allotment percentage—50.1 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—51 percent.

(G) The Committee's recommended salable quantity—908,531 pounds.

(2) Class 3 (Native) Spearmint Oil—

(A) Estimated carry-in on June 1, 1995—156,733 pounds This number is derived by subtracting the estimated 1994–95 marketing year trade demand of 1,150,000 pounds from the revised 1994–95 marketing year total available supply of 1,306,733 pounds.

(B) Estimated trade demand (domestic and export) for the 1995–96 marketing year—1,050,000 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1993, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1995–96 regulated production—893,267 pounds. This number is the difference between the estimated 1995–96 marketing year trade demand and the estimated carry-in on June 1, 1995.

(D) Total allotment base for the 1995–96 marketing year—1,970,542 pounds

(E) Computed allotment percentage—45.3 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—46 percent.

(G) The Committee's recommended salable quantity—906,449 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended salable quantities of 908,531 pounds and 906,449 pounds, and allotment percentages of 51 percent and 46 percent for Scotch and Native spearmint oils, respectively, are based on anticipated 1995–96 marketing year supply and trade demand.

The recommended salable quantity and allotment percentage for Native spearmint oil reflects the Committee's expectation that demand during the 1995–96 marketing year will approximate the demand initially anticipated for the 1994–95 marketing year. On the other hand, the relatively higher recommended salable quantity and allotment percentage for Scotch spearmint oil for the 1995–96 marketing year demonstrates that the Committee is concerned with the increasing Scotch spearmint oil production both inside and outside the marketing order production area, and the industry's desire to maintain a significant share of the North American market.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantity Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1994–95 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from improved returns

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee Adoption of this proposed rule would also provide spearmint oil producers with information on the amount of oil which should be produced for next season.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.214 is added to read as follows:

[Note: This action, if adopted, will not appear in the Code of Federal Regulations.]

§ 985.214 Salable quantities and allotment percentages—1995–96 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1995, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 908,531 pounds and an allotment percentage of 51 percent.

(b) Class 3 (Native) oil—a salable quantity of 906,449 pounds and an allotment percentage of 46 percent.

Dated: December 9, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–30787 Filed 12–14–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

The Unified Agenda of Federal Regulations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory agenda: Correction.

SUMMARY: This document corrects an entry to the Unified Agenda of Federal Regulations appearing in the **Federal Register** on November 14, 1994 (59 FR 58598). This notice is necessary to correct the abstract and timetable sections to reflect the publication of this action as a final rule.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7163.

On page 58610, under NRC entry number 5197, Temporary Access to Safeguards Information (10 CFR part 73), in the first column, the "Abstract" and "Timetable" sections are corrected to read as follows:

Abstract: The final rule amends the Commission's regulations regarding requirements for criminal history checks of individuals granted access to safeguards information. The final rule is a minor procedural change that corrects a defect in the rule that limits the Commission's authority to waive certain requirements and allow temporary access to safeguards information pending completion of criminal history checks.

Timetable:

Action	Date	FR Cite
Final action	7/29/94	59 FR 38553
Final action effective.	8/29/94	

Dated at Rockville, Maryland, this 9th day of December 1994.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–30798 Filed 12–14–94; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–192–AD]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes. This proposal would require repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. This proposal is prompted by the discovery of fatigue cracks that emanated from the bolt holes inboard and outboard of rib 9 in the bottom booms of the front and rear wing spars. The actions specified by the proposed AD are intended to prevent reduced structural integrity of a wing spar as a result of fatigue cracks in the bolt holes.

DATES: Comments must be received by January 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–192–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–192–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–192–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 series airplanes. The DGAC advises that, during full-scale fatigue testing of Model A300 series airplanes, fatigue cracks were found that emanated from the bolt holes inboard and outboard of rib 9 in the bottom booms of the front and rear wing spars. The cracks were discovered at 58,650 simulated flight cycles. Additionally, the DGAC received six reports of cracks found in the bottom booms of the front and rear wing spars at the rib 9 joint on

an in-service Model A300–B2 series airplane. The cracks were discovered between 19,500 and 29,700 flight cycles. Model A300–600 series airplanes are similar in type design to Model A300 series airplanes and, therefore, are subject to the cracking that was discovered on Model A300 series airplanes.

Fatigue cracks in the lower boom of the front and rear wing spars, if not detected and corrected in a timely manner, could result in reduced structural integrity of a wing spar.

Airbus has issued Service Bulletin A300–57–6037, dated August 1, 1994, which describes procedures for repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 94–208–169(B), dated September 14, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated or operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

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 included in this notice to clarify this requirement.

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $23,100, or $660 per airplane, per inspection cycle.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Airbus Industrie: Docket 94–NM–192–AD

Applicability: Model A300–600 series airplanes on which Airbus Modification 10161 has not 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 (c) 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 structural integrity of a wing spar, accomplish the following:

(a) Perform an ultrasonic inspection to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Modification 8842 (reference Airbus Service Bulletin A300–57–6039) has not been installed: Prior to the accumulation of 17,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 9,000 landings.

(2) For airplanes on which Airbus Modification 8842 has been installed: Prior to the accumulation of 17,000 total landings after accomplishment of Airbus Modification 8842, or within 2,000 landings after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 9,000 landings.

(b) If any crack is found, prior to further flight, repair in accordance with Airbus

Service Bulletin A300–57–6037, dated August 1, 1994. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

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

Note 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

(d) 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.

Issued in Renton, Washington, on December 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–30802 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–177–AD]

Airworthiness Directives; Boeing Model 727 and Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 and Model 737 series airplanes. This proposal would require replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with an improved actuator. This proposal is prompted by reports indicating that, during ground acceptance tests on Model 737 series airplanes, the actuator clutch on the engine shutoff and crossfeed valves slipped at cold temperatures due to improper functioning. The actions specified by the proposed AD are intended to prevent improper functioning of these actuators, which could result in a fuel imbalance due to the inability of the flightcrew to transfer fuel through the crossfeed valve; improperly functioning actuators could also prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire.

DATES: Comments must be received by February 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Bray, Aerospace Engineer, Propulsion Branch, ANM–141S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–177–AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–177–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during ground acceptance tests on Model 737 series airplanes, the actuator clutch on the engine shutoff and crossfeed valves slipped at temperatures below -23 F. Subsequent testing, conducted by J. C. Carter Company (the manufacturer of the engine shutoff and crossfeed valves), revealed that the actuator clutch slipped at cold temperatures when the engine shutoff valve was commanded to either the "close" or "open" position. Such a condition prevents the operation of the engine shutoff and crossfeed valves. Improper functioning of these actuators, if not corrected, could result in a fuel imbalance due to the inability of the flightcrew to transfer fuel through the crossfeed valve, or could prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire.

The subject actuators are also installed on certain Model 727 series airplanes. Therefore, those Model 727 series airplanes are subject to the same unsafe condition identified on Model 737 series airplanes.

The FAA has reviewed and approved J. C. Carter Company Service Bulletin 61163–28–08, dated September 1, 1994, which describes procedures for replacement of the actuator, having part number (P/N) 40574–2 (Model EM487–3), with a new actuator, having P/N 40574–4 (Model EM487–4).

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with a new actuator. The actions would be required to be accomplished in accordance with the service bulletin described previously.

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. The FAA

points out that 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 included in this notice to clarify this requirement.

There are approximately 4,137 Model 727 and Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,190 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by J.C. Carter Company at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $394,200, or $180 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Boeing: Docket 94–NM–177–AD.

Applicability: Model 727 and Model 737 series airplanes, as listed in J. C. Carter Company Service Bulletin 61163–28–08, dated September 1, 1994, 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 improper functioning of certain actuators, which could result in a fuel imbalance due to the inability of the flightcrew to transfer fuel through the crossfeed valve, or which could prevent the pilot from shutting off the fuel to the engine following an engine failure and/or fire, accomplish the following:

(a) Within 24 months after the effective date of this AD, replace the actuator, having part number (P/N) 40574–2 (Model EM487–3), on the fuel system crossfeed valve and the engine shutoff valves with a new actuator, having P/N 40574–4 (Model EM487–4), in accordance with the Accomplishment Instructions of J. C. Carter Company Service Bulletin 61163–28–08, dated September 1, 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(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.

Issued in Renton, Washington, on December 9, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 94–30805 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–190–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require replacement of the existing pressure relief valve in the potable water system with a non-adjustable, single setting valve. This proposal is prompted by reports of potable water tanks that ruptured and resulted in damage to the passenger compartment. The actions specified by the proposed AD are intended to prevent injury to the crew and passengers and damage to the passenger compartment, due to an explosive failure of the potable water tank.

DATES: Comments must be received by February 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–190–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2788; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

– Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–190–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–190–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of potable water tanks on Boeing Model 747 series airplanes rupturing and causing damage to the passenger compartment. In one of these cases, the upper polar cap of the potable water tank separated and was projected from the main body of the tank. This projectile penetrated the cabin floor and hit the main deck ceiling panel. This incident took place during ground maintenance operations, and no personnel were injured. In another case, the tank dome separated, causing significant damage to the floor directly above the tank. Investigation showed that the relief valve was improperly adjusted and not capable of relieving pressure. The existing pressure relief valve has a no lock lift pressure adjustment feature and can easily be put out of adjustment. This condition, if not corrected, could result in injury to the crew and passengers and damage to the passenger compartment, due to an explosive failure of the potable water tank.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–38A2105, dated October 27, 1994, which describes procedures for replacing the existing pressure relief valve in the potable water tank with a non-adjustable, single setting valve. Installation of the new pressure relief valve would eliminate the possibility of explosive damage to the potable water tank due to over pressurization as a result of improper relief valve adjustment.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacing the existing pressure relief valve of the potable water tank with a single setting, non-adjustable pressure relief valve. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

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. The FAA points out that 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 included in this notice to clarify this requirement.

There are approximately 983 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 205 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $120 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $73,800, or $360 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Boeing: Docket 94–NM–190–AD

Applicability: Model 747 series airplanes, line positions 1 through 1013, inclusive, 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 explosive failure of the potable water tank, which could cause damage to the passenger compartment and result in injury to the crew and passenger, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the existing pressure relief valve in the potable water system with a non-adjustable, single setting valve, in accordance with Boeing Alert Service Bulletin 747–38A2105, dated October 27, 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(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.

Issued in Renton, Washington, on December 9, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–30803 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–165–AD]

Airworthiness Directives; British Aerospace Model BAC 1–11–200 and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of proposed rulemaking (NPRM)

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11–200 and –400 series airplanes. This proposal would require inspections of the bearings of the aileron control system, and correction of discrepancies. This proposal is prompted by a report indicating that an operator experienced difficulties wherein considerable pressure was required to manually input roll control due to seized bearings in the aileron control system. The actions specified by the proposed AD are intended to prevent such seizure of bearings, which could reduce the pilot's ability to initiate roll control during critical phases of flight.

DATES: Comments must be received by January 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Airbus Limited, P.O Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–165–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAC 1–11–200 and –400 series airplanes. The CAA advises it has received a report indicating that an operator experienced handling difficulties wherein considerable pressure was required to manually input roll control. Investigation revealed that these handling difficulties were caused by seized bearings in the starboard servo tab input and trim tab input control rods of the aileron control system. Further investigation revealed that the bearing seals had deteriorated. Such deterioration allowed the pre-packed bearing lubricant to escape and moisture to enter, which caused heavy corrosion and subsequent seizure of the rod end bearings. This condition, if not corrected, could reduce the pilot's ability to initiate roll control during critical phases of flight.

British Aerospace has issued Alert Service Bulletin 27–A–PM6023, Issue No. 2, dated November 23, 1992, which

describes procedures for repetitive detailed visual and physcial inspections of the bearings of the aileron control system, and correction of discrepancies. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual and physical inspections of the bearings of the aileron control system, and correction of discrepancies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

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. The FAA points out that 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 included in this notice to clarify this requirement.

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane, per inspection to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,860, or $60 per airplane per inspection.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 94–NM–165–AD.

Applicability: All Model BAC 1–11–200 and –400 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 ensure the pilot's ability to initiate roll control during critical phases of the flight, accomplish the following:

(a) Within 5 years from the date of installation of the aileron control bearings or within 6 months after the effective date of this AD, whichever occurs later, perform a detailed visual and physical inspection to detect missing or damaged sealing rings, corrosion, or restricted movement of the bearings of the aileron control system, in accordance with the Accomplishment Instructions of British Aerospace Alert Service Bulletin 27–A–PM6023, Issue No. 2, dated November 23, 1992

(1) If no discrepancies are found, repeat the inspection requirements thereafter at intervals not to exceed 14 months.

(2) If any discrepancy is found, prior to further flight, replace the bearing with a new bearing in accordance with the service bulletin. Repeat the inspection required by this paragraph within 5 years after replacement of the bearings, and thereafter at intervals not to exceed 14 months.

(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.

Issued in Renton, Washington, on December 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-30804 Filed 12-14-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-41-86]

RIN 1545-AI52

Exempt Organizations Not Required To File Annual Returns: Integrated Auxiliaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations that exempt certain tax-exempt organizations from filing information returns. The proposed amendments affect integrated auxiliaries of churches. These proposed amendments incorporate the rules of Rev. Proc. 86-23, 1986-1 C.B. 564, into the regulations defining "integrated auxiliary" for purposes of determining what entities must file information returns. The new definition focuses on the sources of an organization's financial support in addition to the nature of the organization's activities.

DATES: Written comments and requests for a public hearing must be received by March 15, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE-41-86), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, 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-41-86), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Terri Harris or Paul Accettura, 202-622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6033(a)(1) of the Internal Revenue Code of 1986 requires organizations that are exempt from income tax under section 501(a) to file annual returns. Section 6033(a)(2)(A) provides exceptions to this requirement for certain specified types of organizations, including, among others, churches, their integrated auxiliaries, and conventions or associations of churches. Section 6033(a)(2)(B) provides that the Secretary may relieve any other organization from the filing requirement where the Secretary determines that filing is not necessary to the efficient administration of the internal revenue laws.

Section 1.6033-2(g)(5)(i) currently defines the term "integrated auxiliary of a church" as an organization that is: (1) exempt from taxation as an organization described in section 501(c)(3); (2) affiliated with a church (within the meaning of § 1.6033-2(g)(5)(iii)); and (3) engaged in a principal activity that is "exclusively religious." Section 1.6033-2(g)(5)(ii) provides that an organization's principal activity is not "exclusively religious" if that activity is educational, literary, charitable, or of another nature (other than religious) that would serve as a basis for exemption under section 501(c)(3).

The "exclusively religious" standard was litigated in *Lutheran Social Service of Minnesota* v. *United States*, 583 F. Supp. 1298 (D. Minn. 1984), *rev'd* 758 F.2d 1283 (8th Cir. 1985), and *Tennessee Baptist Children's Homes, Inc.* v. *United States*, 604 F. Supp. 210 (M.D. Tenn. 1984) *aff'd*, 790 F.2d 534 (6th Cir. 1986). While the litigation over the "exclusively religious" standard was proceeding, Congress enacted section 3121(w) of the Internal Revenue Code, Tax Reform Act of 1984, Pub. L. 98-369, section 2603(b), 98 Stat. 494, 1128 (1984), which sets forth a financial support requirement for certain church-related organizations that wish to elect out of social security coverage. In light of this litigation and the enactment of section 3121(w), IRS personnel met with representatives of various church organizations to encourage voluntary compliance with the filing requirements and to develop a less controversial and more objective standard for the term "integrated auxiliary of a church."

Subsequent to these meetings the IRS published Rev. Proc. 86-23 (1986-1 C.B. 564), which provides that, for tax years beginning after December 31, 1975, an organization is not required to file Form 990 if it is: (1) described in sections 501(c)(3) and 509(a)(1), (2), or (3); (2) affiliated with a church or a convention or association of churches; and (3) internally supported. Rev. Proc. 86-23 sets forth a financial support requirement that is similar to, but more favorable than, the financial support requirement in section 3121(w).

The proposed regulations adopt the rules of Rev. Proc. 86-23 as the definition of "integrated auxiliary of a church" replacing the current definition set forth in § 1.6033-2(g)(5). Thus, any organization that is exempted from filing a Form 990 by reason of Rev. Proc 86-23 would be an integrated auxiliary of a church within the meaning of the proposed regulations.

The proposed regulations provide examples that apply the operative rules to typical organizations. The examples are provided merely to illustrate the rules, and not to narrow their scope. The examples reflect the manner in which the IRS has applied Rev. Proc. 86-23. The IRS requests comments on the consistency of the examples with the operative rules and the application of Rev. Proc. 86-23.

Additionally, section 508(c) excepts integrated auxiliaries of a church from the requirement that new organizations notify the Secretary that they are applying for recognition of section 501(c)(3) status (Form 1023). For consistency, § 1.508-1(a)(3)(i)(*a*), which gives several examples of integrated auxiliaries, is proposed to be amended by deleting the examples and by cross-referencing to § 1.6033-2(h) for the definition of "integrated auxiliaries of a church."

Explanation of Provisions

An "integrated auxiliary of a church" is not required to file an annual information return (Form 990). The proposed amendment to the regulations defining an "integrated auxiliary of a church" focuses on the sources of financial support of the organization in addition to the nature of the organization's activity. The "exclusively religious" activity requirement contained in current § 1.6033-2(g)(5) would be removed.

Under the proposed amendments, an organization must first be described in section 501(c)(3) and section 509(a)(1), (2), or (3), and meet the standard of affiliation with a church. An organization meeting those tests is an integrated auxiliary if it either: (1) offers admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public *and* not more than 50 percent of its support comes from a combination of government sources, public solicitation of contributions, and receipts other than those from an unrelated trade or business; *or* (2) does not offer admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public.

Therefore, under the proposed amendments, a church affiliated organization that does not offer admissions, goods, services, or facilities

for sale to the general public is an "integrated auxiliary of a church" and is not required to file an annual information return. A church affiliated organization that does offer admissions, goods, services, or facilities for sale to the general public is an "integrated auxiliary of a church" only if 50 percent or less of its support comes from a combination of government sources, public solicitation of contributions and receipts from its sales (except for receipts from an unrelated trade or business).

The IRS developed the support calculations contained in the proposed amendments based on its conclusion that Congress intended that organizations receiving a majority of their support from public and government sources, as opposed to those receiving a majority of their support from church sources, should file annual information returns in order that the public have a means of inspecting the returns of these organizations. The annual information return also was intended to serve as a means by which the IRS could examine, if necessary, those organizations receiving substantial non-church support.

The removal of § 1.6033–2(g)(5) is proposed to be effective with respect to returns filed for taxable years beginning after publication of the final regulations. The remainder of the amendments are proposed to be effective with respect to returns for taxable years beginning after December 31, 1969. Therefore, for returns filed for taxable years beginning after publication of the final regulations, the financial support test contained in proposed § 1.6033–2(h) will be the sole test used in determining whether an entity is an integrated auxiliary of a church. However, for returns filed for taxable years beginning after December 31, 1969, but before publication of the final regulations, the exclusively religious test contained in § 1.6033–2(g)(5) may, at the entity's option, be used as an alternative to the proposed financial support test in determining whether an entity is an integrated auxiliary of a church.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in EO 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, Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any 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 Terri Harris, Office of the Assistant 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

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.508–1 is amended by revising paragraphs (a)(3)(i) introductory text and (a)(3)(i)(*a*) to read as follows:

§ 1.508–1 Notices.

(a) * * *

(3) * * * (i) Paragraphs (a)(1) and (2) of this section are inapplicable to the following organizations:

(*a*) Churches, interchurch organizations of local units of a church, conventions or associations of churches, or integrated auxiliaries of a church. See § 1.6033–2(h) regarding the definition of integrated auxiliary of a church;

* * * * *

Par. 3. Section 1.6033–2 is amended as follows:

1. Paragraphs (g)(1)(i) and (vii) are revised.

2. Paragraph (g)(5) is removed and reserved.

3. Paragraphs (h) through (j) are redesignated as paragraphs (i) through (k).

4. New paragraph (h) is added.

5. The added and revised provisions read as follows:

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1980).

* * * * *

(g) * * * (1) * * *

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in paragraph (h) of this section);

* * * * *

(vii) An educational organization (below college level) that is described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the meaning of paragraph (h)(2) of this section) with a church or operated by a religious order.

* * * * *

(h) *Integrated auxiliary*—(1) *In general.* For purposes of this title, the term *integrated auxiliary of a church* means an organization that is—

(i) Described both in section 501(c)(3) and in section 509(a)(1), (2), or (3);

(ii) Affiliated with a church or a convention or association of churches; and

(iii) Internally supported.

(2) *Affiliation.* An organization is affiliated with a church or a convention or association of churches, for purposes of paragraph (h)(1)(ii) of this section, if—

(i) The organization is covered by a group exemption letter issued under applicable administrative procedures, ((such as Rev. Proc. 80–27, 1980–1 C.B. 677) (See § 601.601(a)(2)(ii)(*b*))), to a church or a convention or association of churches;

(ii) The organization is operated, supervised, or controlled by or in connection with (as defined in § 1.509(a)-4) a church or a convention or association of churches; or

(iii) Relevant facts and circumstances show that it is so affiliated.

(3) *Facts and circumstances.* For purposes of paragraph (h)(2)(iii) of this section, relevant facts and circumstances that indicate an organization is affiliated with a church or a convention or association of churches include the following factors. However, the absence of one or more of the following factors does not

necessarily preclude classification of an organization as being affiliated with a church or a convention or association of churches—

(i) The organization's enabling instrument (corporate charter, trust instrument, articles of association, constitution or similar document) or by-laws affirm that the organization shares common religious doctrines, principles, disciplines, or practices with a church or a convention or association of churches;

(ii) A church or a convention or association of churches has the authority to appoint or remove, or to control the appointment or removal of, at least one of the organization's officers or directors;

(iii) The corporate name of the organization indicates an institutional relationship with a church or a convention or association of churches;

(iv) The organization reports at least annually on its financial and general operations to a church or a convention or association of churches;

(v) An institutional relationship between the organization and a church or a convention or association of churches is affirmed by the church, or convention or association of churches, or a designee thereof; and

(vi) In the event of dissolution, the organization's assets are required to be distributed to a church or a convention or association of churches, or to an affiliate thereof within the meaning of this paragraph (h).

(4) *Internal support.* An organization is internally supported, for purposes of paragraph (h)(1)(iii) of this section, unless it both—

(i) Offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or substantially less than cost); and

(ii) Normally receives more than 50 percent of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

(5) *Effective date.* This paragraph (h) applies for returns filed for taxable years beginning after December 31, 1969. For returns filed for taxable years beginning after December 31, 1969 but beginning before the date these regulations are published as final regulations, the definition for the term *integrated auxiliary of a church* set forth in § 1.6033–2(g)(5) (as contained in the 26 CFR edition revised as of April 1, 1994) may be used as an alternative definition to such term set forth in this paragraph (h).

(6) *Examples of internal support.* The internal support test of this paragraph (h) is illustrated by the following examples, in each of which it is assumed that the organization's provision of goods and services does not constitute an unrelated trade or business:

Example 1. Organization A is described in sections 501(c)(3) and 509(a)(2) and is affiliated (within the meaning of this paragraph (h)) with a church. Organization A publishes a weekly newspaper as its only activity. On an incidental basis, some copies of Organization A's publication are sold to nonmembers of the church with which it is affiliated. Organization A advertises for subscriptions at places of worship of the church. Organization A is internally supported, regardless of its sources of financial support, because it does not offer admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public. Organization A is an integrated auxiliary.

Example 2. Organization B is a retirement home described in sections 501(c)(3) and 509(a)(2). Organization B is affiliated (within the meaning of this paragraph (h)) with a church. Admission to Organization B is open to all members of the community for a fee. Organization B advertises in publications of general distribution appealing to the elderly and maintains its name on non-denominational listings of available retirement homes. Therefore, Organization B offers its services for sale to the general public on more than an incidental basis. Organization B receives a cash contribution of $50,000 annually from the church. Fees received by Organization B from its residents total $100,000 annually. Organization B does not receive any government support or contributions from the general public. Total support is $150,000 ($100,000 + $50,000), and $100,000 of that total is from receipts from the performance of services (66–2/3% of total support). Therefore, Organization B receives more than 50 percent of its support from receipts from the performance of services. Organization B is not internally supported and is not an integrated auxiliary.

Example 3. Organization C is a hospital that is described in sections 501(c)(3) and 509(a)(1). Organization C is affiliated (within the meaning of this paragraph (h)) with a church. Organization C is open to all persons in need of hospital care in the community, although most of Organization C's patients are members of the same denomination as the church with which Organization C is affiliated. Organization C maintains its name on hospital listings used by the general public, and participating doctors are allowed to admit all patients. Therefore, Organization C offers its services for sale to the general public on more than an incidental basis. Organization C annually receives $250,000 in support from the church, $1,000,000 in payments from patients and third party payors (including Medicare, Medicaid and other insurers) for patient care, $100,000 in contributions from the public, $100,000 in grants from the federal government (other than Medicare and Medicaid payments) and $50,000 in investment income. Total support is $1,500,000 ($250,000 + $1,000,000 + $100,000 + $100,000 + $50,000), and $1,200,000 ($1,000,000 + $100,000 + $100,000) of that total is support from receipts from the performance of services, government sources, and public contributions (80% of total support). Therefore, Organization C receives more than 50 percent of its support from receipts from the performance of services, government sources, and public contributions. Organization C is not internally supported and is not an integrated auxiliary.

Example 4. Organization D is a seminary for training ministers of a church and is described in sections 501(c)(3) and 509(a)(1). Organization D is affiliated (within the meaning of this paragraph (h)) with a church. Organization D is open only to members of the denomination of the church with which it is affiliated. Organization D annually receives $100,000 in support from the church with which it is affiliated and $300,000 in tuition payments from students. Therefore, Organization D is internally supported (even though more than 50 percent of its total support comes from receipts from the performance of services) because it does not offer admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public. Organization D is an integrated auxiliary.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–30587 Filed 12–14–94, 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[IA–57–94]

RIN 1545–AT06

Cash Reporting by Court Clerks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the information reporting requirements of court clerks upon receipt of more than $10,000 in cash as bail for any individual charged with a specified criminal offense. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 13, 1995. Outlines of oral comments to be presented at the public hearing scheduled for Monday,

March 13, 1995, must be received by Monday, February 20, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA–57–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (IA–57–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. The public hearing will be held in the IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Susie K. Bird at (202) 622–4960 of the Office of Assistant Chief Counsel (Income Tax and Accounting); concerning submissions and the hearing, Carol Savage of the Regulations Unit, (202) 622–8452 (not toll-free numbers).

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 in this regulation is in § 1.6050I–2T. This information is required by the IRS to implement section 20415 of the Violent Crime Control and Law Enforcement Act of 1994. The information will be used to identify taxpayers with large cash incomes. The respondents are governmental institutions.

The collection of information in § 1.6050I–2T is satisfied by including the required information on a Form 8300 filed with the IRS and on written statements furnished to the United States Attorney for the jurisdiction in which the individual charged with the specified criminal offense resides and the jurisdiction in which the specified criminal offense occurred, and to each person posting bail whose name is required to be reported to the IRS. The burden for these requirements is reflected in the burden estimates for Form 8300.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend 26 CFR parts 1 and 602 relating to section 6050I. The temporary regulations contain rules relating to the cash reporting requirements of court clerks with respect to the receipt of bail.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 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 proposed rules, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Monday, March 13, 1995 at 10 a.m. in the IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by February 13, 1995 and want to present oral comments at the hearing must submit, by Monday, February 20, 1995, an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies). A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the temporary regulations is Susie K. Bird of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6050I–2 also issued under 26 U.S.C. 6050I. * * *

Par. 2. Sections 1.6050I–0 and 1.6050I–2 are added to read as follows:

§ 1.6050I–0 Table of contents.

[The text of this proposed section is the same as the text of § 1.6050I–0T published elsewhere in this issue of the **Federal Register**.]

§ 1.6050I–2 Returns relating to cash in excess of $10,000 received as bail by court clerks.

[The text of this proposed section is the same as the text of § 1.6050I–2T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–30773 Filed 12–12–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program and Abandoned Mine Land Plan

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Utah regulatory program and abandoned mine plan (hereinafter, the "Utah program" and "Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for Utah's proposed rules and statutes pertain to the applicability of Utah Mined Land Reclamation Act to Utah's coal program; administrative procedures; appeals to district court and further review; formal hearings; and cessation orders, abatement notices, and show cause orders. The amendment is intended to revise Utah's program and plan to be consistent with SMCRA and the Utah Administrative Procedures Act, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., December 30, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program and Utah plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102;

Utah Coal Regulatory and Abandoned Mine Reclamation Programs, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, and June 3, 1983, the Secretary of the Interior conditionally approved the Utah program and approved the Utah plan. General background information on the Utah program and Utah plan, including the Secretary's findings, the disposition of comments, the conditions of approval of the Utah program, and approval of the Utah plan, can be found in the January 21, 1981, and June 3, 1983, publications of the **Federal Register** (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30. Subsequent actions concerning Utah's plan amendments can be found at 30 CFR 944.25.

II. Proposed Amendment

By letter dated April 14, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–917). Utah submitted the proposed amendment in part to make its program and plan consistent with SMCRA and in part at its own initiative to make its program and plan consistent with the Utah Administrative Procedures Act, thereby improving operational efficiency.

The program provisions of the Utah Coal Reclamation Act of 1979 that Utah proposed to revise were: Utah Code Annotated (UCA) 40–10–2, purpose of Chapter 10; (2) UCA 40–10–3, definitions of new terms "adjudicative proceeding," "lands eligible for remining," and "unanticipated event or condition;" (3) UCA 40–10–6.5, rulemaking authority and procedure; (4) UCA 40–10–6.7, administrative procedures; (5) UCA 40–10–7, prohibition of financial interest in any coal mining operation; (6) UCA 40–10–8, coal exploration rules issued by the Division of Oil, Gas and Mining (Division) and penalty for violation; (7) UCA 40–10–10, permit applications; (8) UCA 40–10–11, Division action on the permit application; (9) UCA 40–10–12, revision or modification of permit provisions; (10) UCA 40–10–13, informal conferences; (11) UCA 40–10–14, permit approval or disapproval, appeals, and further review; (12) UCA 40–10–15, performance bonds; (13) UCA 40–10–16, release of performance bond, surety, or deposit; (14) UCA 40–10–17, revegetation standards on lands eligible for remining; (15) UCA 40–10–18, operator requirements for underground coal mining; (16) UCA 40–10–19, information provided by the permittee to the Division and right of entry; (17) UCA 40–10–20, contest of violation or amount of penalty; (18) UCA 40–10–21, civil action to compel compliance with Utah's program and other rights not affected; (19) UCA 40–10–22, violations of Utah's program or permit conditions; (20) UCA 40–10–24, determination of unsuitability of lands for surface coal mining; and (21) UCA 40–10–30, judicial review of rules or orders. Utah also proposed to repeal UCA 40–10–4, "Mined land reclamation provisions applied," and UCA 40–10–31, "Chapter's procedures supersede Title 63, Chapter 46B," and add the requirement that UCA 40–10–11(5), modification of permit issuance prohibition, and UCA 40–10–17(2)(t)(ii), revegetation standards on lands eligible for remining, are repealed effective September 30, 2004.

The plan provisions of the Utah Coal Mining and Reclamation Act that Utah proposed to revise were: (1) UCA 40–10–25, lands and water eligible for reclamation; (2) UCA 40–10–27, entry upon land adversely affected by past coal mining practices, State acquisition of land and public sale, and water pollution control and treatment plants; and (3) UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land.

OSM announced receipt of the proposed amendment in the May 12, 1994, **Federal Register** (59 FR 24675), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–926). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 13, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of the Utah Coal Reclamation Act of 1979 at UCA 40–10–3(1), definition of "adjudicative proceeding;" UCA 40–10–4, applicability of provisions of UCA 40–8; UCA 40–10–6.7 and Utah Administrative Rule (Utah Admin. R.) 641–100–100, administrative procedures; UCA 40–10–11(3) schedule of applicant's mining law violations; UCA 40–10–11(5), remining operation violations resulting from unanticipated events or conditions; UCA 40–1013(2)(b), location of informal conferences; UCA 40–1014(6)(c), appeal to district court and further review; UCA 40–10–16(e), informal conference or formal hearings concerning performance bond release decisions; UCA 40–10–18(4), damage resulting from underground coal mining subsidence; UCA 40–10–20(2)(e), contest of a violation or amount of a civil penalty; UCA 40–10–22(2)(b), cessation order, abatement notice or show cause order; UCA 40–10–22(3)(e), costs assessed against the permittee or any person having an interest that is or may be adversely affected by the notice or order of the Board of Oil, Gas and Mining (Board); and UCA 40–10–28(1)(b) and (2)(b), recovery of reclamation costs and liens against reclaimed land. OSM notified Utah of the concerns by letter dated October 24, 1994 (administrative record No. UT–

980). Utah responded in a letter dated December 7, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. UT–997).

Utah proposes additional explanatory information for (1) UCA 40–10–4, for the purpose of explaining its intention in repealing UCA 40–10–4, which allowed the Utah Mined Land Reclamation Act and its implementing rules at Utah Admin. R. Part 647 to be applied to the Utah's coal mining program, (2) UCA 40–10–16(6), for the purpose of affirming that the provisions of Utah Admin. R. Part 641, Rules of Practice and Procedure of the Board, apply to hearings held for the purposes of bond release and to verify that when an informal hearing is converted to a formal hearing, the requirements of a formal proceeding apply, and (3) UCA 40–10–22(2)(b), for the purpose of explaining that this provision allows for the Utah Supreme Court to be the authority for modifying or setting aside a Board order or decision, and that, to the extent that any judicial body can reconsider its own order or decision, the district court can perform a review and act in a manner consistent with the Federal counterpart provisions for granting a stay of enforcement or other relief. Utah also proposes revisions to (1) Utah Admin. R. 641–100–100, to provide that "[t]he rules for informal adjudicative proceedings are in "the Coal Program Rules," the Oil and Gas Conservation Rules and the Mineral Rules and (2) UCA 40–10–14(6), to provide that any applicant or person with an interest which is or may be adversely affected who has participated in the proceedings as an objector, and who is aggrieved by the decision of the Board, "may appeal the decision of the Board directly to the Utah Supreme Court;" to allow in those instances where the Board fails to act that "the applicant or any person with an interest which is or may be adversely affected, who has requested a hearing in accordance with Subsection (3), to bring an action in" the district court, and to delete the provision allowing for review of the adjudication of the district court by the Utah Supreme Court; to provide that "[a]ny party to the action in district court may appeal from the final judgment, order, or decree of the district court;" and to require that the "[t]ime frame for appeals under Subsection (6) (a) through (c) shall be consistent with applicable provisions in Section 63–46b–14, Administrative Procedures Act."

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Utah program and plan amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h) and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program and plan approval criteria of 30 CFR 732.15 and 884.14. If the amendment is deemed adequate, it will become part of the Utah program and plan.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1 Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs, abandoned mine land reclamation (AMLR) plans, program amendments, and plan revisions since such program or plan is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), on proposed state regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed state AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IF of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 1292 1291(D)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) while state AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 9, 1994.

Peter A. Rutledge,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–30831 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 07–94–087]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the State Road 100 drawbridge at mile 810.6, at Flagler Beach, Florida, by permitting the number of openings to be limited during certain months of the year. This action should accommodate the needs of vehicle traffic, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before February 13, 1995.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 07–93–110] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Walt Paskowsky at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and LT J.M. Losego, Project Counsel.

Background and Purpose

This bridge presently opens on signal. The City of Flagler Beach submitted a resolution to the Coast Guard requesting that the bridge be opened only on the hour to ease vehicle congestion. The bridgeowner, the Florida Department of Transportation requested openings on the hour and half hour.

Discussion of Proposed Amendment

A Coast Guard analysis of the traffic counts and bridge logs which was completed on July 8, 1994, showed that the normally light highway traffic is affected by the significant increase in bridge openings during the fall and spring vessel migrations. During these periods the drawbridge may open up to 5 times in an hour which does not allow the waiting traffic to disperse before the next opening. This proposal will reduce the number of back-to-back openings to reduce the impact to vehicular traffic. Holding conditions near the bridge are considered adequate for vessels to safety maneuver while awaiting the next bridge opening.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. We conclude this because the proposed rule exempts tugs with tows.

Small Entities

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

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U S C. 499; 49 CFR 1.46; 33 CFR 1 05–1(g).

2. In § 117.261 paragraphs (e) and (f) are redesignated (f) and (g) and a new paragraph (e) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(e) *State Road 100, Flagler Beach bridge, mile 810.6, at Flagler Beach.* The draw shall open on signal; except that, from April 1 to May 31, and October 1 to November 30, from 7 a.m. to 6 p.m. daily, the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour.

* * * * *

Dated: November 28, 1994.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 94–30479 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–49–1–6678; FRL–5122–8]

Approval and Promulgation of Temporary Section 182(f) Exemption to the Nitrogen Oxides (NO_X) Control Requirements for the Houston and Beaumont Ozone Nonattainment Areas; TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA proposes to approve a petition from the State of Texas requesting that the Houston and Beaumont ozone nonattainment areas be temporarily exempted from NO_X control requirements of section 182(f) of the Clean Air Act (CAA) as amended in 1990. The State of Texas bases its request upon preliminary photochemical grid modeling which shows that reductions in NO_X would be detrimental to attaining the National Ambient Air Quality Standards (NAAQS) for ozone in these areas. This temporary exemption is being requested under section 182(f) of the CAA.

DATES: Comments on this proposed action must be received in writing on or before February 13, 1995

ADDRESSES: Written comments on this action should be addressed to Mr. Guy Donaldson, Acting Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Ms. Leila Yim Surratt or Mr. Quang Nguyen, Planning Section (6T–AP), Air Programs Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

NO_X are precursors to ground level (tropospheric) ozone, or urban "smog." When released into the atmosphere, NO_X will react with volatile organic compounds (VOC) in the presence of sunlight to form ozone. Tropospheric ozone is an important contributor to the nation's urban air pollution problem.

The 1990 Clean Air Act Amendments (CAAA) made significant changes to the air quality planning requirements for areas that do not meet the ozone NAAQS. Subparts 1 and 2 of part D, title I of the CAA as amended in 1990 contain the air quality planning requirements for ozone nonattainment areas. Title I includes new requirements to control NO_X emissions in certain ozone nonattainment areas and ozone transport regions. Section 182(f) requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOC. The new NO_X requirements are reasonably available control technology (RACT) and new source review (NSR). These provisions are explained more fully in the EPA's NO_X Supplement to the General Preamble published in the **Federal Register** (FR) on November 25, 1992 (see 57 FR 55620). In addition, the general and transportation conformity rules (conformity) required by section 176(c) contain new NO_X control requirements (see 58 FR 63214 and 58 FR 62188), and the vehicle inspection and maintenance (I/M) rules required by section 182(c)(3) also contain new NO_X requirements (see 57 FR 52989).

Houston, Texas was designated nonattainment for ozone and classified as severe pursuant to sections 107(d)(4) and 181(a) of the CAA, and has an attainment deadline of 2007. The Houston nonattainment area includes the cities of Houston and Galveston, and consists of the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller. Beaumont, Texas was classified as a serious nonattainment area and has an attainment deadline of 1999. The Beaumont nonattainment area includes the cities of Beaumont and Port Arthur, and consists of the following three counties: Hardin, Jefferson, and Orange. Please reference 56 FR 56694 (November 6, 1991, codified for Texas at title 40 of the Code of Federal Regulations in § 81.344).

II. Applicable EPA Guidance

The CAA specifies in section 182(f) that if one of the conditions listed below is met, the new NO_X requirements would not apply:

1. In any area, the net air quality benefits are greater without NO_X reductions from the sources concerned;
2. In a nontransport region, additional NO_X reductions would not contribute to ozone attainment in the nonattainment area; or
3. In a transport region, additional NO_X reductions would not produce net ozone benefits in the transport region.

In addition, section 182(f)(2) states that the application of the new NO_X requirements may be limited to the extent that any portion of those reductions are demonstrated to result in "excess reductions" of NO_X. The NO_X requirements of the conformity rules would also not apply in an area that is granted a section 182(f) exemption (see 58 FR 62188, 58 FR 63214, and 59 FR 31238). In addition, certain NO_X provisions of the I/M requirements would not apply in an area that is granted a section 182(f) exemption (57 FR 52989).

The EPA's Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f) (December 1993) describes how the EPA intends to interpret the NO_X exemption provisions of section 182(f). In addition, a memorandum signed by John S. Seitz, Director of the EPA Office of Air Quality Planning and Standards, dated May 27, 1994, describes certain revisions to the process the EPA currently intends to follow for granting exemptions from NO_X control requirements.

As described more fully in the Seitz memorandum, petitions submitted under section 182(f)(3) are not required to be submitted as State Implementation Plan (SIP) revisions. Consequently, the State is not required under the CAA to hold a public hearing in order to petition for an areawide NO_X exemption determination. Similarly, it is not necessary to have the Governor submit the petition.

III. State Submittal

On August 17, 1994, the TNRCC submitted to the EPA a petition pursuant to section 182(f) which requests that the Houston and Beaumont nonattainment areas be temporarily

exempted by the EPA from the NO_X control requirements of section 182(f) of the CAA. The State bases its petition on test (2) listed above, through the use of an Urban Airshed Modeling (UAM) demonstration showing that NO_X reductions would not contribute to attainment in either area because the decrease in ozone concentrations resulting from VOC reductions alone is equal to or greater than the decrease obtained from NO_X reductions or a combination of VOC and NO_X reductions.

The State's initial petition included: (1) A letter from John Hall, Chairman of the TNRCC, to Jane N. Saginaw, Regional Administrator of the EPA Region 6, transmitting the NO_X exemption petition; and (2) a summary of the State's UAM modeling results. The State of Texas supplemented its initial submission on August 31, 1994, and September 9, 1994, by forwarding to the EPA four technical reports on the modeling demonstration, which contained the following: base case model inputs, base case performance evaluation, 1999 emissions report, and 1999 progress towards attainment modeling report. These additional technical reports provided supplemental detail and documentation on the modeling information already provided to the EPA in the State's initial submission.

As described in the State's petition, the TNRCC plans to complete additional UAM modeling between November 1995 and May 1996 using the results of an intensive 1993 field study, the Coastal Oxidant Assessment for Southeast Texas (COAST). The data collected through the COAST study consist of hourly point source emissions, gridded typical summer day on-road mobile source emissions, hourly air quality data, and detailed meteorological data for specific ozone exceedance episodes in the Houston-Beaumont domain. Because it is the most comprehensive data set available, it should result in greater accuracy in the modeling and therefore in the attainment control strategy. Since the modeling is expected to be completed by May 1996, the TNRCC is requesting only a temporary NO_X exemption until May 31, 1997.

The TNRCC had previously adopted and submitted to the EPA complete NO_X RACT rules for the Houston and Beaumont areas. The NO_X RACT rules were adopted by the State on May 11, 1993, with additional revisions adopted on August 30, 1993, May 25, 1994, and August 31, 1994. The TNRCC has also adopted and submitted to the EPA NO_X NSR and I/M rules. The State has recently adopted its conformity regulations, and submitted them to the EPA in November 1994. The EPA intends to act on these SIP revisions in separate rulemaking actions.

Once the results of the supplementary UAM modeling based on the COAST data set are available, the State will re-evaluate whether NO_X reductions achieved through implementation of NO_X RACT will or will not contribute to attainment of the ozone standard in the Houston and Beaumont areas. The EPA intends to defer action on the State's NO_X RACT rules until this re-evaluation is completed. If the COAST modeling results continue to indicate that NO_X RACT reductions would not contribute or are detrimental to attainment of the ozone standard in each of these areas, then the State would submit to the EPA a section 182(f) petition requesting a permanent NO_X exemption, and would initiate rulemaking to rescind the NO_X RACT rules pending at EPA; however, if the modeling shows that NO_X reductions would contribute to attainment of the ozone standard in each of these areas, the EPA would initiate rulemaking on the State's NO_X RACT rules which have been submitted to the EPA.

Because the State of Texas has decided, prompted by the initial modeling results, to request that the EPA act at this time on the NO_X exemption petition rather than the previously submitted NO_X RACT rules, certain circumstances regarding the timing of requirements under the CAA are necessarily affected. Section 182(b)(2) of the CAA requires affected sources to implement the RACT measures contained in applicable State rules by May 31, 1995. While Texas has adopted NO_X RACT rules, as noted previously, the EPA rulemaking to approve those rules has been superseded by the NO_X exemption submission, proposing to temporarily exempt Texas from the requirement to impose NO_X RACT in the Houston and Beaumont nonattainment areas. Based on the schedule for completion of the COAST study, from which it will be determined whether NO_X RACT reductions are needed for these areas to attain, any action that will ultimately result in sources being subject to NO_X RACT rules will necessarily occur only after the statutorily-prescribed deadline has passed. Since, as a practical matter, it will be impossible for sources in these areas to meet a deadline that has passed, the EPA believes it would have the discretion in that event to establish a new, reasonable deadline by which such sources must comply.

It is the EPA's determination, after consultation with the TNRCC, that requiring subject sources to implement NO_X control measures as expeditiously as practicable but no later than May 31, 1997, is appropriate for several reasons First, through the State's NO_X RACT rule adoption process, affected sources have been made aware of the requirement to implement NO_X RACT, and in fact, the latest revision to those rules specifically included the May 31, 1997, compliance date. Moreover, the fact that the State has petitioned the EPA for only a temporary NO_X waiver has generally been made clear to the public and affected sources. Finally, through this notice setting forth how the EPA and the State of Texas intend to proceed with regard to finalizing and applying the submitted NO_X RACT rules in the event a need for such reductions is established, sources have again been made aware of the potential necessity (and the deadline that would be applicable) to install and implement NO_X RACT. Since the information regarding whether NO_X RACT will ultimately be required is scheduled to become available by May 1996, sources will effectively be provided with a year to implement the NO_X RACT controls

IV. Analysis of State Submittal

The following items are the basis for the EPA's action proposing to approve the State of Texas' section 182(f) NO_X petition for a temporary NO_X exemption for the Houston and Beaumont ozone nonattainment areas. Please refer to the EPA's Technical Support Document and the State's submittal for more detailed information.

Chapter 4 of the EPA's December 1993 section 182(f) guidance states that photochemical grid modeling may be used to simulate conditions resulting from three emission reduction scenarios: (1) substantial VOC reductions; (2) substantial NO_X reductions; and (3) both VOC and NO_X reductions. To demonstrate that NO_X reductions are not beneficial to attainment, the areawide predicted maximum 1-hour ozone concentration for each day modeled under scenario (1) must be less than or equal to that from scenarios (2) and (3) for the same day. Chapter 7 specifies that application of UAM should be consistent with the techniques specified in the EPA "Guideline on Air Quality Models (Revised)," and "Guideline for Regulatory Application of the UAM," (July 1991). As discussed below, the State has met these conditions by using the UAM consistent with the EPA's guidance.

A. Photochemical Grid Model

The TNRCC used UAM version IV, an EPA-approved photochemical grid model, to develop the modeling demonstration for the Houston and Beaumont areas. The State's modeling activities were performed as outlined in the UAM modeling protocols, according to the EPA's "Guideline for Regulatory Application of the Urban Airshed Model." A specific modeling protocol was developed by the State for its modeling activities. The State's modeling protocol was reviewed and approved by the EPA. The discussion below summarizes the EPA's analysis on how the State's modeling demonstrations complied with the EPA's guidance. Please refer to the EPA's Technical Support Document for more detailed information.

B Episode Selection

The Houston and Beaumont areas are situated in the Upper Texas Coastal Region which has a unique land-sea breeze regime in which morning land breezes typically transition into afternoon sea breezes. The EPA recommended method did not adequately address the source-receptor relationships associated with the land-sea breeze regime in the coastal area. Therefore, consistent with the intent of the EPA guidance, Texas used a slightly modified approach to select episodes. The TNRCC considered both morning and afternoon winds, and meteorological regimes identified in a fashion similar to the EPA-suggested procedure to account for the presence of the coastal land and sea breezes. Data from 1987 through 1991 were examined for episodes which cover at least 48 consecutive hours and the worst-case meteorological conditions. Consistent with EPA guidance, three episodes were selected for the UAM analysis.

C. Model Domain and Meteorological Input

The TNRCC selected a large modeling domain to ensure that the movement of ozone and ozone precursors emitted from the surface sources are well represented during the modeled episodes. In addition, since Houston and Beaumont are adjacent to each other, the State combined both areas into one modeling domain to avoid having overlapping wind fields. This assisted the State in properly utilizing the prognostic model, which requires the use of a large domain to capture all the important horizontal and vertical circulation patterns. This domain encompasses all emission sources and all surface meteorological/air quality monitors in both areas.

Meteorological data was collected from numerous monitoring stations in both areas. The TNRCC followed the methods described in the UAM User's Guides to develop model inputs for wind field data, mixing heights, temperature, and meteorological scalars for both areas. To estimate the different boundary conditions and the initial conditions, the TNRCC used several methods including monitored air quality data, EPA-recommended background concentration levels, and Regional Oxidant Model values.

D. Emissions Inventory

The Houston and Beaumont modeling exercises were conducted using VOC and NO_X emission inventories compiled by survey and direct measurement by the TNRCC. The modeling emissions inventories are composed of point source, area, on-road mobile, off-road mobile, and biogenic emissions. The EPA procedures for developing episode-specific emission inventories were followed.

The TNRCC developed the modeling inventories for the base case model runs for all three episodes from the EPA-approved 1990 base year SIP emission inventories for both areas. These inventories were used to evaluate the model's performance for each episode.

For the section 182(f) demonstration, the EPA's guidance explains that in general, the purpose of the section 182(f) requirements for NO_X is related to attainment of the ozone standard, which suggests that an analysis is needed that is focussed on the time that attainment of that standard is required. Therefore, the analysis should, at a minimum, reflect conditions expected at the time the area is required to attain the ozone standard.

The Beaumont area has an attainment deadline of 1999 and the Houston area has an attainment deadline of 2007. Because the two areas have different attainment deadlines, and because, for reasons explained above, the TNRCC modeled both areas as one modeling domain, the State conducted two section 182(f) analyses. First, the State modeled generalized emissions inventory conditions that would be expected to occur in the attainment year for Houston, by estimating 50 percent reductions in VOC, in NO_X, and in both, from the 1990 base year emissions inventory.

Second, the State conducted a section 182(f) analysis using an emissions inventory that reflects the conditions from 1996–1999. A projected 1999 inventory was developed from the 1990 base year emission inventory and adjusted to reflect conditions in 1999. Demographic and econometric forecasting methods were employed to project activity levels to the summer of 1999, which were in turn used to develop a projected emissions inventory for 1999. The TNRCC then applied the VOC emission reductions that will be achieved by implementation of controls through 1996 from the 15 percent Reasonable Further Progress (RFP) SIP The TNRCC did not include any emission reductions that are required to be implemented from 1996 through 1999 as part of the three percent per year RFP requirements. In addition, the 1999 modeling inventory does not incorporate any NO_X emission reductions that would have been achieved through implementation of NO_X RACT, NSR, or transportation conformity provisions.

The EPA believes that the two inventories used by the State for the section 182(f) demonstration adequately simulate the conditions that would be expected at the time the Beaumont area is required to attain and at the time the Houston area is required to attain.

E. Model Performance

In the Houston and Beaumont model performance evaluation, both graphical and statistical performance measures were implemented for all meteorological episodes and monitoring networks. A sensitivity analysis was also conducted. In the Houston and Beaumont base case simulations, the model performed adequately for the May 16–19, 1988, and July 27–August 1, 1990, episodes, but did not have satisfactory performance for the October 10–15, 1991, episode which was therefore dropped from further analysis.

The EPA's UAM guidance recommends that a minimum of three days from among all meteorological regimes should be modeled (e.g., three meteorological regimes each containing one primary episode day, or two meteorological regimes with at least two primary days from one of those regimes). The TNRCC's analyses are consistent with the EPA's guidance in that the two episodes that exhibited satisfactory performance cover more than three days of ozone exceedances and represent several of the predominant meteorological regimes for ozone exceedances in the Gulf Coast.

F. Section 182(f) Demonstration

Under the EPA's section 182(f) guidance, the State should model three emission reduction scenarios to evaluate the benefits of NO_X reductions: (1) substantial VOC reductions; (2)

substantial NO_X reductions; and (3) both VOC and NO_X reductions.

The TNRCC first modeled the above across the board reduction scenarios using the 1990 base year emissions inventory. The TNRCC conducted three levels of emission reduction analyses: (1) 50 percent VOC reductions, 50 percent NO_X reductions, and 50 percent reduction of both, (2) 35 percent VOC reduction, 20 percent NO_X reduction, and a mixed reduction of 25 percent VOC and 10 percent NO_X, and (3) 25 percent VOC reduction, 10 percent NO_X reduction, and a mixed reduction of 20 percent VOC and 5 percent NO_X.

As explained in the EPA's 182(f) guidance, the EPA believes it is appropriate to focus this analysis on the areawide maximum 1-hour predicted ozone concentration, since this value is critical to the attainment demonstration. For the two episodes with adequate performance, i.e., the May 1988 and July 1990 episodes, in all the emission reduction scenarios conducted above, the controlling day shows that the domain-wide predicted maximum ozone concentration is lowest when only VOC reductions are modeled.

The TNRCC conducted a second analysis on the episode that exhibited the best performance, i.e., the July 1990 episode. The TNRCC ran the above across-the-board emission reduction scenarios with the July 1990 episode, using the projected 1999 inventory which incorporates VOC control measures through 1996 (i.e., from the 15 percent RFP SIP). The results of these scenarios show that for the controlling day, the domain-wide predicted maximum ozone concentrations are lowest when only VOC reductions are modeled. The State limited this second analysis to the July 1990 episode because it exhibited significantly better performance than the May 1988 episode. Furthermore, the maximum domain-wide ozone concentration was larger in the July 1990 episode than in May 1988. Thus, the level of controls necessary to reach attainment with the July 1990 episode would likely be larger than for the May 1988 episode.

G. Evaluation Summary

The EPA believes that the TNRCC's modeling demonstration for the Houston and Beaumont ozone nonattainment areas supports the State's petition for a temporary exemption from the NO_X requirements of section 182(f) of the CAA. The State has followed the EPA's guidance on the application of the UAM appropriately, and has demonstrated that NO_X reductions would not contribute to attainment.

Because the State's petition clearly indicates that the attainment modeling should be completed between November 1995 and May 1996 (which will determine whether a VOC, NO_X, or combination thereof, strategy is most beneficial for attainment), the EPA believes that the petition supports granting the State's request for a temporary exemption only until the end of 1996. The EPA believes that allowing the temporary exemption only until this time is needed to provide adequate insurance that if the subsequent COAST attainment modeling indicates that NO_X reductions would be effective in reducing ozone, the NO_X control requirements of section 182(f) would be implemented without undue delay.

Through the granting of a temporary NO_X exemption, in addition to NO_X RACT, the NO_X NSR, conformity, and certain portions of the I/M requirements of the CAA would no longer be applicable for the Houston and Beaumont areas. If the State does not receive a permanent exemption, then the NO_X RACT, NSR, conformity, and I/M requirements of the CAA would become applicable again upon the expiration of the temporary exemption. As explained previously for RACT, if the NO_X requirements re-apply, then the EPA must establish new compliance deadlines for those requirements.

If the State has not received a permanent exemption prior to the expiration of the temporary exemption, based on the compliance deadline in the previously submitted NO_X RACT rules, the EPA would expect affected sources in the State to implement NO_X RACT controls as expeditiously as practicable but no later than May 31, 1997 Finally, the TNRCC's petition states that the COAST attainment modeling will be completed between November 1995 and May 1996. Therefore, by May 1996, the State will be able to determine whether NO_X reductions will contribute to attainment and thus whether the NO_X RACT rules will need to be implemented in the Houston and Beaumont areas. The EPA therefore believes that affected sources will have adequate prior notice to meet the NO_X RACT compliance deadline indicated above in the event that a permanent exemption is not granted. The NO_X NSR, conformity, and I/M provisions would become applicable immediately upon the expiration of the temporary exemption.

V. Proposed Rulemaking Action

In this action, the EPA proposes to approve the section 182(f) petition submitted by the State of Texas requesting a temporary NO_X exemption for the Houston and Beaumont ozone nonattainment areas. The temporary exemption, if granted, would expire on December 31, 1996, without further notice from the EPA.

The State had previously adopted and submitted to the EPA complete NO_X RACT and NSR rules, and recently submitted conformity rules to the EPA. During the temporary exemption period, the EPA will not act upon the State's NO_X RACT rules. The EPA plans to act upon the State's NO_X NSR and conformity provisions in separate rulemaking actions because those provisions are contained in broader rules that also control VOC emissions.

Upon the expiration of the temporary exemption on December 31, 1996, the State is required to either, (1) have received a permanent NO_X exemption from the EPA prior to that time, or (2) begin implementing the State's NO_X RACT, NSR, conformity and I/M requirements, with NO_X RACT compliance required as expeditiously as practicable but no later than May 31, 1997. The EPA will begin rulemaking action on the State's NO_X RACT SIP upon the expiration of the temporary exemption if the State has not received a permanent NO_X exemption by that time.

Request for Public Comments

The EPA requests comments on all aspects of this proposal. The EPA has received an advance request from an environmental group to extend the comment period from the normal 30-day period to a 60-day period because of the complex technical issues involved in the petition. The EPA is granting the group's request for a 60-day comment period. Therefore, as indicated at the outset of this action, the EPA will consider any comments received by February 13, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of NO_X exemption petitions under section 182(f) of the CAA do not create any new requirements. Therefore, because the Federal approval of the petition does not impose any new requirements, the

EPA certifies that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co v U.S E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2)).

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant", and therefore subject to Office of Management and Budget (OMB) review and the requirements of 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 9, 1994

Carol M. Browner,

Administrator

40 CFR part 52 is proposed to be amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2308 is proposed to be amended by reserving paragraph (c) and adding paragraph (d) to read as follows:

§ 52.2308 Area-wide nitrogen oxides (NO_X) exemptions.

* * * * *

(c) [Reserved]

(d) The TNRCC submitted to the EPA on August 17, 1994, with supplemental information submitted on August 31, 1994, and September 9, 1994, a petition requesting that the Houston and Beaumont ozone nonattainment areas be temporarily exempted from the NO_X control requirements of section 182(f) of the CAA. The Houston nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. The Beaumont nonattainment area consists of Hardin, Jefferson, and Orange counties. The exemption request was based on photochemical grid modeling which shows that reductions in NO_X would be detrimental to attaining the ozone NAAQS. On (insert date), the EPA approved the State's request for a temporary exemption. The temporary exemption automatically expires on December 31 1996, without further notice from the EPA. Upon the expiration of the temporary exemption, the State is required to either, (1) have received a permanent NO_X exemption from the EPA prior to that time, or (2) begin implementing the State's NO_X requirements, with NO_X Reasonably Available Control Technology compliance required as expeditiously as practicable but no later than May 31, 1997.

[FR Doc. 94–30872 Filed 12–14–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5111–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Kenmark Textiles Printing Corporation Superfund site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Kenmark Textiles Printing Corporation Superfund site (Kenmark Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA and the State of New York have determined that no further action is appropriate at the Kenmark Site under CERCLA. Moreover, EPA and the State have determined that activities conducted at the Kenmark Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Kenmark Site from the NPL may be submitted on or before January 17, 1995.

ADDRESSES: Comments concerning the Kenmark Site deletion may be mailed to: Kathleen C. Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 737, New York, NY 10278.

Background information on the Kenmark Site is contained in the EPA Region II public docket, which is located at EPA's Region II Office, and is available for viewing, by appointment only, from 9:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact: Sharon L. Trocher, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 29–100, New York, NY 10278, (212) 264–8746.

Background information from the Regional public docket related to the Kenmark Site is also available for viewing at the information repository noted below: East Farmingdale Fire House, 930 Conklin Street, East Farmingdale, New York 11735.

FOR FURTHER INFORMATION CONTACT: Doug Garbarine, 212–264–0106.

SUPPLEMENTARY INFORMATION:

Table of Contents

I Introduction.
II NPL Deletion Criteria.
III Deletion Procedures
IV Basis for Intended Site Deletion.

I. Introduction

The Environmental Protection Agency (EPA) Region II announces its intent to delete the Kenmark Site from the NPL and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), codified at 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9605. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such sites warrant such action.

The EPA will accept comments concerning the Kenmark Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV

discusses how the Kenmark Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will, in consultation with the State, consider whether any of the following criteria has been met:

(i) Responsible or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Kenmark Site:

1 EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New York has concurred with the deletion decision.

3 Concurrent with this notice of intent to delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package.

4. EPA has made all relevant documents available in the Regional Office and local Kenmark Site information repository.

The comments received during the comment period will be evaluated before any final decision is made. If necessary, EPA Region II will prepare a Responsiveness Summary which will address any significant comments received during the public comment period.

If, after consideration of comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a notice of deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Region II Office.

IV. Basis for Intended Site Deletion

The Kenmark Site, now occupied by the Susquehanna Textile Company, is located in a light industrial area at 921 Conklin Street in East Farmingdale, New York. Since at least 1917, the Kenmark Site has been the location of several successive silk and textile dye, printing and screening operations. The waste disposal areas at the Kenmark Site included a leaching pit, sludge drying beds and three leaching pools. A building and a paved parking lot occupy the majority of the Kenmark Site. The areas north and east of the Kenmark Site are characterized by light industry Residential developments are located to the south and west, with an estimated 6,200 residents living within one mile of the Kenmark Site. Public supply wells are the primary source of drinking water in the area. The closest downgradient public supply well is located about 1.5 miles from the Kenmark Site.

As early as 1972, process wastewater generated at the Kenmark Site was chemically treated, resulting in the precipitation of solids from the wastewater. The sludge from the wastewater was distributed to outdoor concrete-lined beds for settling and drying. The sludge was periodically removed from the sludge drying beds and placed in drums. The resulting wastewater (supernatant) was discharged to the leaching pit located on-Site and east of the building. Beginning in November 1984, the wastewater was discharged to the Suffolk County Publicly Owned Treatment Works.

Sampling conducted between January 1974 and May 1984 by the Suffolk County Department of Health Services and a contractor hired by a representative of the Kenmark Site, revealed that wastewater discharged into the on-Site leaching pit contained hexavalent chromium, copper, iron, lead, silver, and phenols in violation of New York State groundwater discharge standards. Based on these findings, the Kenmark Site was added to EPA's NPL in June 1986.

In 1988, an owner of property at the Site conducted a remedial investigation (RI) under the supervision of the New York State Department of Environmental Conservation (NYSDEC) to determine the extent of contamination at the Kenmark Site. In July 1991, EPA entered into an Administrative Consent Order (ACO) with the owner to complete the RI. The RI consisted of drilling borings, constructing monitoring wells and collecting soil and groundwater samples.

During the RI, ten monitoring wells were installed and sampled to determine the extent of groundwater contamination at the Kenmark Site. In addition, approximately 80 soil samples were collected from the areas of the sludge drying beds, leaching pit and leaching pools. Organic and inorganic contaminants detected in the groundwater sampled at the Kenmark Site were generally present at levels below Federal and State human health-based drinking water standards. Numerous inorganic and organic contaminants were detected in the soil at the Kenmark Site, but were detected below levels that would pose any unacceptable risks based on current land use conditions.

The EPA community relations activities at the Kenmark Site included a public meeting on February 28, 1994 to present the results of the RI, and EPA's preferred remedial alternative. Public comments were received and addressed

At the conclusion of the RI process, EPA, in consultation with the State of New York, issued a Record of Decision on March 30, 1994, that determined that the Kenmark Site does not pose a significant threat to human health or the environment and that no remedial action was required.

Having met the deletion criteria, EPA proposes to delete the Kenmark Site from the NPL. EPA and the State of New York have determined that the response actions are protective of human health and the environment.

Dated: October 26, 1994.

William Muszynski,

Acting Regional Administrator, USEPA Region II.

[FR Doc. 94–28840 Filed 12–14–94; 8:45 am]

BILLING CODE 6560–50–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The ICC proposes to amend parts 1312 and 1314 of its regulations to retain the status quo with respect to the rules for filing electronic and printed tariffs, and to terminate the Ex Parte No. 444 proceeding. This action will codify in the regulations the tariff filing rules which have been in effect for the past five years as a result of the partial stay of the Commission's 1989 decision in Ex Parte No. 444.[1] The revisions we propose will continue the application of part 1314 to rail tariffs, for which rail interests have expressed a preference, and will continue the application of part 1312 to motor (and other non-rail) tariffs, for which motor interests have expressed a preference.

DATES: Comments are due on January 14, 1995.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. 444 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 927–5602, or Thomas A. Mongelli, (202) 927–5150. TTD for the hearing impaired: (202) 927–5721

SUPPLEMENTARY INFORMATION: In a decision served April 1, 1994, in this proceeding, the Commission announced its intention to proceed with the development of an electronic tariff filing (ETF) system, and to establish a negotiated rulemaking (Reg-Neg) committee to review the matter and recommend appropriate ETF regulations to the Commission. Steps were taken to establish the Reg-Neg committee, and public comments were requested on the Commission's initial membership selections. However, before our review of the comments was finalized, legislative proposals were presented to largely eliminate motor carrier tariff filing, and to eliminate or significantly reduce the Commission's Fiscal Year 1995 appropriation. With those circumstances, the Commission postponed all further action to establish the ETF Reg-Neg Committee.[2] On August 24, 1994, the "Trucking Industry Regulatory Reform Act of 1994" (TIRRA) was enacted, which significantly reduced motor carrier tariff filing requirements, and the Commission's Fiscal Year 1995 appropriation was subsequently reduced by 31%.

With the enactment of TIRRA, the need for ETF in any form is greatly diminished, and in light of the more limited remaining ICC tariff filing requirements, it is unnecessary to utilize the Reg-Neg process for ETF regulations.

The major reason for establishing the Reg-Neg Committee was to provide an opportunity for the different transportation modes (primarily rail and motor), and their customers, to agree on the ETF regulations that should be adopted by the Commission. With the enactment of TIRRA and the elimination of the tariff filing requirement for independently determined rates of motor carriers of property (other than household goods carriers), much of the need for the Committee and ETF no longer exists. Additionally, it is possible that further changes to tariff filing requirements will be made if the recommendations in the Commission's TIRRA report[3] are adopted. In light of these factors, and the Commission's extremely limited financial resources, the Commission has decided to terminate the ETF Reg-Neg Committee.

Further, we do not believe it is prudent to invest significant resources in the development of new regulations for either printed or electronically-filed tariffs at this time. We, therefore, propose to modify our tariff filing regulations to designate part 1314 as applicable only for rail tariffs and part 1312 as applicable for other (non-rail) tariffs, and to terminate the Ex Parte No. 444 proceeding. This action will codify the status quo that has existed since 1989.

The Ex Parte No. 444 proceeding has a long history In October 1987, the Commission proposed to replace its detailed tariff publishing regulations with simpler tariff "standards" to facilitate ETF[4] In early 1989, the Commission did eliminate the detailed tariff regulations formally applicable to printed tariffs and authorized the filing of electronic tariffs.[5] However, the Commission declined to prescribe standards for data exchange, because the private sector had already invested significant resources in such projects, and because continued development through the marketplace, rather than government regulation, was considered to be preferable. ETF design was left to the individual carriers, provided that carriers complied with the statutory rate disclosure requirements, and data interchange capability was not mandated.

Subsequently, several parties (primarily motor carrier interests) asked the Commission to stay its decision, arguing (inter alia) that the absence of detailed standards for ETF would undermine the orderly electronic dissemination of tariff information. In contrast, various railroad interests applauded the agency's action and urged the Commission to allow carriers to implement ETF immediately

The Commission granted the stay request,[6] but later lifted the stay (as of November 8, 1989) insofar as it applied to railroad tariffs.[7] The Commission explained that the rail industry was better prepared to proceed with ETF, and that the experience gained with rail ETF would be helpful in considering ETF for other modes. Since this time, as a result of the partial lifting of the stay, the more general "standards" regulations at 49 CFR 1314 have applied to tariff filings by rail carriers; and the much more specific "how-to" regulations at 49 CFR 1312 have applied to non-rail (principally motor) tariff filings.

It appears that the tariff filing rules contained in part 1314 are working satisfactorily for rail tariffs, and that the rail industry supports the continuation of those rules. Motor interests (both carriers and shippers), on the other hand, expressed a strong preference for the part 1312 rules, and, apparently, continue to support those rules as they now apply after TIRRA. In these circumstances, and given the possibility for future regulatory reforms and limited Commission resources, we believe it is in the public interest to continue the *status quo* and terminate this proceeding.

Rail carriers have thus far made only limited use of the electronic tariff filings authorized in part 1314. There is a small number of electronic tariffs on file, however, and the Commission recently

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[1] *Electronic Filing of Tariffs*, 5 I.C.C.2d 279 (1989); 54 FR 6403 and 9052 (1989).

[2] *Electronic Filing of Tariffs*, Ex Parte No. 444 (ICC served August 11, 1994).

[3] Ex Parte No. 522, Study of Interstate Commerce Commission Regulatory Responsibilities, issued October 25, 1994.

[4] Ex Parte No. 444, *Electronic Filing of Tariffs*, decision served October 21, 1987; 52 FR 39549 (1987).

[5] *Electronic Filing of Tariffs*, 5 I.C.C.2d 279 (1989); 54 FR 6403 and 9052 (1989).

[6] *Electronic Filing of Tariffs*, 5 I.C.C.2d 1052 (1989); 54 FR 10533 (1989).

[7] *Electronic Filing of Tariffs*, 6 I.C.C.2d 153 (1989); 54 FR 42959 (1989).

granted a rail carrier's special tariff authority request to eliminate the printed tariff and file only the electronic version,[8] thereby reducing the carrier's publishing costs by an estimated $150,000 per year. While the regulations in part 1312 do not currently authorize electronic filing, we will consider special tariff authority requests if motor (or other) carriers wish to come forward with such proposals.

Regulatory Flexibility

The rules proposed herein will not impose additional burdens on tariff filers or others; rather they merely codify the rules that are currently in effect as a result of the partial stay of the Commission's decision in Ex Parte No. 444, served February 10, 1989 (corrected decision served March 8, 1989).

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Tariffs.

49 CFR Part 1314

Motor carriers, Railroads, Tariffs.

Decided: December 2, 1994.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Commission proposes to amend chapter X of title 49 of the Code of Federal Regulations, parts 1312 and 1314, as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for part 1312 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10762 and 10767.

2. The heading of part 1312 is proposed to be revised to read as follows:

[8] *Special Tariff Authority No 93–12* (not printed), served July 25, 1994.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS OF MOTOR, PIPELINE AND WATER CARRIERS

* * * * *

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS

3. The authority citation for part 1314 continues to read as follows:

Authority: 49 U.S.C. 10321, 10708, 10761, and 10762; 5 U.S.C. 553.

4. The heading of part 1314 is proposed to be revised to read as follows:

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS OF RAIL CARRIERS

* * * * *

[FR Doc. 94–30845 Filed 12–14–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposal To List the Northern Copperbelly Water Snake (Nerodia Erythrogaster Neglecta) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposal is reopened. The northern copperbelly water snake now persists in isolated populations in southern Michigan and adjacent Indiana and Ohio, southern Indiana, southeastern Illinois, and adjacent Kentucky. It occupies lowland swamps and adjacent wooded and upland areas. The Service has recently received several reports dealing with northern copperbelly water snake biology, and these reports are being made available for public review and comment. The reopened comment period will allow interested parties to review these studies and submit additional comments on the proposed rule.

DATES: The comment period on the proposal will close on January 13, 1995.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above Regional Office address (612/725–3276; fax 612/725–3526).

FOR FURTHER INFORMATION CONTACT: For further information or copies of the referenced reports contact either the above office or David Hudak, Supervisor, U.S. Fish and Wildlife Service Ecological Services Field Office, 620 S. Walker Street, Bloomington, Indiana 47403–2121 (812/334–4261; fax 812/334–4273).

SUPPLEMENTARY INFORMATION:

Background

The northern copperbelly water snake has been proposed for listing as a threatened species due to evidence that its range and numbers have declined dramatically, primarily as a result of the destruction of its habitat, and that the threats to the habitat and to the snakes themselves are continuing.

The **Federal Register** notice announcing the proposing of the northern copperbelly water snake for classification as a threatened species was published on August 18, 1993 (58 FR 43860). The original comment period ended on October 18, but was subsequently extended until November 16, 1993 (58 FR 52740). The comment period was reopened from March 22 through April 21, 1994 (59 FR 13472), to encompass a requested public hearing that was held in Indianapolis on April 5, 1994. On July 11, 1994 (59 FR 35307), the Service published a notice indicating that the final decision on listing the snake as a threatened species would not be made by August 18, 1994, and extended the decision deadline until February 18, 1995. That notice also reopened the comment period until November 1, 1994.

The decision on listing the snake as a threatened species was delayed to allow additional time to complete a field study in southern Illinois. The study was designed to address a concern expressed by the Illinois Department of Conservation regarding interbreeding between the northern copperbelly water snake (*N. e. neglecta*) and the more common yellowbelly water snake (*N. e. flavigaster*). The Service believed that determining the extent and location of intergradation between the two

subspecies was sufficiently important to delay the listing decision.

The results of that study (Brandon and Blanford 1994) have now been submitted to the Service and will be utilized in the listing decision for the snake. The Service also has received a status survey of the northern copperbelly water snake in western Kentucky (Bryan 1994) and an update of an ongoing study on the snake's movement patterns based on radiotelemetry work (Kingsbury 1994). Information from these studies will also be considered during the Service's decision whether or not to list the snake as a threatened species. The Service is notifying the public of the existence of these studies, and will provide copies of them to all individuals and organizations that request them. The Service encourages all parties interested in the northern copperbelly water snake to review the studies and provide comments to the address shown above.

References Cited

Brandon, Ronald A. 1994. Research concerning the current distribution, habitat requirements, and hibernation sites of the copperbelly water snake (*Nerodia erythrogaster neglecta*) and intergradation with the yellowbelly water snake (*Nerodia erythrogaster flavigaster*)—Preliminary report: Current distribution and intergradation. Unpublished report, dated October 25, 1994, submitted to the U.S. Fish and Wildlife Service, Federal Building, Ft. Snelling, MN 55111.

Bryan, Hal D. 1994. A status survey for the copperbelly water snake *Nerodia erythrogaster neglecta* in western Kentucky. Unpublished report, dated November 1994, submitted to the U.S. Fish and Wildlife Service, Federal Building, Ft. Snelling, MN 55111.

Kingsbury, Bruce 1994. Letter to U.S. Fish and Wildlife Service, dated November 20, 1994.

Author

The primary author of this notice is Ronald L. Refsnider, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 6, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–30772 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 240
Thursday, December 15, 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

Forms Under Review by Office of Management and Budget

December 9, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

• Animal Plant and Health Inspection Service
Animal Welfare
APHIS 7001, 7001A, 7002, 7003, 7006, 7006A, 7009, 7011, 7019, 7020, 7023, 7005
On occasion; Weekly; Semi-annually; Annually
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 74,289 responses; 242,485 hours
Dr. Debra Beasley, (301) 436–4977

• Agricultural Marketing Service
Melons Grown in South Texas; Marketing Order No. 979
FV–134; FV–134–1; FV–135–1
Recordkeeping; On occasion; Monthly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 211 responses; 23 hours
Robert F. Matthews, (202) 690–0464.

• Food Safety and Inspection Service
Meat Produced Advanced Meat/Bone Separation Machinery and Meat Recovery Systems
Recordkeeping; Daily
Businesses or other for-profit; 48,800 responses; 15,600 hours
Lee Puricelli, (202) 720–7163

Extension

• Farmers Home Administration
Form FmHA 1962–1, Agreement for the Use of Proceeds/Release of Chattel Property
FmHA 1962–1
On occasion
Individuals or households; Farms; 101,551 responses; 33,512 hours
Jack Holston, (202) 720–9736

• Farmers Home Administration
7 CFR 1902–C, Supervised Bank Accounts
FmHA 1902–7
Recordkeeping, On occasion
Businesses or other for-profit; Small businesses or organizations; 50 repsonses, 63 hours
Jack Holston, (202) 720–9736

Reinstatement

• Forest Service
Forest Industry Survey of California and Oregon
One time only
Businesses or other for-profit; 400 responses; 200 hours
Susan Willits, (503) 321–5866

New Collection

• Agricultural Marketing Service
Self-Certification Medical Statement (SCMS)
AMS–5
Recordkeeping; On occasion
Individuals or households; 69 responses; 41 hours
Linda L. Lane, (202) 720–5209

Donald E. Hulcher,
Deputy Departmental Clearance Officer.
[FR Doc. 94–30783 Filed 12–14–94; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Marketing Service

[Docket No. TB–95–02]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: January 19, 1995.

Time: 1:00 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 771 Corporate Drive, Suite 500, Lexington, Kentucky 40503–5480.

Purpose: To elect officers, review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), to discuss the level of tobacco inspection services needed and related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: December 9, 1994.

Lon Hatamiya,
Administrator.
[FR Doc. 94–30784 Filed 12–14–94; 8:45 am]
BILLING CODE 3410–02–P

Forest Service

Boise River Wildlife Recovery Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Availability of a Draft Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service announces the availability of a Draft Environmental Impact Statement (DEIS) for the Boise River Wildlife Recovery Project, Boise National Forest. The responsible official for the DEIS is Acting Forest Supervisor Cathy Barbouletos. The DEIS describes and displays an analysis of three alternatives to manage approximately 141,000 acres of National Forest System land burned in the summer of 1994. The project area is northeast of Boise, Idaho on the Idaho City and Mountain Home Ranger Districts.

Comments/time frame: Reviewers of the draft should provide the Boise National Forest with their comments during the review period which will last for 45 days after this notice of availability. Responding within this time frame will enable forest personnel to analyze and respond to your comments in the Final Environmental Impact Statement (FEIS) and avoid undue delay in the decisionmaking process. Reviewers have an obligation to structure their participation in the review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* vs. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* vs. Harris, 490 F Supp. 1334, 1338 (E.D. Wisc. 1980). Comments on the DEIS should be as specific as possible. It is also helpful if reviewers refer their comments to specific pages and/or chapters in the DEIS.

Availability: Copies of the DEIS or copies of a summary are available upon request from the Boise National Forest, 1750 Front Street, Boise, Idaho 83702; Idaho City Ranger District P.O. Box 129, Idaho City, Idaho 83631; Mountain Home Ranger District, 2180 American Legion Boulevard, Maintain Home, Idaho 83647 or by calling (208) 364–4300 to leave a message.

SUPPLEMENTARY INFORMATION: The DEIS describes three alternatives to treat approximately 141,000 acres of National Forest System Land. The Rabbit Creek, Bannock Creek and Star Gulch Wilderness burned a total of 184,500 acres in July, August, and September of 1994. The DEIS assess opportunities to salvage the economic value of fire killed and imminently dead trees in combination with treatments to promote regeneration of trees on forested areas, maintain or improve hydrologic conditions of affected watersheds, and protect long-term soil site productivity.

Recovery Assessment Schedule: This is Phase II of a four phase ecosystem approach to wildlife recovery. Phase I included burned area emergency analysis and rehabilitation. This phase, Phase II, is an assessment of the opportunities to treat killed timber in the recovery effort, Phase III will assess resource management opportunities which are not time dependent (i.e. trail bridge replacement, access management) and Phase IV will assess long-term effects at a landscape scale and re-evaluate adjacent decisions surrounding the wildfires.

Contact: Further information can be obtained by contacting Project Leader Terry Padilla, Idaho City Ranger District, Boise National Forest, PO Box 129, Idaho City, ID 83631, Telephone, (208) 364–4330.

Response Official: Cathy Barbouletos, Acting Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, ID 83702.

Dated: December 8, 1994.

Cathy Barbouletos,

Acting Forest Supervisor

[FR Doc. 94–30835 Filed 12–14–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation of a countervailing duty order.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

The Department of Commerce has received a request from the Government of New Zealand for revocation of the countervailing duty order on lamb meat from New Zealand.

EFFECTIVE DATE: December 15, 1994

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

On September 30, 1994, the Government of New Zealand submitted a request for revocation of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985), pursuant to 19 CFR 355.25 (b)(1). This request will be considered by the Department in conjunction with the administrative review of this order initiated on October 13, 1994. (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews; Recision of Initiation* (59 FR 51939; October 13, 1994)). This notice is issued pursuant to 19 CFR 355.25 (c)(2)(i) (1994).

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 1995.

Antidumping duty proceedings	Period to be reviewed
Japan:	
Light Scattering Instruments and Parts Thereof	
A–588–813	
Otsuka Electronics ..	11/1/93–10/31/94
Korea:	
Circular Welded Non-Alloy Steel Pipe	
A–580–809	
Dongbu Steel Co., Ltd., Hyundai Pipe Co., Ltd., Korea Steel Pipe Co., Ltd., Union Steel Manufacturing Co., Ltd., Pusan Steel Pipe Co., Ltd., Korean Iron and Steel Co., Ltd., Korean Iron and Steel Co., Ltd.	11/1/93–10/31/94
Mexico:	
Circular Welded Non-Alloy Steel Pipe	
A–201–805	
Hylsa, S.A. de C.V., Western American Mfg., Inc.	11/1/93–10/31/94
Countervailing Duty Proceedings	
Argentina.	
Oil Country Tubular Goods C–357–403	1/1/93–12/31/93

Antidumping duty proceedings	Period to be reviewed
Suspension Agreements	
Singapore:	
Certain Refrigeration Compressors C–559–001	4/1/93–3/31/94

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: December 9, 1994

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 94–30862 Filed 12–14–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–307–808]

Ferrosilicon From Venezuela; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: On June 15, 1994, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on ferrosilicon from Venezuela. In accordance with 19 CFR 355.22(a)(3)(1994), the Department is now terminating this review pursuant to a request by an interested party.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Stephanie Moore, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

Background

On May 31, 1994, the Department received a request for an administrative review of this countervailing duty order from CVG–FESILVEN, a Venezuelan exporter of the subject merchandise, for the period August 25, 1992, through December 31, 1993. No other interested party requested a review. On June 15, 1994, the Department published in the **Federal Register** (59 FR 30770) a notice of "Initiation of Countervailing Duty Administrative Review" initiating the administrative review for that period. On November 1, 1994, CVG–FESILVEN withdrew its request for review.

Section 355.22(a)(3) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so.

Because no significant work has been completed on this review, the aforementioned exporter's request does not unduly burden the Department. Further, no other interested party requested a review in this case, and we have received no submissions regarding CVG–FESILVEN's withdrawal of its request for review. Therefore, under the circumstances presented in this review, we find it reasonable to extend the 90-day deadline established in 19 CFR 355.22(a)(3) to accommodate CVG–FESILVEN's withdrawal. Accordingly, we are terminating this review. This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: December 9, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 94–30865 Filed 12–14–94; 8:45 am]

BILLING CODE: 3510–DS–P

Brigham Young University, 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: 94–107. *Applicant:* Brigham Young University, Provo, UT 85602. *Instrument:* Excimer-Pumped Laser System. *Manufacturer:* Lambda-Physik, Germany. *Intended Use:* See notice at 59 FR 52287, October 17, 1994. *Reasons:* The foreign instrument provides a pulse energy of 400 mJ at a frequency of 308 nm and a maximum repetition rate of 100 Hz for optimal pumping of both UV and visible dyes.

Docket Number: 94–110. *Applicant:* Dartmouth College, Hanover, New Hampshire 03755. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany *Intended Use:* See notice at 59 FR 52288, October 17, 1994. *Reasons:* The foreign instrument provides a precision of 0.1% and sensitivity of 1000 molecules of CO_2 per mass 44 ion.

Docket Number: 93–141R. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Current Limiting Interrupting Device. *Manufacturer:* Calor-Emag AG, Germany. *Intended Use:* See notice at 58 FR 65157, December 13, 1993. *Reasons:* The foreign instrument provides: (1) a rated voltage of 17.5 kV, (2) a rated current of 3.2 kA, (3) trigger level adjustable from 35 to 40 kA instantaneous current and (4) a peak let-through current of 80 kA to prevent short circuit peaks to 295 kA.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no 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. 94–30864 Filed 12–14–94; 8:45 am]

BILLING CODE 3510–DS–F

Texas A&M Research Foundation, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be 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.

Docket Number: 94–106. *Applicant:* Texas A&M Research Foundation, College Station, TX 77843-3578. *Instrument:* Two Fluorometers and Accessories, Model AquatrackA MK III. *Manufacturer:* Chelsea Instruments, United Kingdom. *Intended Use:* See notice at 59 FR 52287, October 17, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign

instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) a logarithmic scale to permit chlorophyll measurements over 5 orders of magnitude variation without recalibration, (2) a low power requirement (250 mA) for battery operation and (3) deployability in seawater.

This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–30863 Filed 12–14–94; 8:45 am]

BILLING CODE 3510–DS–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Cost Reduction Strategies for V–22

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Cost Reduction Strategies for V–22 scheduled for December 7–8, 1994 as published in the **Federal Register** (Vol. 59, No. 201, Page 52766, Wednesday, October 19, 1994, FR Doc. 94–25796) will be held on December 19, 1994. In all other respects the original notice remains unchanged.

Dated: December 9, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–30754 Filed 12–14–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Clean Water Act Section 404 Permit Application by Crandon Mining Company To Construct and Operate the Crandon Mine in Forest County, Wisconsin

AGENCY: U.S. Army Corps of Engineers, St. Paul District, DOD.

ACTION: Notice of intent.

SUMMARY: The St. Paul District, Corp of Engineers, has received a Section 404 permit application from Crandon Mining Company to develop and operate the Crandon Mine which would include the discharge of fill material in isolated wetlands and wetlands adjacent to Swamp Creek in Forest County, Wisconsin. Zinc and copper would be the primary materials mined. Nationally significant natural, cultural, and Native American resources exist in the project area. Construction and operation of the mine could result in significant impacts to these resources. In order to thoroughly evaluate the permit action, an Environmental Impact Statement will be prepared.

ADDRESSES: U.S. Army Corps of Engineer, St. Paul District, 190 5th Street, East, St. Paul, Minnesota 55101–1638.

FOR FURTHER INFORMATION CONTACT: Mr. David Allman, (612) 290–5373.

SUPPLEMENTARY INFORMATION: The DEIS will evaluate the environmental, social and economic effects of mining the zinc and copper orebody known as the Crandon deposit. Alternatives, including project alternatives and mitigation measures to reduce anticipated adverse effects, as well as the no action alternative (permit denial) will be considered.

Significant issues and resources to be analyzed in the DEIS will be identified through coordination and responsible Federal, State, and local agencies; the general public, interested private organizations and parties; and affected Native Americans. Anyone who has an interest in participating in the Department of the DEIS is invited to contact the St. Paul District, Corps of Engineers.

Significant issues identified to date for discussion in the DEIS are as follows:

1. Impacts of mine dewatering on lakes and wetlands.

2. Impacts on water quality, including the Wold River, a Federally-designated Wild and Scenic River.

3. Impacts on Native Americans, including Tribal Trust resources and responsibilities:

4. Impacts on social and economic resources.

5. Impacts on cultural resources.

Additional issues of significance will be identified through public and agency meetings. An initial public scoping meeting will be held at an as yet undetermined date, place, and time. A notice will be published or aired in local media once this meeting has been scheduled. Additional meetings will be held as deemed necessary.

Our environmental review and consultation will be conducted according to the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act of 1966, Council on Environmental Quality Regulations, Endangered Species Act of 1973, Clean Water Act, Rivers and Harbors Act of 1899, and applicable Corps of Engineers regulations and guidance.

We anticipate that the DEIS will be available to the public in June of 1966.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94–30820 Filed 12–14–94; 8:45 am]

BILLING CODE 3710–CY–M

DEPARTMENT OF EDUCATION

National Library of Education Advisory Task Force; Nominations

AGENCY: Department of Education.

ACTION: Nominations for candidates to serve on the National Library of Education Advisory Task Force.

NOMINATIONS INFORMATION: The Secretary is seeking recommendations for candidates to serve as members of the National Library of Education Advisory Task Force (Task Force). Nominations will be accepted for individuals who, by virtue of their training, experience, and background in educational research, libraries, and information services, are qualified to advise the Assistant Secretary for Educational Research and Improvement (Assistant Secretary) on establishing the National Library of Education, identifying activities and functions for it to carry out, and in fulfilling other duties described in Section 951(h), Part E, of the Goals 2000: Educate America Act of 1994. The Task Force will consist of eleven individuals appointed by the Secretary from the following categories: library and information services professionals based in school systems, universities, state library agencies, and public libraries, of which at least one shall be a national expert in archival policy and practice (four vacancies); scholars and researchers familiar with the library and information services needs of the educational research community (three vacancies); and educators and citizens knowledgeable about the role of comprehensive library and information service resources in serving national, state, and local education needs (four vacancies). The latter may include: parents with experience in promoting parental involvement in education; experienced teachers; state and local school administrators; and individuals from business and industry with experience in promoting private sector involvement in education.

Anyone wishing to nominate a candidate or candidates should submit a letter outlining the nominee's qualifications, along with a complete and current resume (including telephone number and addresses). Nominations must be received on or before (insert the 60th day from the date of publication in the Federal Register). Nominations delivered by mail must be addressed as indicated below and must show proof of mailing consisting of one of the following: (1) a legibly dated U.S. Postal Service Postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier. The following are *not* accepted as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

A nomination that is mailed should be addressed to Dr. E. Stephen Hunt, Policy and Planning Coordinator, National Library of Education, 555 New Jersey Avenue, NW., Room 101C, Washington, DC 20208–5721. A nomination that is hand-delivered must be taken to the U.S. Department of Education, Room 6103, 600 Independence Avenue, SW., Washington, DC 20202–0106. Hand-delivered nominations will be accepted daily between the hours of 8:30 a.m. and 5:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. In order for a nomination sent through a Courier Service to be considered timely, the Courier Service must be in receipt of the nomination on or before the deadline. Telephone inquiries should be made to Dr. Hunt at (202) 219–1882.

Background Information

The U.S. Department of Education's Office of Educational Research and Improvement (OERI) was recently reauthorized by Public Law 103–227 Title IX: The "Educational Research, Development, Dissemination and Improvement Act of 1994" (the Act). Part E of the Act directs the Secretary to establish, within OERI, a Task Force to advise on the establishment of the National Library of Education. The Act provides that the terms of office for members shall be for six months, which is the life of the Task Force. At a minimum, the Task Force is required to meet monthly. Additional time may be required to meet monthly.

Additional time may be required for subcommittee meetings and to fulfill the duties assigned to the Task Force. Section 951(h) of the Act provides that the Task Force has the responsibility to: (a) work collaboratively with the Assistant Secretary to prepare a workable plan to establish the National Library to carry out in addition to those included in the Law; and (c) prepare and submit a report to the Assistant Secretary not later than six (6) months after its first meeting on the activities of the Library. Additional responsibilities of the Task Force include: (1) providing information and assistance to the National Educational Research Policy and Priorities Board on the establishment of the National Library of Education and its activities and functions; (2) recommending ways for establishing and strengthening active partnerships and cooperation between the Library and researchers, educational practitioners, other federal agencies and programs, and policymakers at all levels; (3) recommending ways to strengthen interaction and collaboration between the Library and the various program offices and components of OERI and the Department of Education; (4) soliciting advice and information from the education field—making sure to involve educational practitioners, particularly teachers in the process—to define information needs and provide suggestions for research, reference assistance, and service topics; (5) soliciting advice from practitioners, policymakers, and researchers, and recommending ways to organize, maintain, and improve the Library's electronic services for users, including the one-stop information and reference service and other networks and services; and (6) providing recommendations for improving the capacity of the Library to perform the functions contained in its mission under the Act. The Task Force is subject to Federal legislation (the Federal Advisory Committee Act, 5 U.S.C. App. 2; and the Government in the Sunshine Act, 5 U.S.C. 552b), which is designed to ensure that public business is publicly conducted, and that government advisory and policymaking groups are not inappropriately used to advance the private interests of their members. Task Force members are considered special government employees who are subject to certain government-wide restrictions on conflicts of interest.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–30818 Filed 12–14–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement and Public Hearings for the Proposed York County Energy Partners Cogeneration Project at North Codorus Township, PA

AGENCY: Department of Energy.

ACTION: Notice of Extension of Comment Period.

SUMMARY: On November 25, 1994, the U.S. Department of Energy published a notice announcing the availability of a Draft Environmental Impact Statement and public hearings for the proposed York County Energy Partners Cogeneration Project at North Codorus Township, PA (59 FR 60614). Interested parties were invited to provide comments on the content of the Draft Statement to the Department by no later than January 10, 1995. Today's notice announces an extension of the comment period on the Draft Environmental Impact Statement.

DATES: Comments on the Draft Environmental Impact Statement should be postmarked by January 31, 1995.

ADDRESSES: Written comments should be directed to: Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, U.S. Department of Energy, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, U.S. Department of Energy, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, (304) 285–5443.

Signed in Washington, DC, this 9th day of December 1994.

Patricia Fry Godley,

Assistant Secretary for Fossil Energy.

[FR Doc. 94–30850 Filed 12–14–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2572 and 2458—ME]

Great Northern Paper, Inc.; Intent To Hold a Public Meeting in Millinocket, Maine To Discuss the Draft Environmental Impact Statement (DEIS) for the Existing Ripogenus and Penobscot Mills Projects

December 9, 1994

On December 1, 1994, the Commission staff mailed the DEIS for the licensing of two existing hydroelectric projects in the Penobscot

River basin to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental and economic consequences of relicensing the applicant's (Great Northern Paper, Inc. (GNP)) existing 37.5 megawatt (MW) Ripogenus project and existing 55.3 MW Penobscot Mills project with enhancements as proposed by GNP, and alternatives to the applicant's proposal.

The three alternatives to the applicant's proposal include: No action (continued operation without any enhancement); enhancements of fisheries and other measures similar to those requested by conservation intervenors and some agencies; and applicant's proposal with staff-recommended enhancements.

The public meeting, which will be recorded by an official stenographer, is scheduled for 7:00 p.m. on Wednesday, January 25, 1995 at the Sterns High School Auditorium, 199 State Street, Millinocket, Maine.

At the meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record. In addition, written comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 until February 1, 1995. All written comments should clearly show the following caption on the first page: Ripogenus (P–2572) and Penobscot Mills (P–2458) DEIS.

For further information, please contact Edward R. Meyer at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30792 Filed 12–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–116–000]

Natural Gas Pipeline Company of America v. Northern Border Pipeline Company; Notice of Complaint

December 9, 1994.

Take notice that on December 7, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 61048, filed with the Commission in Docket No. CP95–116–000 a complaint, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, against Northern Border Pipeline Company (Northern Border), alleging that the capacity allocation procedure under a current Northern Border expansion and extension proposal is unduly discriminatory.

According to Natural, Northern Border held an open season between October 24 and November 18, 1994, for new capacity on a proposal to expand its system between Port of Morgan, Montana, Ventura, Iowa, and Harper, Iowa, by adding new compression facilities; and to extend its system by constructing new pipeline facilities approximately 250 miles in length eastward from Harper, Iowa, to the metropolitan Chicago, Illinois, market. Northern Border's pipeline system interconnects with Northern Natural's pipeline system at Ventura and with Natural's Amarillo Mainline at the Harper terminus, where Natural receives gas for transportation to the Chicago market.

Natural bases its complaint allegations against Northern Border on an October 24, 1994, copy of Northern Border's expansion and extension proposal.[1] Natural alleges that Northern Border's proposal involves an unlawful and unduly discriminatory typing arrangement, under which Northern Border is using its power over the expansion of its existing system to coerce shippers who desire such expansion capacity into also bidding for unwanted and uneconomical extension capacity beyond Harper, Iowa.

The first paragraph of Section III of the October 24, 1994, proposal provides for project capacity to be allocated on the basis of the delivery zone requested, with preference given to the three delivery zones downstream of the Harper terminus (*i.e.*, on the extension project). According to Natural, the proposal also precludes "shippers from obtaining only desired expansion capacity by expressly excluding any '[e]xpansion of ** existing delivery points [to Northern Natural at Ventura and to Natural at Harper]. Incremental deliveries will only be accommodated to the extent delivery capacity is or becomes available.' (Schedule A, footnote 2)."

Natural believes a competitive alternative to Northern Border's proposal would be to permit shippers to acquire capacity on Northern Border's expansion facilities and to move gas farther east by using Natural's existing system (which Natural could expand as needed). Natural also believes that this alternative could result in gas moving from Port of Morgan to Chicago more efficiently and economically than under Northern Border's proposal.

[1] Northern Border has not filed its proposal with the Commission as of December 9, 1994

Any person desiring to be heard or to make a protest with reference to Natural's complaint, especially potential bidders on Northern Border's expansion and extension facilities, should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions, together with the answer(s) of Respondent to the motion and to the Complaint, should be filed on or before December 23, 1994. Any person desiring 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. Answers to the complaint shall be due on or before December 23, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30800 Filed 12–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1410–000]

Public Service Company of Oklahoma; Notice of Filing

December 9, 1994.

Take notice that on November 15, 1994, Public Service Company of Oklahoma (PSO), tendered for filing an amendment to its Coordination Sales Tariff, filed June 9, 1994. Under the Coordination Sales Tariff, PSO will make Economy Energy, Short-Term Power and Energy, General Purpose Energy and Emergency Energy available to customers upon mutual agreement. The amended filing makes limited changes in selected terms and conditions of the Tariff and associated Service Schedules.

PSO revised the requested effective date from August 31, 1994 to November 1, 1994. Copies of this filing were served on the Oklahoma Corporation Commission and are available for public inspection at PSO's offices in Tulsa, Oklahoma.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 21, 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 area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30789 Filed 12–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–16–003]

South Georgia Natural Gas Company; Filing

December 9, 1994.

Take notice that on December 2, 1994, South Georgia Natural Gas Company (South Georgia), submitted revised standards of conduct under Order Nos. 497, *et seq.*[1] and Order Nos. 566 and 566–A.[2] South Georgia states that it is revising its standards of conduct to incorporate the changes required by Order Nos. 566 and 566–A.

South Georgia states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 27, 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. 94–30791 Filed 12–14–94; 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 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[Docket No. MG88–15–004]

Southern Natural Gas Company; Filing

December 9, 1994.

Take notice that on December 2, 1994, Southern Natural Gas Company (Southern) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 and 566–A.[2] Southern states that it is revising its standards of conduct to incorporate the changes required by Order Nos. 566 and 566–A.

Southern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

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, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 27, 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. 94–30790 Filed 12–14–94, 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 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[Docket No. CP95–111–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

December 9, 1994

Take notice that on December 5, 1994 Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–111–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate two existing delivery point facilities, constructed under Section 311(a) of the Natural Gas Policy Act (NGPA) of 1978, under Tennessee's blanket certificate issued in Docket No. CP82–413–000 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.

The two existing delivery point facilities for which Tennessee seeks authorization are the Katy Interconnect Meter Station facilities, located in Waller County, Texas, and the South Timbalier Transport Meter Station facilities, located in LaFourche Parish, Louisiana.

The request for authorization states that Tennessee has constructed a number of delivery points under Section 311(a) of the NGPA for use in the transportation of natural gas under subpart B of part 284 of the Commission's Regulations. Tennessee states that since it now renders significant transportation of natural gas under its Subpart G blanket certificate, it is imperative that maximum flexibility be attained so that its facilities can be used for the benefit of all customers on Tennessee's system.

It is stated that delivery volumes through the existing delivery points would not impact Tennessee's peak day and annual deliveries; that the proposed activity is not prohibited by its existing

tariff; and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–30788 Filed 12–14–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5122–6]

Solicitation for Graduate Fellowship Applications—1995; Office of Exploratory Research

Introduction

The U.S. Environmental Protection Agency (EPA) invites applications for graduate fellowships in academic disciplines at the forefront of environmental science and technology: The physical, biological, and social sciences; mathematics and computer science; and engineering. These fellowships are intended to help defray costs associated with advanced environmentally-oriented study leading to the masters or doctoral degree. EPA expects to award approximately 100 new multi-year graduate fellowships in 1995. The remainder of this notice presents pertinent background information and describes the application and review process.

Background

The mission of the EPA is to provide leadership in the nation's environmental science, research, education, and assessment efforts; make sound regulatory and program decisions; and carry out effective programs and policies to improve and preserve the quality of the national and global environment. Science and technology are central to virtually every aspect of environmental protection and seem certain to take on progressively greater importance during the foreseeable future. Both the public and private sectors will need a steady stream of well-trained environmental scientists and engineers if our society is to meet the environmental challenges of the future. Through its office of Research and Development, the EPA is anticipating that need by offering financial assistance for advanced study in academic disciplines relevant to its mission.

Eligibility

Applicants must be citizens of the United States or its territories or possessions, or lawfully admitted to the United States for permanent residence.

EPA graduate fellowships are intended for students already enrolled into a full-time graduate program at an accredited U.S. college or university.

Women, minorities, and disabled students who are pursuing graduate degrees in one of the eligible fields are especially encouraged to apply.

Tenure

The term of a graduate fellowship is negotiated with students and ordinarily covers a period of 9 to 12 months for each fellowship year; funds for unutilized months are forfeited. Students seeking a masters degree are supported for a maximum period of two years; students seeking doctoral degrees are supported for a maximum period of three years.

Stipends And Allowances

The Graduate Fellowship Program provides up to $34,000 per year of support. A maximum of $68,000 will be provided for masters fellows (2 years) while doctoral fellows can receive up to $102,000 in support (3 years). Individuals accepting this support may not concurrently hold other Federal scholarships, fellowships, or traineeships. The $34,000 annual support covers stipend, tuition, and expenses as follows:

- Stipends during 1995–96 will be $17,000 for 12-month tenures and prorated monthly at a maximum of $1,417 for shorter periods. Stipends are paid directly to the Fellow. At its discretion, each fellowship institution may supplement a Fellow's stipend from institutional funds in accordance with the supplementation policy of the fellowship institution.
- Tuition support will be up to $12,000 per year, depending upon the policies of the fellowship institution, paid directly to the institution.
- An expense allowance of up to $5,000 (paid to the institution) will be provided for the direct benefit of the fellow, *e.g.*, for health insurance, books, supplies, and travel to scientific meetings.

Evaluation And Selection

Each applicant will be evaluated in terms of his/her potential for successful graduate study, as evidenced by academic records, faculty recommendations, and career goals and objectives. Applicants pursuing a masters degree will be evaluated further on their outlined plan of study and/or proposed thesis research. Applicants pursuing the doctoral degree will be evaluated further on the technical merit of their plan of proposed dissertation research and its relevance to the EPA mission. Panels of scientists, mathematicians, and engineers selected by EPA will perform the reviews.

In the review process, the applicants will fall into two categories: masters and doctoral. Students seeking a masters degree will compete against each other, and students seeking a doctoral degree will compete against each other.

Selections of awardees will be made by EPA based on the panel evaluations, program goals, and availability of funds. The written evaluation summarizing the review panel's findings will be made available to the applicant.

How To Apply

Interested students may request an initial application from the following sources:

- Campus offices of Graduate Deans, Deans of Mathematics, Science, and Engineering Departments, and Multi/Interdisciplinary Studies.
- Virginia E. Broadway, Attn: Graduate Fellowships, Office of Exploratory Research (8703), Room 3102, NEM, 401 M Street, SW., Washington, DC 20460, E–MAIL BROADWAY.VIRGINIA@EPAMAIL.EPA.GOV, Fax No: 202–260–0211.

Application

A complete application consists of the following documents:

- EPA Form 5770–2 (pages 1 and 2), "Fellowship Application"—Submit an original and two copies.
- EPA Form 5770–4, "Fellowship Applicant Qualifications Inquiry"—Recommendations from three scientists or faculty members are required.
- EPA Form 5700–49, "Debarment and Suspension Certification"—This form should be signed by the applicant.

• One page statement outlining Plan of Study and/or Proposed Thesis Research.—This applies to those students seeking a masters degree. The statement should be co-signed by the applicant and sponsor.

• A statement (up to five pages) summarizing Plan of Proposed Dissertation Research—This applies to those students seeking a doctoral degree. The statement should be co-signed by the applicant and sponsor.

• Academic transcripts. Transcripts must bear the official institutional seal.

Please Note: Each applicant should arrange with registrars and sponsors to have transcripts and recommendations mailed to the applicant in sealed envelopes. The original Form 5770–2 (and two copies), sealed transcript(s), sealed recommendations, and one-page statement of study/research plans should be placed in one envelope and mailed to the following address: Virginia Broadway, Office of Exploratory Research (8703), Office of Research and Development, U.S. Environmental Protection Agency, Room NE 3102, 401 M Street, SW., Washington, DC 20460, Telephone No: 202–260–7473.

Applications will be considered invalid if all of the components (see above) are not mailed to EPA in the same envelope.

February 13, 1995: Deadline for receipt of application. It is the applicant's responsibility to meet the deadline. If the application is mailed within five (5) days prior to receipt date, it is recommended that express mail or courier service be used.

Mid-April 1995: EPA will notify all applicants regarding their status. The letters of notification will be sent to each applicant's permanent address.

Robert J. Huggett,

Ph.D, Assistant Administrator for Research and Development.

[FR Doc. 94–30843 Filed 12–14–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 94–48, FCC 94–235]

First Annual Report to Congress Assessing the Status of Competition in the Market for Cable Television and Other Video Programming Services

AGENCY: Federal Communications Commission.

ACTION: First Annual Report to Congress.

SUMMARY: The Commission is required under the Communications Act to report annually to Congress on the status of competition in the market for the delivery of video programming. On September 28, 1994, the Commission released the first such annual report. In the report, the Commission assessed: the definition of the market for the delivery of video programming, including cable television services; the performance of the cable industry since 1990; the status of existing competitors to franchised cable systems and other actual or potential competitors; market structure issues affecting competition (specifically, horizontal concentration, vertical integration and technical changes in the cable industry); and the extent of competition in, and the overall performance of, the market. The Commission also made several recommendations for promotion competition to cable systems.

FOR FURTHER INFORMATION CONTACT: James W. Olson, Chief, Competition Division, Office of the General Counsel, (202) 416–0856.

SUPPLEMENTARY INFORMATION: 1. Pursuant to Section 628(g) of the Communications Act, 47 U.S.C. § 548(g), as amended by Section 19(c) of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, 106 Stat. 1460, the Commission is required to report annually to Congress on the status of competition in the market for the delivery of video programming. On September 28, 1994, the Commission released the first such annual report (the "Report"): Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming), First Report, _____ FCC Rcd _____, FCC 94–235 (CS Docket No. 94–48 Sep. 28, 1994).

2. The full text of the Report is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc (ITS, Inc."), 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone number (202) 857–3805. It will also be published in the Federal Communications Commission Record.

3. In the following paragraphs the Commission summarizes the contents of the Report. This summary covers the following discussions in the Report: (A) Market Definition (which is located in Section III.A of the Report); (B) Cable Industry Performance (which is located in Section II); (C) The Status of Existing Competitors to Cable (which is located in Section III.B); (D) the Status of Other Actual or Potential Competitors to Cable (which is located in Section III.C); (E) Horizontal Concentration (which is located in Section IV.A); (F) Vertical Integration (which is located in Section IV.B); (G) the Nature of Technical Changes affecting Cable Systems (which is located in Section IV.C); (H) The Extent of Competition and Assessment of Market performance (which is located in Section V.A); and (I) Future Considerations and Recommendations for Promoting Competition to Cable Systems (which is located in Section V.B).

A. Market Definition

4. Congress charged the Commission with annually reporting on the "status of competition in the market for the delivery of video programming." [1] In the Commission's view, obtaining a complete picture of the status of competition required the Commission to look beyond multichannel video programming distributors ("MVPDs") to other technologies that are not explicitly included within the statutory definition of an MVPD, but which may have constraining effects on cable system practices. Moreover, to fulfill its statutory mandate, the Commission believes it should also look beyond the "effective competition" standard of the 1992 Cable Act, which is a bright-line test used to determine when a particular cable system's rates may be deregulated.[2] Accordingly, in the Report, the Commission provided a fuller economic analysis of the industry, rather than simply reporting on the status of statutorily-defined "effective competition" in each franchise area in the country.

5. Product Market. For purposes of the Report, the relevant product market contemplated in the 1992 Cable Act—multichannel video programming service—was the appropriate starting point for assessing the status of competition in the market for the delivery of video programming. A primary focus of the Report, and a central concern of the Act, is the extent to which MVPDs that use alternative technologies are emerging as significant competitors to cable operators. In addition to cable operators (which include direct competitors known as "overbuilders"), The statutory definition of MVPDs specifically includes providers that offer television

[1] Communications Act § 628(g), 47 U.S.C. 548(g).

[2] Communications Act (l)(1)(A), 47 U S C. 543(l)(1)(A).

receive-only ("TVRO") satellite services, direct broadcast satellite ("DBS") services, and multichannel multipoint distribution services (MMDS").[3] The Commission has subsequently determined that satellite master antenna television ("SMATV") systems and video dialtone ("VDT") service providers, which will typically offer their services through facilities operated by local exchange carrier telephone companies ("LECs"), should also be considered MVPDs.[4] Consequently, the Report contained evaluations of the status of providers utilizing each of these technologies.

6. In addition, the Commission discussed other video programming distribution media as potential substitutes for cable services. While the statutory definition of an MVPD expressly excludes current broadcast technology (because a broadcast station does not offer "multiple" channels of video programming and is not offered on a subscription basis), the Commission nonetheless included a discussion of broadcast television in this Report, given broadcasting's potential constraining effect on cable industry conduct. Finally, the Commission discussed other delivery media that arguably may have a competitive impact in the market, including low power television, programming distribution by electric utilities, an VCRs.

7 Geographic Market. The proper definition of the geographic market in which cable operators compete has relevance to the assessment of cable operators' market power (and to the administration of the "effective competition" standard of the 1992 Cable Act, which will be addressed in future reports). The scope of the geographic market is defined by the geographic area to which buyers will reasonably turn and from which competing suppliers sell their products. Given the current state of competitive entry, it seemed reasonable to define, at least tentatively, the local franchise area as the geographic market relevant to an analysis of the cable industry. However, over time, it is likely that consumers will be able to purchase services from MVPDs offering service from locations outside their franchise areas. For example, wireless cable and SMATV systems may serve entire metropolitan areas. A LEC providing VDT service may serve an entire region of the country. Finally, DBS service providers appear to contemplate a national market. Therefore, as competitive entry increases, the definition of the geographic market for purposes of economic analysis may be broadened beyond the franchise area to account for the impact of these alternative suppliers.

B. Cable Industry Performance

1. Performance From 1990 to 1993

8. Cable Industry Output. Since the Commission last reported on the status of competition in 1990,[5] the cable industry has continued to expand. The Commission found that the number of homes that could receive cable service ("homes passed") grew to 92.9 million in 1993 (up from 86 million in 1990), which was over 96% of all television households in the United States. With cable services available to more homes than ever before, the total number of households subscribing to basic cable services has increased to 57.4 million households, which is almost 60% of the television households in the United States (up from 51.7 million households and 55.8% of television households in 1990). The industry's penetration (which measures the percentage of households passed by cable that choose to subscribe to basic cable services) increased by 2.78% since 1990 so that nearly 62% of all households that could receive basic cable in 1993 purchased such services.

9. Attributes of Cable Industry Service. Since 1990, average channel capacity has noticeably increased in the industry. As a result, by the end of 1993, nearly 97% of all subscribers for which information is available received service from systems that could provide at least thirty channels. Since 1990, there has also been noticeable growth in the number of cable programming choices. The number of basic programming networks grew by over 18%, from sixty-one at the end of 1990 to seventy-two at the end of 1993. The number of pay-per-view networks nearly doubled, from seven in 1990, to thirteen at the end of 1993. Overall, the number of programming networks increased by over 29%, from seventy-seven at the end of 1990, to ninety-nine at the end of 1993.

10. Cable Industry Revenue. The cable industry continued to generate increased amounts of revenue between 1990 and 1993. It appears that the cable industry generated $22.94 billion in total revenue in 1993, which was over 28% more than the $17.86 billion it generated in 1990. Of the 1993 amount, $13.55 billion, or over 59%, came from basic service tier programming. Revenue from pay-per-view programming increased 102% from $253 million to $512 million over the same time period. Advertising revenue has become an increasingly important source of revenue for the cable industry.

11. Cable Industry Expenditures and Earnings Before Interest, Taxes, Depreciation, and Amortization. Cable expenditures on programming rose by more than 25% between 1990 and 1993. In addition, measurements of earnings before interest, taxes, depreciation, and amortization ("EBITDA"), which people in the industry commonly refer to as "cash flow," are often used to value the economic health of industry firms. Based on the Commission's estimates, it appears that the industry generated cash flows of over $4.8 billion in 1987, $7.9 billion in 1990, and $10.5 billion in 1993. It also appears that the industry had a cash flow per basic subscriber of $164.29 in 1993, which would represent an increase of 19% for the period between 1990 and 1993. Moreover, it appears that the industry's cash flow represented over 46% of its total revenue in 1993, which was a 4.4% increase over 1990.

12. Capital Investment. In 1990, the industry invested nearly $3.0 billion in construction. In 1991 and 1992, however, investment in construction dropped off, to approximately $2.2 billion in each of those years. The cable industry's construction investment rebounded in 1993, however, to almost the same level as in 1990, nearly $3.0 billion.

13. Cable System Transactions. In 1990, systems with an aggregate value of $1.07 billion were sold, compared with the aggregate value of $11.21 billion for systems sold in 1987. In 1993, however, the systems sold had an aggregate value of over eight billion dollars, even though the total number of transactions declined from 1990. The dollar value per subscriber of systems sold increased by over five percent during the same years, from $2049 in 1990, to $2160 in 1993.

2. Recent Developments

14. Subscriber Growth. The record in the proceeding that led to the Report indicated that the publicly-reporting companies have experienced continued growth in the number of basic subscribers over the first six months of 1994.

[3] Communications Act § 602(12) 47 U.S.C. § 522(12).

[4] Implementation of Sections of the 1992 Cable Act (Rate Regulation), Report & Order, & Further Notice of Proposed Rulemaking ¶¶21–22, 8 FCC Rcd 5631, 5650–51 (MM Docket No. 92–266 1993), summarized in 58 Fed. Reg. 29736 (May 21, 1993).

[5] Rate Deregulation & the Commission's Policies Relating to the Provision of Cable Television Serv., Report on Competition, 5 FCC Rcd 4962 (1990) ("1990 Cable Report"), summarized in 55 Fed. Reg. 32631 (Aug. 10, 1990).

15. Revenues. Information from cable system operators that make financial information publicly available through the SEC indicated that cable system revenues remained relatively steady through the first six months of 1994. According to the most recent annual or quarterly reports of fifteen cable system operators, ten reported increased cable system revenues and five reported decreases. On the other hand, several MSOs reported decreases in revenues during the first six months of 1994.

16. Capital Investment. The Commission determined that the cable industry appears to be substantially increasing its capital investment in infrastructure development.

17. Cable System Transactions. There has been considerable activity in the market for cable system transactions during the first six months of 1994. The thirty-eight transactions announced in 1994 that were identified by the Commission have a total dollar value of nearly $10.95 billion which, if the transactions are consummated, would be significantly greater than the $8.32 billion that changed hands in 1993. However, the average price of $2035 per subscriber and cash flow multiple of 10.2 times cash flow are somewhat lower this year than the 1993 levels of $2160 per subscriber and 11.3 times cash flow.

C. The Status of Existing Competitors to Franchise Cable Systems

1. Overbuilders

18. The term "overbuild" describes the situation in which a second cable operator enters a local market in direct competition with an incumbent cable operator. In those markets, the second operator, or "overbuilder," lays wires in the same area as the incumbent, "overbuilding" the incumbent's plant, thereby giving consumers a choice between cable service providers.

19. In the Report, the Commission discussed the findings it made in connection with its March 30, 1994 Report and Order regarding rate regulation, when it examined the competitive differential between markets that were overbuilt and those that were not.[6] Under that analysis, the Commission determined that the rates in markets that were overbuilt were an average of sixteen percent lower than the rates in markets that were not overbuilt.[7] The Commission then discussed the fact that, while most studies suggest that overbuilding produces meaningful rate effects, overbuilding seems to have remained quite limited, despite the 1992 Cable Act's explicit purpose to encourage the emergence of direct competition. The Commission will track the progress of existing overbuilds and monitor the emergence of new overbuild construction on an on-going basis.

2. Direct-To-Home Satellite Services

20. Two distinct types of direct-to-home ("DTH") satellite services now offer video programming for subscription that is comparable to the satellite-delivered programming provided by cable television services. DBS is one. Technically, DBS service refers to satellites that transmit signals "intended for reception by the general public" and operate pursuant to Part 100 of the Commission's Rules in a portion of the Ku-band.[8] The second type of DTH service is offered by the home satellite dish (HSD) industry, and involves the home reception of signals transmitted by satellites operating generally in the C-band.

a. Direct Broadcast Satellite (DBS)

21. The Commission found in the Report that DBS has advanced since 1990 as a potential long-term viable competitor to cable. In December 1993, the first high-power DBS satellite ("DBS–1"), owned by DirecTV and operated jointly with USSB, was launched, and on June 17, 1994, DirecTV and USSB began providing high-power DBS service via DBS–1. On August 3, 1994, DBS–2, also owned by DirecTV, was launched. As of September 9, 1994, equipment necessary to receive service from DirecTV, and USSB was available in twenty-three states, approximately 40,000 households were receiving programming through small reception dishes that are approximately eighteen inches in diameter. Retailers in the first five markets in which that DBS service has been introduced have reported that the demand for the dishes has exceeded the supply In addition to that high-power DBS service, Primestar Partners, L.P. ("Primestar"), has been operational as a medium-power Ku-band service provider since 1991, and its service is available to consumers using thirty-six-inch and forty-inch dishes. As of June 4, 1994, Primestar served 70,383 subscribers, and it began to use digital technology to provide service to its subscribers on July 31, 1994.

22. The Commission reported that, by its very nature, DBS is a national video programming distribution service. However, DBS services does not offer local broadcast signals, a fact which may inhibit the ability of DBS service to become an effective competitor to cable service. On the other hand, DBS service might provide consumers with service attributes that are not generally available on cable systems at this time.

b. Home Satellite Dishes (HSDs)

23. The Commission noted in the Report that HSD technology was first developed in 1976, and commercialized in 1989. HSDs are approximately 7–10 feet in diameter and receive video programming transmitted in the C-band of frequencies.[9] Generally, HSD owners have access to the same programming services that are available on cable, although the most popular cable programming services are scrambled. In order to receive one or more scrambled channels, an HSD owner must purchase an integrated receiver-decoder ("IRD") from an equipment dealer and then pay a monthly or annual subscription fee to one of the thirty or so national packagers of HSD programming.

24. Today, there are approximately four million HSD users, roughly half of whom subscribe to one or more programming services. It has also been reported that almost all recent buyers of HSD systems are choosing to subscribe to a programming service. It appears that 61% of HSD systems were purchased by persons who did not have access to cable at the time they purchased HSD. However, 37% of HSD owners with access to cable subscribe to cable services, and 18% of HSD owners who subscribe to satellite-programming packages also subscribe to cable. Among HSD owners who subscribe to both cable and one or more satellite-programming packages, 41% subscribe to cable for the purpose of receiving local television stations. Accordingly, it appears that HSDs and cable systems may be either complementary video programming distribution services or substitutes for each other, depending on viewer preferences and other circumstances.

25. The HSD industry's primary competitive strength *vis-a-vis* cable is

[6] Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation, Second Order on Reconsideration, Fourth Report & Order, & Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 (MM Docket No. 92–266 1994), summarized in 59 Fed. Reg. 18064 (Apr 15, 1994). Appendix C of the order contains a detailed and technical discussion of the variables and economic assumptions underlying the Commission's calculation. The Commission studied 51 overbuilds (including those by municipal providers) in connection with the order. *Id* ¶ 96, 9 FCC Rcd at 4162

[7] *Id* ¶ 97, 9 FCC Rcd at 4162

[8] 47 CFR 100.3

[9] Because signals in this band are transmitted at lower power than signals in other bands used for direct-to-home service, the receiving antenna must be larger to receive the signal

programming variety and flexibility. Although HSD services offer more programming options than any other video delivery system, the cost of a system entails a large upfront expenditure by the consumer. Another drawback for HSD services comes from the fact that many localities have enacted zoning ordinances that restrict the deployment of HSDs. A third factor that may affect the ability of HSD systems to compete with cable systems is presented by claims video programming suppliers charge HSD program packagers prices that cannot be justified under the Commission's program access rules.

3. Terrestrial "Wireless" Cable—Multichannel Multipoint Distribution Service (MMDS)

26. The term "wireless cable" refers to the Multipoint Distribution Service ("MDS") and MMDS (Multichannel Multipoint Distribution Service), both of which transmit video programming using over-the-air microwave radio channels. Subscribers use rooftop antennas to receive the programming transmitted from the wireless cable tower. The signals received are then sent through electronics equipment to the subscriber's television set. There are eleven MMDS (multichannel) channels available to wireless cable system operators for full-time use, and either two or three MDS (single-channel) channels depending on the particular city. In addition, wireless cable system operators have access to the twenty channels allocated to Instructional Television Fixed Service ("ITFS")[10] on a leased, part-time basis. Thus, wireless cable operators have access to a maximum of thirty-two or thirty-three channels.

27. In the Report, the Commission noted that the wireless cable industry increased its subscribership from 50 systems serving 300,000 subscribers in 1990, to 143 systems serving 550,000 subscribers by June 1994. In addition, the Commission discussed projections that the number of wireless cable subscribers will grow through the end of the decade, and concluded that, although wireless cable has not achieved significant penetration nationwide, there are a number of markets in which wireless cable has gained a foothold in competition with wired cable systems.

28. In the Report, the Commission wrote that the wireless cable industry has a number of strengths *vis-a-vis* cable. First, wireless cable system operators appear to incur lower costs for the initial construction of their systems, which allows wireless operators to provide comparable service at lower prices than cable. Second, it appears wireless operators may be able to upgrade their systems to employ digital compression and interactive applications at a lower cost per subscriber than cable system operators. Third, in contrast to cable system operators, wireless cable operators are not required to obtain franchises in order to provide service. However, at least one state now regulates various aspects of the customer service provided by wireless cable operators and other MVPDs.

29. The Commission noted, however, that there appear to be several remaining obstacles that could hamper the growth of wireless cable. First, wireless cable operators have difficulty in gaining access to a sufficient number of channels to provide a competitive service. Second, wireless cable transmitters must have line-of-sight access to a home in order for that home to be capable of receiving wireless cable service. Consequently, many homes are unable to receive service from this technology because they are blocked by trees or buildings.

30. Overall, the Commission concluded that it appears that two of the wireless cable industry's most significant problems, lack of capital and insufficient channel capacity, are being addressed. First, the program access provisions of the 1992 Cable Act appear to have given wireless operators the credibility to raise money in the public debt and equity markets, thereby easing the financial difficulties experienced by many wireless systems. Second, the combination of improved Commission licensing and the use of digital compression is expected to alleviate wireless cable's problem with limited channel capacity in the near future. The progress in these two areas has led some analysts to forecast continued growth for this industry.

4. Satellite Master Antenna Television (SMATV) Systems

31. SMATV system operators (also known as "private cable systems") are MVPDs that serve residential, multiple-dwelling units ("MDUs"), and various other buildings and complexes. A SMATV system offers, in general, the same type of programming as a cable system, and the operation of a SMATV system, in large part, resembles that of a cable system—a satellite dish receives the programming signals, equipment processes the signals, and wires distribute the programming to individual dwelling units. The primary difference between the two is that SMATV systems typically are unfranchised, stand-alone systems that serve a single building or complex, or a small number of buildings or complexes in relatively close proximity to each other. However, SMATV operators are increasingly using microwave facilities to interconnect properties spread over a metropolitan area.

32. The Commission noted in the Report that one industry source estimates that there are currently approximately 3000 to 4000 SMATV systems operating nationwide serving approximately one million subscribers. SMATV operators may have the ability to offer lower prices than can wired cable operators for substantially the same services. On the other hand, the Commission noted that regulatory barriers, including the circumstances under which SMATV systems may be required to obtain franchises, may artificially raise the cost of operating SMATV systems. Moreover, SMATV operators contended in the proceeding that the Commission's cable home wiring rules permit cable operators to engage in conduct that has a chilling effect on competition. Those rules, require, *inter alia*, that cable operators provide subscribers with the opportunity to acquire cable home wiring before the cable operator removes it from the premises after termination of service.[11] The Commission concluded by stating that it will address home wiring issues when it rules on the petitions for reconsideration that are now pending.

5. Broadcast Television Service

33. Broadcast television stations are, and always have been, significant suppliers in the market for delivered video programming. In the Report the Commission noted that during the 1993–94 season, ABC, CBS, NBC and Fox maintained a combined 72% share of prime-time viewers. Even among those households subscribing to cable, retransmitted broadcast channels had a

[10] ITFS channels are used by educational institutions to interconnect scattered campus locations.

[11] 47 C.F.R. § 76.802. The purpose of the cable home wiring rules is to avoid the disruption from having the wire removed after service is terminated and to allow subscribers to utilize the wires with competing MVPDs, thereby facilitating competition from these entities. Implementation of the 1992 Cable Act, Cable Home Wiring, Report & Order, 8 FCC Rcd 1435 (1993), summarized in 58 Fed. Reg. 11970 (Mar. 2, 1993), recon. pending., MM Docket No. 92–260. The Commission currently has before it a petition to initiate a rulemaking to determine how cable subscribers may have access to existing cable home wiring for the delivery of competing and complementary services. Joint Petition for Rulemaking on Cable Television Wiring, Public Notice, 8 FCC Rcd 8184 (1993).

46% prime time viewing share in the 1992–93 season, while retransmitted independent broadcast and public television stations maintained 17% and 3% shares respectively. Therefore, two-thirds of all cable households watching television delivered by cable in the 1992–93 season were watching a retransmitted broadcast channel. Moreover, more than one-third of all households that could subscribe to cable service elected not to do so. Accordingly, the Commission wrote that it would appear that for at least some viewers, broadcast television service satisfies their demand for video programming.

34. The Commission found, however, that cable systems offer a "steadily-expanding complement of specialized program services," which can increasingly meet consumer demand for more video programming choices.[12] Accordingly, the Commission determined that the menu of available broadcast signals is insufficient to constrain cable market power.

D. The Status of Other Actual or Potential Competitors

1. Local Exchange Carrier (LEC) Entry

35. Since 1990, the Commission has adopted orders easing the regulatory restrictions that had essentially prevented LECs from participating in the multichannel video marketplace. The Commission discussed in the Report the "video dialtone" ("VDT") framework that it created for LEC participation in the multichannel video distribution marketplace consistent with the statutory prohibition against LECs' provisions of video programming directly to subscribers within their service areas.[13] That VDT framework, along with technological advances, has spurred increased video-related activity by LECs, including several market and technical trails and twenty-four applications for permanent authority covering over 8.5 million homes. Those applications, taken together, constitute a promising source of competition to cable operators for the multichannel distribution of video programming.

36. In the Report, the Commission discussed how the VDT regulatory framework adopted by the Commission in 1992 permits a LEC to make available, on a non-discriminatory common carrier basis, a platform capable of providing non-discriminatory access to multiple video programmers and of delivery video programming and other services to end users within its local telephone service area. The LEC may also provide additional enhanced and non-common carrier services to customers of the common carrier platform. Neither a LEC offering VDT service, nor its programmer-customers, is required to obtain a local cable television franchise.[14] Authorization pursuant to Section 214 of the Communications Act[15] ("Section 214 authorization") is required for LEC provision of VDT service, and the Commission has established safeguards to prevent discrimination and cross-subsidization.

37. In addition to regulatory and legal constraints, the Commission wrote that technology has also played a role in restraining the entry of LECs into the multichannel video programming distribution marketplace. While an infrastructure owned by telephone companies currently exists for delivery of narrowband voice communications to most homes and businesses in the nation, that infrastructure is unable to transport and deliver multichannel video programming to multiple end users. Various techniques, technologies and architectures for delivering broadband video signals are currently being tested.

38. Finally, the Commission discussed the fact that a number of issues remain unresolved with respect to the participation of LECs in the delivery of video programming. At the time of the release of the Report, the regulatory framework for permitting LECs to construct and operate a common carrier VDT platform for the transmission of video programming and other services to end-users was under review by the Commission.[16] Moreover, the VDT industry is in its planning and construction phases. In future reports, the Commission will further review the development of LEC provision of video programming and its status as a competitive alternative to cable.

2. Local Multipoint Distribution Service (LMDS)

39. LMDS is a new technology, similar to MMDS, in which multiple channels of video programming are transmitted using high-frequency microwave channels in the 28 GHz band. Like MMDS, LMDS subscribers must have a special antenna that is located with a line of sight to the transmitter. Because of the propagation characteristics in this frequency band, LMDS requires multiple transmitters in "cells" with radii of three to six miles in order to cover a metropolitan area that could be covered by a single wireless cable transmitter.

40. Because the Commission has not yet determined whether the 28 GHz band will be designated for use by LMDS operators, the Commission determined that it was premature to draw any conclusions in the Report regarding the feasibility of LMDS. If the Commission ultimately concludes that LMDS is to be licensed in the 28 GHz band, LMDS will be included in future reports to Congress.

3. Low Power Television (LPTV)

41. Low power television ("LPTV") refers to use of the VHF and UHF spectra pursuant to the regulatory scheme that was established by the Commission in 1982 as a means of increasing diversity in television programming and station ownership.[17] Although this service has been highly successful in meeting that objective, there is now interest in using LPTV channels to provide multichannel video service.

42. The Commission wrote in the Report that, while multichannel LPTV services may eventually become available in many areas, an application freeze on new LPTV stations within 100 miles of the thirty-six largest United States cities, which was entered to preserve spectrum availability for the implementation of advanced television systems, suggests that multichannel LPTV entry will likely be limited to smaller and mid-sized markets. In addition, it is unclear whether multichannel LPTV will enter the market as a competitor to cable, or as a substitute to cable service in largely uncabled areas.

4. Electric Utilities

43. The Commission also discussed the fact that electric utility companies may provide another potential source

[12] 1990 Cable Report ¶ 69, 5 FCC Rcd at 4971–72.

[13] Communications Act § 613(b), 47 U.S.C. § 533(b). See also 47 C.F.R. §§ 63.54, 63.58 (1990); *United States* v. *AT&T* 552 F. Supp. 131 (D.C.C. 1982), *aff'd sub nom Maryland* v. *United States* 460 U.S. 1001 (1983).

[14] The Commission's decision that neither LECs nor their programmer-customers are required to obtain a local franchise in order to provide video programming to end-users was recently affirmed by the D.C. Circuit. *National Cable Television Assoc* v. *FCC*, 33 F.3d 66, (D.C. Cir 1994)

[15] 47 U.S.C. § 214.

[16] The Commission has subsequently released an order on reconsideration, in which it affirmed the VDT regulatory framework in most respects, and issued a further notice of proposed rulemaking on certain issues. Telephone Company–Cable Television Cross-Ownership Rules, Sections 63.54–63.58, FCC 94–269 (CC Docket No. 87–266 Nov. 7, 1994).

[17] An inquiry into the Future Role of Low Power Television Broadcasting & Television Translators in the Nat'l Telecommunications Sys., 51 RR2d 476 (1982).

for the delivery of video programming. Some municipal electric utility companies are actively engaged in overbuilding privately-owned cable systems, or are presently contemplating such overbuilding As is the case with LEC provision of VDT services, the need for appropriate safeguards to avoid cross-subsidization between regulated and video distribution businesses in an issue associated with entry by electric utility companies.

5 Video Cassette Recorders (VCRs)

44. VCRs (video cassette recorders) are not "multichannel video programming distributors." However, widespread ownership of VCRs allows many viewers to see over the-air programs at times other than when they are broadcast, and also permits those viewers to choose pre-recorded tapes on a variety of subjects, giving them more control over both the programming they watch and the time they watch it.

45. In the Report, the Commission found that VCRs have become more prevalent since the 1990 Cable Report was released. It appears that by the end of 1993, there were approximately 80.5 million households with VCRs, which compares to approximately 57 million cable households in 1990. Although those 80.5 million households with VCRs would account for nearly 84% of all television households in the United States, the Commission noted that a study conducted by the Commission following its release of the 1990 Cable Report found that VCRs are more properly categorized as competitors of premium or pay-per-view cable programming, rather than of cable services generally.[18]

E. Horizontal Concentration in the Cable Industry

46. The Commission determined that there has been a moderate increase in the horizontal concentration of the cable industry on the national level since the issuance of the 1990 Cable Report, as measured by the Herfindahl-Hirschman Index ("HHI"), which is a standard measure of horizontal concentration.[19] At the end of the first quarter of this year, the HHI for the industry is 898, which is a number that is typically associated with an "unconcentrated" market, although it does represent a modest increase in concentration since 1990. However, the Commission then discussed the fact that, by the middle of September 1994, four transactions had been announced that would significantly alter the shares of the market attributable to the top ten companies. The Commission determined that, if those four transactions are consummated, the HHI will rise to approximately 1051 Standard antitrust analysis considers a market with an HHI between 1000 and 1800 to be "moderately concentrated."[20]

47. The Commission discussed the fact that the persistence of high concentration at the local level (i.e., one cable system per community) tends to impair market performance. In addition, Congress and the Commission have noted that greater national concentration may have both adverse and pro-competitive effects. Concentration in regional, or locally clustered, marketing areas may also be pro-competitive or anti-competitive. Such clustering may result in significant efficiencies, or it may reflect the desire of cable operators to enter the telephone business or position themselves to compete against LECs that are themselves regionally clustered and poised to enter the market for the distribution of multichannel video programming. On the other hand, the Commission found that there are competitive risks associated with increased regional clustering of commonly-owned cable systems. The creation of large, contiguous clusters of commonly-owned systems may result in the removal of cable systems that are not affiliated with large MSOs from significant regions of the country, and thereby, increase the market power of clustered systems by decreasing the likelihood of entry by overbuilders.

F. Vertical Integration in the Cable Industry

48. The Commission found in the Report that, while the number of vertically-integrated national programming services has grown substantially since 1990, so too has the overall number of programming services available for distribution. Consequently, approximately 53% of programming services are integrated with cable system operators today, compared with 50% in 1990.

49. The Commission noted that vertically-integrated national programming services dominate the group of services that are most widely viewed. Twelve of the top fifteen most-watched services, according to prime-time rankings, are vertically integrated, an increase from ten in 1990. Moreover, cable operators have interests in fifteen of the top twenty-five services, an increase from thirteen in 1990. The Commission wrote, however, that it is too early to determine, whether vertically-integrated services that have been introduced since 1990 will be more successful than their non-integrated counterparts.

50. Currently, there are fifty-six vertically-integrated programming services. They are owned, in whole or in part, by only twenty MSOs. Nine of the ten largest MSOs have attributable ownership interests under the program access rules in one or more of these fifty-six programming services. The four largest MSOs have partial ownership interests in seven of the fifteen most popular services and in nine of the top twenty-five.

51. In contrast to the "substantial evidence of specific problems concerning program access" that were noted in the 1990 Cable Report,[21] the Commission noted that the commenters in this proceeding have not complained about widespread unavailability of programming to distributors competing with cable operators. From November 1993, when the program access and carriage agreement regulations took effect, through June 30, 1994, only twelve program access cases were filed; eleven have since been resolved.[22] Accordingly, the Commission determined that its enforcement of the program access provisions appears to be meeting one of the goals of Section 19 of the 1992 Cable Act—ensuring access by competing MVPDs to satellite cable programming from vertically-integrated programming services.

52. The Commission also noted that it has not received any complaints alleging violations of its channel occupancy rules or petitions requesting that the restrictions be waived. That silence, ten months after the rules took effect, is a strong indication that there are no significant violations of the rules and that the rules are not unduly restricting the ability of vertically-integrated MSOs to deliver programming to their customers. However, the Commission did not have a sufficient record to determine whether cable systems exclude affiliated programming services because of the rules. Nor was there a sufficient record to address whether the channel

[18] See Florence Setzer & Jonathan Levy, Broadcast Television in a Multichannel Marketplace 108 (Federal Communications Commission, Office of Plans and Policy, OPP Working Paper Series, June 1991).

[19] The HHI is calculated by summing the squares of the firms' percentage shares of the market United States Dep't of Justice & Federal Trade Comm'n, 1992 Horizontal Merger Guidelines ("Horizontal Merger Guidelines") ¶ 1 5, 57 Fed. Reg. 41552, 41557

[20] *Id* ¶ 1.51, 57 Fed. Reg. at 41558.

[21] 1990 Cable Report ¶ 113, 5 FCC Rcd at 5021

[22] A brief description of the resolved cases appears in Appendix F of the Report.

occupancy limits have influenced investment of cable MSOs in programming, or whether unaffiliated programming vendors have benefitted from the limits.

G. The Nature of Technical Changes Affecting Cable Systems

53. The Commission noted in the Report that telecommunications technologies, including those used in the distribution of video programming, are evolving rapidly. For example, technologies used to transmit voice, video and data are crossing the boundaries that have traditionally separated information distributors. Moreover, the cable industry and competing information distributors are in the midst of deploying new and improved transmission systems; and they are projecting the near-term introduction of new and innovative services that are presently unavailable to consumers, or are only available on an experimental basis. The Commission determined that those changes have the potential to exert a major influence on industry structure, and will affect the sustainability of competition with incumbent cable systems from MVPDs that use technologies other than cable.

54. The Commission found, however, that it was too soon to draw any conclusions regarding the ongoing dynamics of technological change that permeate the telecommunications industry today. Nevertheless, significant issues that may have a dramatic effect on how competition develops in the delivered multichannel video programming industry are coming into focus. The Commission's ongoing review of such issues will be essential to the formulation of public policies for video distribution markets that will provide consumers with early access to the remarkable advantages that such technologies seem to promise.

H. The Extent of Competition and Assessment of Market Performance

55. The Commission found in the Report that cable television remains the dominant medium for providing consumers with multichannel video programming. Most local markets for the distribution of multichannel video programming are highly concentrated, and for most consumers, cable television is the only provider of multichannel video programming. There are presently only a few scattered areas of the country where the local cable operator faces direct competition from an overbuilder. Moreover, providers using alternative technologies have not yet reached the subscribership levels necessary for the Commission to find the existence of vigorous rivalry in the market for multichannel video distribution.

56. Overall, the Commission reported that the current market performance in the multichannel video programming distribution industry, when assessed in terms of several indicators of economic efficiency, is mixed. While the industry is responsive to growth in consumer demand, the output is supplied to consumers at prices that often imply substantial losses in economic efficiency. The industry continues to invest in the deployment of improved video distribution facilities, which should offer the consumer expanded video programming options. The industry also invests in research and development, which should improve the capabilities and performance of local cable networks and services in the future. The willingness of new entrants to invest substantial resources in competition with the incumbent cable systems suggests, however, that there exist further opportunities for improved market performance.

57. The Commission also reported that, in the longer term, increased rivalry in the market for delivered multichannel video programming should result in lower prices relative to present cable rates, and in a substantially broadened array of programming options for increasingly specialized audiences. In addition, consumers should receive more pricing options. Such rivalry may also be expected to provide a stimulus to more rapid development of new technologies and product innovation. At present, however, the Commission found that market performance in local cable markets does not yet reflect the benefits of this competitive rivalry. Therefore, lowering barriers to entry is likely to lead to significant gains in consumer welfare.

58. The commission noted that the cost of constructing a cable distribution network may be viewed as a sunk cost, *i.e.*, an operator's investment in its cable plant cannot typically be physically redeployed to some other profitable use of operation of the system were to become unprofitable.[23] The existence of those sunk costs creates strong incentives for the incumbent cable operator to engage in strategic behavior designed to protect that investment. While such behavior may take the form of vigorous competition, which enhances consumer welfare, cable operators also have the incentive to engage in strategic behavior designed to deter entry by potential rivals.

59. The record in the proceeding also contained evidence that federal statutory schemes prevent competitive entry altogether, or may prevent the most efficient form of entry. Various state laws were also identified as possible impediments to competitive entry. For example, a recently enacted California statute allows municipalities to require video programming distributors to undertake various actions in cities in which they offer video programming. Similarly, despite limited preemption by the Commission, local zoning regulations may inhibit competition from direct-to-home programming distributors by preventing home users from installing HSDs and smaller DBS dishes.

60. The creation of technological bottlenecks in the telecommunications industry has long been of great concern to the Commission. The record in the proceeding reflected a variety of potential bottlenecks, some as old as the industry itself, and others related to emerging technological developments. In particular, the Commission noted that concerns have recently reemerged with respect to utility poles as a potential bottleneck where cable operators themselves might be suffering competitive harm.[24] The Commission determined that pole attachment is an area that could affect the status of competition in the delivered video programming market and may merit Commission attention in the future.[25]

61. The Commission noted that MSOs are currently investing in digital compression and encryption technologies, which could impact the manner in which "raw" video programming is distributed via satellite nationally, and possibly create a technological bottleneck to competing distribution media. Finally, the Commission wrote that, as the cable industry converts to digital technology and two-way communications, issues concerning network architecture, standardization, and access may become important competitive issues as they have in the telephone industry. While the Report provided no analysis of the potential significance of such issues at this time, it is likely that such issues will require attention in future reports

[23] The concept and economic significance of sunk costs are discussed in Appendix H of the Report.

[24] See, e.g., *Selkirk Communications, Inc* v *Florida Power & Light Co*, 8 FCC Rcd 387 (1993); *Heritage Cablevision Assocs* v *Texas Elec Co*, 8 FCC Rcd 373, *appeal denied sub nom*, *Tex. Elec Co* v *FCC*, 997 F 2d 925 (D.C. Cir 1993).

[25] The Commission did not seek or receive public comment on the issue of pole attachments in this proceeding. Accordingly, the Report did not contain any conclusions concerning the status of this issue or the need for Commission or congressional action

H. Future Considerations and Recommendations for Promoting Competition to Cable Systems

62. While the Commission believes that several specific reforms mentioned in the Report might improve market performance, most of the competitive issues raised in the Report will require ongoing monitoring as a more dynamic and competitive environment develops in this market. In the coming year, Commission staff will endeavor to find a mechanism to collect, interpret and monitor the growth of alternative distribution media so future reports will be able to provide a more complete picture of the status of competition at both the local and national levels. Because this market is dynamic and evolving, the Commission anticipates that, to a certain extent, this series of reports will be a work in progress in which certain parts are continually updated and revised.

63. Consistent with the requirement that the Commission annually report to Congress on the status of competition, future reports will be submitted to Congress by November 15 of each subsequent year.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–30832 Filed 12–14–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011415–001

Title: MSC/POL Space Charter and Sailing Agreement.

Parties:

Mediterranean Shipping Company, S.A.
Polish Ocean Lines

Synopsis: The proposed amendment adds Atlantic Container Line AB as a party, and increases the maximum number and capacity of vessels in the trade. It also modifies the Notice and Arbitration provisions of the Agreement. In addition, it changes the name of the Agreement to MPA Space Charter and Sailing Agreement and makes other non-substantive changes.

Agreement No.: 224–200244–001.

Title: Manatee County Port Authority/ Del Monte Fresh Produce N.A. Corporation Extension Terminal Agreement.

Parties:

Manatee County Port Authority
Del Monte Fresh Produce N.A. Corporation

Synopsis: The proposed amendment increases the rental rate, adds new wharfage and dockage charges, and provides for a guaranteed minimum cargo wharfage rate.

By Order of the Federal Maritime Commission.

Dated: December 12, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–30793 Filed 12–14–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Publication of Draft Fiscal Year 1995 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMSC) is publishing the draft Fiscal Year 1995 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202–653–5320.

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY 1995

A Introduction

The following is the draft solicitation for the Fiscal Year (FY) 1995 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the forementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1995, competition will be open to plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly under other Federal programs (*e.g.*, job training, mediation of contract disputes, etc.).

Required Program Elements

1. Problem Statement—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses WHY the effort is needed.

2. Results or Benefits Expected—By using specific goals and objectives, the application must discuss in detail WHAT the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. Approach—This section of the application specifies HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.*, members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (*i.e.*, in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. Major Milestones—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1, 1995, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. Evaluation—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. The section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. Letters of Commitment—Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. Other Requirements—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovatives or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has been given an allocation of approximately $1.25 million for this program. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that a least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its appropriation to be awarded on a non-competitive basis. These funds will be used to support industry-specific national-scope initiatives and/or regional industry models with high potential for widespread replication. They will also be used to support the Eighth National Labor-Management Conference in Chicago, Illinois, on May 29–31, 1996.

FMCS reserves the right to retain up to an additional five percent of the FY95 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (*i.e.*, in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued for a limited time at a 40 percent cash match ratio. Initial awards to establish new labor-management committees (*i.e.*, not yet established or in existence less than 12 months prior to the submission deadlines), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued for a limited time at a 40 percent cash match ratio.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources

or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must no be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY95 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by both a labor and management representative and be postmarked no later than May 13, 1995. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Peer Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Manager, Labor-Management Program Services, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY95 grant applicants will be notified of results and all grant awards will be made before September 30, 1995. Applications submitted after the May 13 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Manager, Labor-Management Program Services.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits and additional information or clarification can be obtained free of charge by contacting Linda Stubbs, Lee A. Buddendeck, or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Program Services; 2100 K Street, NW., Washington, DC 20427; or by calling 202–653–5320 or 202–606–8181.

John Calhoun Wells,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 94–30822 Filed 12–14–94; 8:45 am]

BILLING CODE 6732–01–M

FEDERAL RESERVE SYSTEM

Ronald H. Gabriel; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-29043) published on page 60635 of the issue for Friday, November 25, 1994.

Under the Federal Reserve Bank of San Francisco heading, the entry for Ronald H. Gabriel, is revised to read as follows:

1. Ronald H. Gabriel, Los Angeles, California; to acquire approximately 83.9 percent of the voting shares of Garfield Bank, Montebello, California.

Comments on this application must be received by December 19, 1994.

Board of Governors of the Federal Reserve System, December 9, 1994.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 94-30796 Filed 12-14-94; 8:45 am]

BILLING CODE 6210-01-F

Old National Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 9, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Old National Bancorp, Evansville, Indiana; to acquire 100 percent of the voting shares of Oblong Bancshares, Inc., Oblong, Illinois, and thereby indirectly acquire The First National Bank of Oblong, Oblong, Illinois.

Board of Governors of the Federal Reserve System, December 9, 1994.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 94-30795 Filed 12-14-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Gerald Leisman, Ph.D., New York Chiropractic College: The Division of Research Investigations (DRI) of the Office of Research Integrity (ORI) reviewed an investigation conducted by the New York Chiropractic College (NYCC) into possible scientific misconduct on the part of Gerald Leisman, Ph.D., formerly Director of Research and Institutes at NYCC. ORI found that Dr. Leisman committed

scientific misconduct by misrepresenting his academic credentials and professional experience and awards in a grant application (T32 AR07564–01A1) for Public Health Service (PHS) research funds submitted on December 29, 1988. Based upon information obtained by ORI during its oversight review, the ORI found that Dr. Leisman falsely claimed: (1) To have earned a M.D. degree from the University of Manchester (Manchester, England) in 1972; (2) to have held the position of Professor, Neurology and Biomedical Engineering, Harvard University Medical School (June 1982 to January 1987); and (3) to have been awarded inventorship or co-inventorship of thirteen (13) U.S. Patents. Dr. Leisman accepted the ORI findings and agreed to a Voluntary Exclusion agreement under which he is not eligible to apply for or receive any Federal funds in non-procurement transactions (*e.g.*, grants and co-operative agreements) and is not eligible to contract or subcontract with any Federal Government Agency for a three-year period beginning November 28, 1994 and ending November 27, 1997. In addition, Dr. Leisman is prohibited from serving on PHS Advisory Committees, Boards, or peer review groups for a three-year period beginning November 28, 1994 and ending November 27, 1997.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens, Ph.D.,

Director, Office of Research Integrity.

[FR Doc. 94–30871 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 94N–0392]

Fujisawa USA, Inc.; Withdrawal of Approval of a New Drug Application; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice, correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 3, 1994 (59 FR 55120). The document withdrew approval of a new drug application (NDA) held by Fujisawa USA, Inc. The document was published with an inadvertent error. This document corrects that error.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 94–27317 appearing on page 55120 in the **Federal Register** of Thursday, November 3, 1994, the following correction is made:

1. On page 55120, in the first column, in the fifth paragraph, line 6, the word "Lyphomed" is corrected to read "Fujisawa".

Dated: December 9, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–30866 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0437]

Drug Export; Amplicor™ Hepatitis C Virus (HCV) PCR Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Roche Molecular Systems, Inc. has filed an application requesting approval for the export of the biological product Amplicor™ HCV PCR Test to Australia, Belgium, Canada, Denmark, Federal Republic of Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Roche Molecular Systems, Inc., 1080 U.S. Hwy. 202, Branchburg, NJ 08876–1760, has filed an application requesting approval for the export of the biological product Amplicor™ HCV PCR Test to Australia, Belgium, Canada, Denmark, Federal Republic of Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. The Amplicor™ HCV Test is a direct DNA Probe test that utilizes a nucleic acid amplification called Polymerase Chain Reaction (PCR) and nucleic acid hybridization for the detection of HCV in Human serum and plasma. The application was received and filed in the Center for Biologics Evaluation and Research on November 10, 1994, which shall be considered the filing date for purposes of the act. Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 27, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: November 30, 1994.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 94–30759 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0402]

Endosonics Corp.; Premarket Approval of the Endosonics Oracle™ Micro PTCA Catheter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Endosonics Corp., Rancho Cordova, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Endosonics Oracle™ Micro PTCA Catheter After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1994, of the approval of the application.

DATES: Petitions for administrative review by January 17, 1995

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brad C. Astor, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243

SUPPLEMENTARY INFORMATION: On December 26, 1991, Endosonics Corp., 3078–B Prospect Park Dr , Rancho Cordova, CA 95670, submitted to CDRH an application for premarket approval of the Endosonics Oracle™ Micro PTCA Catheter The device is a percutaneous transluminal coronary angioplasty (PTCA) dilatation catheter and is indicated for use in patients with coronary artery disease who are acceptable candidates for coronary artery bypass graft surgery, and who meet one of the following selection criteria. (1) Single vessel atherosclerotic coronary artery disease that is discrete and accessible to a dilatation catheter; (2) multiple vessel coronary artery disease under certain circumstances; and (3) coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery, who have recurrence of symptoms, and progression of disease or stenosis and closure of the grafts.

The Endosonics Oracle™ Micro PTCA Catheter is further indicated for use following balloon dilatation as an adjunct to conventional angiographic procedures to provide: (1) An image of the vessel lumen and wall structures, and (2) dimensional measurements from the image.

On April 12, 1993, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended disapproval of the application, with specific requirements to make the application approvable. The sponsor has submitted the required information. On September 30, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 17, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 5, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–30868 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0403]

SCIMED, Inc.; Premarket Approval of the SCIMED Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheter and Corflo™ Hemoperfusion Pump

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Scimed Life Systems, Inc., Maple Grove, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the SCIMED Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheter and Corflo™ Hemoperfusion Pump These devices are to be manufactured under an agreement with Leocor Inc., Houston, TX, which has authorized Scimed Life Systems, Inc., to incorporate information contained in its approved premarket approval application (PMA) and related supplements for the Leocor PTCA Catheter and Corflo™ Hemoperfusion Pump FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 28, 1994, of the approval of the application.

DATES: Petitions for administrative review by January 17, 1995

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Glenn N. Byrd, Center for Devices and Radiological Health (HFZ–450), Food

and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243.

SUPPLEMENTARY INFORMATION: On February 18, 1994, Scimed Life Systems, Inc., Maple Grove, MN 55311–3648, submitted to CDRH an application for premarket approval of the SCIMED PTCA Catheter and Corflo™ Hemoperfusion Pump. These devices are indicated for PTCA in patients with significant coronary artery disease who are acceptable candidates for coronary artery bypass graft surgery and who meet one of the following selection criteria. (1) Single or multiple vessel atherosclerotic coronary artery disease that is accessible to a dilatation catheter, or (2) coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery and who have recurrence of symptoms and (a) progression of disease or (b) stenosis and closure of the grafts. Hemoperfusion can be indicated by the physician in patients who cannot tolerate the inflation times necessary to achieve the desired stenosis reduction. Intolerance to inflation is demonstrated by anginal pain and/or ST segment elevation, and/or hemodynamic instability (systemic blood pressure drop) and/or arrhythmias. The application includes authorization from Leocor, Inc., Houston, TX, to incorporate information contained in its approved PMA and related supplements for the SCIMED PTCA Catheter and Corflo™ Hemoperfusion Pump. In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Circulatory System Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On September 28, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 17, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 5, 1994

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–30867 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress

National Advisory Council on Nurse Education and Practice Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, DC. Copies may be obtained from: R. Margaret Truax, Executive Secretary, National Advisory Council on Nurse Education and Practice, Room 9–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5786.

Dated: December 12, 1994

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–30870 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–15–P

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration (HRSA), PHS.

ACTION: Notice of availability of funds.

SUMMARY: The HRSA in collaboration with the National Highway Traffic Safety Administration (NHTSA) announces the availability of fiscal year (FY) 1995 funds for grants authorized under section 1910 of the PHS Act. These discretionary grants will be made to States or accredited schools of medicine to support projects for the expansion and improvement of emergency medical services for children (EMSC). Funds appropriated by Public Law 103–112 will be used for this purpose. Awards made under the EMSC program authority are for project periods of up to 2 years. Within the HRSA, EMSC grants are administered by the Maternal and Child Health Bureau (MCHB)

The NHTSA participated with the MCHB in developing program priorities for the EMSC program for FY 1995. The NHTSA will share the Federal monitoring responsibilities for EMSC awards made during FY 1995 and will continue to provide ongoing technical assistance and consultation in regard to the required collaboration/linkages between applicants and their Highway Safety Offices and Emergency Medical Services Agencies for the State(s). Grantees funded under this program are expected to work collaboratively with the State trauma systems planning and development projects funded by the Bureau of Health Resources Development, HRSA, and the State agency or agencies administering the Maternal and Child Health (MCH) and

the Children with Special Health Care Needs (CSHCN) programs under the Maternal and Child Health (MCH) Services Block Grant, Title V of the Social Security Act (42 U.S.C. 701).

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The EMSC grant program will directly address the Healthy People 2000 objectives related to emergency medical services and trauma systems linking prehospital, hospital, and rehabilitation services in order to prevent trauma deaths and long-term disability. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone 202 783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

ADDRESSES: Grant applications for Emergency Medical Services for Children Demonstration Grants (Revised PHS form #5161–1, approved under OMB #0937–0189) must be obtained from and submitted to: Grants Management Branch, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Attn: EMSC, telephone 301 443–1440.

DATES: The application deadline date is March 17, 1995. 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 the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Late competing applications or those sent to an address other than specified in the **ADDRESSES** section will be returned to the applicant.

FOR FURTHER INFORMATION: Requests for technical or programmatic information should be directed to Jean Athey, Ph.D., Division of Maternal, Infant, Child and Adolescent Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301 443–4026. Requests for technical or programmatic information from NHTSA should be directed to Garry Criddle, R.N , CDR, USCG/USPHS, Department of Transportation, NHTSA EMS Division, NTS–42, 400 7th Street SW, Washington, DC 20590, telephone 202 366–5440. Requests for information concerning business management issues should be directed to: Maria Carter, Grants Management Specialist, Grants Management Branch, Maternal and Child Health Bureau, Room, 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone 301 443–1440.

In addition, this program funds two national EMSC resource centers that are available to provide technical assistance and support to applicants, particularly in the areas of: (1) Understanding EMSC terminology; (2) developing a manageable approach to EMSC implementation; (3) obtaining local support for the grant application process; (4) facilitating development of community linkages for a collaborative effort; (5) identifying products of previously-funded EMSC projects of interest to potential applicants; and (6) offering advice on grant writing. Applicants may contact: James Seidel, M.D., Ph.D., or Deborah Henderson, R.N., M.A., National EMSC Resource Alliance, Research and Education Institute, Harbor/UCLA Medical Center, 1001 West Carson Street, Suite S, Torrance, CA 90502, telephone 310 328–0720; or Jane Ball, R.N., Dr. P.H., EMSC National Resource Center, Children's National Medical Center, Emergency Trauma Services, 111 Michigan Ave., N.W., Washington, DC 20010, telephone 202 884–4927.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Emergency Medical Services for Children statute (Section 1910 of the PHS Act, as amended) establishes a program of two-year grants to States, through a State-designated agency, or to an accredited medical school within the State, for projects for the expansion and improvement of emergency medical services systems for children who need treatment for trauma or critical illness. For purposes of this grant program, the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia The term "school of medicine" is defined as having the same meaning as set forth in Section 799(1)(A) of the PHS Act (42 U.S.C. 295p(1)(A)). "Accredited" in this context has the same meaning as set forth in section 799(1)(E) of the PHS Act (42 U.S.C. 295p(1)(E)). It is the intent of this grant program to stimulate further development or expansion of ongoing efforts in the States to reduce the problems of life-threatening pediatric trauma and critical illness. The Department does not intend to award grants which would duplicate grants previously funded under the Emergency Medical Services Systems Act of 1972 or which would be used simply to increase the availability of emergency medical services funds allotted to the State under the Preventive Health Services Block Grant.

Funding Categories

There will be four categories of competition for funding this year: State planning grants, State systems grants, targeted issue grants, and cooperative agreements. States may apply for a grant in only one of the first two categories, but are not restricted in applying for the last two categories. The table included in this notice includes a breakdown of the number of awards, estimated amounts available, and the project period for each of the above categories.

Category (1): State Planning Grants

Planning grants are intended for States that have never received an EMSC grant and that are not at a stage of readiness to initiate a full-scale implementation project. States (or medical schools within those States) that have not received prior EMSC implementation grants are the only applicants eligible for this category. Planning grants are designed to enable a State to assess needs and develop a strategy to begin to address those needs. Funds may be used to hire staff to assist in the assessment of EMSC needs of the State; obtain technical assistance from national, State, regional or local resources; help formulate a State plan for the integration of EMSC services into the existing State EMS plan, and plan a more comprehensive grant proposal based upon a needs assessment performed during the planning grant project period. A comprehensive approach, addressing physical, psychological, and social aspects of EMSC along the continuum of care, should be reflected. An ongoing working relationship with Federal EMSC program staff and resource center

staff, beginning with the initiation of a planning grant application, is strongly encouraged Budget requests in this category should not exceed $50,000. The project period is for one year only, with no renewal.

Category (2): State Systems Grants

This category of grants has two subcategories: implementation grants and system enhancement grants. For both subcategories, proposals are sought which include strategies and/or models to ensure that pediatric emergency care is family centered. "Family-centered" includes the following key elements of care: maximum possible involvement of families in all phases of the EMSC continuum of care; clear and continuous communication between family members and the emergency care team; attention to the psychosocial needs of all family members; cultural competence of providers; consumer (parental) involvement in planning and needs assessment; organizational support for the formation of parent advocacy groups; and ongoing partnerships with such groups

Subcategory (A): Implementation Grants

Implementation grants will improve the capacity of a State's Emergency Medical Services system to address the particular needs of children. Implementation grants are used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS/trauma, MCH and CSHCN systems, using the experience and products of previous EMSC grantees. The program components of these grants should reflect the goals of the draft MCHB/NHTSA Five Year Plan for EMSC. This plan outlines the direction of the EMSC program and identifies specific objectives for the program (a list of these goals and objectives will be included with the application kit). It builds on the 1993 Report for EMSC conducted by a blue-ribbon Institute of Medicine panel. The range of funding for these grants is anticipated to be $200,000 to $250,000 per award for each twelve month budget period. Project periods are up to two years. Up to six grants will be awarded. For this competition, we intend to fund applications from States (and medical schools within those States) that have not as yet received support, or that have received only partial support under this program as part of a regional alliance. This means that approved applications from States (and medical schools within those States) with no or very limited prior EMSC program support will be funded before approved applications from outside this group. Applications will not be accepted for both planning grants and implementation grants simultaneously from the same State

Subcategory (B): System Enhancement Grants

System enhancement grants will fund activities that represent the next logical step or steps to take in institutionalizing EMSC activities within the State EMS/trauma, MCH and CSHCN systems and achieving program goals outlined in this announcement. The program components of these grants should reflect the goals and objectives of the draft MCHB/NHTSA Five Year Plan for EMSC. For example, funding might be used to improve linkages between local and regional or State agencies, to develop pediatric standards for a region, or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources. Activities implemented under prior EMSC program funding but not completed or made self-sustaining during the original implementation project period will not be considered suitable. States that have previously received EMSC funds may apply for a system enhancement grant, as long as they will not also be receiving continuation funding for a State Systems grant during the project period of the systems enhancement grant. The range of funding for these grants is anticipated to be $100,000 to $150,000 for the first year, with grants of up to $100,000 for the second year.

Category (3): Targeted Issues Grants

The third funding category is that of targeted issues grants on topics of importance to EMSC. These grants are intended to address specific, focused issues related to the development of EMSC capacity, with the potential to serve as national or regional models. Proposals in this category must have a well conceived methodology to evaluate the impact of the activity. The Director of the Maternal and Child Health Bureau (MCHB) will judge the acceptability of projects proposed in this category. Prospective applicants are urged to contact EMSC program staff well in advance of submitting their formal applications, so that the work of proposal development can be avoided if the proposed project is judged to be inappropriate for submission in this category.

Applications are sought which will assist in meeting the objectives identified in the draft MCHB/NHTSA Five Year Plan for EMSC. Proposals should include a justification that clearly links the activities in the application with the plan's objectives.

Up to five grants will be awarded in Category (3). States that have received EMSC funding as well as those that have never received EMSC funding may compete in this category A total of $450,000 is allocated for this category for FY 1995. It is anticipated that the funding range will be $50,000 to $125,000 per award. Project periods are up to two years.

Category (4): Resource Capacity Cooperative Agreements

Up to two resource centers will be supported through cooperative agreements under this funding category These resource centers are intended to provide assistance in two areas: data use and linkage; and economics and health insurance/HMO issues. A total of $300,000 is allocated for this category for FY 1995. Project periods are up to two years.

Area (A): Data Use and Linkage Cooperative Agreement Proposals are sought which assist States to identify, model, and organize data (including different data sets) so that outcomes for children and adolescents can be assessed in relation to various dependent variables. For example, States and grantees may want to link pre-hospital, emergency department, and hospital discharge data sets to identify problems in service delivery and the implications of these problems for treatment. Or, emergency department and pre-hospital data may be compared to determine use of pre-hospital transport by children or to assess injury morbidity in a community. Special activities of this center will include the following: (1) Identification of data sets for EMS that are currently available or under development (e.g., trauma registries, pre-hospital data sets, hospital discharge data, etc.); (2) identification of States that have adopted the Uniform Pre-Hospital EMS Minimum Data Set developed by NHTSA as well as other data sets and that use them to evaluate EMSC; (3) technical assistance to grantees and others in data systems management and linkage related to EMSC; (4) special statistical analyses on EMSC issues; (5) collaboration with national groups, including Federal agencies, in national data development planning to ensure inclusion of pediatric-related data elements, including those responsive to the special cultural and linguistic needs of specific populations. Plans for technical assistance to State systems grantees are a particularly critical component for proposals in this category.

Area (B): Economics and Health Insurance/HMO Cooperative Agreement Proposals are sought which identify methods of providing technical assistance to States and to EMSC grantees on benefit/cost analyses, particularly those related to treatment and systems development issues affected by health insurer, HMO, and Federal or State Medicaid decisions, policies and protocols. Also important are analyses of how changes in insurance, HMO, or Medicaid policies may affect pediatric emergency care, and analyses of the impact on pediatric emergency care of differing reimbursement policies in contiguous jurisdictions.

In addition to monitoring and technical assistance, Federal involvement will include the following:

—Making available the services of experienced MCHB personnel as participants in the planning and development of all phases of the project.
—Participation, as appropriate, in any conferences and meetings conducted during the period of the cooperative agreement.
—Review, approval, and implementation of procedures to be established for accomplishing the scope of work.
—Assistance and referral in the establishment of Federal interagency contacts that may be needed to carry out the project and assisting MCHB dissemination and program communication goals.
—Participation in the dissemination of project products.

If time permits, comments from the public will be accepted on the categories, priorities, and preferences described above. Any comments which members of the public wish to make should be submitted to: Chief, Grants Management Branch, at the address in the **ADDRESSES** section.

Availability of Funds

Approximately $10,000,000 is available for grants under the EMSC program, of which approximately $3,050,000 will be used for new grants Of this total, the distribution of funds for new grants in FY 1995 is anticipated to be as follows:

EMERGENCY MEDICAL SERVICES FOR CHILDREN GRANTS, FY 1995 AWARD, FUNDING, AND PROJECT PERIOD INFORMATION

Category	Max. No. of awards*	Est. amounts available*	Project period
(1) State Planning	4	$200,000	1 year
(2) State Systems:			
(A) Implementation	6	1,500,000	2 years.
(B) System Enhancement	4	600,000	2 years.
(3) Targeted Issues	4	450,000	2 years.
(4) Resource Capacity	2	300,000	2 years.

* All grant amounts in this notice include indirect costs.

Special Concerns

The MCHB places special emphasis on improving service delivery to children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care. This means that EMSC projects are expected to serve and appropriately involve in project activities members of ethnoculturally distinct groups, unless there are compelling programmatic or other justifications for not doing so. The MCHB's intent is to ensure that project outcomes are of benefit to culturally distinct populations and to ensure that the broadest possible representation of culturally distinct and historically under-represented groups is supported through programs and projects sponsored by the MCHB. This same special emphasis applies to improving service delivery to children with special health care needs.

Project Review and Funding

The Department will review applications in the preceding funding categories as competing applications and will fund those which, in the Department's view, are consistent with the statutory purpose of the program, with particular attention to children from culturally distinct populations and children with special health care needs; and that best meet the purposes of the EMSC program and address achievement of applicable Healthy People 2000 objectives related to emergency medical services and trauma systems.

Review Criteria

The review of applications will take into consideration the following criteria:

• For Category (1) State Planning Grants:

—Evidence of the State's commitment to improve pediatric emergency care services and to continue with EMSC program implementation.
—The adequacy of the applicant's proposed method to identify problems and conduct a needs assessment
—Evidence of the applicant's understanding of obstacles to EMSC activity in the past, and the completeness of proposed strategies to overcome these obstacles.
—The adequacy of the applicant's proposed planning process for improving EMSC
—The soundness of the methods the applicant will use to: (1) Recruit, select and assemble appropriate participants, including minorities, with demonstrated expertise and experience in EMS; trauma systems, child health issues; and emergency care for children; and (2) obtain input from potential consumers (e.g., families) of a State EMSC plan.
—Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period

• For Categories (2) State Systems Grants, and (3) Targeted Issues Grants

—The adequacy of the applicant's understanding of the problem of pediatric trauma and critical illness in the grant locale, including the special problems of (a) children with special health care needs (CSHCN) and their families; and (b) minority children and families (including Native Americans, Native Hawaiians, and Alaska Natives).
—The appropriateness of project objectives and outcomes in relation to

the specific nature of the problems identified by the applicant.
—In relation to the state of the art, the soundness, appropriateness, comprehensiveness, cost effectiveness, and responsiveness of the proposed methodology for achieving project goals and outcome objectives.
—The soundness of the plan for evaluating progress in achieving project objectives and outcomes.
—Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.
—The extent to which the applicant will employ products and expertise of EMSC programs from other States, especially of current and former grantees of the Federal EMSC program.
—The extent to which the project gives special emphasis to the issues identified in the Special Concerns section of this notice.

• For Category (2) State Systems Grants only, the following additional criteria:
—The adequacy with which the applicant addresses institutionalization of the proposed project.
—The extent to which the applicant demonstrates collaboration and coordination with any trauma care systems implementation plan funded by HRSA.
—The extent to which the applicant demonstrates the involvement and participation of consumers (*e.g.*, families) and parent advocacy groups in planning, needs assessment, and project implementation.
—The extent to which the applicant demonstrates a multi-disciplinary approach to EMSC system development, including providers at all levels (*e.g.*, physicians, nurses, emergency medical technicians, social workers and others appropriate to project activities).
—Evidence that the applicant will collaborate and coordinate with other participants in the EMSC continuum, *e.g.*, the State Emergency Medical Services agency; the State MCH/CSHCN agency or agencies; the State Highway Safety Office; other relevant State agencies; tribal nations; state and local professional organizations; private sector voluntary organizations; business organizations, hospital organizations; and any other ongoing federally-funded projects in EMS, injury prevention, and rural health
—Adequacy of the applicant's plan to integrate pediatric emergency care into the primary care delivery system.

For Category (3) Targeted Issues Grants only, the following additional criteria:
—The relevance of the proposed project to the draft MCHB/NHTSA Five Year Plan for EMSC.

• For Category (4) Resource Capacity Cooperative Agreements:
—The adequacy of the applicant's understanding of the issues being addressed in the proposal, including knowledge of and experience with strategies to overcome identified problems as well as familiarity and experience with the MCH Block Grant.
—The appropriateness of project objectives and outcomes in relation to the specific nature of the problems identified by the applicant.
—The soundness, appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.
—The extent to which the proposed resources are necessary and sufficient for project activities.
—The soundness of the plan for evaluating progress in achieving project objectives and outcomes.
—The reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.
—The extent to which the applicant is capable of successfully carrying out the project, particularly, the qualifications of proposed staff.
—The extent to which the project gives special emphasis to the issues identified in the Special Concerns section of this notice.
—The soundness of the applicant's plan for linking and coordinating with the other EMSC resource centers.

Eligible Applicants

Applications for funding will be accepted from States and accredited schools of medicine. Applications which involve more than a single State will also be accepted. In developing the proposed project, applicants must seek the participation and support of local or regional trauma centers and other interested entities within the State, such as local government and health and medical organizations in the private sector. If the applicant is a school of medicine, the application must be endorsed by the State. The State's endorsement must acknowledge that the applicant has consulted with the State and that the State is a participant in the proposed project.

Any State (or medical school within that State) may apply for any category or subcategory of grant, subject to the following considerations based on equitable geographic distribution of EMSC funds, differences in purpose among EMSC grant categories, and variation among States in EMSC program progress:

• For Category (1) Planning Grants, States (or medical schools within those States) that have received prior EMSC implementation grants may not apply for planning grants.

• For Category (2)(A) Implementation Grants, applications from States (and medical schools within those States) that have not previously received EMSC program funds, or that have received only partial support under this program as part of a regional alliance, will receive preference for funding in this subcategory. This means that approved applications from States (and medical schools within those States) with no or very limited prior EMSC program support will be funded ahead of approved applications from outside this group.

• For Category (2)(B) System Enhancement Grants, States (and medical schools within States) that have previously received EMSC funds may apply for a system enhancement grant, as long as they will not also be receiving continuation funding for a State Systems Grant during the project period of the systems enhancement grant. States that have not previously received EMSC funds are advised to apply first for planning or implementation category funds.

• For Category (3) Targeted Issues Grants, eligibility is not affected by receipt of other EMSC funding.

• For Category (4) Resource Capacity Cooperative Agreements, eligibility is not affected by receipt of other EMSC funding.

Applications will not be considered for both Category (1) State Planning Grants and Category (2)(A) Implementation Grants simultaneously from the same State. Funding of an application for a planning grant or for a State Implementation Grant bars a State from future competitions for that category or subcategory. Although funding of a Category (3) Targeted Issue Grant does not preclude a State (or medical school) from applying for other categories of EMSC funding, applicants should take care to avoid overlap in proposed project activities and associated Federal support for the separate categories.

Allowable Costs

The MCHB may support reasonable and necessary costs of EMSC Demonstration Grant projects within the scope of approved projects. Allowable costs may include salaries, equipment and supplies, travel, contracts, consultants, and others, as well as indirect costs. The MCHB adheres to administrative standards reflected in the Code of Federal Regulations, 45 CFR Part 92 and 45 CFR Part 74.

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, community-based nongovernmental applicants 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 non-governmental 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 or local health agencies.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

The OMB Catalog of Federal Domestic Assistance number is 93 127

Dated. December 9, 1994

Ciro V. Sumaya,

Administrator

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BILLING CODE 4160–15–P

Rural Health Services Outreach Grant Program

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), announces that applications are being accepted for Rural Health Services Outreach Demonstration Grants to expand or enhance the availability of essential health services in rural areas. Awards will be made from funds appropriated under Public Law 103–333 (HHS Appropriation Act for FY 1995). Grants for these projects are authorized under Section 301 of the Public Health Service Act.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Rural Health Services Outreach program is related to the priority areas for health promotion, health protection and preventive services. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–C) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 783–3238).

Funds Available

Appropriations for FY 1995 included $27.2 million to support Rural Health Outreach Services grants Of this amount, it is anticipated that $5 million will be available to support new projects. The Office of Rural Health Policy expects to make approximately 20–25 new awards in Fiscal Year 1995 The budget period for new projects will begin September 1, 1995

Individual grant awards under this notice will be limited to a total amount of $300,000 (direct and indirect costs) per year. Applications for smaller amounts are encouraged Applicants may propose project periods for up to three years It is expected that the average grant award will be approximately $180,000 for the first year. However, applicants are advised that continued funding of grants beyond the one year period covered by this announcement is contingent upon the appropriation of funds for the program and assessment of grantee performance No project will be supported for more than three years.

DATES: Applications for the program must be received by the close of business on March 15, 1995. Completed applications must be sent to The Grants Management Officer, c/o Global Exchange, Inc., 7910 Woodmont Avenue, Suite 400, Bethesda, Maryland 20814.

Applications 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 and received in time for orderly processing. Applicants must obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB #0937–0189) have been approved by the Office of Management and Budget. To receive a grant application kit, contact The Grants Management Office, c/o Global Exchange, Inc., 7910 Woodmont Avenue, Suite 400, Bethesda, Maryland 20814 or, in the contiguous U.S., call 1–800/784–0345. Hawaii, Alaska, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Compact of Free Association Jurisdictions of the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia should call 301/656–3100 COLLECT

FOR FURTHER INFORMATION CONTACT: Information or technical assistance regarding business, budget, or fiscal issues should be directed to the Office of Grants Management, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, 301/594–4260. Requests for technical or programmatic information on this announcement should be directed to Eileen Holloran, Office of Rural Health Policy, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0835.

SUPPLEMENTARY INFORMATION:

Program Objectives

The purpose of the program is to support projects that demonstrate new and innovative models of outreach and health care services delivery in rural areas that lack basic health services. Grants will be awarded either for the direct provision of health services to rural populations that are not currently receiving them, or to enable access to and utilization of existing services.

Applicants may propose projects to address the needs of a wide range of rural population groups, including the poor, the elderly, the disabled, pregnant women, infants, adolescents, rural minority populations, and rural populations with special health care needs. Projects should be responsive to the special cultural and linguistic needs of specific populations.

A central goal of the demonstration program is to develop new and innovative models for more effective integration and coordination of health services in rural areas. It is hoped that some of these models will prove significant in solving rural health problems throughout the country. In order to better integrate the provision of health services in rural areas, participation in the program requires the formation of consortium arrangements among three or more separate and distinct entities to carry out the demonstration projects.

A consortium must be composed of three or more health care organizations, or a combination of three or more health care and social service organizations. At least one of the entities must be a health care service delivery organization. Individual members of a consortium might include such entities as hospitals, public health agencies, Area Health Education Centers, home health providers, mental health centers, substance abuse service providers, rural health clinics, social service agencies, health profession schools, local school districts, emergency service providers, community and migrant health centers, civic organizations, etc.

The roles and responsibilities of each member organization must be clearly defined and each must contribute significantly to the goals of the project. The process used to ensure compliance with the consortium requirement includes two steps: (1) making sure that three organizations, including the applicant, are identified, and that each has a separate IRS Employee Identification Number (EIN), and (2) ensuring each member plays a substantial part in accomplishing the objectives of the project.

Applicants are encouraged to develop projects to address specific areas of need in their communities. Need can be established through a formal needs assessment or by population specific demographic data. Examples of areas of focus include, *but are not limited to:*

1. Projects that bring ambulatory and mental health care to unserved or underserved rural areas or populations.
2. Projects that provide, or make possible the provision, of emergency medical services within rural areas that lack these services.
3. The creation of new integrated networks of providers to deliver ambulatory care when such networks appear likely to improve access to health care or its quality.
4. Projects that provide services that enable rural populations to utilize existing health services, including those involving the use of community outreach workers.
5. Projects that provide training for health care professionals and workers, including community outreach workers, when such training may be demonstrated to be likely to lead to higher quality services or more accessible services in rural areas.
6. Projects that enhance the health and safety of farmers, farm families, and migrant and seasonal farm workers through direct services.
7. Projects that address the needs of rural minority populations.
8. Projects that train rural people in disease prevention and health promotion, when such training addresses critical needs of the area.

The focus areas listed above are examples only. All projects must address the demonstrated needs of the community.

Eligible Applicants

All public and private entities, both nonprofit and for-profit, may participate as members of a consortium arrangement as described above. However, a grant award will be made to only one entity in a consortium. The grant recipient must be a nonprofit or public entity which meets one of the three requirements stated below.

(1) The applicant's administrative headquarters is located *outside* of a Metropolitan Statistical Area as defined by the Office of Management and Budget. A list of the cities and counties that are designated as being within a Metropolitan Statistical Area will be included with the application kit.

(2) The applicant's administrative headquarters is located in a rural census tract of one of the counties listed in Appendix I to this announcement. Although each of these counties is a Metropolitan Statistical Area, or part of one, large parts of the counties are rural. Organizations located in these rural areas also are eligible for the program. Rural portions of these counties have been identified by census tract since this is the only way we have found to clearly differentiate them from urban areas in the large counties. Appendix I provides a list of eligible census tracts for each eligible MSA county. Appendix II includes the telephone numbers for regional offices of the Census Bureau. Applicants may call these offices to determine the census tract in which they are located.

(3) The applicant is an organization that is constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and is supported under Section 329 of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of their administrative headquarters.

Applicants from the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of the Virgin Islands, Guam, American Samoa, the Compact of Free Association Jurisdictions of the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia, are eligible to apply.

Applications from organizations that do not meet one of the three requirements described above will not be reviewed. Current Rural Health Services Outreach grantees who are in the last year of their projects may not reapply for funds to support the same project. Any new proposal they submit must have a different focus from the project that is currently being funded.

Review Consideration

Grant applications will be evaluated on the basis of the following criteria:

(1) The extent to which the applicant has proposed a new and innovative

network of providers to bring new services into rural areas or strengthen existing services.

(2) The extent to which the proposed project would be capable of replication in rural areas with similar needs and characteristics, and the applicant's plan for disseminating information about the project.

(3) The extent to which the applicant has justified and documented the need(s) for the project and developed measurable goals and objectives for meeting the need(s).

(4) The extent to which the applicant has clearly defined the roles and responsibilities for each member of the consortium and developed a workable plan for managing the consortium's activities.

(5) The reasonableness of the budget proposed for the project.

(6) The level of local commitment and community support and involvement with the project, including the extent of cost participation by the applicant and/or other organizations, and the extent to which the project will contribute to enhancing the local economy.

(7) The feasibility of plans to continue the project after federal grant support is completed.

(8) The strength of the applicant's plan for evaluating the project.

The HRSA hopes to expand the outreach program into geographic areas not currently served by the program. Consequently, HRSA will consider geographic coverage when deciding which approved applications to fund.

Other Information

Grantees will be required to use at least 85 percent of the total amount awarded for outreach and care services, as opposed to administrative costs. At least 50 percent of the funds awarded must be spent in rural areas. This is a demonstration program that will not support projects that are solely or predominantly designed for the purchase of equipment or vehicles. The purchase of equipment and vehicles may not represent more than 40% of the total federal share of a proposal. Grant funds may not be used for purchase, construction or renovation of real property or to support the delivery of inpatient services.

Applicants are advised that the entire application may not exceed 70 pages in length. Applications that exceed the 70 page limit will not receive consideration. All applications must be typewritten and legible. Margins must be no less than 1/2 inch on all sides.

The Office of Rural Health Policy will provide a technical assistance workshop for prospective applicants in Rockville, Maryland on January 11 and 12, 1995. Information regarding this meeting will be included in the application kit.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget – # 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 non-governmental 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 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 or local health agencies.

Executive Order 12372

The Rural Health Services Outreach Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more then one state, the applicant is advised to contact the SPOC of each affected State. All SPOC recommendations should be submitted to Opal McCarthy, Office of Grants Management, Bureau of Primary Health Care, 4350 East West Highway, 11th Floor, Bethesda, Maryland 20814, (301) 594–4260. The due date for state process recommendations is 60 days after the application deadline (May 15, 1995) for competing applications. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date. (See Part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements.

State Offices of Rural Health

Applicants should notify their State Office of Rural Health of their intent to apply for this grant program. The State Office can provide information and technical assistance. A list of State Offices of Rural Health will be provided with the application kit.

(OMB Catalog of Federal Domestic Assistance number is 93.912.)

Dated: December 9, 1994

Ciro V. Sumaya,

Administrator

Appendix I

* Census tract numbers are shown *below* each county name.

State and County Tract Number

Alabama

Baldwin

0101
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Mobile

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Tuscaloosa

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Arizona

Maricopa

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California

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El Dorado

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Los Angeles

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Riverside

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San Bernardino

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Palm Beach

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Grand Forks

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Wisconsin

Douglas

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Marathon

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Wyoming

Laramie

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Appendix II

Bureau of the Census Regional Information Service

Atlanta, GA 404–730–3957
Alabama, Florida, Georgia
Boston, MA 617–565–7078
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Upstate New York
Charlotte, NC 704–344–6144
Kentucky, North Carolina, South Carolina, Tennessee, Virginia
Chicago, IL 708–409–4617
Illinois, Indiana, Wisconsin
Dallas, TX 214–767–7105
Louisiana, Mississippi, Texas
Denver, CO 303–969–7750
Arizona, Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming
Detroit, MI 313–354–4654
Michigan, Ohio, West Virginia
Kansas City, KS 913–236–3711
Arkansas, Iowa, Kansas, Missouri, New Mexico, Oklahoma
Los Angeles, CA 818–904–6339 California
New York, NY 212–264–4730
Brooklyn, Bronx, Manhattan, Queens, Staten Island, Nassau Co., Orange Co., Suffolk Co., Rockland Co., Westchester Co.
Philadelphia, PA 215–597–8313
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Seattle, WA 206–728–5314
Idaho, Montana, Nevada, Oregon, Washington

[FR Doc. 94–30761 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–15–P

Rural Telemedicine Grant Program

AGENCY: Health Resources and Services Administration (HRSA), Public Health Service (PHS), Health and Human Services (HHS).

ACTION: Notice of availability of funds. Notice of technical assistance workshop.

SUMMARY: The Office of Rural Health Policy, HRSA, announces that applications are being accepted for Rural Telemedicine Grants to (1) develop a base of information for conducting a systematic evaluation of telemedicine systems serving rural areas; and (2) facilitate development of rural health care networks through the use of telemedicine. Awards will be made from funds appropriated under Public Law 103–333 (HHS Appropriation Act for FY 1995). Grants for these projects are authorized under section 301 of the Public Health Service Act.

The Office of Rural Health Policy also announces that a technical assistance workshop will be held on March 6–7, 1995 in the Washington, D.C. area. The focus of the workshop is to provide assistance with writing evaluation plans for telemedicine grant applications. Details about the workshop will be included in the application kit.

National Health Objectives for the Year 2000

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Rural Telemedicine Grant program is related to the priority areas for health promotion, health protection, and preventive services. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–C) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Funds Available

Approximately $7.4 million is available for the Rural Telemedicine Grant program in FY 1995. Of these funds, it is anticipated that about $2.3 million will be available to support new telemedicine grants. The Office of Rural Health Policy expects to make approximately five new awards for one year. Applicants may propose project periods for up to three years. However, applicants are advised that continued funding of grants beyond the one-year period supported under this announcement is subject to appropriation of funds and assessment of grantee performance. The budget period for new projects will begin September 1, 1995.

Funding Limits

Individual grant awards under this notice will be limited to a total amount of $500,000 (direct and indirect costs) per year. Applications for smaller amounts are strongly encouraged.

Equipment costs up to 40 percent of the total grant award are allowable. However, the costs of purchasing and installing transmission equipment, such as laying cable or telephone lines, microwave towers, digital switching equipment, amplifiers, etc., are not allowable. Transmission costs are allowable. Indirect costs are allowable up to 20 percent of the total grant award.

Grant funds may not be used for construction, except for minor renovations related to the installation of equipment. Grant funds may not be used to acquire or build real property.

Cost Participation

Cost participation serves as an indicator of community and institutional support for the project and of the likelihood that the project will continue after Federal grant support has ended. Applicants are required to demonstrate cost participation in the form of equipment, personnel, building space, indirect costs, other in-kind contributions, or cash.

DATES: Applications for the program must be received by the close of business on May 2, 1995.

Applications 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 and received in time for orderly processing. Applicants must obtain a legible dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

ADDRESSES: Requests for grant application kits should be directed to the Grants Management Office, c/o Global Exchange, Inc., 7910 Woodmont Avenue, Suite 400, Bethesda, MD 20814 or by calling 1–800–784–0345 if in the contiguous United States. Residents of Hawaii, Alaska, and U.S. territories can call 301–656–3100 COLLECT. Completed applications should be mailed to the Grants Management Officer, c/o Global Exchange, Inc., at the above address. The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB 0937–0189) have been approved by the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information on this announcement should be directed to Carole Mintzer, Office of Rural Health Policy, HRSA, 5600 Fishers Lane, Room 9–05, Rockville, MD 20857, (301) 443–0835, cmintzer@hrsa.ssw.dhhs.gov. Requests for information regarding business or fiscal issues should be directed to Opal McCarthy, Grants Management Office, Bureau of Primary Health Care, HRSA, West Tower, 11th Floor, 4350 East West Highway, Bethesda, MD 20814, (301) 594–4260.

SUPPLEMENTARY INFORMATION:

Program Objectives

The purpose of the program is to demonstrate and collect information on the feasibility, costs, appropriateness, and acceptability (to practitioners and patients) of telemedicine for improving access to health services for rural residents and reducing the isolation of rural practitioners. Grants will be awarded for implementing and operating telemedicine systems that link multi-specialty entities with rural health care facilities for the purposes of delivering health care services to the rural sites and exchanging information between the sites.

A central goal of the program is to demonstrate how telemedicine can be used as an effective tool in the development of integrated systems of health care. Integrated systems of care provide comprehensive, coordinated health care services to the rural residents served by the system through referrals, consultations, and support systems that ensure patient access to a comprehensive set of services and reduce practitioner isolation. In particular, the program is to promote systems of health care in rural areas that link rural primary care practitioners with specialty and referral services.

For the purposes of this grant program, telemedicine is defined as the use of telecommunications for medical diagnosis and patient care. A clinical consultation is defined as a person-to-person interaction relating to the clinical condition or treatment of the patient. The consultation could be between two practitioners, with or without the patient present, or between a specialty practitioner and a patient. It may be interactive or asynchronous (using store and forward technology).

In order to compete for the program, applicants must participate in a telemedicine network that includes at least three sites: A multispecialty entity (tertiary care hospital, multi-specialty clinic, or a collection of facilities that, combined, could provide 24-hour a day specialty consultations), a small rural hospital (fewer than 100 staffed beds), a rural primary care clinic or practitioner office. Networks that include a long-term care facility are especially encouraged. The network may include additional rural sites, such as mental health clinics, school-based clinics, emergency service providers, home health providers, community and migrant health centers, rural health clinics, Federally qualified health centers, health professions schools, etc. The telemedicine network must be used to provide clinical consultations

between the multispecialty entity (hub) and the rural sites (spokes). Projects that use low cost technologies are particularly encouraged.

For purposes of this grant program, a telemedicine network is characterized by a full partnership among all the members that includes the following elements: (1) Resource participation; (2) a specific role for each member; (3) a contractual relationship or formal written agreement, (4) a long-term commitment to the project by each member; (5) documentation of the network's activities; and (6) active participation by each member so that the network is not solely dependent on any particular member organization.

Applicants must propose to monitor their own performance and be willing and able to participate in an evaluation of telemedicine services. This may include, but is not limited to, collecting data, completing surveys, and participating in on-site observations by independent evaluators.

In order to facilitate an evaluation of telemedicine, it is important that there be some level of uniformity in the types of clinical services provided among the projects. All projects, at a minimum, must be able to provide teleconsultations in the following specialty services. teleradiology, cardiology, dermatology, mental health and/or substance abuse, obstetrics and gynecology, orthopedics, subspecialties of pediatrics, and stabilization of trauma patients. Applicants may propose to provide teleconsultations for additional services, such as physical therapy, speech therapy, diabetic counseling, dentistry, or otolaryngology.

This grant program is intended to support telemedicine for medical diagnosis and treatment of patients, including patient counseling. It is not for didactic distance learning programs, such as lectures or other programs designed solely for the purposes of instructing health care personnel or patients.

Applicants must develop projects that address specific, well-documented needs of the rural communities. In doing so, applicants are advised to consider both the health care needs of the rural communities served by the project, and the extent to which the project can build upon existing telecommunications capacity in the communities to facilitate efficient use of that capacity by multiple users. Needs can be established through a formal needs assessment or by population specific demographic data.

All the grant funding must be used for services provided to or in rural communities A majority of grant dollars must actually be spent for equipment placed in rural communities and for costs incurred in rural communities, including salaries, maintenance of equipment, and transmission costs

Eligible Applicants

A grant award will be made either (1) to an entity that is a health care provider and is a member of a telemedicine network, or (2) to an entity that is a consortium of providers that are members of a telemedicine network. The applicant must be a legal entity capable of receiving Federal grant funds. The grant recipient can be a public (non-Federal) or private nonprofit or for-profit entity, located in either a rural or urban area. Rural spoke sites may be public or private entities, either nonprofit or for-profit. All spoke facilities supported by this grant must meet one of the two requirements stated below.

(1) The facility is located outside of a Metropolitan Statistical Area as defined by the OMB. A list of the cities and counties that are designated as being within a Metropolitan Statistical Area will be included with the application kit; or

(2) The facility is located in a rural census tract of one of the counties listed in Appendix I to this announcement. Although each of these counties is a Metropolitan Statistical Area, or part of one, large parts of the counties are rural. Facilities located in these rural areas are eligible for the program. Rural portions of these counties have been identified by census tract because this is the only way we have found to clearly differentiate them from urban areas in the large counties. Appendix I provides a list of these census tracts for each county. Appendix II includes the telephone numbers for regional offices of the Census Bureau. Applicants may call these offices to determine the census tract in which they are located

Review Consideration

Grant applications will be evaluated on the basis of the following criteria:

(1) Extent to which the project facilitates development of an integrated system of care for the rural areas served by the project by providing referral linkages, facilitating consultations among health care professionals, and reducing the isolation of health care practitioners, as evidenced by the strength of the contractual arrangements among the members of the telemedicine network.

(2) Demonstrated ability to monitor the performance of the project, collect data, and participate in an evaluation of telemedicine.

(3) Demonstrated capability, experience, and knowledge by the applicant and other network members to carry out the project.

(4) Reasonableness of the budget proposed for the project.

(5) Level of local commitment and involvement with the project, as evidenced by the extent of cost participation by the applicant and/or other organizations, letters of support, and the feasibility of plans to sustain the project after Federal grant support has ended.

(6) Extent to which the applicant has justified and documented the need(s) for the project, developed measurable goals and objectives for meeting the need(s), and designed a project that could be replicated in rural areas with similar needs and characteristics.

Other Information

Applicants are advised that the narrative description of their program and the budget justification may not exceed 30 pages in length. All applications must be typewritten and clearly legible, using print no smaller than 12 characters per inch and having margins no less than one inch on all sides. Any applications that are judged nonresponsive because they are inadequately developed, in an improper format, exceed the specified page length, or otherwise are unsuitable for peer review and funding consideration, will be returned without further consideration. All responsive applications will undergo objective peer review

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the OMB—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 of local health agencies.

Executive Order 12372

The Rural Telemedicine Grant program has been determined to be a program that is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more then one State, the applicant is advised to contact the SPOC of each affected State All SPOC recommendations should be submitted to Opal McCarthy, Office of Grants Management, Bureau of Primary Health Care, HRSA, West Tower, 11th Floor 4350 East West Highway, Bethesda, Maryland 20814, (301) 594–4260. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements.

OMB Catalog of Federal Domestic Assistance number is 93.211

Dated: December 9, 1994

Ciro V. Sumaya,

Administrator.

Appendix I* Census tract numbers are shown below each county name.

STATE

County

tract number

ALABAMA

Baldwin

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Mobile

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Tuscaloosa

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ARIZONA

Maricopa

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Pima

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CALIFORNIA

Butte

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El Dorado

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Fresno

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Los Angeles

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Monterey

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Placer

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Riverside

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San Bernardino

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Santa Barbara

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Santa Clara

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Stanislaus

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FLORIDA

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Osceola

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Palm Beach

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Yellowstone

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NEW MEXICO

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NORTH DAKOTA

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Grand Forks

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WASHINGTON

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Douglas

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Marathon

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WYOMING

Laramie

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Appendix II

Bureau of the Census Regional Information Service

Atlanta, GA 404–730–3957
Alabama, Florida, Georgia
Boston, MA 617–565–7078
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Upstate New York
Charlotte, NC 704–344–6144
Kentucky, North Carolina, South Carolina, Tennessee, Virginia
Chicago, IL 708–409–4617
Illinois, Indiana, Wisconsin
Dallas, TX 214–767–7105
Louisiana, Mississippi, Texas
Denver, CO 303–969–7750
Arizona, Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming
Detroit, MI 313–354–4654
Michigan, Ohio, West Virginia
Kansas City, KS 913–236–3711
Arkansas, Iowa, Kansas, Missouri, New Mexico, Oklahoma
Los Angeles, CA 818–904–6339
California
New York, NY 212–264–4730
Brooklyn, Bronx, Manhattan, Queens, Staten Island, Nassau Co., Orange Co., Suffolk Co., Rockland Co., Westchester Co.
Philadelphia, PA 215–597–8313
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Seattle, WA 206–728–5314
Idaho, Montana, Nevada, Oregon, Washington

[FR Doc 94–30794 Filed 12–14–94, 8:45 am]

BILLING CODE 4160–15–P

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, D.C. 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on January 30, 1991 through January 31, 1991.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information

and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Timothy Kisel, Solon, Ohio, Claims Court Number 91–0397 V
2. Robert Salisbury, Huron, South Dakota, Claims Court Number 91–0398 V
3. Lynette Voorheis, Jackson, Michigan, Claims Court Number 91–0399 V
4. Judith Brooks, Auburn, New York, Claims Court Number 91–0400 V
5. Cheryl Dixon, Baltimore, Maryland, Claims Court Number 91–0401 V
6. Pamela Delay on behalf of Michael Delay, Columbus, Ohio, Claims Court Number 91–0402 V
7. Linda Evans on behalf of Christopher Evans, Akron, Ohio, Claims Court Number 91–0403 V
8. Cindy Stave on behalf of Jeremiah Gerling, Deceased, Fargo, North Dakota, Claims Court Number 91–0404 V
9. Ruby Arledge on behalf of Michael Arledge, Birmingham, Alabama, Claims Court Number 91–0405 V
10. Susan Clarke on behalf of Kevin Lampron, Deceased, Haverhill, Massachusetts, Claims Court Number 91–0406 V
11. David F. Jarvis on behalf of Michael W. Jarvis, Winston Salem, North Carolina, Claims Court Number 91–0407 V
12. Mary Greenwood on behalf of Jeanette Greenwood, Syracuse, New York, Claims Court Number 91–0408 V
13. Laurie Garcelon on behalf of Jeremiah Garcelon, Deceased, Albany, New York, Claims Court Number 91–0409 V
14. Jackie Jake Waldner on behalf of Melissa Waldner, Huron, South Dakota Claims Court Number 91–0410 V
15. Steven Eisen on behalf of David Eisen, Morristown, New Jersey, Claims Court Number 91–0411 V
16. Richard and Sherry Hill on behalf of Karrie Jo Hill, Salt Lake City, Utah, Claims Court Number 91–0412 V
17. Spencer Hovey on behalf of Carol Hovey, Layton, Utah, Claims Court Number 91–0413 V
18. Leslie Steadman on behalf of Sarah Vondersaar, Dayton, Ohio, Claims Court Number 91–0414 V
19. Vicky Renee Smith on behalf of Jennifer Kay Smith, Ellsworth Air Force Base, South Dakota, Claims Court Number 91–0415 V
20. Margie Kelley on behalf of Toby Kelley, Cameron, Louisiana, Claims Court Number 91–0416 V
21. Laurel Najarian on behalf of Michael Jennings, Toledo, Ohio, Claims Court Number 91–0417 V
22. Brian Thompson on behalf of Jennifer Thompson, Garland, Texas, Claims Court Number 91–0418 V
23. Madeline Johnston on behalf of Matthew Corwin, Lancaster, California, Claims Court Number 91–0419 V
24. K. Beth Guilford on behalf of Jennifer Guilford, Deceased, Jacksonville, North Carolina, Claims Court Number 91–0420 V
25. Janna Leech on behalf of Walter Leech, Franklin, North Carolina, Claims Court Number 91–0422 V
26. James Crumbey, Inglewood, California, Claims Court Number 91–0424 V
27. Patty Chatigny on behalf of Travis Chatigny, Beaumont, California, Claims Court Number 91–0425 V
28. James E. Savington on behalf of Kendra Savington, Salt Lake City, Utah, Claims Court Number 91–0426 V
29. Deborah Helprin, Flushing, New York, Claims Court Number 91–0427 V
30. Steve Blanks on behalf of John Blanks, Nashville, Tennessee, Claims Court Number 91–0428 V
31. Taya Meadows-Ladd, Chattanooga, Tennessee, Claims Court Number 91–0429 V
32. Brian Dunn, Ridgefield, Connecticut, Claims Court Number 91–0430 V
33. Kimberly Baker on behalf of Marshall Baker, Deceased, New Town, North Dakota, Claims Court Number 91–0431 V
34. Clifford Callison on behalf of Clifford Callison, II, Beckley, West Virginia, Claims Court Number 91–0432 V
35. Donna Heller, Oakland, California, Claims Court Number 91–0433 V
36. Joyce Swanson on behalf of Jeff Kleffman, Harlan, Iowa, Claims Court Number 91–0434 V
37. Robert Meyer, Casper, Wyoming, Claims Court Number 91–0435 V
38. Colleen Lewis on behalf of Megan Lewis, Owensboro, Kentucky, Claims Court Number 91–0436 V
39. Terry and Linda Hagerman on behalf of Justin Hagerman, Stuttgart, Germany, Claims Court Number 91–0437 V
40. Charlie Bliss, Sr. on behalf of Charlie Bliss, Jr., Wheeling, West Virginia, Claims Court Number 91–0438 V
41. R. Jack Siring on behalf of John Siring, Syracuse, New York, Claims Court Number 91–0439 V
42. Deborah La Porte on behalf of Timothy La Porte, Herkimer, New York, Claims Court Number 91–0440 V
43. Martha Weikle on behalf of Diane Harmon, Ronceverte, West Virginia, Claims Court Number 91–0441 V
44. Terry Rust on behalf of Randolph Rust, St. Paul, Minnesota, Claims Court Number 91–0442 V
45. William Kienzle on behalf of Amanda Kienzle, Freeport, Illinois, Claims Court Number 91–0443 V
46. Jonny Waldner on behalf of Ramona Waldner, Huron, South Dakota, Claims Court Number 91–0444 V
47. Camilla Snyder on behalf of Shylah Snyder, Deceased, New Town, North Dakota, Claims Court Number 91–0445 V
48. Edward Kwiecien on behalf of Klint Kwiecien, Middleboro, Massachusetts, Claims Court Number 91–0446 V
49. Lyle Nicholson on behalf of Jeffrey Nicholson, Omaha, Nebraska, Claims Court Number 91–0447 V
50. Danny Hescock, Greenfield, Massachusetts, Claims Court Number 91–0448 V
51. Stanley Zukowski, Bristol, Connecticut, Claims Court Number 91–0449 V
52. Timothy Dorr on behalf of Samuel Dorr, Miami, Florida, Claims Court Number 91–0450 V
53. Carolyn Garofolo on behalf of Joseph Saladino, Manville, New Jersey, Claims Court Number 91–0451 V
54. Wilma Roberts, Whitesville, Kentucky, Claims Court Number 91–0452 V
55. Linda Viernes on behalf of Jeffrey Allen, Colorado Springs, Colorado, Claims Court Number 91–0453 V
56. Barbara Loucks on behalf of Virginia Loucks, Deceased, White Plains, New York, Claims Court Number 91–0454 V
57. Jimmie Liber on behalf of Steven Liber, Deceased, Liberty, Missouri, Claims Court Number 91–0455 V
58. Ja'nan Derwin on behalf of Samantha Derwin, Deceased, Shreveport, Louisiana, Claims Court Number 91–0456 V

59. Patricia Pittman on behalf of Montez Pittman, Deceased, Chicago, Illinois, Claims Court Number 91–0457 V
60. David Claver on behalf of Robin Claver, Honolulu, Hawaii, Claims Court Number 91–0458 V
61. Gloria Bartels on behalf of Angela Bartels, Minneapolis, Minnesota, Claims Court Number 91–0459 V
62. Gerald Gribble on behalf of Jesse Gribble, Deceased, Provo, Utah, Claims Court Number 91–0460 V
63. Debra Preston on behalf of William Preston, Spokane, Washington, Claims Court Number 91–461 V
64. Hilda Pagan on behalf of Abner Pagan, Guayanilla, Puerto Rico, Claims Court Number 91–0462 V
65. Ja'nan Derwin on behalf of Sonya Derwin, Deceased, Shreveport, Louisiana, Claims Court Number 91–0463 V
66. Lawrence Wilson on behalf of Andrew L. Wilson, Weisbaden, Germany, Claims Court Number 91–0464 V
67. Linda Wilkins, Atlanta, Georgia, Claims Court Number 91–0465 V
68. David Bounds on behalf of John Bounds, Austin, Texas, Claims Court Number 91–0466 V
69. Jeffrey and Lisa Dillard on behalf of Jami Dillard, Lubbock, Texas, Claims Court Number 91–0467 V
70. Don Branham on behalf of Blake Branham, Norman, Oklahoma, Claims Court Number 91–0468 V
71. Lucy Casares on behalf of Elizabeth Casares, San Antonio, Texas, Claims Court Number 91–0469 V
72. Gary Kanarr on behalf of Kimberly Kanarr, Fort Hood, Texas, Claims Court Number 91–0470 V
73. Timothy M. Choina on behalf of Timothy D. Choina, Biloxi, Mississippi, Claims Court Number 91–0471 V
74. Sheila Evans on behalf of Kenneth Mims, Dallas, Texas, Claims Court Number 91–0472 V
75. Ruben and Melissa Guerrero on behalf of Jared Guerrero, Plainview, Texas, Claims Court Number 91–0473 V
76. Victor Whitney on behalf of Kelly Whitney, New Braunfels, Texas, Claims Court Number 91–0474 V
77 Beatrice Castillo on behalf of Casandra Castillo, Lubbock, Texas, Claims Court Number 91–0475 V
78. Jeffrey Kerrigan on behalf of Grant Kerrigan, San Antonio, Texas, Claims Court Number 91–0476 V
79. Wayne Kindle on behalf of Issac Wood, Austin, Texas, Claims Court Number 91–0477 V
80. Juan Herrera on behalf of Nicole Herrera, Kingsville, Texas, Claims Court Number 91–0478 V
81. Carlos Hernandez on behalf of Jose Hernandez, El Paso, Texas, Claims Court Number 91–0479 V
82. Douglas Owens on behalf of Owen Owens, Los Alamos, New Mexico, Claims Court Number 91–0480 V
83. Raul Lopez on behalf of Raphael Lopez, Deceased, San Antonio, Texas, Claims Court Number 91–0481 V
84. Karen Eccles on behalf of Vernon Dyne, Erie, Pennsylvania, Claims Court Number 91–0482 V
85. Michael and Delia Pulliam on behalf of Latanya Pulliam, Deceased, Springfield, Illinois, Claims Court Number 91–0483 V
86. William Olson on behalf of Lewis Olson, Boston, Massachusetts, Claims Court Number 91–0484 V
87. Evelyn Thomas on behalf of David Thomas, Milwaukee, Wisconsin, Claims Court Number 91–0485 V
88. Diane Rodgers on behalf of Leann Rodgers, Fordyce, Arkansas, Claims Court Number 91–0486 V
89. Gary Vigna on behalf of Silas Davidow, Chico, California, Claims Court Number 91–0487 V
90. Peter J. Steyer on behalf of Cassandra Steyer, New Hartford, New York, Claims Court Number 91–0488 V
91. Gordon Rackley on behalf of Sean Rackley, Harrisburg, Pennsylvania, Claims Court Number 91–0489 V
92. Terry Miller on behalf of Thomas Miller, Deceased, Silver Spring, Maryland, Claims Court Number 91–0490 V
93. Jeraldine Spruiell on behalf of Thomas Spruiell, Birmingham, Alabama, Claims Court Number 91–0491 V
94. Maxine Segovia on behalf of Alethea Segovia, Nashville, Tennessee, Claims Court Number 91–0492 V
95. Peter and Jacqueline Browne on behalf of Joshua Browne, Newport, Rhode Island, Claims Court Number 91–0493 V
96. Emma Rogers, Oklahoma City, Oklahoma, Claims Court Number 91–0494 V
97. Gary Reisner on behalf of Raymond Reisner, State College, Pennsylanvia, Claims Court Number 91–0495 V
98. Alan Fox, Jr. East Syracuse, New York, Claims Court Number 91–0496 V
99. John and Kathleen Hannigan on behalf of Kevin Ross Hannigan, Baltimore, Maryland, Claims Court Number 91–0497 V and 91–0498 V
100 Joanne Clark on behalf of Zane Clark, Waterville, Maine, Claims Court Number 91–0499 V
101 Vernon Colaw on behalf of Linda Colaw, Richmond, Virginia, Claims Court Number 91–0500 V
102. Edward Weldon, III, Honolulu, Hawaii, Claims Court Number 91–0501 V
103. Sushila Khanna on behalf of Richard Khanna, Alexandria, Virginia, Claims Court Number 91–0502 V
104. Connie Joehnk on behalf of Robin Joehnk, Cincinnati, Ohio, Claims Court Number 91–0503 V
105. Areta Coats on behalf of Dean Coats, Portland, Indiana, Claims Court Number 91–0504 V
106. Peggy Ellis, Cincinnati, Ohio, Claims Court Number 91–0505 V
107 Ronald Niland, Joppa, Maryland, Claims Court Number 91–0506 V
108. Kent L. Gobble on behalf of Kent H. Gobble, Kernersville, North Carolina, Claims Court Number 91–0507
109. Kent Gobble on behalf of Deanna Goins, Kernersville, North Carolina, Claims Court Number 91–0508 V
110. Jackie Gobble, Kernersville, North Carolina, Claims Court Number 91–0509 V
111. Donald and Brenda Edwards on behalf of Dawn Edwards, Cranston, Rhode Island, Claims Court Number 91–0510 V
112. Christina Kramer, Anchorage, Alaska, Claims Court Number 91–0511 V
113. James B. Stanley on behalf of Jennifer Stanley, El Paso, Texas, Claims Court Number 91–0512 V
114. Patricia Alden on behalf of Adam Alden, Washington, D.C., Claims Court Number 91–0513 V
115. Sandra Tingley on behalf of Sherri Roop, Balboa, Panama, Claims Court Number 91–0514 V
116. Ronald and Patricia O'Brien on behalf of Jennifer O'Brien, Lubbock, Texas, Claims Court Number 91–0515 V
117. Gail Block on behalf of Collin Block, De Witt, Iowa, Claims Court Number 91–0516 V
118. David Doban, Wheeling, West Virginia, Claims Court Number 91–0517 V
119. Daniel Butler on behalf of Erin Butler, Clarkston, Georgia, Claims Court Number 91–0518 V
120. James Piermarini on behalf of Alyssa Piermarini, Leominster, Massachusetts, Claims Court Number 91–0519 V
121. Viola Hicks on behalf of Katherine Wilson, Augusta, Georgia, Claims Court Number 91–0520 V
122. Eddie Langford on behalf of Eddie Maurice Langford, Baumholder, Germany, Claims Court Number 91–0521 V
123. Tommy and Sharon Sturdivan on behalf of James Sturdivan, Deceased, Chattanooga, Tennessee, Claims Court Number 91–0522 V

124. Ronald Lien on behalf of Sandra Lien, Laconia, New Hampshire, Claims Court Number 91–0523 V
125. Mary McGrath on behalf of Kathryn Nagle, Denver, Colorado, Claims Court Number 91–0524 V
126. Joseph Schartz on behalf of Matthew Schartz, Dodge City, Kansas, Claims Court Number 91–0525 V
127 David and Janis Glusman on behalf of Sharon Glusman, Wynnewood, Pennsylvania, Claims Court Number 91–0526 V
128. Rex Hennefent on behalf of Thomas Hennefent, Dubuque, Iowa, Claims Court Number 91–0527 V
129. Jose Vianna on behalf of Oliver Vianna, New York City, New York, Claims Court Number 91–0528 V
130. Robert Ourso on behalf of Judson Ourso, Baton Rouge, Louisiana, Claims Court Number 91–0529 V
131 Vincent Rietzke on behalf of Erin Rietzke, Deceased, Smith Center, Kansas, Claims Court Number 91–0530 V
132. Richard Ducay on behalf of Robert Ducay, Deceased, Glassport, Pennsylvania, Claims Court Number 91–0531 V
133. Larry and Jeanne Kasteller on behalf of Myndi Kasteller Kearns, Utah, Claims Court Number 91–0532 V
134. W Thomas Sutton on behalf of Shawn Sutton, Deceased, Albuquerque, New Mexico, Claims Court Number 91–0533 V
135. Cheryl Wood on behalf of Keith Wood, Houston, Texas, Claims Court Number 91–0534 V
136. Ann and Frank Morrell on behalf of Brandon Morrell, Beaumont, Texas, Claims Court Number 91–0535 V
137. Raynell Singletary on behalf of Kyle Singletary, Houston, Texas, Claims Court Number 91–0536 V
138. Nicholas Delapo on behalf of Susan Entwistle, Neptune, New Jersey, Claims Court Number 91–0537 V
139. Nicholas F. Delapo on behalf of Nicholas Charles Delapo, Asbury, New Jersey, Claims Court Number 91–0538 V
140. William and Andrea Combs on behalf of Lynsey Combs, Fresno, California, Claims Court Number 91–0539 V
141. Alyce Collier on behalf of Angie Bouley, Los Gatos, California, Claims Court Number 91–0540 V
142. Robert and Sara Riegelsberger on behalf of Thomas G. Riegelsberger, Sacramento, California, Claims Court Number 91–0541 V
143. Christine Gonzales on behalf of Kathrine Gonzales, Deceased, San Jose, California, Claims Court Number 91–0542 V
144. Lorraine Hamilton on behalf of Matthew Summers, Stockton, California, Claims Court Number 91–0543 V
145. Donald McNary on behalf of Patricia McNary, San Mateo, California, Claims Court Number 91–0544 V
146. Kurtis Heaton on behalf of Ryan Heaton, Salt Lake City, Utah, Claims Court Number 91–0545 V
147. Diana Victoria Johnson, Panama Canal Zone, Puerto Rico, Claims Court Number 91–0546 V
148. Alexandra Gaiduk, Washington, D.C., Claims Court Number 91–0547 V
149. Patricia McBride on behalf of Patrick Kahle, Deceased, Drexel Hill, Pennsylvania, Claims Court Number 91–0548 V
150. Dennis McBride on behalf of Kelly McBride, Drexel Hill, Pennsylvania, Claims Court Number 91–0549 V
151. Kent Barhydt on behalf of Mindi Barhydt, South Bend, Indiana, Claims Court Number 91–0550 V
152. Wyndell W. Carter on behalf of Wyndell Hoyt Carter, Arlington, Virginia, Claims Court Number 91–0551 V
153. Eleanor Moore on behalf of Allen Moore, Fairmont, West Virginia, Claims Court Number 91–0552 V
154. Robert Riesberg on behalf of Catherine Riesberg, West Saint Paul, Minnesota, Claims Court Number 91–0553 V
155. George McCrary on behalf of Keith McCrary, Nashville, Tennessee, Claims Court Number 91–0554 V
156. Stephen Bond on behalf of Alan Bond, Secaucus, New Jersey, Claims Court Number 91–0555 V
157. Ralph Uhlmann on behalf of Shawn Uhlmann, Teaneck, New Jersey, Claims Court Number 91–0556 V
158. Wilson Eshbach on behalf of Michael Eshbach, Reading, Pennsylvania, Claims Court Number 91–0557 V
159. Wayne Johnson on behalf of Laura Johnson, Dayton, Ohio, Claims Court Number 91–0558 V
160. Susan Schlussel on behalf of Stacey Schlussel, Deceased, Bardonia, New York, Claims Court Number 91–0559 V
161. Vanessa Woodard on behalf of Darrin Woodard, Washington, D.C., Claims Court Number 91–0560 V
162. Sean McDonough, Cliffside Park, New Jersey, Claims Court Number 91–0561 V
163. Bradford Hilbert on behalf of Andrew Hilbert, Spring Valley, New York, Claims Court Number 91–0562 V
164. William Shpunder on behalf of Kimberly Shpunder, Clinton, New Jersey, Claims Court Number 91–0563 V
165. Gerald Tarrant on behalf of Mary Tarrant, Montpelier, Vermont, Claims Court Number 91–0564 V
166. Daniel Pozzuto on behalf of Jennifer Pozzuto, Baton Rouge, Louisiana, Claims Court Number 91–0565 V
167. Dianna McIntosh on behalf of Dana McNeil, Washington, D.C., Claims Court Number 91–0566 V
168. Roger Wheeler, Fort Sam Houston, Texas, Claims Court Number 91–0567 V
169. Daryl Lemon, Beverly Hills, California, Claims Court Number 91–0568 V
170. Mari Minjares on behalf of Robert E. Jovin, Deceased, Missoula, Montana, Claims Court Number 91–0569 V
171 Gerard Mittleberger on behalf of Charles Mittleberger, Philadelphia, Pennsylvania, Claims Court Number 91–0570 V
172. Chester Janus on behalf of Joann Janus, Brooklyn, New York, Claims Court Number 91–0571 V
173. Maryann Hellebrand-Sztaba on behalf of Damien Hellebrand-Sztaba, Deceased, Norfolk, Virginia, Claims Court Number 91–0572 V
174. Larry Halliburton on behalf of Quentin Halliburton, Macon, Tennessee, Claims Court Number 91–0573 V
175. Scott and Sandra Odegard on behalf of Ander S. Odegard, Reno, Nevada, Claims Court Number 91–0574 V
176. Harold and Barbara Bragg on behalf of Michele Bragg, Mechanicsburg, Ohio, Claims Court Number 91–0575 V
177. Norma Speegle on behalf of Stephanie Speegle, Oneonta, Alabama, Claims Court Number 91–0576 V
178. Machelle Duty on behalf of Anthone Duty, Columbus, Ohio, Claims Court Number 91–0577 V
179. Maria Valenzuela on behalf of Auturo Valenzuela, Chicago, Illinois, Claims Court Number 91–0578 V
180. Marty Jeffries, Fayette County, West Virginia, Claims Court Number 91–0579 V
181. Mary Taggart on behalf of Jeffrey Taggart, Brownwood, Texas, Claims Court Number 91–0580 V
182. Donna and Robert Fontaine on behalf of Shane Fontaine, Beaumont, Texas, Claims Court Number 91–0581 V
183. Rose Yezierski, Waterbury, Connecticut, Claims Court Number 91–0582 V

184. Errol Kairdolf on behalf of Michella Kairdolf, Baton Rouge, Louisiana, Claims Court Number 91–0583 V
185. Edward Cottrell on behalf of Kristin Cottrell, Madison, Connecticut, Claims Court Number 91–0584 V
186. Lucille Marchmon on behalf of Claudia Render, Cleveland, Ohio, Claims Court Number 91–0585 V
187. Deanna Barker on behalf of Brian Barker, Kanawha County, West Virginia, Claims Court Number 91–0586 V
188. Nina George, Avon, Connecticut, Claims Court Number 91–0587 V
189. Mary O'Riordan on behalf of Michael O'Riordan, San Francisco, California, Claims Court Number 91–0588 V
190. Albert Rettew on behalf of Jonathan Rettew, Pottstown, Pennsylvania, Claims Court Number 91–0589 V
191. Victor Lakstins on behalf of Lorn Lakstins, Deceased, Indianapolis, Indiana, Claims Court Number 91–0590 V
192. Todd Kimmel on behalf of Jessica Kimmel, New Wilmington, Pennsylvania, Claims Court Number 91–0591 V
193. Wendy Morrison on behalf of Ashley Morrison, Rockingham, North Carolina, Claims Court Number 91–0592 V
194. Gwen D. Dudley on behalf of Billy Dudley, Deceased, Saint Albans, Vermont, Claims Court Number 91–0593 V
195. James Goeltz on behalf of Kurt Goeltz, Taipei, Taiwan, Claims Court Number 91–0594 V
196. Ernest Jones on behalf of Bethany Jones, Ruston, Louisiana, Claims Court Number 91–0595
197. Earl Vandry on behalf of Anthony Vandry, Plainview, Nebraska, Claims Court Number 91–0596
198. William Fisher on behalf of Joshua Fisher, Deceased, Claysville, Pennsylvania, Claims Court Number 91–0597.

December 8, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–30762 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–15–M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act (the Table). This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on January 31, 1991

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1 Robert Scrima on behalf of Christina Rose Scrima, Afton, New York, Claims Court Number 91–0598 V
2. Charlotte Hayes on behalf of Michelle Epperson, Deceased, Birmingham, Alabama, Claims Court Number 91–0599 V
3. Johnnie Leazer, Jr., Davidson, North Carolina, Claims Court Number 91–0600 V

4. Thomas Phelan on behalf of Molly Phelan, Portland, Oregon, Claims Court Number 91–0601 V
5. Joanna Easley on behalf of William Easley, Pampa, Texas, Claims Court Number 91–0602 V
6. Machelle Duty on behalf of Bobbie Duty, Columbus, Ohio, Claims Court Number 91–0603 V
7 Donald Routh on behalf Kimberly Routh, Bellevue, Washington, Claims Court Number 91–0604 V
8. Ronald Brann, Jacksonville, North Carolina, Claims Court Number 91–0605 V
9 Melissa Gorman, Fort Bliss, Texas, Claims Court Number 91–0606 V
10. John Minkiewicz, Cohoes, New York, Claims Court Number 91–0607 V
11 Donald McNutt, Brush Valley, Pennsylvania, Claims Court Number 91–0608 V
12 Ruth Prater on behalf of Jason Prater, Crossville, Tennessee, Claims Court Number 91–0609 V
13 John Davin, Springfield, Massachusetts, Claims Court Number 91–0610 V
14 Kay McMahon on behalf of Ashlin McMahon, Ramsey, New Jersey, Claims Court Number 91–0611 V
15. Judith Price on behalf of Holly A. Price, San Antonio, Texas, Claims Court Number 91–0612 V
16. Linda Holland on behalf of Sara Holland, Martinsville, Virginia, Claims Court Number 91–0613 V
17 Robert Allen Wood on behalf of Robert Aaron Wood, Pampa, Texas, Claims Court Number 91–0614 V
18. Kathleen McDonnell on behalf of Amanda McDonnell, Collingswood, New Jersey, Claims Court Number 91–0615 V
19. Kevin and Pamela Sanderson on behalf of Kevin Christopher Sanderson, Chico, California, Claims Court Number 91–0616 V
20. Lisa Brewer on behalf of Gregory Brewer, Houston, Texas, Claims Court Number 91–0617 V
21 Jane Pratzner, Jersey City, New Jersey, Claims Court Number 91–0618 V
22 Barbara Bagley on behalf of Nathan Bagley, Seattle, Washington, Claims Court Number 91–0619 V
23 Lisa Smith, Northumberland, Pennsylvania, Claims Court Number 91–0620 V
24 Linda Atwell on behalf of Lindsey Atwell, Vancouver, Washington, Claims Court Number 91–0621 V
25 Claude Sirois on behalf of Amy Sirois, Washingtonville, New York, Claims Court Number 91–0622 V
26. William Higgins on behalf of Jerry Higgins, Mingo Junction, Ohio, Claims Court Number 91–0623 V
27 Lynne Justice, Weatherford, Texas, Claims Court Number 91–0624 V
28 Trisha Sloan on behalf of Joshua Sloan, Ardmore, Oklahoma, Claims Court Number 91–0625 V
29 Patricia Dennis on behalf of Jeffrey Dennis, Springfield, Massachusetts, Claims Court Number 91–0626 V
30. Frankie Jayne Mann on behalf of Joshua Mann, Deceased, Laurens, South Carolina, Claims Court Number 91–0627 V
31 Alan Jarry on behalf of Anastasia Jarry, Chicopee, Massachusetts, Claims Court Number 91–0628 V
32. Vescelia Kates, Hopkinsville, Kentucky, Claims Court Number 91–0629 V
33 Albert Hartsfield on behalf of Stacie Hartsfield, Detroit, Michigan, Claims Court Number 91–0630 V
34. Carl Wilson on behalf of Donovan Carl Wilson, Columbus, Ohio, Claims Court Number 91–0631 V
35 Rhonda Campbell on behalf of Kacy Campbell, Orange, Texas, Claims Court Number 91–0632 V
36. Bernadette Chapman on behalf of Jennifer Chapman, Silver Creek, New York, Claims Court Number 91–0633 V
37 Gary and Mary Beth Smith on behalf of Jeremy Smith, Erie, Pennsylvania, Claims Court Number 91–0634 V
38. Patricia Joas on behalf of Christopher Joas, Haddonfield, New Jersey, Claims Court Number 91–0635 V
39. Luther Marsh on behalf of Nina Marsh, deceased, Austin, Texas, Claims Court Number 91–0636 V
40. Joseph and Natalie Johnson on behalf of Crystal Johnson, New Orleans, Louisiana, Claims Court Number 91–0637 V
41 Patricia Imamura on behalf of Arend Imamura, Honolulu, Hawaii, Claims Court Number 91–0638 V
42. George McCue on behalf of Brandon McCue, Deceased, Columbus, Ohio, Claims Court Number 91–0639 V
43. Josephine Young on behalf of Jason Young, Deceased, Ruston, Louisiana, Claims Court Number 91–0640 V
44. Jack Roberson on behalf of Shannon Roberson, Farmington, New Mexico, Claims Court Number 91–0641 V
45. Charlene Stewart on behalf of James Stewart, Deceased, Portsmouth, Ohio, Claims Court Number 91–0642 V
46. Tawnya Hayden on behalf of Whittney Hayden, Leavenworth, Kansas, Claims Court Number 91–0643 V
47 Robert Stark on behalf of Robin Kay Stark, Spring Branch, Texas, Claims Court Number 91–0644 V
48. Rebecca Fisher Van Nuys, Norfolk, Virginia, Claims Court Number 91–0645 V
49. Judy Pierce on behalf of Justin Pierce, Decatur, Georgia, Claims Court Number 91–0646 V
50. A. Dale Lakes on behalf of Kathleen Lakes, Kettering, Ohio, Claims Court Number 91–0647 V
51. Miguel Rios on behalf of Christian Negron, Bayamon, Puerto Rico, Claims Court Number 91–0648 V
52. Robert Sells on behalf of Roberto Sells, Oakland, California, Claims Court Number 91–0649 V
53 Chester Riley on behalf of Kenneth Riley, Deceased, Los Lunas, New Mexico, Claims Court Number 91–0650 V
54. Anna Wade on behalf of Jennifer Wade, Ronceverte, West Virginia, Claims Court Number 91–0651 V
55. Maurine Kaminski on behalf of Christina Kaminski, Deceased, Kansas City, Kansas, Claims Court Number 91–0652 V
56. Collen and Lewis Edwards on behalf of Ryan Edwards, Wynnewood, Oklahoma, Claims Court Number 91–0653 V
57. Michael and Twila Dillon on behalf of Michael Dillon, Jr., Deceased, Hot Springs, South Dakota, Claims Court Number 91–0654 V
58. Daniel Yarborough on behalf of Wendy Yarborough, Oklahoma City, Oklahoma, Claims Court Number 91–0655 V
59. Govin Rajan on behalf of Rekha Rajan, Moline, Illinois, Claims Court Number 91–0656 V
60. Susan Houle on behalf of Amber Pilgrim, Newport, Arkansas, Claims Court Number 91–0657 V
61 Jon L. Bailey, Amarillo, Texas, Claims Court Number 91–0658 V
62. Floyd and Jon Bailey on behalf of Matthew Bailey, Hereford, Texas, Claims Court Number 91–0659 V
63. Paulette Elkins on behalf of Sheri Johnson, Houston, Texas, Claims Court Number 91–0660 V
64. Larry Passwaters on behalf of Joel Passwaters, Newport News, Virginia, Claims Court Number 91–0662 V
65. Tracy Klein, St. Cloud, Minnesota, Claims Court Number 91–0663 V
66. William Simms on behalf of Kizzie Simms, Deceased, Oklahoma City, Oklahoma, Claims Court Number 91–0664 V
67 Frederick Larrance on behalf of Billie Larrance, Lawton, Oklahoma, Claims Court Number 91–0665 V
68. Stephen McIntosh on behalf of Stephen Shane McIntosh, Texarkana, Texas, Claims Court Number 91–0666 V
69. Don and Ruth Caggins, Sr. on behalf of Don Caggins, Jr., Houston, Texas, Claims Court Number 91–0667 V
70. Peter Lodi on behalf of Benjamin Lodi, Shelburne Falls, Massachusetts, Claims Court Number 91–0668 V
71 Cynthia Nichols, Beaumont, Texas, Claims Court Number 91–0669 V
72. Maryan Croom on behalf of David Croom, Fort Worth, Texas, Claims Court Number 91–0670 V
73 Maryan Croom on behalf of Don Croom, Fort Worth, Texas, Claims Court Number 91–0671 V
74. Molly Gore, Beaumont, Texas, Claims Court Number 91–0672 V
75. Andrea McClelland on behalf of Crystal McClelland, Orange, Texas, Claims Court Number 91–0673 V
76. Michael Sheffield on behalf of Katie Sheffield, Beaumont, Texas, Claims Court Number 91–0674 V
77 Robert Foster on behalf of Ryan Foster, Beaumont, Texas, Claims Court Number 91–0675 V
78. Desiree Bryant on behalf of Blithe Bryant, Beaumont, Texas, Claims Court Number 91–0676 V
79. Gail Doss on behalf of Kristie Doss, Beaumont, Texas, Claims Court Number 91–0677 V
80. Dona Simmons on behalf of Chas Simmons, Orange, Texas, Claims Court Number 91–0678 V

81 Frank Lipscomb on behalf of Lisa Marie Lipscomb, Dixon, Missouri, Claims Court Number 91–0679 V

82. Jacqueline McGrath on behalf of Racheal Myers, Bristol, Pennsylvania, Claims Court Number 91–0680 V

83. Maureen Cerveny on behalf of Mark Cerveny, Middleburg Heights, Ohio, Claims Court Number 91–0681 V

84. William Valentine on behalf of Jennifer Valentine, Meyersdale, Pennsylvania, Claims Court Number 91–0682 V

85. Vivian Gaudette on behalf of Sharon Fitzgerald, Deceased, Belchertown, Massachusetts, Claims Court Number 91–0683 V

86 Brenda Adio on behalf of Kevin Adio, Providence, Rhode Island, Claims Court Number 91–0684 V

87. Mona Tremblay on behalf of Julian Tremblay, Auburn, Massachusetts, Claims Court Number 91–0685 V

88 Harvey Mandell on behalf of Melinda Mandell, Greenbrae, California, Claims Court Number 91–0686 V

89. Thomas Barnhorn, Clearwater, Florida, Claims Court Number 91–0687 V

90. Michael Bond, Toledo, Ohio, Claims Court Number 91–0688 V

91. Sarah Larson, Falls Church, Virginia, Claims Court Number 91–0689 V

92. Katherine Carter on behalf of Raymond Carter, Fort Hood, Texas, Claims Court Number 91–0690 V

93. Patricia St. Mauro on behalf of Steven St. Mauro, Neptune, New Jersey, Claims Court Number 91–0691 V

94. Teresa Peavy on behalf of Jonathan Peavy, Jasper, Georgia, Claims Court Number 91–0692 V

95. Diane Hamilton on behalf of Susan Hamilton, Toledo, Ohio, Claims Court Number 91–0693 V

96 Jackson and Rosemary Gwin on behalf of Jessica Gwin, Mesquite, Texas, Claims Court Number 91–0694 V

97 Lucy Temperilli on behalf of Lisa Temperilli, Weatogue, Connecticut, Claims Court Number 91–0695 V

98. Elizabeth McMillian on behalf of Thomas McMillian, Oelwein, Iowa, Claims Court Number 91–0696 V

99 Michael West on behalf of Luke West, Deceased, Taylorville, Illinois, Claims Court Number 91–0697 V

100 Susan Thigpen, Little Rock, Arkansas, Claims Court Number 91–0699 V

101 Tammy L. Moreno on behalf of Juanita Medina, Deceased, Browning, Montana, Claims Court Number 91–0700 V

102 Rhonda Brown on behalf of Ruth Brown, Kingston, New York, Claims Court Number 91–0701 V

103. Freddie Ashley on behalf of Ricky Ashley, Port Arthur, Texas, Claims Court Number 91–0702 V

104. Steven Olson on behalf of Scott Olson Cherokee, Iowa, Claims Court Number 91–0703 V

105. David Bird on behalf of Elizabeth Bird, Provo, Utah, Claims Court Number 91–0704 V

106 Peter A. Nelson, Williamston, Michigan Claims Court Number 91–0705 V

107. Leffridge Deloney, Los Angeles, California, Claims Court Number 91–0706 V

108. Barbara Appleton on behalf of Jeremy Appleton, Bangor, Maine, Claims Court Number 91–0707

109. David and Patricia Eyler on behalf of Daniel Eric Eyler, Council Bluffs, Iowa, Claims Court Number 91–0708 V

110. Connie Yates on behalf of Angelina Elkins, Oklahoma City, Oklahoma, Claims Court Number 91–0709 V

111. Alberto Johnson, San Antonio, Texas, Claims Court Number 91–07 10 V

112. Sandra Farmer on behalf of Charles Farmer, Cheyenne, Wyoming, Claims Court Number 91–0711 V

113. Susan Renee Smith on behalf of Timothy Neely, Tampa, Florida, Claims Court Number 91–0712 V

114. Myron Ferry on behalf of Susan Ferry, Marion, Ohio, Claims Court Number 91–0713 V

115. Carla Ballard on behalf of Christopher Hicks, Deceased, Dayton, Tennessee, Claims Court Number 91–0714 V

116. Ella Shoemaker on behalf of Sharon Shoemaker, Dalton, Georgia, Claims Court Number 91–0715 V

117. Andre McClain, Chicago, Illinois, Claims Court Number 91–0716 V

118. Daniel Minkler on behalf of John Minkler, Rhinebeck, New York, Claims Court Number 91–0717 V

119. Cherie Frick, Belgrade, Montana, Claims Court Number 91–0718 V

120. Gerald and Sylvia Julian on behalf of Daniel Hammer, Evansville, Indiana, Claims Court Number 91–0719 V

121. Charles and Connie Fauze, Sr. on behalf of Charles Fauze, Jr., Hamilton, Missouri, Claims Court Number 91–0720 V

122. Daniel Minkler on behalf of Suzanne Minkler, Rhinebeck, New York, Claims Court Number 91–0721 V

123. Pamela Ewell on behalf of Colleen Ewell, Waterloo, Iowa, Claims Court Number 91–0722 V

124. Kent Marten, Anaconda, Montana, Claims Court Number 91–0723 V

125. Linda Etkin on behalf of Elizabeth Etkin, Springfield, Massachuetts, Claims Court Number 91–0724 V

126. Bryan Tait on behalf of Rebecca Tait, Deceased, Rancho Cucamonga, California, Claims Court Number 91–0725 V

127 Ervin Scheeringa on behalf of Scott Scheeringa, Munster, Indiana, Claims Court Number 91–0726 V

128. Oscar Thurmond, Chicago, Illinois, Claims Court Number 91–0727 V

129. Beverly Walsh on behalf of Rebecca Walsh, Deceased, Wilkes-Barre, Pennsylvania, Claims Court Numbers 91–0728 V

130. Jeffrey and Rosalyn Jones on behalf of Jeannine Jones, St. Petersburg, Florida, Claims Court Number 91–0729 V

131 John Ash on behalf of Staci Ash, Los Angeles, California, Claims Court Number 91–0730 V

132. Michael G. Austin, Oklahoma City, Oklahoma, Claims Court Number 91–0731 V

133. Jeff Raley on behalf of Aaron Raley, Deceased, Henrietta, Texas, Claims Court Number 91–0732 V

134. Emile Parrish, Lake Charles, Louisiana, Claims Court Number 91–0733 V

135. Martin Hoffman on behalf of Issac Hoffman, Jacksonville, Florida, Claims Court Number 91–0734 V

136. Robin Johnson on behalf of Emily Johnson, Citrus Heights, California, Claims Court Number 91–0735 V

137. Steve Chambers on behalf of Kyle Chambers, Deceased, Reno, Nevada, Claims Court Number 91–0736 V

138. Dorothy Dyer on behalf of Charles Scharmann, Pittsfield, Massachusetts, Claims Court Number 91–0737 V

139. Jennifer Rowland, Chicago, Illinois, Claims Court Number 91–0738 V

140. Bobbie Culver on behalf of Cynthia Stephens, Jacksonville, Florida, Claims Court Number 91–0739 V

141. Eustace Vinzant, Fernandina Beach, Florida, Claims Court Number 91–0740 V

142. Sharon Rice on behalf of Joseph Rice, Campbellsville, Kentucky, Claims Court Number 91–0741 V

143. Josephine Szczesny on behalf of Marie Szczesny, Chicago, Illinois, Claims Court Number 91–0742 V

144. Josephine Szczesny on behalf of Michael Szczesny, Chicago, Illinois, Claims Court Number 91–0743 V

145. Josephine Szczesny on behalf of Mark Szczesny, Chicago, Illinois, Claims Court Number 91–0744 V

146. Josephine Szczesny on behalf of Marcia Szczesny, Chicago, Illinois, Claims Court Number 91–0745 V

147. Patricia Parker, Phoenix, Arizona, Claims Court Number 91–0746 V

148. Donna Fausel on behalf of Donald Andrews, Deceased, Burdett, New York, Claims Court Number 91–0747 V

149. Steve Weathers on behalf of April Weathers, Deceased, Edmond, Oklahoma, Claims Court Number 91–0748 V

150. Marcelle Gercken on behalf of Susan Morgan, Deceased, Atlanta, Georgia, Claims Court Number 91–0749 V

151. Donald Rodgers on behalf of Dina Rodgers, Deceased, Munster, Indiana, Claims Court Number 91–0750 V

152. Frank Luketic, Jr. on behalf of Frank Luketic, III, Warren, Ohio, Claims Court Number 91–0751 V

153. Vicki Warbis on behalf of Charles Chadwick, Bismarck, North Dakota, Claims Court Number 91–0752 V

154. Wendy Montayre on behalf of Micah Montayre, Oceanside, California, Claims Court Number 91–0753 V

155. Carmen Malanche on behalf of Pearl Valentin, Alameda, California, Claims Court Number 91–0754 V

156. Thomas Strauch on behalf of Linda Strauch, San Antonio, Texas, Claims Court Number 91–0755 V

157. Kathy Pesak on behalf of Dustin Johnson, Albert Lea, Minnesota, Claims Court Number 91–0756 V

158. Marianne Patton, Miamisburg, Ohio, Claims Court Number 91–0757 V

159 Phillip Passno on behalf of Devon Passno, Ventura, California, Claims Court Number 91–0758 V
160. James Welsh, Boise, Idaho, Claims Court Number 91–0759 V
161 Willard Flatt, Knoxville, Tennessee, Claims Court Number 91–0760 V
162. Donna Kirby on behalf of Kristen Kirby, Altus, Oklahoma, Claims Court Number 91–0761 V
163. Sheila Cooper on behalf of Tara Cooper, Evansville, Indiana, Claims Court Number 91–0762 V
164. Rhonda Kennedy on behalf of Wendy Kennedy, Barnwell, South Carolina, Claims Court Number 91–0763 V
165. Michael Draughon, Pasadena, Texas, Claims Court Number 91–0764 V
166. William Miles, Jr., Marianna, Arkansas, Claims Court Number 91–0765 V
167 Teresa Drake, Santa Maria, California, Claims Court Number 91–0766 V
168. Eugene Mueller, St. Louis, Missouri, Claims Court Number 91–0767 V
169. Barry Absher, Columbia, Kentucky, Claims Court Number 91–0768 V
170. Gloria Quintana on behalf of Damion McElroy, Deceased, La Junta, Colorado, Claims Court Number 91–0769 V
171 Maria Lombardi on behalf of Lisa Aghai, Santa Monica, California, Claims Court Number 91–0770 V
172 Vicki Florence on behalf of Todd Robinson, Covington, Kentucky, Claims Court Number 91–0771 V
173 Elizabeth Pryor on behalf of Julene Thompson, San Bernardino, California, Claims Court Number 91–0772 V
174 Jane Culver on behalf of Charles Culver, Palo Alto, California, Claims Court Number 91–0773 V
175 Linda Ruth Moseley, Little Neck, New York, Claims Court Number 91–0774 V
176 Maxine McCann on behalf of James Pullen, Deceased, New Haven, Connecticut, Claims Court Number 91–0775 V
177 Christina Ashby on behalf of Tania Ashby, Auburn, New York, Claims Court Number 91–0776 V
178. Billie Kelley on behalf of Juan Kelley, Columbus, Ohio, Claims Court Number 91–0777 V
179. Nella Blakesly on behalf of Sara Browning, Austin, Texas, Claims Court Number 91–0778 V
180. David Kennedy on behalf of Gabriel Kennedy, Eureka, California, Claims Court Number 91–0779 V
181. Nancy Gifford on behalf of Cathleen Gifford, Glen Falls, New York, Claims Court Number 91–0780 V
182. Celeste Paradis, Waterville, Maine, Claims Court Number 91–0781 V
183. Anna Sutliff on behalf of George Sutliff, Philadelphia, Pennsylvania, Claims Court Number 91–0782 V
184. Peter Braam on behalf of Emily Braam, Hudson, Wisconsin, Claims Court Number 91–0783 V
185. Karen Flaherty, Boston, Massachusetts, Claims Court Number 91–0784 V
186. Jonathan Griffin, Chicago, Illinois, Claims Court Number 91–0785 V
187. L.R. Petteton on behalf of Monica Stark, Chicago, Illinois, Claims Court Number 91–0786 V
188. Kinga Czuprynowski on behalf of Eugene Czuprynowski, New Britian, Connecticut, Claims Court Number 91–0788 V
189. Karen Hawley, Sumter, South Carolina, Claims Court Number 91–0789 V
190. Michael Porcello on behalf of Dominick Porcello, East Orange, New Jersey, Claims Court Number 91–0790 V
191. Almedia and Joseph Freeman on behalf of Patrice Seamon, Chicago, Illinois, Claims Court Number 91–0791 V
192. Bradford Carroll on behalf of Melissa Carroll, Benton Harbor, Michigan, Claims Court Number 91–0792 V
193. Karen Holliday on behalf of Jonathan Holliday, Deceased, Ronceverte, West Virginia, Claims Court Number 91–0793 V
194. Janice Wagner on behalf of James Boardman, Deceased, Toms River, New Jersey, Claims Court Number 91–0794 V
195. Marva Lamb on behalf of Justin Watkins, Portland, Oregon, Claims Court Number 91–0795 V

Dated: December 8, 1994

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–30763 Filed 12–14–94; 8:45 am]

BILLING CODE 4160–15–P

Social Security Administration

1994 Advisory Council on Social Security; Postponement of Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of postponement of meeting.

SUMMARY: Notice is hereby given that the meeting of the 1994 Advisory Council on Social Security that was to be held at the Capital Hilton, 16th & K Streets, N.W., Washington, D.C., 20036, on December 16 and 17, 1994, has been postponed. The meeting will be rescheduled at a later date. The original notice of this meeting appeared December 1, 1994 at 59 FR 61633

Dated: December 13, 1994

David Lindeman,

Executive Director, 1994 Advisory Council on Social Security.

[FR Doc. 94–31018 Filed 12–13–94; 3:57 pm]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–03–1220–04: G5–042]

Prohibited Acts in Owyhee National Wild and Scenic River Area

AGENCY: Vale District, Bureau of Land Management, Interior

ACTION: Notice of closures and restrictions within the boundaries of the Main Owyhee River as established in the Main, West Little and North Fork Owyhee National Wild and Scenic Rivers Management Plan.

SUMMARY: The Vale District is initiating certain closures and restrictions as part of the implementation of the 1993 Main, West Little and North Fork Owyhee National Wild and Scenic Rivers Management Plan, and in order to protect and enhance the outstandingly remarkable values (ORVs) for which the river was designated. The closures and restrictions are the minimum necessary to protect and enhance ORVs. Personnel that are exempt from the closures and restrictions include any Federal, State, or local officers, or any member of an organized rescue or fire-fighting unit in performance of official duties, or any person authorized by the Bureau of Land Management.

Pursuant to 43 CFR 8351.2–1, the following acts are prohibited on all public lands within the boundaries of the Main Owyhee River component of the National Wild and Scenic River System administered by the Bureau of Land Management:

1. Fire

a. Building or maintaining any open campfires except those contained in a firepan or similar metal container

b. Failure to remove campfire debris from the river corridor and disposing of it in a refuse container

2. Sanitation or Refuse

a. Failure to carry and use a portable, containerized toilet during float trips

b. Disposal of solid human body waste except at designated locations or fixtures provided for that purpose

3 Firearms

a. Discharging a firearm at any time into or from within any area posted no shooting or safety zone

b Discharging a firearm at any time in violation of State law

4. Boating

a. Operation of any motor-driver (including electric motor-driven) watercraft.

b. Violation of any State Marine Board regulation.

5. Camping

a. Camping on any area posted as "Closed" to that use.

6. Vehicle

a. Operating a motor vehicle on the lower portion of the Bogus Creek Road from near the point where it crosses Bogus Creek (T.28S., R.41E., Section 34) to the river.

b. Operating a motor vehicle on the road on the west side of the river north of the Morrison site from the river ford to the Griffith Ranch (T.27S., R.43E., section 6).

c. Operating a motor vehicle to ford the river anywhere within the wild river corridor other than The Hole-In-The-Ground Ranch.

7. Archaeology

a. Defacing, disturbing or removing any historic or prehistoric feature or artifact.

8. Other Acts

a. Failure to register any boat trip prior to launching.

b. Exceeding float boat part or group sizes of:

15 on the Upper (Idaho state line to Three Forks).

15 on the Middle (Three Forks to Rome).

20 on the Lower (Rome to Leslie Gulch).

c. Aircraft landing without authorization.

d. Failure to observe posted regulations at launch sites.

Violation of these prohibitions is punishable by a fine of not more than $500 or imprisonment for not more than six (6) months or both. (Title 16 U.S.C. Section 1281 and Title 16 U.S.C. Section 3)

The lands administered by the Bureau of Land Management to which this order applies are within the Administrative boundary of the Owyhee National Wild and Scenic River. Legal description of the administrative boundary can be viewed at the Vale District office and is available in the above mentioned management plan.

FOR FURTHER INFORMATION CONTACT: Jerry L. Taylor, Jordan Resource Area Manager, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918 (Telephone 503 473–3144).

James E. May,

District Manager.

[FR Doc. 94–30765 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–33–M

[OR–030–03–1220–04: GS–043]

Prohibited Acts in West Little and North Fork Owyhee National Wild and Scenic River Area

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of closures and restrictions within the boundaries of the West Little and North Fork Owyhee Rivers as established in the Main, West Little and North Fork Owyhee National Wild and Scenic Rivers Management Plan.

SUMMARY: The Vale District is initiating certain closures and restrictions as part of the implementation of the 1993 Main, West Little and North Fork Owyhee National Wild and Scenic Rivers Management Plan, and in order to protect and enhance the outstandingly remarkable values (ORVs) for which the rivers were designated. The closures and restrictions are the minimum necessary to protect and enhance ORVs. Personnel that are exempt from the closures and restrictions include any Federal, State, or local officers, or any member of an organized rescue or firefighting unit in performance of official duties, or any person authorized by the Bureau of Land Management.

Pursuant to 43 CFR 8351.2–1, the following acts are prohibited on all public lands within the boundaries of the West Little and North Fork Owyhee Rivers components of the National Wild and Scenic River System administered by the Bureau of Land Management:

1. Aircraft

a. Aircraft landing without authorization.

2. Boating

a. Operation of any motor-driven (including electric motor-driven) watercraft.

3. Archaeology

a. Defacing, disturbing or removing any historic or prehistoric feature or artifact.

4. Other Acts

a. Failure to register any boat trip prior to launching.

b. Failure to observe posted regulations.

Violation of these prohibitions is punishable by a fine of not more than $500 or imprisonment for not more than six (6) months or both. (Title 16 USC section 1281 and Title 16 USC section 3)

The lands administered by the Bureau of Land Management to which this order applies are within the administrative boundaries of the West Little and North Fork Owyhee National Wild and Scenic rivers. Legal description of the administrative boundaries can be viewed at the Vale District office and is available in the above mentioned management plan.

FOR FURTHER INFORMATION CONTACT: Jerry L. Taylor, Jordan Resource Area Manager, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918 (Telephone 503 473–3144).

James E. May,

District Manager.

[FR Doc. 94–30766 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–33–M

[WY–030–05–1060–04]

Helicopters and Motorized Vehicles Use of Gathering Wild Horses and Burros; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Hearing.

SUMMARY: A public hearing on the use of helicopters in wild horse roundup activities will be held at the conference room of the Lander Resource Area office.

DATES: January 18, 1995.

ADDRESSES: 125 Sunflower, Lander, Wyoming 82520.

FOR FURTHER INFORMATION CONTACT: Jack Kelly, Area Manager, Lander Resource Area, 125 Sunflower, Lander, Wyoming 82520.

SUPPLEMENTARY INFORMATION: The agenda will be limited to:

1. Introduction and opening remarks.
2. Review of the Wild Horse Gathering Plan.
3. Use of helicopters in the Plan.
4. Film presentation of roundup activity.
5. Public comment period.

The meeting is open to the public and interested persons may make oral statements on the subject. All statements will be recorded.

David C. McWhirter,

Acting District Manager.

[FR Doc. 94–30809 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–22–M

[ID–040–1430–00–45008; ID–0458–4–27; IDI–30625]

Realty Actions; Sales, Leases, etc.: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action for the Sale of Public Land in Custer County Idaho.

SUMMARY: The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian, Idaho

T 8N., R. 20 E.,
Sec. 25, lot 1

The area described contains 0.97 acres in Custer County

The patent, when issued, will contain a reservation to the United States for ditches and canals. The patent will also be subject to a right-of-way for a telephone lien to the Custer Telephone Cooperative Inc. and a right-of-way for an electric powerline to Lost River Electric Co-Operative Inc.

DATES: On December 15, 1994, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Information concerning this action can be obtained from the Bureau of Land Management Salmon Office, P.O. Box 430, or Highway 93, South, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Mark E. Johnson, Challis Resource Area Manager, at the address shown above or call (208) 756–5420.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Orval and Sara Beus, of Soda Springs, Idaho, based on historic use and valuation of added improvements. Failure or refusal of Orval and Sara Beus to submit the total purchase price amount, 180 days from the date of the sale, will result in cancellation of the sale.

It has been determined that the subject area has low potential for locatable minerals and moderate potential for mineral material; therefore, mineral interests will be retained in public ownership.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager at the above address. Any adverse comments will be reviewed by the Ecosystem Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. In the absence of adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: December 5, 1994.

Fritz U. Rennebaum,

Ecosystem Manager

[FR Doc. 94–30812 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–66–M

[OR–942–00–1420–00: G5–047]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T 16 S., R. 2 E., accepted September 28, 1994
T 36 S., R. 20 E., accepted November 16, 1994
T 2 S., R. 45 E., accepted November 30, 1994
T 3 S., R. 45 E., accepted November 30, 1994
T 16 S., R. 1 W , accepted October 12, 1994
T. 17 S., R. 1 W., accepted October 7, 1994
T 17 S., R. 2 W., accepted September 28, 1994
T 19 S., R. 3 W , accepted October 7, 1994
T 16 S., R. 6 W., accepted October 25, 1994
T 30 S., R. 11 W., accepted September 27, 1994 (2 Sheets)

Washington

T 22 N., R. 11 W , accepted October 28, 1994

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: December 5, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–30811 Filed 12–14–94, 8:45 am]

BILLING CODE 4310–33–M

[AZ–930–1430–01; AZA–10898]

Expiration of Withdrawal and Opening of Land; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order (PLO) No. 6502, withdrawing land on behalf of the Bureau of Land Management (BLM), expired on January 22, 1989. The order withdrew 9,183.50 acres of BLM-administered land from location and entry under the mining laws, but not the mineral leasing laws to protect residential lands in and near the Town of Wickenburg in Maricopa and Yavapai Counties. The purpose of the withdrawal was to prevent mining claim conflicts from occurring within a 5-year period during which the private land owners could seek to acquire the mineral estate under authority of Sec 209 of the Federal Land Policy and Management Act of 1976. This action, a requirement under 43 CFR 2091.6, will open the land to location and entry under the United States mining laws.

EFFECTIVE DATE: Expiration of PLO No. 6502 was effective on January 22, 1989. The land will be opened to filings under the mining laws at 10:00 a.m. MST on January 17, 1995.

FOR INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

SUPPLEMENTARY INFORMATION: Pursuant to regulations found in 43 CFR 2091.6, the following described land is hereby opened to location and entry under the United States mining laws. It has been and will remain open to the public land

laws and the mineral leasing laws. Subject land is identified as follows:

Gila and Salt River Meridian

T. 7 N., R. 4 W.,
Sec. 17, NE¼, E½NW¼, E½W½NW¼, S½SW¼NW¼NW¼, W½SW¼NW¼, E½SW¼, N½SE¼, W½SW¼SE¼, NE¼SW¼SE¼, W½SE¼SW¼SE¼, SE¼SE¼, and that portion of the N½SW¼NW¼NW¼ described as follows:

Beginning at the Southeast corner of said North half of the Southwest quarter of the Northwest quarter of the Northwest quarter; thence west parallel to the North line of the North half of the Southwest quarter of the Northwest quarter of the Northwest quarter, 330 feet; thence North parallel to the West line of the North half of the Southwest quarter of the Northwest quarter of the Northwest quarter, 264 feet; thence East parallel to the North line of the North half of the Southwest quarter of the Northwest quarter of the Northwest quarter, 330 feet; thence South parallel to the West line of the North half of the Southwest quarter of the Northwest quarter of the Northwest quarter, 264 feet to the Point of Beginning;

Sec. 20, E½SE¼.
T. 7 N., R. 5 W.,
Sec. 3;
Sec. 4, E½NE¼, NE¼SE¼;
Sec. 8, N½, N½SW¼, NW¼SE¼;
Sec. 9, NE¼, E½NW¼,NW¼NW¼, NE¼SE¼;
Sec. 10;
Sec. 11, NW¼NE¼, W½;
Sec. 17.
T. 8 N., R. 5 W.,
Sec. 17, W½E½, W½;
Sec. 18;
Sec. 19;
Sec. 20, W½, S½NW¼SE¼, SW¼SE¼, S½SE¼SE¼;
Sec. 21, S½S½SW¼;
Sec. 27, NW¼SW¼;
Sec. 28, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 29;
Sec. 30, lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼ lying east of the Atchison Topeka and Santa Fe Railroad right-of-way;
Sec. 33;
Sec. 34;
Sec. 35, W½SW¼, SE¼SW¼.

The areas described aggregate 9,183.50 acres in Maricopa and Yavapai Counties.

Dated: December 2, 1994.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 94–30813 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Endangered Species and Threatened Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for a Permit.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Permit No. PRT–704930

Applicant: Assistant Regional Director, Ecological Services, Denver, Colorado

The applicant requests amendment to their current permit to include take activities for Virgin spinedace (*Lepidomenda mollispinis*), if and when it becomes federally protected as endangered or threatened under the U.S. Endangered Species Act and take activities for the endangered jaguar (*Panthera onca*) for the purposes of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Written data or comments in regard to the application should be sent to the address provided below. Documents and other information submitted in conjunction with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (Attn: ARD Ecological Services). Phone (303) 236–7398 or FAX (303) 236–0027.

Dated: December 2, 1994.

Terry T. Terrell,

Acting Regional Director.

[FR Doc. 94–30819 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–35–M

Minerals Management Service

Minerals Management Advisory Board; Outer Continental Shelf (OCS), Scientific Committee (SC); Notice of Vacancies and Request for Nominations

The Minerals Management Service (MMS) is seeking interested and qualified individuals to serve on its Minerals Management Advisory Board OCS SC during the period of May 2, 1995, through May 1, 1997. The initial 2-year term may be renewable for up to an additional 4 years. The OCS SC is chartered under the Federal Advisory Committee Act to advise the Director of the MMS on the appropriateness, feasibility, and scientific value of the OSC Environmental Studies Program (ESP) and environmental aspects of the offshore oil and gas program. The ESP, which was authorized by the OCS Lands Act as amended (Section 20), is administered by the MMS and covers a wide range of field and laboratory studies in biology, chemistry, and physical oceanography, as well as studies of the social and economic impacts of OCS oil and gas development. The work is conducted through award of competitive contracts and interagency and cooperative agreements. The OCS SC reviews the relevance of the information being produced by the ESP and may recommend changes in its scope, direction, and emphasis.

The OCS SC comprises distinguished scientists in appropriate disciplines of the biological, physical, chemical, and socioeconomic sciences. The selection is based on maintaining disciplinary expertise in all areas of research, as well as geographic balance. Demonstrated knowledge of the scientific issues related to OCS oil and gas development is essential. Selection is made by the Department of the Interior on the basis of these factors.

Interested individuals should send a letter of interest and resume within 30 days to: Dr. Ken Turgeon, Executive Secretary and Chief, Environmental Studies Branch, Environmental Policy and Programs Division, Minerals Management Service, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070. He may be reached by telephone on (703) 787–1717.

Dated: December 6, 1994

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 94–30814 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice—Mountaineering Program.

SUMMARY: A new Mountaineering Program will be put in place for the 1995 climbing season in Denali National Park and Preserve. The mountaineering program will include a 60–Day Pre-Registration requirement for climbers on Mount McKinley and Mount Foraker and a mountaineering program fee. Mountaineering in the park has increased dramatically over the last 10

years, with the number of Mount McKinley climbers increasing from 695 in 1984 to 1,277 in 1994. Climbing related injuries and deaths have correspondingly increased. By requiring advance registration, the Denali park staff will be able to provide information to prospective mountaineers in advance of their climb. This may include information on the specific dangers they may face, other safety related issues, how to prepare and equip, and requirements concerning resource protection issues such as litter removal and human waste disposal. The 60–Day pre-registration requirement is a regulatory issue and is being addressed through an interim rulemaking. As part of the interim rulemaking process, the National Park Service (NPS) will be soliciting comments and will review comments and consider making changes to the rule based upon an analysis of comments.

The fee to be charged—$150 per climber—will help offset mountaineering administrative costs associated with prepositioning and maintaining the high-altitude ranger camp at 14,200 feet on the West Buttress route, mountaineering patrol salaries, education materials aimed at reducing the number of accidents, transportation and supplies. The cost of administering the international mountaineering program (climbers represented 23 countries in 1994) has increased over the past several years and consumes a disproportionate amount of the park budget.

The program has three major components:

1. Sixty-Day Pre-Registration. Climbers on McKinley and Foraker will be required to register a minimum of 60 days in advance of their climb. By requiring advance registration, the Denali staff will be able to provide information to prospective mountaineers on the dangers they may face, how to prepare and equip, and to discuss requirements concerning resource issues such as littering and human waste disposal. Currently, climbers are required to register, but may do so as late as the day they depart for the mountain. The National Park Service will be revising the regulations to implement this requirement.

2. Preventative SAR/Education: Written and visual orientation materials will be improved to better prepare mountaineers for a sub-arctic mountaineering experience. Mountaineers from outside the United States account for a disproportionate number of rescues. With 20 to 30 countries represented each season, written and voice-mail materials eventually will be prepared in eight languages.

3. Climbing Special Use Permit Fee: The $150 per climber fee is expected to generate about $180,000 per year (1,200 climbers x $150). Expenditures will include ranger and support salaries while doing mountaineering-related work, improved educational presentations and materials, logistical support and patrol supplies (such as that used at the 14,200-foot camp on the West Buttress). The fee will neither cover the lease of the high-altitude helicopter (about $240,000 per year), nor will it be used to offset expenses incurred in rescues (anywhere from $70,000 to $200,000 per year).

The move to a fee program does not change Denali park's existing rescue policy which states:

> Denali National Park and Preserve recognizes that a certain number of park visitors each year will become ill, injured, or incapacitated in some way It is the policy of Denali National Park and Preserve to assist those in need when, in the opinion of the park personnel apprised of the situation, it is necessary, appropriate, within the reasonable skill and technical capability of park personnel and provides searchers and rescuers with a reasonable margin of safety

The NPS will continue to make reasonable efforts to provide, subject to existing conditions and the availability of personnel and equipment, search and rescue operations. Further, the level and exigency of the response is determined by field personnel based on their evaluation of the situation. Denali National Park and Preserve expects park users, specifically individuals who undertake mountaineering activities, to exhibit a degree of self-reliance and responsibility for their own safety commensurate with the degree of difficulty of the activities they undertake.

James M. Brady,

Chief, Ranger Activities Division.

[FR Doc. 94–30839 Filed 12–14–94; 8:45 am]

BILLING CODE: 4310–70–P

Notice of Availability of Draft Environmental Impact Statement/ General Management Plan/ Development Concept Plan, Obed Wild and Scenic River, Tennessee

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service Policy, the National Park Service (NPS) announces the release of the Draft Environmental Impact Statement/General Management Plan/Development Concept Plan (DEIS/GMP/DCP) for Obed Wild and Scenic River, Tennessee.

DATES: The DEIS/GMP/DCP will be on public review until January 30, 1995 Any review comments must be postmarked no later than January 30, 1995, and addressed to the Regional Director, Southeast Region, National park Service, 75 Spring Street, SW. Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Superintendent, Obed Wild and Scenic River, P.O. Box 429, Wartburg, Tennessee 37887, Telephone: (615) 346–6294.

SUPPLEMENTARY INFORMATION: The DEIS/GMP/DCP presents two alternatives for future management and use of Obed Wild and Scenic River one of which is preferred by the NPS. Copies of the DIES/GMP/DCP are available for review at the NPS Regional Office in Atlanta and at the Wartburg office. Copies of the DEIS/GMP/DCP may be obtained from the Superintendent at the above address.

Dated: December 8, 1994

C.W. Ogle,

Acting Regional Director, Southeast Region

[FR Doc. 94–30837 Filed 12–14–94, 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Tuesday, December 13, 1994, 1:30 p.m. until 4:30 p.m.

ADDRESSES: Public Safety Building, 10 E. Church Street, Room P–205, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission

was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: November 29, 1994.

David B. Witwer,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 94–30764 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–70–M

Gettysburg National Military Park Advisory Commission

AGENCY: Gettysburg National Military Park Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the thirteenth meeting of the Gettysburg National Military Park Advisory Commission.

DATE: January 12, 1995.

TIME: 2:00 p.m.–5:00 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Gettysburg Hotel, One Lincoln Square, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, review of final Land Exchange Alternative Study, review of Draft Environmental Impact Statement for White-Tail Deer Management, Museum of the American Civil War, Gettysburg Centennial.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Warren D. Beach,

Acting Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 94–30838 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–70–M

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: February 2–4, 1995, 8:00 a.m.–5:00 p.m.

ADDRESSES: Holiday Inn-Billings Plaza, 5500 Midland Road, Billings, Montana 59101.

THE AGENDA OF THIS MEETING WILL BE: Review minutes of last meeting, discuss follow-up actions from previous meeting, introduction/opening remarks, introduction of National Park Service Support Team, travel/administrivia, reports from committees for: Media/Public Relations, Fund Raising, Design Criteria/Competition.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022. The telephone number is (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Booher, Indian Affairs Coordinator, Rocky Mountain Regional Office, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: December 5, 1994.

Michael D. Snyder,

Associate Regional Director, Professional Services, Rocky Mountain Region, National Park Service.

[FR Doc. 94–30854 Filed 12–14–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 165X)]

Norfolk and Western Railway Company—Abandonment Exemption—in Cincinnati (St. Bernard), OH

Norfolk and Western Railway Company (NW) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 0.85-mile rail line between milepost C–0.00 and C–0.85 in Cincinnati (St. Bernard), OH.

NW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105 12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective January 14, 1995, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 4, 1994. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N W., Washington, DC 20423. In addition, one copy must be served on James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 20, 1994. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–30840 Filed 12–14–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree and Bankruptcy Stipulation Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Agrico Chemical Co., Inc. et al*, Civil Action No. 94–40462 (E.D. Mich.), was lodged on November 30, 1994 with the United States District Court for the Eastern District of Michigan and a proposed Stipulation in *In re: Bond Corporation North America, et al* Case No. 91 B 10326 (FGC), was lodged on December 2, 1994 with the United States Bankruptcy Court for the Southern District of New York.

The Consent Decree and the Stipulation together resolve claims of the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 , 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), against fourteen corporations that have been identified as potentially responsible parties ("PRPs") in connection with the hazardous waste site known as the Forest Waste Products site, in Forest Township, Genesee County, Michigan (the "Site").

The proposed decree requires thirteen "Settling Defendants" to undertake the design and implementation of the final and remaining portion of EPA's selected remedy for the Site, as set forth in a Record of Decision dated March 31, 1988, as amended by an Explanation of Significant Differences, signed by U.S. EPA May 4, 1993. Previous remedial actions have been undertaken at the Site pursuant to an Administrative Order on Consent, signed by U.S. EPA on August 23, 1993.

In addition, under the proposed Consent Decree, in conjunction with the bankruptcy Stipulation, the United States will recover a total of $5 million in past removal, investigative, administrative, and enforcement costs ("Past Response Costs") incurred by the United States through March 31, 1993 in connection with the Site. The proposed Consent Decree also provides for reimbursement of any future response costs, including overseeing the remedial action work that is being undertaken by the defendants, incurred by the United States in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Agrico Chemical Co., Inc., et al*, D.J. reference # 90–11–2–306C.

The proposed Consent Decree and Bankruptcy Stipulation may be examined at the Office of the United States Attorney for the Eastern District of Michigan, Southern Division, 210 Federal Building, 600 Church Street, Flint, Michigan 48502; the Office of the United States Attorney for the Southern District of New York, 100 Church Street, New York, New York, 10007; the Region V Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20004, (202) 624–0892. A copy of the proposed consent decree and Stipulation may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $30.05 (25 cents per page reproduction costs), payable to the Consent Decree Library

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–30829 Filed 12–14–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9622(d), and the policy of the United States Department of Justice, as provided in 28 CFR 50.7, notice is hereby given that on November 21, 1994, a proposed Consent Decree in *United States* v *Florida Steel Corporation*, Civil No. 94–14241, was lodged with the United States District Court for the Southern District of Florida. From 1970 until 1982, Florida Steel operated a steel mill and metal recycling facility on the Site, which is located near Indiantown, Florida. As a result of these operations, the Site is contaminated with heavy metals, PCB's and other hazardous substances. The proposed Consent Decree addresses Operable Unit Two of the Site, which concerns contaminated groundwater and wetland sediments. Pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), the Complaint in this action seeks defendant's performance of the remedy selected by EPA for Operable Unit Two, as well as recovery of all previously unreinbursed response costs incurred by the United States at the Site, and of all future and oversight costs to be incurred by the United States in connection with Operable Unit Two.

Florida Steel has agreed in the proposed Consent Decree to (1) perform the remedy selected by EPA for Operable Unit Two, at a total estimated cost of $1.2 million, and (2) reimburse the United States for all of its previously unreimbursed response costs incurred at

[2] *See Exempt of Rail Abandonment—Offers of Finan Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

the Site, and for all of its future response and oversight costs incurred in connection with Operable Unit Two. The selected remedy for Operable Unit Two requires (1) pumping and treatment of contaminated groundwater, and (2) excavation of contaminated wetland sediments and solidification of those sediments in an on-Site landfill.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C., 20044, and should refer to *United States* v. *Florida Steel Corporation*, D.J. Ref. 90–11–2–833A (Operable Unit Two).

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Southern District of Florida, 99 NE. 4th Street, suite 300, Miami, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Decree may be obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. For a copy of the Consent Decree with attachments (Record of Statement of Work and Site map) please enclose a check for $37.50 ($.25 per page reproduction charge) payable to "Consent Decree Library." For a copy of the Consent Decree without those attachments please enclose a check for $19.00 ($.25 per page reproduction charge) payable to "Consent Decree Library."

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 94–30830 Filed 12–14–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *GATX Corporation and General American Transportation Corporation*, Civil Action No. 94–312E, was lodged on November 15, 1994 with the United States District Court for the Western District of Pennsylvania. The Consent Decree requires the defendants to excavate and incinerate contaminated soils and sludges at the Saegertown Industrial Area Site in Saegertown, Crawford County, Pennsylvania. The Consent Decree also requires the defendants to pay a portion of the United States past and future costs associated with the Site. Further, the consent decree requires the defendants to reimburse the United States for damages caused to the natural resources within the trusteeship of the U.S. Fish and Wildlife Service.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *GATX Corporation and General American Transportation Corporation*, DOJ Ref. #90–11–2–870.

The proposed consent decree may be examined at the office of the United States Attorney, 633 Post Office & Courthouse, 7th & Grant Streets, Pittsburgh, PA15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $44.55 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–30824 Filed 12–14–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. § 9622(d)(2), notice is hereby given that on December 2, 1994, a Consent Decree in *United States* v. *PacifiCorp d/b/a Utah Power & Light Company*, Civil Action No. 94–C–1162W, was lodged with the United States District Court for the District of Utah.

The United States, on behalf of the U.S. Environmental Protection Agency, filed a complaint against PacifiCorp d/b/a Utah Power & Light Company ("UP&L"), under Sections 106, 107, and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613(g)(2), with respect to the Utah Power & Light/American Barrel Superfund Site located in Salt Lake City, Utah. Under the Consent Decree, UP&L has agreed to perform the remedy selected by EPA under CERCLA for the Site, which involves remediating contaminated surface and subsurface soils by way of asphalt batching. Any characteristic wastes are to be incinerated. The groundwater is to be protected by treating the sources of contamination through soil vapor extraction. UP&L has also agreed to reimburse EPA for future response costs.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *PacifiCorp d/b/a Utah Power & Light Company*, Civil Action No. 94–C–1162W, Ref. No. 90–11–2–899. The proposed Consent Decree may be examined at the office of the United States Attorney General, District of Utah, 478 Frank E. Moss U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah, 84101. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500 Denver, Colorado 80202–2466. When requesting a copy of the settlement agreement by mail, please enclose a check in the amount of $20.75 (twenty five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–30828 Filed 12–14–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States, the State of Florida and the State of Maryland v. Browning-Ferris Industries, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in the above-captioned case.

On December 1, 1994, the United States, the State of Florida, and the State of Maryland filed a complaint to block the proposed acquisition by Browning-Ferris Industries, Inc. ("BFI") of the stock of Attwoods plc ("Attwoods"). BFI provides waste hauling service throughout the United States; Attwoods provides waste hauling service in the state of Florida and in the mid-Atlantic region of the United States. The Complaint alleges that the acquisition may substantially lessen competition in the provision of small containerized hauling service in the areas of Florida, Maryland, Pennsylvania, and Delaware.

The proposed Final Judgment requires that BFI divest certain of Attwoods' assets that provide small containerized hauling service in the following areas: (1) Duval and Clay counties, Florida; (2) Frederick and Washington counties, Maryland; (3) Chester County, Pennsylvania; and (4) Sussex County, Delaware/the Southern Eastern Shore of Maryland. The proposed Final Judgment also requires that BFI offer a one year contract with limited liquidated damages (Exhibit A of the proposed Final Consent Judgment) to small containerized hauling customers in Baltimore City, Baltimore County, Anne Arundel County, Calvert County, Howard County, Carroll County, Harford County, Prince George's County, and Montgomery County, Maryland. Additionally, the proposed Final Judgment requires that BFI offer a two year contract with limited liquidated damages (Exhibit B of the proposed Final Judgment) to small containerized hauling customers in Polk and Broward counties, Florida.

Public comment is invited within the statutory 60-day period. Such comments will be published in the **Federal Register** and filed with the Court. Comments should be addressed to Anthony V Nanni, Chief, Litigation I Section, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., suite 4000, Washington, DC 20530 (phone 202/307–6576).

Constance K. Robinson,

Director of Operations.

Stipulation

United States of America, State of Florida by and through its Attorney General Robert A. Butterworth; and State of Maryland by and through its Attorney General J. Joseph Curran, Jr., Plaintiffs v Browning-Ferris Industries, Inc., Defendant. Civil Action No.. 94–2588. Filed: 12/1/94. Judge Richey

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiffs have not withdrawn their consent, which they may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendant and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. In the event plaintiffs withdraw their consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: December 1, 1994.

For Plaintiff United States of America:

Anne K. Bingaman,

Assistant Attorney General.

Steven C. Sunshine.

Constance K. Robinson.

Willie L. Hudgins, Jr.,

DC Bar #37127

Nancy H. McMillen.

Peter H. Goldberg,

DC Bar #055608.

Evangelina Almirantearena,

Attorneys, U.S. Department of Justice, Antitrust Div.

For Defendant Browning-Ferris Industries, Inc.

Rufus Wallingford,

Executive Vice President and General Counsel.

For Plaintiff State of Maryland.

J. Joseph Curran, Jr.,

Deputy Attorney General.

Ellen S. Cooper,

Assistant Attorney General, Chief, Antitrust Division.

Alan M. Barr,

Assistant Attorney General, Deputy Chief, Antitrust Division.

John R. Tennis,

Assistant Attorney General

For Plaintiff State of Florida.

Robert A. Butterworth,

Attorney General.

Jerome W. Hoffman,

Chief, Antitrust Section.

Lizabeth A. Leeds,

Assistant Attorney General.

So Ordered.

United States District Judge.

Final Judgment

United States of America, State of Florida, by and through its Attorney General Robert A. Butterworth; and State of Maryland, by and through its Attorney General J. Joseph Curran, Jr., *Plaintiffs* v Browning-Ferris Industries, Inc., *Defendant.* Civil Action No. 94–2588. Filed: 12/1/94. Judge Richey

Whereas, plaintiffs, United States of America (hereinafter "United States"), the State of Florida (hereinafter "Florida"), and the State of Maryland (hereinafter "Maryland"), having filed their Complaint herein on December 1, 1994, and plaintiffs and defendant, by their respective attorneys, having consented to the entry of their Final Judgment without trial or adjudication of any issue of fact or law herein, and without the Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court,

And whereas, prompt and certain divestiture of certain assets and the prompt adoption of contract terms to assure that competition is not substantially lessened is the essence of this agreement;

And whereas, the parties intend to require defendant to divest, as viable business operations, the Small Container Business of Attwoods;

And whereas, defendant has represented to plaintiffs that the divestiture and contract changes required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or contract provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I.

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II.

Definitions

As used in this Final Judgment:

A. "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not medical waste; organic waste; special waste, such as contaminated soil; sludge, or recycled materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pickup, containerized pick-up and roll-off service.

B. "BFI" means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. "Attwoods" means Attwoods plc, a British corporation with its headquarters in Buckinghamshire, U.K., and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees.

D. "Small Container Business of Attwoods" means the provision by Attwoods of solid waste hauling service to commercial customers using frontend load trucks to service small containers in Frederick County, Maryland; Washington County, Maryland; by the operations of Attwoods' Salisbury, Maryland Division; in Duval and Clay Counties, Florida; and the provision by Attwoods of solid waste hauling service to commercial customers using frontend load and rearload trucks to service small containers in Chester County, Pennsylvania.

E. "Honey Brook Assets" means the assets of Honey Brook Division of Attwoods with an office on Chestnut Tree Road, Honey Brook, Pennsylvania, the provides solid waste hauling services in the Chester County, Pennsylvania area. Honey Brook Assets include all customer lists, contracts and accounts, and contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Honey Brook Division.

F. "All Jax Assets" means the assets of County Sanitation Inc., an Attwoods subsidiary, d/b/a All Jax Waste Services, with an office at 8619 Western Way, Jacksonville, Florida, that provides solid waste hauling services in the Duval County and Clay County, Florida area. The All Jax Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by County Sanitation d/b/a/ All Jax Waste Service.

G. "Frederick Assets" means the assets of the Frederick Division of Attwoods with an office at 8145 Reichs Ford Road, Frederick, Maryland, that provides solid waste hauling services in the western Maryland area. Frederick Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Frederick Division.

H. "Salisbury Assets" means the assets of the Salisbury Division of Attwoods with an office at 9140 Ocean Highway, Delmar, Maryland, that provides solid waste hauling services in the Maryland and southern Delaware area. Salisbury Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Salisbury Division.

I. "Divestiture Assets" refers to the Honey Brook Assets, All Jax Assets, Frederick Assets, and Salisbury Assets taken together.

J. "Small Container" means a 1 to 10 cubic yard container.

III

Applicability

A. The provisions of this Final Judgment apply to the defendant, its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. BFI shall require, as a condition of the sale or other disposition of all or substantially all of the Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. Unless otherwise stated herein, BFI's obligations become effective upon its ownership of more than 50.0 percent of the ordinary shares of Attwoods plc.

IV

Divestiture of Assests

A. BFI is hereby ordered and directed, within 90 days following the date a majority of the Attwoods Board of Directors is elected or appointed by BFI, but in no event later than March 30, 1995, to divest all of the Divestiture Assets, unless the United States, after consultation with Florida and Maryland, consents that only some portion of the Divestiture Assets need be divested. BFI is further ordered and directed to notify plaintiffs in writing immediately when it has elected or appointed a majority of the Attwoods Board of Directors.

B. Unless the United States, after consultation with Florida and Maryland, otherwise consents, divestiture under Section IV.A, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole

determination after consultation with Florida and Maryland, that the Honey Brook Assets, the All Jax Assets, the Frederick Assets, and the Salisbury Assets can and will be operated by the purchaser or purchasers as viable, ongoing businesses engaged in solid waste hauling in their respective areas. Divestiture under Section IV.A or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to the satisfaction of the United States, after consultation with Florida and Maryland, that (1) the purchase or purchases is or are for the purpose of competing effectively in at least small container solid waste hauling and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in at least small container solid waste hauling.

C. BFI shall not require of the purchaser or purchasers, as a condition of sale, that any current employee of the Divestiture Assets be offered or guaranteed continued employment after the divestiture.

D. BFI shall take all reasonable steps to accomplish quickly the divestitures contemplated by this Final Judgment.

V

Appointment of Trustee

A. In the event that BFI has not divested all of its interest required by Section IV.A by the time set forth in Section IV.A, the Court shall, on application of the United States, after consultation with Florida and Maryland, appoint a trustee selected by the United States to effect the remainder of the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Final Judgment. Any such objections by defendant must be conveyed in writing to plaintiffs and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

B. The trustee shall serve at the cost and expense of BFI, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to BFI and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

C. BFI shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets, and defendant shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

D. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, after consultation with Florida and Maryland.

E. Defendant shall give 45 days' notice to the United States, to Florida and to Maryland prior to:

(1) Acquiring any interest in any assets other than in the ordinary course of business of any person that, at any time during the 12 months immediately preceding the acquisition, was engaged in the solid waste hauling industry in Maryland, Florida, Delaware or Pennsylvania where that person had small container revenues in excess of $500,000 per year or total revenues in excess of $1 million per year;

(2) Acquiring any capital stock, or any other securities with voting rights of any supplier of solid waste hauling services, that at any time during the twelve (12) months immediately preceding the acquisition had been engaged in the solid waste hauling industry in Maryland, Florida, Delaware or Pennsylvania where that person had small container revenues in excess of $500,000 per year or total revenues in excess of $1 million per year;

(3) Selling or transferring to any firm engaged in the solid waste hauling industry in the United States any of defendant's assets other than in the ordinary course of business that at any time during the 12 months immediately preceding the sale or transfer were used in the solid waste hauling industry in Maryland, Florida, Delaware or Pennsylvania where the assets are small container assets that generated in excess of $500,000 in revenues per year or where total revenues are in excess of $1 million per year;

(4) Selling or transferring to any firm engaged in the solid waste hauling industry in Maryland, Florida, Delaware or Pennsylvania any of defendant's equity securities or any other securities with voting rights if the sale would give control over a solid waste hauling operation that generated small container revenues in excess of $500,000 per year or total revenues of $1 million per year

F. Defendant shall give 45 days' notice to the United States and to Maryland prior to:

(1) Acquiring any interest in any assets other than in the ordinary course of business of any person that, at any time during the 12 months immediately preceding the acquisition, was engaged in the solid waste hauling industry in Maryland, Delaware or the counties of Pennsylvania contiguous to Maryland, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous 6 months, exceed the revenue limits of paragraph E (1) above;

(2) Acquiring any capital stock, or any other securities with voting rights of any supplier of solid waste hauling services, that at any time during the 12 months immediately preceding the acquisition had been engaged in the solid waste hauling industry in Maryland, Delaware or the counties of Pennsylvania contiguous to Maryland, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous 6 months, exceed the revenue limits of paragraph E (2) above.

G. Defendant shall give 45 days' notice to the United States and to Florida prior to:

(1) Acquiring any interest in any assets other than in the ordinary course of business of any person that, at any time during the 12 months immediately preceding the acquisition, was engaged in the solid waste hauling industry in Florida, where the

revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous 6 months, exceed the revenue limits of paragraph E (1) above;

(2) Acquiring any capital stock, or any other securities with voting rights of any supplier of solid waste hauling services, that at any time during the 12 months immediately preceding the acquisition had been engaged in the solid waste hauling industry in Florida, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous 6 months, exceed the revenue limits of paragraph E (2) above.

H. The purchaser or purchasers of the Divestiture Assets, or any of them, shall not, without the prior written consent of the United States, after consultation with Florida and Maryland, sell any of those assets to, or combine any of those assets with, those of BFI during the life of this decree. Furthermore, the purchaser or purchasers of the Divestiture Assets, or any of them, shall notify plaintiffs 45 days in advance of any proposed sale of all or substantially all of the assets, or control over those assets, acquired pursuant to this Final Judgment.

VI

Notification

A. BFI or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiffs of any proposed divestiture required by Section IV or V of this Final judgment. If the trustee is responsible, it shall similarly notify BFI. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Divestiture Assets or any of them, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiffs may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. BFI or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States, after consultation with Florida and Maryland, shall notify in writing BFI and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing BFI and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to BFI's limited right to object to the sale under Section V.A. Upon objection by the United States, after consultation with Florida and Maryland, or by BFI under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when BFI elects or appoints a majority of the Board of Directors of Attwoods, but in no event later than December 30, 1994, and ever thirty (30) days thereafter until the divestiture has been completed, BFI shall deliver to plaintiffs a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Divestiture Assets or any of them, the name, address, and telephone number of that person and a detailed description of each contract with that person during that period. BFI shall maintain full records of all efforts made to divest the Divestiture Assets or any of them.

VII

Financing

BFI shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States, after consultation with Florida and Maryland.

VIII

Contractual Revisions

A. In accordance with paragraph VIII B, below, BFI shall alter the contracts it uses with its small container solid waste commercial customers in the following Maryland areas: Anne Arundel County, Baltimore City, Baltimore County, Calvert County, Carroll County, Harford County, Howard County, Montgomery County and Prince George's County to the form contained in the attached Exhibit A.

B. BFI shall offer contracts in the form attached as Exhibit A to all new small container solid waste commercial customers or customers that sign new contracts for small container solid waste commercial service effective beginning on the date BFI acquires a majority of Attwoods' ordinary shares. BFI shall offer such contracts to all other small container solid waste commercial customers in the above area by December 1, 1995.

C. In accordance with paragraph VIII D below BFI shall alter the contracts it uses with its small container solid waste commercial customers in the following areas of Florida: Broward County and Polk County to the form contained in the attached Exhibit B.

D. BFI shall offer contracts in the form attached as Exhibit B to all new small container solid waste commercial customers or customers that sign contracts for small container solid waste commercial service effective beginning on the date BFI acquires a majority of Attwood's ordinary shares. BFI shall offer such contracts to all other small container solid waste commercial customers in Broward County, Florida and Polk County, Florida by December 1, 1995.

IX

Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, Florida, or Maryland, including consultants and other persons retained by the plaintiffs, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Florida or the Attorney General of the State of Maryland, respectively, and on reasonable notice to BFI made to its principal offices, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of BFI and without restraint or interference from them, to interview BFI directors, officers, employees, and agents who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust division or the Attorney General of the State of Florida or the Attorney General of the State of Maryland, respectively, made to BFI at its principal offices, BFI shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section IX shall be divulged by any representative of the United States or the Office of the Attorney General of Florida or the Office of the Attorney

General of Maryland to any person other than a duly authorized representative of the Executive Branch of the United States or of the Office of the Attorney General of Florida or of the Office of the Attorney General of Maryland, except in the course of legal proceedings to which the United States or the Attorney General of Florida or the State of Maryland is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by BFI to plaintiffs, BFI represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and BFI marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiffs shall given ten (10) days notice to BFI prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which BFI is not a party.

X

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI

Termination

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XII

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

Exhibit A

Contract for Solid Waste Services

Date: _____

_____

Service Location (which shall be deemed to include all locations to which the identified location is relocated or reestablished.)

_____

Street No. & Name

_____

City Zip

Telephone Fax

Dear _____.

Thank you for choosing BFI as your waste services company. Our aim is to provide this essential service so responsibly and dependably that you don't need to give it a second thought We will do our best to keep you satisfied and want you to tell us when we don't. This contract will continue in effect for one year and will renew for successive one-year periods unless terminated in writing at least 30 days prior to the end of a period. You may also terminate when appropriate under "Our Guaranty."

Our Mission

Our Mission is to provide the highest quality waste collection, transportation, processing, disposal and related services to both public and private customers worldwide. We will carry out our Mission efficiently, safely and in an environmentally responsible manner with respect for the role of government in protecting the public interest.

Our Guaranty

We guarantee the quality of our waste services. If our services do not measure up to the standards described in this contract, and we do not correct the problems with 48 hours (excluding Sundays) after we receive written notice from you (unless the problem is caused by circumstances outside our reasonable control), you may terminate our services and this contract without penalty.

Our Responsibilities

1. The specific services we will provide, and the schedule and initial charges for each service, are listed below We will give you at least 30 days written notice if we increase our charges, which we reserve the right to do from time to time proportionately in connection with increases in costs for disposal, longer transportation distances, fuel, regulatory compliance, taxes, and increases in average weight per container yard. In connection with increases in the cost of disposal, we frequently do not receive advance notice of increases. We reserve the right to pass on to you such increases without 30 days advance notice but will give you as much notice as possible. Customers will be provided in writing with the formula used in calculating increases based upon increases in disposal fees. We will advise Customer in writing of the reason for the increase and do our best to satisfy any concerns you have about any increases. Any other type of price increase requires your written consent.

2. Our employees will be friendly, courteous and responsive. They will, in writing, have gone through a customer satisfaction and safety training program, and will provide quality, professional service.

3 We will provide and maintain the equipment you need for the deposit and other handling of the materials that we have agreed to pick up from you.

4. We are committed to making every pick-up as scheduled, but if we are unable to do so, we will make every effort to let you know in advance and reschedule it within 24 hours.

Your Responsibilities

1 You agree that BFI will provide the specified services for all your non-hazardous waste. You agree not to deposit radioactive, volatile, corrosive, highly flammable, explosive, infectious, toxic or hazardous waste in our equipment and will indemnify us from resulting liabilities if you do. Anything else that is deposited in our truck becomes our property at that time.

2. You agree to provide us with access to our equipment over surfaces that can sustain the weight and operation of our vehicles. You also agree not to overload (by weight or volume), abuse or move our equipment; but if it does need to be moved, you will call us.

3. You agree to use your best efforts to keep people from coming into contact with our equipment other than those who are authorized and trained to use it.

4. You agree to pay our bills monthly within ten days after they are received. We reserve the right to charge a late fee on all past due payments.

5. If you terminate this contract during your first 10 months as a BFI customer (other than as provided under "Our Guaranty"), you agree to pay us, as liquidated damages and not as a penalty, two times your prior average monthly charges. If you terminate after you have been a BFI customer for more than 10 months (other than as provided under "Our Guaranty"), you agree to pay us as liquidated damages an amount equal to one month average charges.

We look forward to a long-lasting relationship, so please let us know if you have any problems or concerns as they occur and give us the opportunity to provide solutions. As we deliver our services, we will continuously look for ways to keep you satisfied.

SERVICE DESCRIPTION

Line No.	System	Qty.	Cont Size	Vol Code	Freq	Comp	On call	Pick up/ haulrate	Est. hauls	Zero TCT flag	Est. MNTS	Disp site	Min hauls	Monthly equip charges
N 1														
E 2														
W 3														
O 1														
L 2.														
D 3.														

Other Services: _____

Other Charges: _____

CUSTOMER _____

Name of Operating Browning-Ferris Industries Subsidiary

By: _____

BY _____

BY _____

Title: _____

Title: _____

Agreed to this _____ day of _____ 19 ____

Service to Start On: _____

Exhibit B

Contract for Solid Waste Services

Date: _____

Service Location (which Business Name shall be deemed to include all locations to which the identified location is relocated or reestablished.)

_____

_____

Business Name

_____

Street No. & Name _____

City Zip _____

_____

_____

_____

Telephone Fax

Dear _____:

Thank you for choosing BFI as your waste services company. Our aim is to provide this essential service so responsibly and dependably that you don't need to give it a second thought. We will do our best to keep you satisfied and want you to tell us when we don't. This contract will continue in effect for two years and will renew for successive one-year periods unless terminated in writing at least 30 days prior to the end of a period. You may also terminate when appropriate under "Our Guaranty."

Our Mission

Our Mission is to provide the highest quality waste collection, transportation, processing, disposal and related services to both public and private customers worldwide. We will carry out our Mission efficiently, safely and in an environmentally responsible manner with respect for the role of government in protecting the public interest.

Our Guaranty

We guarantee the quality of our waste services. If our services do not measure up to the standards described in this contract, and we do not correct the problem with 48 hours (excluding Sundays) after we receive written notice from you (unless the problem is caused by circumstances outside our reasonable control), you may terminate our services and this contract without penalty.

Our Responsibilities

1. The specific services we will provide, and the schedule and initial charges for each service, are listed below. We will give at least 30 days written notice if we increase our charges, which we reserve the right to do from time to time proportionately in connection with increases in costs for disposal, longer transportation distances, fuel, regulatory compliance, taxes, and increases in average weight per container yard. In connection with increases in the cost of disposal, we frequently do not receive advance notice of increases. We reserve the right to pass on to you such increases without 30 days advance notice but will give you as much notice as possible. Customers will be provided in writing with the formula used in calculating increases based upon increases in disposal fees. We will advise Customer in writing of the reason for the increase and do our best to satisfy any concerns you have about any increases. Any other type of price increase requires your written consent.

2. Our employees will be friendly, courteous and responsive. They will, in writing, have gone through a customer satisfaction and safety training program, and will provide quality, professional service.

3. We will provide and maintain the equipment you need for the deposit and other handling of the materials that we have agreed to pick up from you.

4. We are committed to making every pick-up as scheduled, but if we are unable to do so, we will make every effort to let you know in advance and reschedule it within 24 hours.

Your Responsibilities

1. You agree that BFI will provide the specified services for all your non-hazardous waste. You agree not to deposit any radioactive, volatile, corrosive, highly flammable, explosive, infectious, toxic or hazardous waste in our equipment and will indemnify us from resulting liabilities if you do. Anything else that is deposited in our truck becomes our property at that time.

2. You agree to provide us with access to our equipment over surfaces that can sustain the weight and operation of our vehicles. You also agree not to overload (by weight or volume), abuse or move our equipment; but if it does need to be moved, you will call us.

3. You agree to use your best efforts to keep people from coming into contact with our equipment other than those who are authorized and trained to use it.

4. You agree to pay our bills monthly, within ten days after they are received. We reserve the right to charge a late fee on all past due payments.

5. If you terminate this contract during your first 10 months as a BFI customer (other than as provided under "Our Guaranty"), you agree to pay us, as liquidated damages and not as a penalty, three times your prior average monthly charges. If you terminate after you have been a BFI customer for more than 10 months (other than as provided under "Our Guaranty"), you agree to pay us as liquidated damages an amount equal to two months average charges.

We look forward to a long-lasting relationship, so please let us know if you have any problems or concerns as they occur and give us the opportunity to provide solutions. As we deliver our services, we will continuously look for ways to keep you satisfied.

SERVICE DESCRIPTION

Line No	System	Qty	Cont size	Vol code	Freq	Comp	On call	Pick up/ HAU rate	Est. hauls	Zero TCT flag	Est. mnts	Disp site	Mim. haul rate	Monthly equip. charges
N 1														
E 2														
W 3														
O 1														
L 2														
D 3														

Other Services
Other Charges
CUSTOMER

Name of Operating Browning-Ferris Industries Subsidiary

By
By
Title:
By
Title:
Agreed to this day of
19
Service to Start On.

Exhibit B

Competitive Impact Statement

United States of America, State of Florida, by and through its Attorney General Robert A Butterworth, and State of Maryland, by and through its Attorney General J. Joseph Curran, Jr, Plaintiffs v *Browning-Ferris Industries, Inc*, Defendant.

Civil Action No. 1:94CV02588, Judge Richey

Filed. 12/2/94.

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

I.

Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U S.C. 25, on December 1, 1994, alleging that the proposed acquisition of the ordinary shares of Attwoods plc ("Attwoods") by Browning-Ferris Industries, Inc. ("BFI") would constitute a violation of Section 7 of the Clayton Act, 15 U S.C. 18. The State of Florida and the State of Maryland, by and through their respective Attorneys General, are co-plaintiffs with the United States in this action.[1]

The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in small containerized waste hauling services in Chester County, Pennsylvania; Clay, Duval, Polk, and Broward counties, Florida; Baltimore City, Baltimore County, and Anne Arundel County, Maryland ("Baltimore market"); Wicomico, Dorchester, Worcester, and Somerset counties, Maryland ("Southern Eastern Shore market"); Sussex County, Delaware; and Frederick County and Washington County, Maryland ("Western Maryland market").

Plaintiffs seek, among other relief, a permanent injunction preventing the defendant from, in any manner, combining its assets with those of Attwoods in Duval and Clay counties, Florida, Chester County, Pennsylvania; the Southern Eastern Shore market; Sussex County, Delaware; and the Western Maryland market. By the terms of a Hold Separate Stipulation and Order, which was filed simultaneously with the proposed Final Judgment, defendant BFI must take certain steps to ensure that, until the required divestiture has been accomplished, the Attwoods' assets as outlined in the proposed Final Judgment will be held separate and apart from defendant's other assets and businesses. BFI must, until the required divestiture is accomplished, preserve and maintain the specified Attwoods assets as saleable and economically viable ongoing concerns.

The United States, its co-plaintiffs, and the defendant also have filed a stipulation by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, BFI would be required, within 90 days following the date a majority of the Attwoods Board of Directors is elected or appointed by BFI, but in no event later than March 30, 1995, to divest, as viable business operations, Attwoods' small container businesses serving the Western Maryland market; Duval and Clay counties, Florida; Chester County, Pennsylvania; and the areas where Attwoods provides small container service from its Salisbury, Maryland Division (the Southern Eastern Shore market and Sussex County, Delaware). If BFI were not to do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust, which may, if necessary, include extending the trust and the trustee's appointment by a period requested by the United States, after consultation with its co-plaintiffs.

Additionally, under the proposed Final Judgment, as explained more fully below, defendant BFI would be required to offer less restrictive contracts to its small container solid waste hauling customers in the Baltimore market, and the following neighboring counties: Carroll County, Howard County, Harford County, Calvert County, Prince George's County, and Montgomery County, Maryland; and in Polk and Broward counties, Florida.

The United States, its co-plaintiffs, and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

Description of the Events Giving Rise to the Alleged Violation

BFI is the world's second largest company engaged in the solid waste hauling and disposal business, with operations throughout the United States and in several foreign countries. BFI had total revenues of over $3 billion from solid waste hauling and disposal in its 1993 fiscal year.

[1] The APPA obligates only the United States to file a Competitive Impact Statement.

Attwoods plc is a United Kingdom company with solid waste hauling operations in Florida and in the mid-Atlantic region of the United States. Attwoods' U.S. revenues in 1993 were $327.9 million.

On September 20, 1994, BFI announced an unsolicited tender offer for the ordinary shares of Attwoods plc, seeking to acquire enough ordinary shares to give BFI control. If BFI were to acquire more than 50 percent of the ordinary shares of Attwoods plc, BFI's and Attwoods' solid waste hauling service operations, in particular in the U.S., effectively would be merged.

A. The Solid Waste Hauling Industry

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called "small containers." Small containers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rearend load vehicles can also be used to service some small container customers, but these trucks generally are not as efficient as frontend load vehicles and are limited in the sizes of containers they can safely handle. Frontend load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet; the containers do not need to be manually rolled into position by a truck crew as with a rearend load vehicle. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rearend load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in amount and kind to those generated by residential customers. Generally, rearend loaders use a one or two person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

B. Small Containerized Hauling Service

There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized hauling service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option. Accordingly, small containerized hauling service is a line of commerce and a relevant product market.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances from customers without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served. Local laws or regulations that restrict where waste can be disposed of may further localize markets. Flow control regulations designate the disposal facilities where trash picked up within a geographic area must be disposed. Other local regulations may also prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. These laws and regulations dictate that haulers operate only in these local jurisdictions so that they may use the designated disposal facilities. Thus, the Complaint alleges that small containerized hauling services in certain specific geographic areas constitute a line of commerce and a relevant market for antitrust purposes.

The Complaint alleges each of the following as a relevant geographic market for small containerized hauling services: (1) The Baltimore market; (2) Broward County, Florida; (3) Chester County, Pennsylvania; (4) Clay County, Florida; (5) Duval County, Florida; (6) Polk County, Florida; (7) the Southern Eastern Shore market; (8) Sussex County, Delaware; and (9) the Western Maryland market.

BFI and Attwoods compete with each other in small containerized hauling services in each of the relevant geographic markets named, all of which are highly concentrated and become substantially more concentrated as a result of the proposed acquisition. In the markets of concern, BFI and Attwoods have the following approximate shares of the small containerized hauling business: (1) Baltimore market, BFI 31 percent, Attwoods 22 percent; (2) Broward County, Florida, BFI 11 percent, Attwoods 12 percent;[2] (3) Chester County, Pennsylvania, BFI 38 percent, Attwoods 20 percent; (4) Clay County, Florida, BFI 27 percent, Attwoods 22 percent; (5) Duval County, Florida, BFI 38 percent, Attwoods 14 percent; (6) Polk County, Florida, BFI 33 percent, Attwoods 18 percent; (7) the Southern Eastern Shore. BFI 31, Attwoods 24 percent; (8) Sussex County,

[2] The market share data and HHI calculations in Broward County and Polk County, Florida are based on open commercial areas not subject to municipal or county franchises.

Delaware, BFI 19 percent, Attwoods 27 percent; and (9) Western Maryland, BFI 38 percent, Attwoods 23 percent.

The acquisition would increase the Herfindahl-Hirschmann Index ("HHI"),[3] a measure of market concentration, by the following amounts in the following areas: (1) Baltimore market, by about 1350, to about 3300; (2) Broward County, Florida, by about 260 to about 2870; (3) Chester County, Pennsylvania, by about 1500, to about 3750; (4) Clay County, Florida, by about 1200, to about 4000; (5) Duval County, Florida, by about 1025, to about 3475; (6) Polk County, Florida, by about 1190, to about 4020; (7) the Southern Eastern Shore, by about 1450, to about 3650; (8) Sussex County, Delaware, by 1010, to about 2970; and (9) Western Maryland, by about 1725, to about 3950.

A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized hauling service, achieving comparable operating efficiencies requires achieving route density comparable to existing firms, which typically takes a substantial period of time. A substantial barrier to entry is the use of long-term contracts coupled with selective pricing practices by incumbent firms to deter new entrants into small containerized hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years

[3] The Herfindahl-Hirschmann Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20 and 20 percent, the HHI is 2600 (30 squared (900) plus 30 squared (900) plus 20 squared (400) plus 20 squared (400) = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged markets, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

Based on the foregoing and other facts, the Complaint alleges that the effect of the proposed acquisition may be substantially to lessen competition in the above-described geographic areas in the small containerized hauling service market in violation of Section 7 of the Clayton Act.

III.

Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized hauling services in certain geographic markets by establishing a new, independent and economically viable competitor in those markets. The proposed Final Judgment requires BFI, within 90 days following the date a majority of the Attwoods Board of Directors is elected or appointed by BFI, but in no event later than March 30, 1995, to divest, as viable ongoing businesses, the small container business of Attwoods serving Chester County, Pennsylvania, Duval and Clay counties, Florida, the Western Maryland market, Sussex County, Delaware, and the Southern Eastern Shore market. The divestiture would include both the small containerized hauling service assets and such other assets as may be necessary to insure the viability of the small container business. If BFI cannot accomplish these divestitures within the above-described period, the Final Judgment provides that, upon application (after consultation with the states of Florida and Maryland) by the United States as plaintiff, the Court will appoint a trustee to effect divestiture.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Florida and Maryland) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant markets. Similarly, if the divestiture is accomplished by the trustee, the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Florida and Maryland) that the businesses can and will be operated as viable, independent competitors by the purchaser or purchasers. The defendant must take all reasonable steps necessary to accomplish the divestiture and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that BFI will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment also requires BFI to offer less restrictive contracts (attached to the proposed Final Judgment as Exhibit A) to small containerized hauling customers in the Baltimore market, and in the following neighboring counties: Howard, Carroll, Harford, Prince George's, Calvert, and Montgomery.

These changes to the contracts involve substantially shortening the term of contracts BFI uses from three years to one year and substantially reducing the amount of liquidated damages. The proposed Final Judgment requires that these revised contracts shall be offered to all new small containerized hauling customers or to existing customers that sign new contracts for small containerized hauling services, effective beginning the date BFI acquires a majority of Attwoods' ordinary shares. By December 1, 1995, BFI must offer the revised contract attached as Exhibit A to the proposed Final Judgment to all of its (and former Attwoods') small containerized hauling service customers in the area described in the preceding paragraph.

The United States concluded divestiture was not necessary in the Baltimore market and that a change in the types of contracts used with small containerized hauling service in this market and in the adjoining areas of Calvert, Carroll, Harford, Howard, Montgomery, and Prince George's counties, Maryland, will adequately address the competitive concerns posed by BFI's acquisition of a majority of

Atwoods' ordinary shares. A number of factors led to that decision, including the number of existing competitors in the market; the size of the population and number and density of commercial establishments requiring small containerized hauling service; and the number of haulers that currently do not provide but could, absent the long-term contracts that now exist, easily and quickly provide small containerized hauling service in the market. Due to these factors, requiring BFI to offer less restrictive contracts both within the market and throughout the neighboring counties eliminates a major barrier to entry and expansion. Haulers already serving the market will be able to more easily expand their current or build new routes and nearby haulers will be able to build routes, thus constraining any possible anticompetitive price increase by the post-acquisition firm.

The proposed Final Judgment also requires BFI to offer less restrictive contracts (attached to the proposed Final Judgment as Exhibit B) to small containerized hauling customers in Polk and Broward counties, Florida. The changes to the contracts involve substantially shortening the term of contracts BFI uses from five years to two years and substantially reducing the amount of liquidated damages. The proposed Final Judgment requires that these revised contracts shall be offered to all new small containerized hauling customers or to existing customers that sign new contracts for small containerized hauling service, effective beginning the date BFI acquires a majority of Attwoods' ordinary shares. By December 1, 1995, BFI must offer the revised contract attached as Exhibit B to the proposed Final Judgment to all of its (and former Atwoods') small containerized hauling service customers in Polk and Broward counties, Florida.

The United States concluded that these contracts revisions in Polk and Broward counties will adequately address the competitive concerns posed by BFI's acquisition of the majority of Atwoods' stock in these markets. In Broward County, the number and relative size of other competitors, and the fact that the merged firm would have a market share of 23 percent were all factors in reaching this conclusion. In Polk County, which has only a limited amount of small containerized hauling service that is open to private haulers (a large percentage of the service is provided by municipalities), and is located 30 miles from Tampa, a major metropolitan area, there are at least one or two strong haulers that could easily and quickly enter if prices for small containerized hauling service in Polk County were to rise to constrain possible anticompetitive behavior. With less restrictive contracts being used, these haulers would be able to obtain customers and build sufficient route density to create profitable routes.

The relief sought in the various markets alleged in the complaint has been tailored to insure that, given the specific conditions in each market, the relief will protect consumers of small containerized hauling service from higher prices and poorer quality service in those markets that might otherwise result from the acquisition.

IV.

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V.

Procedures Available for Modification of the Proposed Final Judgment

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI.

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation against defendant BFI. The United States could have brought suit and sought preliminary and permanent injunctions against BFI's acquisition of the ordinary shares of Aftwoods. The United States is satisfied, however, that the divestiture of the assets and the contract relief outlined in the proposed Final Judgment, will establish viable small containerized hauling service competitors in the markets identified by the United States as requiring divestiture and lower entry barriers that would otherwise substantially lessen competition in the markets identified for contractual relief. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in those markets. The divestiture and the proposed contractual relief will restore the markets to the structure that existed prior to the acquisition, will preserve the existence of independent competitors in those areas, and will allow for new entry and expansion by existing firms in those markets where contract relief is sought.

VII.

Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). The courts have recognized that the term "public interest" "take[s] meaning from the purposes of the regulatory legislation." *NAACP v. Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to "preserve[e] free and unfettered competition as the rule of trade," *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States v. Waste Management, Inc.*, 1985–2 Trade Cas, ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[4] Rather,

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶ 61,580, at 71,980 (W.D. Mo. 1977).

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *Quoting United States v. Bechtel Corp*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981). Precedent requires that:

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

Waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. Armour & Co., 402 U.S. 673, 681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[6]

VIII.

Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 2, 1994.

Respectfully submitted,

Nancy H. McMillen,
Peter H. Goldberg,
DC Bar #055608
Evangelina Almirantearena,
Antitrust Division.

Certification of Service

I hereby certify that a copy of the foregoing has been served upon Browning-Ferris Industries, Inc., the Office of the Attorney General of the State of Florida, and the Office of the Attorney General of the State of Maryland, by placing a copy of this Competitive Impact Statement in the U.S. Mail, directed to each of the above-named parties at the addresses given below, this second day of December, 1994.

Browning-Ferris Industries, Inc.: c/o Rufus Wallingford, Executive Vice President and General Counsel, 757 North Eldridge Street, Houston, Texas 77079

State of Maryland, Office of the Attorney General, Antitrust Division, 200 St. Paul Place, Baltimore, Maryland 21202

State of Florida, Office of the Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399–1050

Nancy H. McMillen,
Attorney.

Hold Separate Stipulation and Order

UNITED STATE OF AMERICA, State of Florida by and through its Attorney General Robert A. Butterworth, and State of Maryland by and through its Attorney General J. Joseph Curran, Jr., Plaintiffs v. *Browning-Ferris Industries, Inc.*, Defendant

Civil Action No.: 94 2588, Judge Richey

It is stipulated and agreed by and between the undersigned parties:

1. As used in this Stipulation and Order:

(a) "BFI" means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees. After BFI acquires control of Attwoods plc, BFI includes Attwoods plc, but does not include the entities described in paragraph (e)–(h) herein.

(b) "Attwoods" means Attwoods plc, a British corporation with its headquarters in Buckinghamshire, U.K., and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

(c) "Small Container Business of Attwoods, means the provision by Attwoods of solid waste hauling service

[4] 119 Cong. Rec. 24598 (1973). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[5] *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States v. BNS, Inc.*, 858 F.2d at 463; *United States v National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.* 406 F Supp. at 716. *See also United States v American Cyanamid Co.*, 719 F.2d at 565.

[6] *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v United States*, 460 U.S. 1001 (1983) *quoting United States v. Gillette Co., supra*, 406 F Supp. at 716; *United States v. Alcan Aluminum, Ltd*, 605 F Supp. 619, 622 (W.D. Ky 1985).

to commercial customers using frontend load trucks to service 1 to 10 cubic yard containers: in Frederick County, Maryland; Washington County, Maryland; by the operations of Attwoods, Salisbury, Maryland Division; in Duval and in Clay Counties, Florida, and the provision by Attwoods of solid waste hauling service to commercial customers using frontend load and rearload trucks to service 1 to 10 cubic yard containers in Chester County, Pennsylvania.

(d) "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up and roll-off service.

(e) "Honey Brook Assets" means the assets of the Honey Brook Division of Attwoods with an office on Chestnut Tree Road, Honey Brook, Pennsylvania, that provides solid waste hauling services in the Chester County, Pennsylvania area. Honey Brook Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Honey Brook Division.

(f) "All Jax Assets" means the assets of County Sanitation Inc., an Attwoods subsidiary, d/b/a All Jax Waste Service, with an office at 8619 Western Way, Jacksonville, Florida, that provides solid waste hauling services in the Duval County and Clay County, Florida area. The All Jax Assets include all disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by County Sanitation d/b/a All Jax Waste Service.

(g) "Frederick Assets" means the assets of the Frederick Division of Attwoods with an office at 8145 Reichs Ford Road, Frederick, Maryland, that provides solid waste hauling services in the western Maryland area. Frederick Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Frederick Division.

(h) "Salisbury Assets" means the assets of the Salisbury Division of Attwoods with an office at 9140 Ocean Highway, Delmar, Maryland, that provides solid waste hauling services in the Maryland and southern Delaware area. Salisbury Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Salisbury Division.

2. It is the intent of the Final Judgment filed in this proceeding to require BFI to divest as viable business operations the Small Container Business of Attwoods. It is the intent of this Hold Separate Stipulation and Order to insure, prior to such divestiture, that the Divestiture Assets will remain available as a source of assets for a prospective purchaser to insure such viability.

3. BFI shall preserve, hold, and continue to operate the Honey Brook Assets, All Jax Assets, Frederick Assets, and Salisbury Assets ("hereinafter referred to together as the 'Divestiture Assets' ") as ongoing businesses with their assets, management and operations entirely separate, distinct and apart from those of BFI, unless the United States of America (hereinafter "United States"), after consultation with the State of Florida (hereinafter "Florida") and the State of Maryland (hereinafter "Maryland") otherwise consents in writing in advance. BFI shall use all reasonable efforts to maintain, preserve and increase the customer base of the Divestiture Assets, and to otherwise maintain the Divestiture Assets as viable and active competitors in solid waste hauling in the areas in which they operate. Nothing herein shall prevent BFI from appointing a person with oversight responsibility for the Divestiture Assets to insure compliance with this Stipulation and Order and the Final Judgment provided that such person agrees to comply in all respects with the terms of this Stipulation and Order.

4. BFI shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefor), any Divestiture Assets, except such assets as are replaced in the ordinary course of business with newly purchased assets and are so identified as replacement assets.

5. The provisions of paragraphs 3 and 4 include but are not limited to: Preserving all facilities and equipment used for solid waste hauling and their right and ability to be used or operated at the site(s) where they are located or customarily used; preserving all operating permits and permit applications (including proceeding with such operation or application as is necessary to renew such permits, make permanent any temporary permits, or obtain a permit applied for); and preserving all administrative and support facilities within such areas. It is expressly recognized that nothing herein shall prevent BFI, upon divestiture of the Small Container Business in any area identified in paragraph 1(c), from taking over the remaining Divestiture Assets in that area.

6. BFI shall not use the "Attwoods" name or any other Attwoods names or trademarks nor identify any relationship between BFI and Attwoods in any advertising, sales or promotional activities pertaining to solid waste hauling in the areas where the Divestiture Assets operate until such time as the Divestiture Assets are divested. BFI shall permit the use by the Divestiture Assets of the "Attwoods" name or any other Attwoods names or trademarks presently being used by the Divestiture Assets in their solid waste hauling operations until such time as they are divested. Until such time, BFI shall not cause any change in the identification of services provided by the Divestiture Assets including identifications on correspondence, invoices or similar documents.

7. BFI shall preserve all of the Divestiture Assets, except those replaced with newly acquired assets in the ordinary course of business, in a state of repair comparable to their state of repair as of December 1, 1994, subject to ordinary and customary wear and tear in the ordinary course of business. BFI shall continue to perform normal maintenance and to replace the Divestiture Assets in the ordinary course of business.

8. To maintain the Divestiture Assets as viable, ongoing businesses, BFI shall, until divestiture, (a) provide and maintain sufficient working capital for the Divestiture Assets and (b) provide and maintain sufficient lines and sources of additional credit for the Divestiture Assets.

9. BFI shall refrain from taking any action that would jeopardize the sale or operation of any of the Divestiture Assets as viable ongoing concerns,

including but not limited to refraining from causing or allowing a shift of customers from any of the Divestiture Assets to BFI or to any other provider of solid waste hauling. A rebuttable presumption that BFI has caused or allowed a shift of customers shall arise if, prior to divestiture of the Honey Brook Assets, the All Jax Assets, the Frederick Assets, or the Salisbury Assets the number of residential, commercial or industrial solid waste hauling customers drops seven and one half (7.5) percent or more below the number existing on December 1, 1994 for the specified asset, or if monthly solid waste hauling revenues decline seven and one half (7.5) percent or more below the December 1994 solid waste hauling revenues for the specified Assets.

10. BFI shall maintain on behalf of the Divestiture Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss, assets and liabilities, separately, of the Honey Brook Assets, the All Jax Assets, the Frederick Assets, and the Salisbury Assets on a monthly and quarterly basis.

11. BFI shall refrain from terminating or reducing any current employment, salary, or benefit agreements for any management, sales, marketing, mechanical, or other technical personnel employed by the Divestiture Assets, except in the ordinary course of business, without the prior written approval of the United States, after consultation with Florida and Maryland.

12. In the absence of prior consent by the purchaser of any of the Divestiture Assets, defendant is hereby enjoined and restrained until six (6) months following the date of divestiture from negotiating for or offering any employment to any person who is currently employed by the Divestiture Assets acquired by said purchaser.

13. The defendant shall refrain from taking any action that would have the effect of reducing the scope or level of competition between the Divestiture Assets and other providers of solid waste hauling without the prior written approval of the United States, after consultation with Florida and Maryland.

14. BFI shall take all steps necessary to assure that no proprietary business or financial information specific to the Divestiture Assets is transferred or otherwise becomes available to BFI's employees having direct marketing and sales responsibilities for any area where BFI competes with the Divestiture Assets. This paragraph includes, but is not limited to, contract, account or customer—specific information of any kind, and pricing and marketing plans and strategies of the Divestiture Assets.

15. Defendant shall take no action that would interfere with the ability of the trustee appointed pursuant to the proposed Final Judgment filed in this proceeding to sell the Divestiture Assets to a suitable purchaser or purchasers.

16. This Hold Separate Stipulation and Order shall remain in effect pending consummation of the divestiture contemplated by the proposed Final Judgment filed in this proceeding or until further Order of the Court.

Dated: December 1, 1994.

Respectfully submitted.

For Plaintiff United States of America: Anne K. Bingaman, Assistant Attorney General, Steven C. Sunshine; Constance K. Robinson, Attorneys, U.S. Department of Justice, Antitrust Division, Willie L. Hudgins, Jr., DC Bar #37127, Nancy H. McMillen, Peter H. Goldberg, DC Bar #055608; Evangelina M. Almirantearena, Attorneys, U.S. Department of Justice, Antitrust Division.

For Defendant Browning-Ferris Industries, Inc.: Rufus Wallingford, Executive Vice President and General Counsel.

For Plaintiff State of Maryland: J. Joseph Curran, Jr., Deputy Attorney General; Ellen S. Cooper, Assistant Attorney General, Chief, Antitrust Division; Alan M. Barr, Assistant Attorney General, Deputy Chief, Antitrust Division; John R. Tennis, Assistant Attorney General.

For Plaintiff State of Florida; Robert A. Butterworth, Attorney General; Jerome W. Hoffman, Chief, Antitrust Section; Lizabeth A. Leeds, Assistant Attorney General, Fl. Bar #0457991.

So Ordered.

United States District Judge

Date:

[FR Doc. 94–30816 Filed 12–14–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Establishment

In accordance with the Federal Advisory Committee Act and Article 17 of the North American Agreement on Labor Cooperation, the Secretary of Labor has established the National Advisory Committee for the North American Agreement on Labor Cooperation.

The National Advisory Committee for the North American Agreement on Labor Cooperation shall provide advice to the Department of Labor on a number of matters pertaining to the administration and implementation of the side accord to the North American Free Trade Agreement (NAFTA). These include but are not limited to the following: (1) Improving working conditions and living standards in each signatory's territory, (2) encouraging cooperation to promote innovation and rising levels of productivity and quality, (3) encouraging the publication and exchange of information to enhance the understanding of laws and institutions governing labor in each signatory's territory, (4) promoting compliance with, and effective enforcement by each signatory of, its labor laws.

The committee will meet at least two times a year and more often as necessary. It shall comprise approximately 12 members, 4 representing the labor community, 4 representing the business community two representing academia and two representing the public. None of these members shall be deemed to be employees of the United States.

The committee will report to the Deputy Under Secretary for International Affairs. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen (15) days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the National Advisory Committee for the North American Agreement on Labor Cooperation. Such comments should be addressed to: Irasema T. Garza, Secretary, U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210, telephone (202) 501–6653.

Signed at Washington, D.C., this 7th day of December, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–30755 Filed 12–14–94; 8:45 am]

BILLING CODE 4510–23–M

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meeting and Agenda

The regular Fall meeting of the Committee on Occupational Safety and Health of the Business Research Advisory Council will be held on January 5, 1995 at 1:00 p.m. The meeting will be held in Meeting Rooms 1 and 2 of the Postal Square Building

Conference Center, 2 Massachusetts Avenue, N.E., Washington, D.C.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meeting is as follows:

Thursday, January 5, 1995

1:00–4:00 p.m.—Committee on Occupational Safety and Health Statistics

1. Survey of Occupational Injuries and Illnesses:
   a. Availability of detailed worker and case information.
   b. 1993 Survey results.
2. Report of Appropriations Committees on occupational safety and health data.
3. Survey of Employer Provided Training.
4. 1993 Census of Fatal Occupational Injuries.
5. Other business.

The meeting is open to the public. Persons with disabilities wishing to attend should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5887, for appropriate accommodations.

Signed at Washington, D.C., the 7th day of December 1994.

Katharine G. Abraham,

Commissioner.

[FR Doc. 94–30756 Filed 12–14–94; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Peabody Coal Company

[Docket No. M–94–170–C]

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.380(d)(3) (escapeways; bituminous and lignite mines) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. Due to the height of the primary escapeway from the working section planned in the No 11 seam, the petitioner proposes to use the existing primary escapeway until a new intake air course and primary escapeway are developed; to use the track haulage entry to the working section as the alternate escapeway; and to install carbon monoxide monitors along the beltline at intervals not to exceed 300 feet. The petitioner states that if during any shift in which coal is produced in the working section the mine monitoring system fails or malfunctions, the entire length of the beltline into the working section would be patrolled at intervals not to exceed one hour between patrols until the system functions properly again. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Nowacki Coal Company

[Docket No. M–94–171–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed petitions to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. Because of steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternate, when using the gunboat to transport persons, the petitioner proposes to use an increased rope strength safety factor and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connecting device. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Costain Coal, Inc.

[Docket No. M–94–172–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459–0289 has filed a petition requesting that MSHA's Proposed Decision and Order granting petition for modification of 30 CFR 75.364, docket number M–92–94–C be amended. The petitioner requests that evaluation points be established to monitor the air quantity and quality in the deteriorating area of the intake air course on a weekly basis instead of daily. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Tilden Magnetite Partnership

[Docket No. M–94–46–M]

Tilden Magnetite Partnership, P.O. Box 2000, Ishpeming, Michigan 49849–0901 has filed a petition to modify the application of 30 CFR 56/57.18010 (first aid training) to its Tilden Mine (I.D. No. 20–00422) located in Marquette County, Michigan. The petitioner requests that Michigan State Certified Emergency Medical Technicians and First Responders be considered equivalent to "selected supervisors" on determining whether the mine has adequate trained first aid personnel. The petitioner states that the modification would allow for the inclusion of those employees who have had advanced training and are currently licensed as Emergency Medical Technicians or First Responders to be as part of the total number of trained first aid personnel without precluding the necessity of training additional members to assure adequate coverage on all shifts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 17, 1995. Copies of these petitions are available for inspection at that address.

Dated: December 8, 1994

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–30815 Filed 12–14–94; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP–90CD]

Ascertainment of Controversy for 1990 and Other Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office directs all claimants to royalty fees collected for secondary transmission by cable systems in 1990 to submit comments as

to whether a controversy exists as to the distribution of this fund. The Office also seeks comment as to whether it should consolidate the distribution of the 1990 cable royalties with other cable royalty funds collected in subsequent years. For those claimants intending to participate in the distribution proceeding, the Office requests that they file a Notice of Intent to Participate.

DATES: Written comments and Notices of Intent to Participate are due January 20, 1995.

ADDRESSES: If sent by mail, an original and five copies of written comments and Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand-delivered, an original and five copies of written comments and Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright Arbitration Royalty Panel, (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Each year, cable systems submit royalties to the U.S. Copyright Office for a statutory license to retransmit broadcast signals to their subscribers. 17 U.S.C. 111. These royalties are, in turn, distributed to the appropriate copyright owners by means of a cable royalty distribution proceeding. These proceedings were formerly conducted by the Copyright Royalty Tribunal. However, on December 17, 1993, the Tribunal was abolished. Royalty distribution proceedings are now conducted by *ad hoc* copyright arbitration royalty panels (CARPs) convened and supported by the Library of Congress and the Copyright Office. Copyright Royalty Tribunal Reform Act of 1993, P.L. 103–198, 107 Stat. 2304 (1993).

At the time Congress was considering the abolition of the Tribunal, the Tribunal had already begun a proceeding to distribute the cable royalties that were collected in 1990. The 1990 cable royalty distribution proceeding began on April 2, 1993. 58 FR 17387 (1993). The proceeding did not, however, reach a conclusion. In light of the imminent passage of the Copyright Royalty Reform Act of 1993, the Tribunal suspended the 1990 cable royalty distribution proceeding. *Order*, dated October 14, 1993.

II. Copyright Office Actions in 1994

On January 18, 1994, the Copyright Office issued a notice of proposed rulemaking to adopt rules to govern the new CARP proceedings. Among other things, we considered the question of how to handle proceedings that were suspended because of the abolition of the Tribunal. The Office determined that matters left pending at the Tribunal would not be taken up where they have been left off, but would have to be begun anew. 59 FR 2551 (1994). This policy determination was confirmed and restated when we issued our interim rules on May 9, 1994. 59 FR 23954 (1994).

During the comment period on our May 9 interim rules, the Office met with the cable copyright claimants who stated that they preferred to restart the 1990 cable distribution proceeding only after final rules were adopted and in place. Meeting, held August 11, 1994. Final rules governing CARP proceedings were published in the **Federal Register** on December 7, 1994. 59 FR 63025.

This Notice

Accordingly, the Library of Congress and the Copyright Office, having adopted final CARP rules, are hereby taking the first step to start the 1990 cable royalty distribution proceeding.

The Library of Congress and the Copyright Office direct all claimants [1] to royalty fees collected in 1990 for secondary transmissions by cable systems to submit comments as to whether a controversy exists as to the distribution of this fund. If any controversies exist, the claimant should specifically name the claimants with whom he or she has a controversy, and whether it is a Phase I or Phase II controversy. If there are both Phase I and Phase II controversies, we also solicit comment as to how these proceedings should be scheduled, sequentially or concurrently, and whether separate panels should be convened if they are to be scheduled concurrently.

The Library and the Office also seek comment from all cable claimants, 1990–1993, as to whether we should consolidate the distribution of the 1990 cable royalties with other cable royalty funds collected in subsequent years. Royalties have been collected during 1991, 1992, and 1993, and could be made the subject of the same proceeding as the 1990 cable royalty proceeding if that would serve the public interest. If claimants want to consolidate this proceeding with that of subsequent years, we would also need to know the extent of the Phase I and Phase II controversies that exist for the subsequent years, as well.

Finally, the Office is requesting claimants who wish to participate in the 1990 cable distribution proceeding to file a Notice of Intent to Participate. If the Office decides, after receiving comments, to consolidate the 1990 cable distribution with one or more subsequent years, we will issue at that time a request for Notices of Intent to Participate for those subsequent years.

An original and five copies of the claimants' comments and Notice of Intent to Participate should be filed no later than January 20, 1995, to the address noted above. Claimants should use this time period to make diligent efforts at settlement. If a claimant does not report a controversy or file a notice of intent to participate, it will be presumed that the claimant has settled, and has no controversies with the other claimants.

Dated: December 8, 1994.

Marilyn J. Kretsinger,

Acting General Counsel.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–30855 Filed 12–14–94; 8:45 am]

BILLING CODE 1410–33–P

[1] "All claimants" includes even those claimants, such as National Public Radio, who reached settlements during the suspended 1990 cable distribution proceeding held by the Tribunal. Since we are starting this proceeding anew, we want to know whether those settlements apply to the new proceeding as well

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–101)]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Aerodynamics; 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 NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Aerodynamics meeting.

DATES: January 17, 1995, 8:30 a.m. to 5:00 p.m.; January 18, 1995, 8:15 a.m. to 5:00 p.m.; and January 19, 1995, 8:00 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1222, Langley Room, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. William P. Henderson, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864–3520.

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:

—Aeronautics Program Update
—Thrust 1—Subsonic Transportation
—Thrust 2—High-Speed Research
—Thrust 3—High Performance Aircraft and Flight Projects
—Thrust 4—NASP and Hypersonics
—Thrust 5—Critical Technologies
—Thrust 6—National Facilities

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: December 9, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–30836 Filed 12–14–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Draft Branch Technical Position on Site Characterization for Decommissioning; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Draft Branch Technical Position on Site Characterization for Decommissioning.

SUMMARY: The NRC is noticing the availability and soliciting comments on a Draft Branch Technical Position on Site Characterization for Decommissioning (November 1994). The draft Branch Technical Position (BTP) describes the type, amount, and quality of information that might be necessary in Site Characterization Reports prepared and submitted to NRC by licensees and other responsible parties in support of decommissioning actions. The BTP may also serve as a template for the site characterization content of site-specific orders issued by NRC to compel timely characterization and remediation of contaminated sites.

DATES: Written comments on the draft Branch Technical Position received by February 13, 1995 will be considered in developing the final Branch Technical Position on Site Characterization for Decommissioning. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments on the draft Branch Technical Position should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Docketing and Services Branch. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

Copies of the draft Branch Technical Position may be obtained by contacting Mary Hood, U.S. Nuclear Regulatory Commission, Mail Stop T7F27, Washington, DC 20555–0001. Phone (301) 415–6644; Fax (301) 415–5397

FOR FURTHER INFORMATION CONTACT: Boby Eid, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7F27, Washington, DC 20555–0001. Phone (301) 415–5811.

SUPPLEMENTARY INFORMATION: The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 assign to the U.S. Nuclear Regulatory Commission the responsibility for licensing and regulating commercial nuclear facilities. These activities include decommissioning of nuclear facilities, or the process of removing the facility safely from service and reducing residual radioactivity to a level that permits release of the property in accordance with NRC requirements. NRC decommissioning requirements are specified in the various licensing regulations in 10 CFR Parts 30, 40, 50, 70, and 72. NRC has also recently proposed radiological criteria for decommissioning (59 FR 43200; August 22, 1994).

Over the past two decades, NRC has gained experience with the decommissioning of commercial nuclear facilities. Since 1989, NRC has placed special attention on the timely remediation and decommissioning of about 50 sites listed in the Site Decommissioning Management Plan (SDMP). This experience in overseeing the decommissioning of SDMP sites and other licensed nuclear facilities has highlighted the importance of effective site characterization early in the decommissioning process.

On April 16, 1992, NRC published the "Action Plan to Ensure Timely Cleanup of SDMP Sites" (57 FR 13389). Recognizing the importance of effective site characterization, NRC committed in the Action Plan to providing guidance on the content of acceptable site characterization programs conducted in support of decommissioning.

In July 1992, NRC completed a preliminary draft Branch Technical Position on Site Characterization for Decommissioning. NRC circulated the preliminary draft for internal review and made copies available to licensees and other parties upon request. NRC also presented the concepts of the preliminary draft at a public workshop on the SDMP Action Plan in November 1992.

In today's notice NRC is announcing the availability of the draft Branch Technical Position on Site Characterization for Decommissioning and soliciting comments. The draft Branch Technical Position (BTP) is an updated version of the 1992 preliminary draft BTP. NRC discussed this BTP at a public workshop on site characterization for decommissioning, which was held on November 29 and 30, 1994, in Rockville, Maryland (59 FR 49423; September 28, 1994). A copy of the transcript from that workshop will soon be available in the NRC Public Document Room.

NRC will review the comments and suggestions from the workshop along with written comments provided in response to this notice in finalizing the BTP. NRC anticipates completion of the final BTP in September 1995.

Dated at Rockville, Maryland, this 2nd day of December 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–30797 Filed 12–14–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35076; File No. SR–Amex–94–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Fee Change

December 9, 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 December 5, 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 Organizations's Statement of the Terms of Substance of the Proposed Rule Change

The Amex has approved a 50% discount on all Exchange transaction charges incurred by members and member organizations in connection with their equities trading on the Exchange during the month of December, 1994

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 by 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

As the Exchange has had a rewarding year from a financial perspective, it has determined that all Exchange transaction charges incurred by members and member organizations in their equities business in the month of December 1994 shall be subject to a 50% discount.

2. Statutory Basis

The fee change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The fee change will impose no 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 fee change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. 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–94–53 and should be submitted by January 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30851 Filed 12–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35068; File No. SR–BSE–94–09]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Stopping Stock

December 8, 1994.

I. Introduction

On June 20, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new rule regarding stopping stock. On June 24, 1994 and November 10, 1994, the Exchange submitted to the Commission Amendments No. 1 and No. 2. to the proposed rule change in order to clarify certain procedural requirements for the handling of stopped orders and to specify the duration of the BSE's pilot program for stopping stock in minimum variation markets.[3]

The proposed rule change, together with Amendment No. 1, was published for comment in Securities Exchange Act Release No. 34569 (August 22, 1994), 59 FR 44437 (August 29, 1994). No comments were received on the BSE proposal. This order approves the proposed rule change, including Amendment No. 2 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Chapter II of its Rules to add a new Section 38 to codify procedures for stopping stock and to establish a pilot program permitting BSE specialists to stop stock in minimum variation markets.[4] Under the proposed rule change, an agreement by a BSE specialist to "stop" securities at a specified price will constitute a guarantee by the specialist of the

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letters from Karen A. Aluise, Assistant Vice President, BSE, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated June 21, 1994 ("Amendment No. 1"); and Howard Kramer, Associate Director, Division of Market Regulation, SEC, dated November 10, 1994 ("Amendment No. 2").

[4] The BSE has proposed a March 21, 1995 termination date for its minimum variation market pilot program to conform with the pilot program of other exchanges. See Amendment No. 1, *supra*, note 3.

purchase or sale of the securities at the specified price (or better). According to the Exchange, the practice of stopping stock enables BSE specialists to offer primary market price protection,[5] without negatively impacting the national market system by disseminating executions at prices away from the primary market (e.g., double up or down ticks, new highs or new lows, or out-of-range prints). If, however, the stopped order is executed at a less favorable price, the specialist will be liable for an adjustment of the difference between the two prices.

The proposed rule change will impose certain procedural requirements for the handling of stopped orders. A BSE specialist will be permitted to stop stock upon the unsolicited request of another member. After granting the stop, the specialist must display the order in his or her quote. Thus, where the spread between the consolidated best bid and offer is greater than the minimum variation, a specialist who stops a buy (sell) order will be required to reduce the spread by bidding (offering) at a price higher (lower) than the prevailing bid (offer). In a minimum variation market, the specialist must change his or her quoted bid (offer) size in order to reflect the size of the order being stopped.[6]

Stopped orders will be placed on the specialist's limit order book and, consistent with the BSE's price protection rules,[7] will be filled based on trades that occur in the primary market. The BSE proposal also will implement certain procedures, on a pilot basis until March 21, 1995, governing the execution of stopped stock in minimum variation markets. Under that pilot program, a stopped buy (sell) order will be filled (1) when a transaction takes place on the primary market at the stop price or higher (lower); (2) when the share volume on the Exchange at the bid (offer) is exhausted or (3) at any time at a better price, subject to the conditions discussed below.

In certain limited circumstances, the proposed rule change will allow a BSE specialist to execute a stopped order before limit order interest on the Exchange is exhausted.[8] Before a specialist can fill a stopped order in this manner, however, the specialist must make the determination that such action is necessary, in his or her professional judgment, to prevent an execution that would create a new high or new low, double up or down tick or out-of-range print on an order that is due.[9]

Moreover, the specialist must follow certain procedures designed to ensure that the BSE's limit order book is adequately protected. First, the proposed interpretation will require that the specialist split any contra-side order flow between the stopped order and limit orders with priority at the better price. In addition, if the specialist elects to fill a stopped order at a price better than the stop price before it is otherwise due an execution, he or she must allocate an equal number of shares, up to a maximum of 500 shares, to orders at that price on the limit order book. Finally, if any portion of a stopped order remains unexecuted at the end of the trading day, the specialist must fill such order in its entirety and, as described above, allocate an appropriate number of shares to the book.

The Exchange states that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

III. 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, with the requirements of Sections 6(b) and 11(b).[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirements of Section 11(b), and Rule 11b–1 thereunder,[11] that specialist transactions must contribute to the maintenance of fair and orderly markets.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duty to unexecuted customer orders on the limit order book.[12] The Commission, however, has approved the practice in limited circumstances where the potential harm is offset by the improvement in marketplace liquidity and the possibility of price improvement for the customer.[13] Accordingly, those exchanges with stopping stock rules[14] require their specialists to reduce the spread between the consolidated best bid and offer or, in minimum variation market, to add size at the inside quote. The Commission believes that such a requirement strikes an appropriate balance between the interests of various market participants. Moreover, by encouraging accurate representation of the trading interest held by the specialist, it also facilitates greater transparency in the securities markets. In the Commission's opinion, such safeguards are a critical aspect of an exchange's stopping stock rule.

After careful review, the Commission has concluded that the proposed rule change should help ensure that BSE specialists handle stopped orders in a manner which is consistent with their

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[5] See generally, Ch. II, Sec. 33 of the BSE Rules. For securities traded through the Intermarket Trading System ("ITS"), the Exchange's price protection rules are designed to ensure that customers receive an execution on the BSE that is no worse than they would have received had their order been transmitted to the primary market.

[6] As noted above, see *supra* note 4, BSE specialists will be permitted to stop stock in minimum variation markets on a pilot basis until March 21, 1995.

[7] See *supra*, note 5 and accompanying text.

[8] See Amendment No. 2, *supra*, note 3, and letter from Karen A. Aluise, Assistant Vice President, BSE, to Howard Kramer, Associate Director, Division of Market Regulation, SEC, dated November 16, 1994 ("November 16th letter").

[9] See November 16th letter, *supra*, note 8.

[10] 15 U.S.C. § 78f(b) (1988).

[11] 17 CFR 240.11b–1 (1991).

[12] See, e.g., SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives a better price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[13] See, e.g., Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991) (File No. SR–NYSE–90–48) (approving proposed rule change to permit New York Stock Exchange ("NYSE") specialists to stop stock in minimum variation markets when (1) an imbalance is of sufficient size to suggest the likelihood of price improvement) ("1991 NYSE approval order"). In approving the NYSE proposal, the Commission found, among other things, that a stopped order is the equivalent of a limit order for purposes of Section 11(b) of the Act.

[14] See NYSE Rule 116.30; American Stock Exchange ("Amex") Rule 109; and Article XX, Rule 12 of the Chicago Stock Exchange ("CHX") Rules. See also Securities Exchange Act Release No. 34614 (August 30, 1994), 59 FR 46280 (September 7, 1994) (File No. SR–Phlx–93–41) (approving a Philadelphia Stock Exchange ("Phlx") proposal to codify its procedures for stopping stock into Equity Floor Procedure Advice A–2, Stopping Orders).

obligation to maintain fair and orderly markets.[15] Under the BSE proposal, a specialist who stops an order will be required to display that order in his or her market. In particular, the specialist must reduce the spread between the consolidated best bid and offer or, in a minimum variation market, add size at the inside quote. In addition, the customer will receive an opportunity for price improvement, rather than automatic execution at the displayed quotation. The Commission therefore is satisfied that the proposed rule change should increase the likelihood that a customer whose order is stopped will receive price improvement and result in narrower and/or deeper markets. This, in turn, should enhance the liquidity and transparency of the market for securities traded on the BSE.

Despite these potential benefits, the Commission continues to be particularly concerned that, in minimum variation markets, limit orders on the specialist's book may be bypassed when stopped orders are executed at a better price. For that reason, the Commission has required that procedures for stopping stock in minimum variation markets be implemented on a pilot basis. These pilot programs have been extended until March 21, 1995, in order to allow the Commission and the relevant exchanges to determine whether the benefits of the practice substantially outweigh the costs thereof.[16] In the interim, the Commission believes that it is appropriate to place the BSE on equal competitive footing with the other exchanges and to approve the BSE's procedures for stopping stock in minimum variation markets as a pilot program until March 21, 1995.

In making this determination, the Commission recognizes the interplay between a regional exchange's price protection rules and its procedures for handling stopped stock. As the Commission noted in regard to a similar CHX proposal,[17] in a minimum variation market, requiring regional exchange specialists to fill stopped orders at the price of the next primary market sale may have unintended consequences. Specifically, if the next trade occurs at a price better than the stop price and if there are limit orders with time priority at that price, execution of the stopped order would trigger the execution of all pre-existing limit orders, even if they are not otherwise entitled to be filled.

In the Commission's opinion, the Exchange's pilot program is a reasonable attempt to ensure that same-side limit orders on the book are not bypassed when stock is stopped in minimum variation markets. As proposed, the BSE specialist can fill a stopped order at the stop price after a trade takes place in the primary market at that price or worse (*i.e.*, after a new range for the day is created which includes the stop price). If the next sale takes place at a better price, the specialist will not be required to fill the stopped order until all pre-existing share volume on the BSE is exhausted (*i.e.*, the stopped order has priority at the better price). A BSE specialist, however, can elect to fill a stopped order at a better price at any time, so long as customers with limit orders on the book are adequately protected.

This portion of the proposed rule change will allow the specialist to address those situations where, based on his or her professional judgment, the specialist determines that executing a stopped order ahead of same-side limit orders is necessary to ensure that the customer receives the best price available in the national market system.[18] To the extent the specialist faces a choice between assuming a significant position where not otherwise warranted by Exchange rules or disseminating an execution at a price away from the market, the Commission finds that the BSE proposal presents an acceptable third alternative.

In this context, the Commission notes that a specialist executing a stopped order pursuant to the proposed interpretation will be required to allocate an equal number of shares to the limit order book. Under the proposed rule change, the specialist must split contra-side order flow between the stopped order and the pre-existing limit orders; if the specialist elects to participate, those limit orders with priority will receive an execution of the size of the stopped stock printed (up to a maximum of 500 shares). In light of the relatively thin limit order books on a regional exchange such as the BSE, the Commission believes that, as a practical matter, the proposed rule change is unlikely materially to disadvantage customers with limit orders on the specialist's book. The Commission, however, will monitor the Exchange's pilot program to ensure that the benefits of stopping stock in minimum variation markets warrant continued approval of such procedures.

The Commission therefore requests that the BSE submit a report describing its experience with its minimum variation market pilot program by February 7, 1995. Specifically, the Exchange should gather and report information for a one month period on (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that receive price improvement. In addition, the BSE should work with the Commission to develop an appropriate measure of the pilot program's impact on limit orders, particularly those limit orders on the specialist's book ahead of the stopped stock. Finally, if the Exchange determines to request an extension of the pilot program beyond March 21, 1995 or permanent approval thereof, the Commission requests that the BSE also submit a proposed rule change by February 7, 1995

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof Amendment No. 2 clarifies certain procedural requirements contained in the original filing. Finally, the Commission did not receive any comments on the original proposal, which was published in the **Federal Register** for the full comment period

Interested persons are invited to submit written data, views and arguments concerning Amendment No 2 to the proposed rule change Persons making written submissions should file six copies thereof with the Secretary

[15] See Ch. XV, Sec. 2. of the BSE Rules. In addition, the Commission notes that the definition of stopping stock proposed by the BSE is substantively identical to other exchanges' definition. See, *e.g.*, NYSE Rule 116. Although an agreement to stop securities at a specified price constitutes a guarantee, by the specialist, of the purchase or sale of the securities at that price or better, the order can interact with all market interest. For that reason, the Commission has concluded that a specialist granting a stop does not enter into an unconditional contract within the meaning of Rule 3b–3 under the Act. 17 CFR 240.3b–3 (1991).

[16] Currently, the NYSE, Amex and CHX have pilot programs that permit specialists to stop stock in minimum variation markets. For further discussion of these pilot programs and the Commission's rationale for extending them until March 21, 1995, see Securities Exchange Act Release Nos. 33792 (March 21, 1994), 59 FR 14437 (March 28, 1994) (File No. SR–NYSE–94–06); 33791 (March 21 1994), 59 FR 14432 (March 28, 1994) (File No. SR–Amex–93–47); and 33790 (March 21, 1994), 59 FR 14434 (March 28, 1994) (File No. SR–CHX–93–30) ("1994 CHX approval order").

[17] See 1994 CHX approval order, *supra*, note 16 Under Art. XX, Rule 37, Interpretation .03 of the CHX Rules, in a minimum variation market, a stopped buy (sell) order will not be filled until (1) a transaction takes place at the offering (bid) price or higher (lower) on the primary exchange or (2) the CHX's displayed share volume at the bid (offer) has been exhausted (*i.e.*, the stopped order has time priority at the better price).

[18] See November 16th letter *supra*, note 8. For instance, a specialist might rely on the proposed interpretation in a situation where, at the time a stopped order is due, there are a substantial number of shares ahead of that order on the book and the primary market has not traded at the stop price that day (or has not done so within several hours).

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 rules change that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–09 and should be submitted by January 5, 1995.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–BSE–94–09), including Amendment No. 2 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30782 Filed 12–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35061; File No. SR–GSCC–94–7]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Changes in Membership Standards

December 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 11, 1994, the Government Securities Clearing Corporation ("GSCC") 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 primarily by GSCC. On December 5, 1994, GSCC filed an amendment to the proposed rule change.[2] 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 proposed rule change will establish minimum financial standards for two current Netting System membership categories: insurance companies and registered investment companies.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC 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

(a) The purpose of the proposed rule change is to establish minimum financial standards for two current Netting System membership categories: insurance companies and registered investment companies.

(1) Proposed Minimum Financial Standards for Insurance Companies

(A) *Background.* In general, there are two types of insurance companies that operate in the United States: stock companies and mutual insurers. Insurance in the United States also is provided by other types of entities, including governmental units such as the Pension Benefit Guaranty Corp., the Federal Crop Insurance Corp., and the Federal Deposit Insurance Corp.

Insurance companies are regulated primarily by the various states in which they organize and operate. While stock companies generally are subject to requirements regarding both the amounts of paid-in capital and the surplus that must be retained, typically the means of ensuring that an insurance company is financially responsible is largely performed by statutory and administrative requirements for the maintenance of reserves that bear a reasonable relation to risks presented by the insurer's outstanding contractual obligations.

There are various agencies that rate insurance companies. A.M. Best ("Best") was the first rating agency to report on the condition of insurance companies and remains the most widely known of them. Standards & Poor's ("S&P"), Moody's, and Duff & Phelps ("D&P") also rate insurance companies.

A new measure of the financial strength of insurance companies, a risk-based capital rating, recently has been introduced. In December 1992, the National Association of Insurance Commissioners ("NAIC") adopted a model law that establishes standards for the adequacy of life insurance company surplus levels based upon the risk profile of their operations and investments.[4] The model law establishes a risk-based capital ratio based on four main risk categories (investment risk, underwriting risk, interest rate risk, and business risk) at or below which an insurance commissioner must act and place an insurer under varying degrees of state control.

(B) *Proposed standards.* Given that insurance companies are primarily state-regulated, there historically has been a lack of uniformity of regulatory financial standards for them. GSCC believes that the best proxy for such a uniform financial standard, such as the Commission's net capital rule, are the analysis and rating of each insurance company provided by the rating agencies. GSCC also believes it appropriate to establish a "size" test that at least initially only insurance companies of substantial size can meet and believes it is appropriate to require that insurance company netting members have a satisfactory risk-based capital ratio.

More specifically, GSCC is seeking to establish the following minimum financial standards for insurance company netting members in order to ensure that only sufficiently creditworthy institutions are accepted into Netting System membership:

(1) A Best's rating of "A–" or better (if the member is rated by Best),[5]

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[19] 15 U.S.C. § 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The amendment made a rating by A.M. Best for insurance company applicants for netting members permissible rather than mandatory and expanded the category of rating organizations that GSCC will accept to establish the qualifications of insurance company applicants for netting membership. Letter from Jeffrey F Ingber, General Counsel and Secretary, GSCC, to Jerry Carpenter, Assistant Director, Office of Securities Processing, Division of Market Regulation, Commission (December 1, 1994).

[3] While GSCC's rules provide that insurance companies and registered investment companies may become Netting System members, no insurance companies or investment companies have applied for membership.

[4] In December 1993, the NAIC adopted similar risk-based standards for property and casualty insurance companies. It is expected that these standards will be implemented this year.

[5] Best's ratings are as follows:

A++ and A+ = superior

A and A– = excellent

B++ and B+ = very good

(2) A rating by at least one of the other three major rating agencies (D&P Moody's, or S&P) of at least "A−" or "A3", as applicable (or an equivalent rating by either a nationally-recognized statistical rating organization or another rating agency acceptable to GSCC),[6]

(3) No rating by any one of the other three major rating agencies of less than "A−" or "A3", as applicable,[7]

(4) A risk-based capital ratio of at least 200 percent,[8] and

(5) Statutory capital (consisting of adjusted policyholders' surplus plus the company's asset valuation reserve) of no less than $500 million.[9]

(C) *Proposed reporting requirements.* Each applicant for membership in GSCC's Netting System that is an insurance company will be required to provide its two most recent annual statements and three most recent quarterly financial statements filed with the NAIC, the Commission, and/or the applicant's regulatory authority in its state of domicile. In order to monitor the financial status of insurance company netting members, each such member will be required to provide GSCC with copies of its quarterly and annual financial statements and any intervening amendments and addendums thereto at the time that such statements are filed with the NAIC, the Commission, and/or member's regulatory authority in its state of domicile.

B and B− = good
++ and + = fair
C and C− = marginal
D = below minimum standards
E = under state supervision
F = in liquidation

Currently, approximately one-third of all life insurance companies rated by Best and over one-half of all property and casualty insurance companies rated by Best have a rating of A− or better.

[6] GSCC believes it to be prudent to have the reassurance of a high rating from a rating agency in addition to Best.

[7] A rating of below "A−" or "A3" by one of the other three major rating agencies indicates some weakness.

[8] The risk-based capital percentage is calculated using the company's "total adjusted capital" (which is the sum of its statutory surplus, assets valuation reserve, voluntary investment reserves, and half of the annual dividend liability as adjusted for the capital contributed by subsidiaries) as the numerator and its "authorized control level risk-based capital" (which is the capital level at which the state insurance commissioner may place the insurer under regulatory control) as the denominator. A ratio of 200 percent or more is necessary for an insurance company to avoid any regulatory action.

[9] Currently, this standard encompasses roughly the twenty-five largest life insurers plus the twenty-five largest property and casualty insurers.

(2) Proposed Minimum Financial Standards for Registered Investment Companies

(A) *General information.* An investment company is a company that sells shares or certificates that represent an interest in a pool of financial assets. A registered investment company is an investment company that files a registration statement with the Commission and meets all the other requirements of the Investment Company Act of 1940 ("Investment Company Act"). The Investment Company Act classifies investment companies into three broad types: face-amount certificates companies, unit investment trusts, and management companies (which are further classified as open-end or closed-end and diversified or non-diversified).

The vast majority of investment companies are open-end and closed-end funds. An open-end investment company, better known as a mutual fund, has a floating number of outstanding shares and continuously issues and redeems shares at their current net asset value. A closed-end investment company, also known as an investment trust, has a fixed number of outstanding shares that are traded like stock, often on the major exchanges.

In addition to the registration requirement for investment companies, they are required to disclose their financial condition and investment policies and to provide investors complete information about their activities. The Investment Company Act also:

(1) Prohibits such companies from substantially changing the nature of their business or investment policies without stockholder approval;

(2) Bars persons guilty of security frauds from serving as officers and directors;

(3) Prevents investment bankers from constituting more than a minority of the directors of such companies;

(4) Requires that management contracts and any material changes thereto be submitted to security holders for their approval;

(5) Prohibits transactions between such companies and their directors, officers, or affiliated companies or persons except when approved by the Commission;

(6) Forbids such companies to issue senior securities except under specified conditions and upon specified terms;

(7) Prohibits pyramiding of such companies and cross-ownership of their securities; and

(8) Imposed asset-to-debt coverage rate restrictions.

Other provisions of the Investment Company Act involve advisory fees not conforming to an adviser's fiduciary duty, sales and repurchases of securities issued by investment companies, exchange offers, and other activities of investment companies including special provisions for periodic payment plans and face-amount certificate companies.

Investment company securities also must be registered under the Securities Act of 1933. Investment companies must file periodic reports and are subject to the Commission's proxy and insider trading rules.

(B) *Proposed minimum financial standards.* An important criterion used by market participants and other registered clearing agencies in assessing the creditworthiness of a registered investment fund is asset size. In view of this, GSCC management recommends that registered investment company netting members be required to have and maintain a minimum of $500 million in net assets either directly and/or under management. This would ensure that only a sizeable entity will qualify for Netting System membership.[10]

Moreover, the following additional criteria will be considered on a case-by-case basis in evaluating the membership application of any registered investment company for Netting System membership:

(1) Quality and experience of management;

(2) Years in business;

(3) Open-end versus closed-end;

(4) Leverage restrictions;

(5) Range of permissible investment; and

(6) As applicable, the company's ratings.

This combination of required and discretionary standards will help to ensure that only a registered investment company of high credit quality will be eligible to become a Netting System member.

(C) *Proposed reporting requirements.* Each applicant for membership in GSCC's Netting System that is a registered investment company will be required to provide copies of its two most recent reports on Form N–SAR filed semi-annually with the Commission pursuant to Rule 30b1–1 under the Investment Company Act and copies of each of its three most recent

[10] This minimum level of assets is significantly higher than the requirements imposed by other registered clearing agencies on their registered investment company members. By example, the Midwest Securities Trust Company has a requirement of $50 million in net assets, and MBS Clearing Corporation's requirement is $10 million in net worth.

reports, communications, and prospectuses (and any amendments and supplements thereto) transmitted to shareholders and filed with the Commission. In order to monitor the financial status of registered investment company netting members, such members will be required to provide GSCC with its report on Form N–SAR and reports, communications, and prospectuses (and any amendments and supplements thereto) transmitted to shareholders and filed with the Commission at the time such reports are filed with the Commission.

(b) The proposed rule change will allow GSCC, in a prudent and creditworthy manner, to provide the benefits of its comparison and netting processes to additional netting members and to ensure that it can appropriately monitor such members. Thus GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule change and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[11] 15 U.S.C. 78q–1 (1988).

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, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–94–7 and should be submitted by January 5, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30781 Filed 12–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20761; 812–9008]

AIM Equity Funds, Inc., et al.; Notice of Application

December 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: AIR Equity Funds, Inc., AIM Funds Group, AIM International Funds, Inc., AIM Investment Securities Funds, AIM Strategic Income Fund, Inc., AIM Summit Fund, Inc., AIM Tax-Exempt Funds, Inc., Short-Term Investments Co., Short-Term Investments Trust, Tax-Free Investments Co., including all existing and future series thereof (collectively, the "Existing Funds"), on behalf of themselves and all registered investment companies (including series thereof) for which A I M Advisors Inc. or A I M Capital Management, Inc. (each an "Adviser") serves in the future as investment adviser (collectively, with the Existing Funds, the "Funds"); A I M Advisors, Inc.; and A I M Capital Management, Inc.

RELEVANT ACT SECTION: Exemption requested under section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to participate in a joint account (the "Joint Account") to pool cash balances and reserves for the purpose of investing in: (a) repurchase agreements with remaining maturities not to exceed 60 days; and (b) other short-term money market instruments, including tax-exempt money market instruments, that constitute "Eligible Securities" within the meaning of rule 2a–7 under the Act with remaining maturities or deemed maturities (pursuant to rule 2a–7) not to exceed 90 days ("Short-Term Money Market Instruments").

FILING DATES: The application was filed on May 18, 1994, and was amended on October 18, 1994, and December 8, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 3, 1995, 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 who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Eleven Greenway Plaza, Suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Existing Funds are registered management investment companies, several of which consist of multiple portfolios. AIM Advisors, Inc. is a registered investment adviser that serves as investment adviser to the Existing

Funds. AIM Capital Management, Inc., a wholly-owned subsidiary of AIM Advisors, Inc., is a registered investment adviser and serves as subadviser to the AIM Charter, AIM Constellation, and AIM Weingarten portfolios of AIM Equity Funds, Inc.

2. Pursuant to an existing order (the "Existing Order"),[1] the Funds may deposit overnight cash balances and reserves into Joint Accounts that would invest in commercial paper or repurchase agreements with a bank, non-bank government securities dealer, or major brokerage house. The repurchase agreements are collateralized by: U.S. Government obligations; obligations issued or guaranteed as to principal and interest or otherwise backed by any of the agencies or instrumentalities of the U.S. Government; certain obligations of the U S. Government in the form of separately traded principal and interest components of securities issued or guaranteed by the U.S. Treasury; or certain U.S. government agency securities such as mortgage-backed certificates issued by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, that represent ownership interests in mortgage pools. In addition, the Funds may invest jointly in interest bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers, provided that the commercial paper is rated in the highest category by Standard & Poor's or Moody's, or unrated but of equivalent investment quality as determined by the Advisers under the supervision of the boards of the applicable Funds.

3 The requested order would supersede the Existing Order, and would permit the Funds to purchase on a joint basis other securities in addition to the purchases permitted under the Existing Order. The Joint Accounts established under the requested order would invest in any "Investment," as defined in condition 2 below.

4 A separate custodial cash account would be established for each Joint Account at the applicable custodian bank into which some or all of the uninvested net cash balances of the participating Funds would be deposited daily

5 All of the Funds are authorized by their investment policies and limitations to invest at least a portion of their uninvested cash balances in Investments. An Adviser would determine the amount of anticipated cash available at the end of a trading day. After the Advisers have accumulated data as to available cash and the type of Investments desired for each Fund, they would determine the extent of the market in various securities and aggregate orders as appropriate. The Advisers then would give a broker/dealer one order for each Joint Account and instruct the custodian to allocate the securities acquired by the Joint Account among the participating Funds.

6. The operation of the Joint Account will result in fewer transactions in Investments for the Funds, thus saving transaction fees. The Funds also will benefit from higher yields and administrative savings through pooling of their uninvested cash balances in Joint Accounts.

7. Subject to differences in investment objectives, each of the Funds has established the same systems and standards for acquiring Investments and the Joint Accounts will use the same systems and standards employed by the individual Funds. With respect to repurchase agreement transactions, these standards include creditworthiness standards for counterparties and for collateral. The repurchase agreements entered into under the requested order will be "collateralized fully," as that term is defined in rule 2a–7, and would have remaining maturities that would not exceed 60 days.

8. All joint repurchase agreement transactions will be effected in accordance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and with other existing and future positions taken by the SEC or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Fund may be deemed an "affiliated person" of each other Fund under the definition set forth in section 2(a)(3). Each Fund participating in the proposed joint account and the Adviser could be deemed to be "a joint participant" in a transaction within the meaning of section 17(d). In addition, the proposed account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

2. Applicants assert that the Joint Account will not result in any conflicts of interest among the joint participants. Although the Advisers will gain some benefit through administrative convenience and possible reduction in clerical costs, the primary beneficiaries will be the participating Funds because the Joint Account will be a more efficient means of administering investment transactions. Applicants believe that the operation of the Joint Account will be free of any inherent bias favoring one Fund over another.

3. In passing upon applications under section 17(d) and rule 17d–1, the SEC considers whether participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act and not on a basis less advantageous than that of other participants. Applicants submit that these criteria are met.

Applicants' Conditions

Applicants agree to the following as express conditions to any order issued by the SEC in connection with the application:

1. Each Fund will transfer into one or more of the Joint Accounts the cash it wishes to invest through such Joint Accounts after the calculation of its daily cash available for investment and will specifically indicate whether the cash is to be used to purchase Investments. The Joint Accounts will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that monies from a Fund will be deposited on a commingled basis. The Joint Accounts will not have any separate existence and will not have indicia of separate legal entities. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Fund of its uninvested cash balances.

2. Cash in the Joint Accounts would be invested in one or more of the following, as directed by the Fund: repurchase agreements collateralized by U.S. Government obligations; repurchase agreements collateralized by obligations issued or guaranteed as to principal and interest or otherwise backed by any of the agencies or instrumentalities of the U.S. Government; repurchase agreements collateralized by certain obligations of the U.S. Government in the form of separately traded principal and interest components of securities issued or guaranteed by the U.S. Treasury;

[1] Investment Company Act Release Nos. 18550 (Feb 13, 1992) (notice) and 18614 (Mar. 12, 1992) (order)

repurchase agreements collateralized by certain U.S. government agency securities such as mortgage-backed certificates issued by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, representing ownership interests in mortgage pools; interest bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and in any other short-term money market instruments, including tax-exempt money market instruments, that constitute "Eligible Securities" within the meaning of rule 2a–7 under the Act (collectively, the "Investments"). No Fund would be permitted to invest in a Joint Account unless the Investment in such account satisfied the policies and guidelines of that Fund. Investments that are joint repurchase transactions would have a remaining maturity of 60 days or less and other Investments would have a remaining maturity of 90 days or less, each as determined pursuant to rule 2a–7 under the Act.

3. All assets held by a Joint Account would be valued on an amortized cost basis to the extent permitted by applicable SEC release, rule, or order.

4. Each participating Fund valuing its net assets in reliance upon rule 2a–7 under the Act will use the average maturity of the instrument(s) in the Joint Account in which such Fund has an interest (determined on a dollar weighted basis) for the purpose of computing that Fund's average portfolio maturity with respect to the portion of its assets held in such Account on that day.

5. In order to assure that there will be no opportunity for one Fund to use any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in a Joint Account for any reason, although it would be permitted to draw down its entire balance at any time. Each Fund's decision to invest in a Joint Account would be solely at its option, and no Fund will be obligated either to invest in a Joint Account or to maintain any minimum balance in a Joint Account. In addition, each Fund would retain the sole rights of ownership to any of its assets invested in a Joint Account, including interest payable on such assets invested in such Account.

6. The Advisers would administer the investment of the cash balances in and operation of the Joint Accounts as part of their duties under the general terms of each Fund's existing or any future investment advisory contract or subadvisory contract (the "Advisory Contracts") and would not collect any additional or separate fees for advising any Joint Account. The operation of the Joint Accounts is not provided for specifically under each Fund's Advisory Contract, but rather is covered under the general terms of each such Contract. The Advisers would collect their fees based upon the assets of each separate Fund as provided in each respective Advisory Contract.

7. The administration of the Joint Accounts would be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The boards of trustees/directors of the Funds will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each of the boards will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the boards will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with such procedures.

9. Any Investment made by a Fund or Funds through the Joint Accounts will satisfy the investment criteria of all Funds participating in that Investment.

10. The Advisers and the custodian of each Fund will maintain records (in conformity with section 31 of the Act and the rules thereunder) documenting, for any given day, each Fund's aggregate investment in a Joint Account and each Fund's *pro rata* share of each Investment made through such Joint Account.

11. Not every Fund participating in the Joint Accounts will necessarily have its cash invested in every Joint Account. However, to the extent a Fund's cash is applied to a particular Joint Account, the Fund will participate in and own a proportionate share of the Investment in such Joint Account, and the income earned or accrued thereon, based upon the percentage of such Investment in such Joint Account purchased with monies contributed by the Fund.

12. Investments held in a Joint Account generally will not be sold prior to maturity except: (a) If the Advisers believe the Investment no longer presents minimal credit risk; (b) in the case of commercial paper or tax-exempt securities, if as a result of a credit downgrading or otherwise, the Investment no longer satisfies the investment criteria of all Funds participating in that Investment; or (c) in the case of a repurchase agreement, if the counterparty defaults. A Fund may, however, sell its fractional portion of an Investment in a Joint Account prior to the maturity of the Investment in such Joint Account if the cost of such transaction will be borne solely by the selling Fund and the transaction would not adversely affect the other Funds participating in that Joint Account. In no case would an early termination by less than all participating Funds be permitted if it would reduce the principal amount or yield received by other Funds participating in a particular Joint Account or otherwise adversely affect the other participating Funds. Each Fund participating in such Joint Account will be deemed to have consented to such sale and partition of the Investment in such Joint Account.

13. Any Investment held through a Joint Account with a remaining maturity of more than seven days will be considered illiquid and, for any Fund that is an open-end management investment company registered under the Act, subject to the restriction that the Fund may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if the Fund cannot sell its fractional interest in the Investment in such Joint Account pursuant to the requirements described in the preceding condition.

For the SEC, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30780 Filed 12–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20762; File No. 812–9086]

Equitable Variable Life Insurance Company, et al.

December 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Equitable Variable Life Insurance Company ("Equitable Variable"), Separate Account FP of Equitable Variable Life Insurance Company (the "Separate Account") and Equico Securities, Inc. ("Equico").

RELEVANT SECTIONS OF THE ACT AND RULES: Order requested under Section 6(c) of the Act exempting Applicants from Section 27(a)(3) of the Act and Rule 6e–3(T)(b)(13)(ii), 6e–3(T)(d)(1)(ii)(A) and 6e–3(T)(d)(2)(i) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies that

provide for a higher contingent deferred sales charge percentage to be deducted following certain face amount increases.

FILING DATE: The Application was filed on July 1, 1994.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 4, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. 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 the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Mary Breen, Esq., The Equitable Life Assurance Society of the United States, 787 Seventh Avenue, Area 36–K, New York, NY 10019.

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. Equitable Variable is a stock life insurance company organized under the laws of New York and licensed in all fifty states, Puerto Rico, the Virgin Islands and the District of Columbia. It is a wholly-owned subsidiary of The Equitable Life Assurance Society of the United States, a stock life insurance company organized under the laws of New York.

2. The Separate Account was established by Equitable Variable under New York law. Equitable Variable is the depositor of the Separate Account. The Separate Account is registered under the Act as a unit investment trust. The Separate Account supports benefits payable under certain variable life insurance contracts issued by Equitable Variable (the "Policies").

3. Equico, a registered broker-dealer under the Securities Exchange Act of 1934, is the distributor of the Policies.

4. The Policies are flexible premium variable life insurance contracts. Equitable Variable deducts monthly charges from Policy account value for administrative expenses, cost of insurance, mortality and expense risk, and the guaranteed death benefit. In addition, Equitable Variable imposes administrative charges in connection with withdrawals. Administrative withdrawal charges are limited to the greater of 2% of the amount withdrawn or $25. Premium payments under the Policies are subject to deductions for state or local premium taxes. Equitable Variable has reserved the right to charge $25 per transfer among investment options after the twelfth transfer in any Policy year.

5. The Policies have both a front-end sales charge ("FESC") and a contingent deferred sales charge ("CDSC"). The FESC and CDSC percentage rates vary by face amount of insurance. CDSC rates are based on "SEC Guideline Annual Premiums" as defined in Rule 6e–3(T)(c)(8). The following table sets forth the sales load schedule for the first Policy year:

Face amount band	FESC percent of gross premium	CDSC percent up to one SEC guideline annual premium	CDSC percent applied to premiums over SEC guideline annual premium
	A	B	C
$50,000 to $99,999	6	24	3
$100,000 to $499,999	4	26	5
$500,000+	3	27	6

After the first Policy year, premiums paid are subject to the same FESC percentage set forth in Column A. In policy years two through fifteen, premiums paid are subject to the same CDSC percentage set forth in Column C. After fifteen Policy years, the CDSC is zero. For the first nine Policy years, the maximum CDSC for the initial face amount is equal to 66% of one "CDSC Target Premium." [1] After the first nine Policy years, the maximum CDSC begins to decrease by 11% per year on a monthly basis through policy year fifteen. After fifteen Policy years, the maximum CDSC is zero.

6. Applicants represent that the aggregate of the FESC and the CDSC assessed in connection with a Policy will not exceed sales load limitations specified in Rule 6e–3(T)(b)(13)(i)(A). Specifically, the total sales load under a Policy will not exceed nine percent of the sum of the Guideline Annual Premiums that would be paid over a twenty year period or the life expectancy of the insured if it is less than twenty years.

7. Any time after the first Policy year, a Policy owner can request an increase in face amount. A new layer of sales charges will apply to a requested face amount increase (with certain rare exceptions). If the increase keeps the Policy in the same Face Amount Band, there will be no change in the FESC and CDSC percentages applied to future premium payments in the table in paragraph 5. However, if a face amount increase moves a Policy into a different Face Amount Band, the FESC and CDSC percentages applied to future premium payments will be changed. For example, if a Policy owner requests a face amount increase from a $50,000 Policy to a $150,000 Policy, the FESC percentage will decrease from 6% to 4% and the CDSC percentage will increase from 24% to 26% (first year) and 5% (subsequent years) for future premiums. Sales charges will not be adjusted based on the new percentages for premiums paid prior to the increase in face amount.

Applicants' Legal Analysis

1. Section 27(a)(3) of the Act provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate by any registered investment company issuing such certificates, or any depositor or underwriter for such company, may not exceed proportionately the amount

[1] A CDSC Target Premium is determined at issue based upon the sex, tobacco user status and issue age of the insured person and the face amount of the Policy

deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e–3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3) provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or reductions in sales load for amounts transferred to a variable life insurance policy from another plan of insurance.

Subsection (d) of Rule 6e–3(T) provides computational rules for use is applying the Rule. Rule 6e–3(T)(d)(1)(ii)(A) provides that section (b)(13)(ii) of Rule 6e–3(T) shall be deemed to be satisfied if the amount of sales load deducted pursuant to any method permitted does not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method, with certain exceptions not present here.

Rule 6e–3(T)(d)(2)(ii)(A) provides procedures for computing sales load to comply with provisions of the Rule after an increase in or addition of insurance benefits.

3. Under the Policy's sales load structure, Applicants state that if a face amount increase results in a higher Face Amount Band, the CDSC percentages for the incremental face amount layer and, with respect to premiums paid subsequent to the increase, the CDSC percentages for the initial (base) policy, will be higher than the initial CDSC percentages for the base policy. This scenario would appear to give rise to a violation of the so-called "stair-step" provisions in Section 27(a)(3) of the Act. Moreover, the exemption provided by Rule 6e–3(T)(b)(13)(ii) does not appear to apply to this situation.

4. Applicants submit that the Policy's sales charge structure benefits Policy owners and is not inconsistent with the policies and purposes behind Section 27(a)(3). Any increase an CDSC percentages resulting from a change in Face Amount Band is accompanied by an identical percentage decrease in the FESC percentage that would otherwise apply. Thus, Applicants assert that the sole effect of the Policy's sales charge structure is to shift part of the sales charges from the front-end to the back-end for Policies that move into a larger Face Amount Band, a change that does not increase the proportionate amount of sales charges when taken as a whole. The potential benefit to Policy owners is that more of the investor's money is available to accrue any positive investment experience due to the inherent benefits of CDSCs to FESCs.

5. Section 27(a)(3), and the other sales load limitations in the Act, were designed to address the perceived abuses of periodic payment plans that deducted large amounts of front-end sales charges early in the life of the plan so that an investor who redeemed in the early periods recouped little of his or her investment. Applicants contend that the fact that the Policy's sales structure may vary solely because of the action of Policy owners in exercising their flexibility to increase the face amount under a Policy is a desirable feature for Policy owners. Applicants contend that the policies underlying the stair-step provisions are not contravened by fluctuations in sales load due to factors beyond the issuer's control.

Conclusion

For the reasons stated above, Applicants submit that the requested exemptions, in accordance with the standards of Section 6(c) of the Act, are consistent with the protection of Policy owners and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 30778 Filed 12–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20760 ; File No. 812–9170]

Portico Funds, Inc.; Notice of Application

December 9, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Portico Funds, Inc. ("Portico").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a) (2), 17(a)(1), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder and pursuant to section 17(d) of the Act and rule 17d–1 thereunder approving certain joint transactions.

SUMMARY OF APPLICATION: Portico requests an order permitting it to enter into deferred compensation agreements with certain of its directors.

FILING DATES: The application was filed on August 17, 1994, and amended on November 17, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 3, 1995, and should be accompanied by proof of service on the applicant, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Portico Funds Center, 615 East Michigan Street, Milwaukee, Wisconsin, 53201; c/0 W. Bruce McConnel, III and Kenneth L. Greenberg, Drinker Biddle & Reath, 1345 Chestnut Street, Suite 1100, Philadelphia, PA 10107

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942-0147 or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a free at the SEC's Public Reference Branch

Applicant's Representations

1. Portico is a registered open-end management investment company with multiple portfolios (together with any future portfolios of Portico, the "Portfolios"). Portico has implemented a deferred compensation plan under which a director may elect to defer receipt of all or part of his or her fees. The deferred fees are credited to an account maintained on Portico's books at the time the fees would otherwise be payable. All amounts in the account are credited monthly with interest equal to the "average rate"[1] earned on 90-day United States Treasury Bills. The plan allows individual directors to defer receipt of their fees so that they may defer payment of income taxes or otherwise obtain personal financial benefits. Portico believes that deferred fee arrangements enhance its ability to

[1] The average rate is calculated by adding the rate on the last day of the current month and the rate on the last day of the preceding month then dividing the sum by two.

attract and retain directors of high caliber.

2. Portico proposes that it be permitted to modify its deferred compensation plan (as modified, the "Plan") so that its directors may allocate their deferred fee accounts to any or all Portfolios. Amounts allocated to a Portfolio will be adjusted periodically to reflect earnings, gains, and losses attributable to the Portfolio. The rate of return or loss on directors' deferred fee accounts will equal that of the Portfolio's public shareholders.

3. Portico's obligations to pay amounts accrued under the Plan will be general unsecured obligations payable solely from its general assets and property. The Plan does not obligate Portico to retain a director in that capacity or pay any (or any particular level of) director's fees to any director

4. Portico may make administrative amendments to the Plan from time to time without approval or authorization of the SEC, provided that the amendments do not conflict with any policy or provision of the Act of regulations thereunder unless the SEC staff first expressly approves the amendment.

5. Portico intends, although it is not obligated, to cover its obligations under the Plan by purchasing and holding shares of the Portfolios equal to the "deemed investments" of the directors' deferred fee accounts. Any such investment will remain part of the general assets and property of Portico.

Applicant's Legal Analysis

1. Portico requests an order under section 6(c) of the Act to exempt it from sections 13(a)(2), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder to the extent necessary to permit the Portfolios to offer the deferred compensation Plans and section 17(d) of the Act and rule 17d–1 thereunder to permit the Portfolios to effect certain joint transactions incident to the Plans.

2. Section 18(f)(1) restricts the ability of a registered open-end investment company to issue senior securities. Section 13(a)(2) requires that an investment company obtain shareholder authorization before issuing any senior securities not contemplated by the recitals of policy in its registration statement. Portico believes that the Plan possesses none of the characteristics of senior securities that led Congress to enact these sections. Portico asserts that the Plan would not induce speculative investments or provide opportunities for manipulative allocation of the expenses and profits of any Portfolio, affect control of any Portfolio, confuse investors, convey a false impression of safety, or be inconsistent with the theory of mutuality of risk. All liabilities resulting from credits to the directors' accounts will be offset by substantially equal amounts of assets that would not otherwise exist if the directors' fees were paid on a current basis.

3 Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. All these restrictions would be clearly set forth in the agreement.

4. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or property other than cash or securities. That section is primarily concerned with the dilutive effect on the equity and voting power that can result when securities are issued for consideration that is not readily valued. Portico believes that the Plan will not have this effect, but merely provides for deferral of payment of fees and not for payment in securities for services.

5. Rule 2a–7 requires a registered investment company to limit its portfolio to securities meeting certain standards of maturity, quality, and diversification as a condition to adopting the term "money market" as part of its name and holding itself out to investors as a money market portfolio. Rule 2a–7 limits the extent to which the net asset value of a money market portfolio as determined pursuant to a method prescribed in rule 2a–7 can deviate from its net asset value as determined by the mark-to-market method. The rule imposes conditions that reduce the likelihood that a money market portfolio will hold securities that will substantially decline in value and cause the portfolio's net asset value to deviate from one dollar per share. Any money market Portfolio that values its assets using a method prescribed by rule 2a–7 will buy and hold securities of other Portfolios to achieve an exact match between the Portfolio's liability to pay deferred fees and the assets that offset that liability.

6. Section 17(a)(1) prohibits an affiliated person of a registered investment company from selling any security to the company, except in limited circumstances. Each Portfolio may be an affiliate of each other Portfolio. The section was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated. Portico believes that its purchase and sale of securities pursuant to the Plan does not implicate these concerns, but merely facilitates the matching of the Portfolio's liabilities.

7. Section 17(d) prohibits affiliated persons from participating in joint transactions with a registered investment company in contravention of rules and regulations prescribed by the SEC. Rule 17d–1 prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting the transactions While the Plan does have some profit-sharing characteristics, it does not have the effect of placing Portico or any of its Portfolios on a basis different from or less advantageous than that of any director

Applicant's Conditions

Portico agrees that any order granting the requested relief will be subject to the following conditions:

1 With respect to the requested relief from rule 2a–7, for any money market Portfolio that values its assets using the amortized cost method, Portico will (a) buy and hold the securities that determine performance of the deferred compensation plan to achieve an exact match between such Portfolio's liability to pay deferred fees and the assets that offsets that liability and (b) allocate such securities to each money market Portfolio.

2. In the event of a shareholder vote, Portico will vote its shares in the same proportion as the votes of all other shareholders entitled to vote in the matter being voted upon.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30779 Filed 12–14–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2757]

Texas; Declaration of Disaster Loan Area

Hidalgo County and the contiguous counties of Brooks, Cameron, Kennedy, Starr, and Willacy in the State of Texas constitute a disaster area as a result of damages caused by severe storms, high winds, and flooding which occurred October 8 through October 27, 1994. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Feb. 6, 1995 and for economic injury until the close of business on Sept. 6,

1995 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and Small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 275706 and for economic injury the numbers 840500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 6, 1994.

Philip Lader,

Administrator.

[FR Doc. 94–30833 Filed 12–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2131]

Overseas Security Advisory Council Renewal

The Department of State has renewed the Charter of the Overseas Security Advisory Council. This advisory council will continue to interact on overseas security matters of mutual interest between the U.S. Government and the American private sector. The council's initiatives and security publications provide a unique contribution to protecting American private sector interests abroad. The Under Secretary for Management has determined that the council is necessary and in the public interest.

The council consists of four U.S. Government agencies and twenty-one American private sector companies and organizations. The council will follow the procedures prescribed by the Federal Advisory Committee Act (FACA) (Public Law 92–463). Meetings will be open to the public unless a determination is made in accordance with Section 10(d) of the FACA, 5 U.S.C. 552b(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the Federal Register at least 15 days prior to the meeting.

For more information contact Gary Schatz, Executive Director, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, phone: 202–663–0869.

Dated: December 5, 1994.

Mark Mulvey,

Director of the Diplomatic Security Service and Chairman, Overseas Security Advisory Council.

[FR Doc. 94–30823 Filed 12–14–94; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–109]

Chemical Transportation Advisory Committee (CTAC) and CTAC Subcommittee on Marine Vapor Control Systems Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: CTAC and its Subcommittee on Marine Vapor Control Systems will meet to discuss various issues relating to the marine transport of hazardous materials in bulk. Agenda items include discussion of amendments to domestic regulations, hazardous substance response plans, and international activities. Both meetings will be open to the public.

DATES: The CTAC meeting will be held on Monday, January 9, 1995, from (9:30 a.m. to 3 p.m. The Subcommittee on Marine Vapor Control Systems meeting will be held on Tuesday, January 10, 1995, from 9:30 a.m. to 5 p.m. Persons wishing to make oral presentations should notify the Executive Director, listed below under **FOR FURTHER INFORMATION CONTACT**, on or before January 3, 1995.

ADDRESSES: The CTAC meeting will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001. The Subcommittee on Marine Vapor Control Systems meeting will be held in Room 4315, U.S. Coast Guard Headquarters. Written material should be submitted to Commander K.J. Eldridge, Executive Director, Commandant (G–MTH–1), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander K.J. Eldridge, Executive Director, or Lieutenant R.J. Raksnis, Executive Assistant, Commandant (G–MTH–1), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593–0001, telephone (202) 267–1217.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The agenda for the CTAC meeting will include the following topics:

(1) Introduction and swearing in of new members and election of a new chair;

(2) Discussion of issues such as the status of revisions to 46 CFR Parts 151 and 152, status of maritime regulatory reform, and results of the inert gas systems field survey;

(3) Reports from Revisions to 46 CFR Parts 151 and 152, Marine Occupational Safety and Health, and Marine Vapor Control Systems Subcommittee;

(4) New tasking regarding the development of hazardous substance response plans for facilities and vessels;

(5) Discussions of international activities, including tank filling limits, air pollution from ships, and the rewrite of Annex II to MARPOL; and

(6) Discussions on human factors in the Coast Guard, chemical compatibility update, and marine vapor control systems for hazardous air pollutants.

The Subcommittee on Marine Vapor Control Systems will review the results of the hazard and operability studies that were conducted to identify safety hazards that may exist when using a vapor control system during tank barge cleaning operations.

Attendance at both meetings is open to the public. With advance notice, and at the Chairman's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than January 3, 1995. Written material may be submitted at any time for presentation to the Committee or Subcommittee.

Dated: December 8, 1994.

N.W. Lemley,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–30799 Filed 12–14–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–94–44]

Petition for Waiver; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of petitions for waiver received.

SUMMARY: This notice contains summaries of certain petitions requesting a waiver from the interim compliance date requirement in 14 CFR part 91, § 91.867. Requesting a waiver is allowed through § 91.871. 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 by December 29, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules 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 Ave., SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7624.

Issued in Washinghton, D.C. on December 13, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Waiver

Docket No. 27994.

Petitioner: Vanguard Airlines, Inc.

Regulations Affected: 14 CFR 91.867

Description of Waiver Sought: To allow Vanguard Airlines, Inc., to operate its aircraft after December 31, 1994, without meeting the interim compliance date for fleet transition to Stage 3 aircraft.

Docket No. 27996.

Petitioner: Volga-Dnepr J.S. Cargo Airline.

Regulations Affected: 14 CFR 91.867

Description of Waiver Sought: To allow Volga Dnepr J.S. Cargo Airline to operate its aircraft after December 31, 1994, without meeting the interim compliance date for fleet transition to Stage 3 aircraft.

[FR Doc. 94–30941 Filed 12–13–94; 11:51 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 9, 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.

Special Request:

In order to conduct the survey described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by December 21, 1994. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Survey Project Number: IRS PC:V 94–013–G.

Type of Review: Revision.

Title: Federal Tax Deposit (FTD) Delinquency Survey.

Description: The objective of this survey is to determine the causes of the apparent failure to meet required deposit requirements and react to those causes that are educational or systemic in nature. Feedback on the Revenue Officer's "meet and deal" qualities will also be used to enhance IRS employee training. With the probable changes to the Federal Tax Deposit (FTD) Alert System we need a viable customer measurement. This survey will be a pilot test within a small IRS Post-of-Duty (POD) in Orlando, Florida to see if there could be nationwide significance in this type of effort.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 60.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other

Estimated Total Reporting Burden. 5 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW,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. 94–30849 Filed 12–14–94; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

December 9, 1994.

The Department of the 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.

Special Request

In order to conduct the survey described below in a timely manner, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by December 21, 1994. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Survey Project Number: IRS PC:V 94–012–G.

Type of Review: Revision.

Title: One-Stop-Service Survey

Description: The Coordinated Examination Program (CEP) has initiated numerous changes in the last few years to improve the quality of examinations and to reduce taxpayer burden. Through one of these changes, the "One-Stop-Service" concept, the CEP is encouraging taxpayers to view the case manager and the audit team as the principal source and initial contact for all corporate matters relating to the

Internal Revenue Service. To evaluate how the CEP is progressing in their effort, a questionnaire has been developed to determine if the concept is being employed by the CEP case managers and audit teams and to ascertain how effective one stop service is in resolving taxpayer problems.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 42 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. 94–30848 Filed 12–14–94; 8:45 am]

BILLING CODE: 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

December 9, 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 Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0182.

Form Number: ATF F 5400.13/ 5400.16.

Type of Review: Extension.

Title: Application for License or Permit.

Description: This form allows application for an explosives license or permit, which, if approved, permits the holder to engage in manufacturing, importing, dealing or using explosive materials under the Organized Crime Control Act of 1970. Emphasis is placed on qualifying applicants and identifying proper storage facilities.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 2,100.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,200 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

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. 94–30847 Filed 12–14–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

December 7, 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 Alcohol, Tobacco and Firearms (BATF)

OMB Number: New.

Form Number: ATF F 5300.38.

Type of Review: New collection.

Title: Application for an Amended Federal Firearms License.

Description: This form is used when a Federal Firearms Licensee makes application to change the location of the firearms business premises. The applicant must certify that the proposed new business premises will be in compliance with State and local law for that location. A copy of this application must be submitted to the Chief, Law Enforcement Officer as intent to apply for an amended Federal Firearms License.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents. 18,000.

Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 22,500 hours.

OMB Number: 1512–0081.

Form Number: ATF F 5130.23.

Type of Review: Extension.

Title: Brewer's Bond Continuation Certificate.

Description: ATF Form 5130.23 is executed by brewers and surety companies to continue the coverage of bonds by the surety company. Brewers may use this form rather than executing an entirely new bond. This certificate identifies the brewer and the surety company, and it identifies the bond(s) which are being continued in effect.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 115.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 115 hours.

OMB Number: 1512–0090.

Form Number: ATF F 1643 (5100.18).

Type of Review: Extension.

Title: Application for Amended Basic Permit Under the Federal Administration Act.

Description: ATF Form 1643 (5100.18) is completed by persons who hold a basic permit to operate as an importer or wholesaler, producer, rectifier, bottler, or warehouseman of distilled spirits, wine, or malt beverages with ATF, but who intend to change their basic permit due to changes in name, trade name, location, or operations of their business.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1512–0198.

Form Number: ATF REC 5110/03 and ATF F 5110.28.

Type of Review: Extension.

Title: Distilled Spirits Plant (DSP) Processing Records and Reports

Description: The information collected is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant

operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 134.

Estimated Burden Hours Per Respondent/Recordkeeper: 3 hrs., 30 mins.

Frequency of Response: Monthly.

Estimated Total Reporting/Recordkeeping Burden: 3,886 hours.

OMB Number: 1512–0520.

Form Number: ATF F 5300.35.

Type of Review: Extension.

Title: Statement of Intent to Obtain a Handgun(s).

Descriptions: This form is used to establish the eligibility of the buyer and to determine if a handgun sale is legal, prior to the actual delivery of the handgun. It becomes part of the dealer's records and is used by Criminal Enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons who have violated the Gun Control Act.

Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees.

Estimated Number of Respondents/Recordkeepers: 8,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1,316,750 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

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 Manager Officer

[FR Doc. 94–30846 Filed 12–14–94, 8:45 am]

BILLING CODE 4810–31–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Glory of Venice: Art in the Eighteenth Century." (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at National Gallery of Art on or about January 29, 1995 through April 23, 1995 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: December 9, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–30841 Filed 12–14–94, 8:45 am]

BILLING CODE 8230–01–M

Central American Program of Undergraduate Scholarships—CAMPUS X

ACTION: Notice—Request for Proposals.

SUMMARY: The American Republics Programs Branch of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to host groups of Central American undergraduate students for English language training and the final two years of their undergraduate studies. USIA anticipates awarding five or six grants under this competition in the tenth Central American Program of Undergraduate Scholarships (CAMPUS).

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AEL–94–01.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, April 7, 1995. Faxed documents will not be accepted, nor will documents postmarked on April 7, 1995 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: American Republics Programs Branch, E/AEL, Room 314, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, tel: 202–619–5365, fax: 202–401–1720, Internet: CAMPUS@USIA.GOV to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Debra Shetler on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the American Republics Programs Branch or submitting their proposals. Once the RFP deadline has passed, the American Republics Programs Branch may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, Ref.: E/AEL–95–01, Office of Grants management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to

[1] A copy of this list may be obtained by contacting Ms. Carol B. Epstein, Assistant General Counsel, at 619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547

race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The objectives of the program are to improve the range and quality of educational alternatives for talented young Central Americans of limited financial means, to match educational opportunities with regional needs, and to build lasting links between the U.S. and Central America.

Guidelines

Approximately 63 upper division transfer students from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama will be sponsored for up to 30 months of U.S. study toward a bachelor's degree, including intensive English language training and undergraduate academic coursework. In selecting student grantees, the Agency will seek those who, by prior academic preparation and performance, are likely to succeed in rigorous U.S. college courses.

USIA will award grants to five or six accredited U.S. colleges and universities to host nationally diverse groups of 10–14 student participants.

Applicant institutions should pledge administrative and faculty commitment, as well as instructional and counseling support, to implement an extensive range of educational and cultural program elements and to assist students in achieving academic and personal success.

Student Selection

A joint private sector-USIA team will review students' applications, conduct interviews, and consider test scores, transcripts, transferable credits, prospective class standing, linguistic aptitude, and all other factors relevant to students' likelihood of achieving academic success and earning a degree within the time limits of the program. The team will recommend the selection and placement of candidates to USIA, final selection is subject to review by the J. William Fulbright Foreign Scholarship Board.

Admission and Credit Transfer

Once student participants are identified, the application dossiers will be sent to the prospective host institution, which will have a specified time in which to review student qualifications and confirm admission.

Project Director's Workshop

USIA will hold a two-day conference in Washington, D.C. in October 1995 for university Project Directors or Project Administrators/Coordinators. Project issues and policies will be discussed with USIA staff.

Plenary Arrival Orientation Program

USIA will conduct an orientation program for the students in January 1996 (the actual dates to be determined in accordance with the selected universities' academic calendars), in Miami, Florida.

II. The Program

Intensive English Language Program

Institutions shall provide intensive English as a Second Language programs responsive to widely varying levels of individual ability and rates of progress to enable the students to achieve adequate English fluency to enter regular academic courses in the fall of 1996.

Nature and Level of Academic Program

CAMPUS students will enroll at each U.S. host institution as undergraduates seeking (unless otherwise specified) to earn a bachelor's degree during the scholarship period. As they will have completed at least two years of college-level study at Central American institutions, CAMPUS students should in many ways be considered upper division (third and fourth year) students.

Academic Program—Guidance and Monitoring

Host institutions are expected to ensure that CAMPUS students are enrolled in a substantive undergraduate study program throughout the duration of the scholarship. If careful assessment of a participant's prior studies suggests that a bachelor's degree can be earned before the program expiration date, that participant will be expected to return home immediately after graduation. Conversely, if careful assessment while the student is pursuing studies in the U.S. suggests that a bachelor's degree cannot be earned within the scholarship period, USIA will work with the host institution to determine an appropriate course of action.

Academic Program—Fields of Study

Institutional grantees must offer academic programs in three or more of the following fields of study: Business Administration, Communications, Education, Social Sciences, Natural Sciences, and Information Sciences.

The proposal should include a list of all the major fields of study and the specialization offered in which, based on the institution's previous experience with Central American students and the standards of the departments involved, the students should have a reasonable expectation of attaining a degree in the specializations offered.

Special Programs and Services

The special needs of the CAMPUS X participants group should be addressed in orientation programs focusing on social and cultural adaptations, introduction to preparation for U.S. scholarly traditions and classroom methodology, ongoing intercultural counseling, appropriate undergraduate coursework, and intellectual, cultural, and social enhancement activities, e.g. attending a play, concert, lecture, sports event, or other community or cultural activities, are encouraged and should be offered during the entire length of the program. To the extent possible, faculty members or local citizens with relevant expertise should prepare and/or accompany the students for each activity.

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details.

Proposed Budget

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Provide a three-column outline showing funds requested from USIA, contributions by the applicant institution or other sources, and total expenditures on major line items (tuition, maintenance, cultural activities, administration, etc.) for a group of ten (10) students. Provide a separate and comparable cost per additional student budget outline and explanation for USIA's use in the event your proposal is funded and your institution is asked to host more than 10 students.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of American Republics and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7 Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. Award-receiving organizations/ institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 7, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: December 7, 1994

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 94–30573 Filed 12–14–94; 8:45 am]

BILLING CODE 8230–01–M

International Educational and Cultural Activities Discretionary Grant Program

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award program. Public or private nonprofit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to develop projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *, to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

Interested applications should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to the Fall Discretionary Grant Program. The announcement number is E/P–95–29. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, March 10, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 10, 1995, but received at a later date. It is the responsibility of each grant applicant to

ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through March 10, 1995, for projects where activities will begin between July 1, 1995 and December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, E/PL, Room 216, United States Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, (202) 619–5326, to request detailed application packets, which include award criteria, all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please direct inquiries and correspondences to USIA Program Officer Laverne Johnson, E-Mail (LJohnson@USIA.GOV).

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications to: U.S. Information Agency, REF: E/P–95–29 Spring Discretionary Grant Competition, Grants Management Division (E/XE), 301 4th Street, S.W., Room 336, Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: Urban planners, jurists, specialized journalists (specialists in economic, business, political analysis, international affairs), business professionals, NGO leaders, environmental specialists, parliamentarians, educators, economic planning, and other government officials.

Guidelines

Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

The Newly Independent States: USIA and other agencies of the U.S. government have numerous programs in the countries of the NIS (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). As such, the amount of funds for that part of the world in this competition will be extremely limited. Proposals which would normally be considered for other USIA grant competitions will not be accepted. E/P encourages organizations to seek clarification on these points before presenting a proposal.

Europe, Eastern Europe, and the Baltics (EU): Projects are encouraged involving Western Europe (including Canada). Priority will be given to projects relating to conflict resolution, tolerance, diversity, and the environment. Due to the fact that the Office has or is in the process of conducting specific competitions in Eastern Europe and the Baltics, we will not accept proposals for youth exchange programs or for programs in the following thematic areas: public administration, business management, independent media development, journalism training, and local government administration and municipal management.

East Asia and the Pacific (EA): Priority consideration will be given to regional or subregional proposals that focus on the following themes: (1) APEC-related economic and trade issues; (2) The information superhighway: technological changes and effects on the individual and society; (3) Press professionalism, press ethics and good governance; and (4) The evolving security dynamics in the Asia-Pacific region.

American Republics (AR): Priority will be given to projects in the following areas: Civil-military relations, effective administration/decentralization, American studies, judicial reform, and the protection/promotion of minority and indigenous rights. Preference will be given to projects involving Haiti which focus on: democracy building, support for indigenous non-governmental organization (NGOs), and the environment.

Africa (AF): While proposals in all fields are encouraged, emphasis will be given to proposals which focus on strengthening democratic institutions.

North Africa, Near East and South Asia (NEA): Priority will be given to projects which promote civil society, democratization, economic reform, free markets, tolerance and pluralism, conflict resolution, and Israeli and Arab understanding.

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; *i.e.*, clerical work, auto maintenance, etc, and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (*i.e.*, one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country USIS posts, prior to submitting proposals.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, USIA and USIS posts abroad retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such proposals.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register.**

For projects that would begin after December 31, 1995, competition details will be announced in the **Federal Register** on or about June 1, 1995. Inquiries concerning technical requirements are welcome prior to submission of applications.

Funding

Although no set funding limit exists, proposals for less than $150,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for USIA funding support is keen.

The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals with substantial private sector support from foundations, other institutions, *et. al.* will be deemed highly competitive. The Recipient must provide a minimum of 33 percent cost sharing of the total project cost.

Cost sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E-Cost Sharing and Matching and should be described in the proposal. In the event the Recipient does not provide a minimum of 33 percent cost sharing, the Agency's contribution will be reduced in proportion to the Recipient's contribution. The Recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed. The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed on one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Note: the 20 percent limitation of "administrative costs" included in previous announcements does not apply to this RFP.

Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contract offices, as well as the USIA geographic regional office and the USIS post overseas, where appropriate. Proposals may also be reviewed by the USIA's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1 *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substance undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program objectives and plan.

4. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Value of U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goal.

7. *Institution Reputation/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. *Evaluation Plan:* Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

10. *Cost-Effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11 *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Support of Diversity:* Proposals should demonstrate the recipients' commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their activities.

Notice

The need of the program may require the award to reduced, revised, or increased. The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by the Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 8, 1994.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–30842 Filed 12–14–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 240

Thursday, December 15, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, December 13, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Application of First Security Bank, Searcy, Arkansas, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Searcy and Heber Springs branches of Worthen National Bank of Arkansas, Little Rock, Arkansas, and for consent to establish the Searcy and Heber Springs branches of Worthen National Bank of Arkansas as branches of First Security Bank.

Matters relating to the Corporation's supervisory activities.

Personnel matters.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and concurred in by Chairman Ricki R. Tigert, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: December 13, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94-31023 Filed 12-13-94; 3:55 pm]

BILLING CODE 6714-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 2-95 Amended

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., Dec., 21, 1994 at 10:00 a.m.—Consideration of Final Decisions and Amended Final Decisions on claims against Iran.

Subject matter not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616-6988.

Dated at Washington, DC on December 13, 1994

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 94-31021 Filed 12-13-94; 3:55 pm]

BILLING CODE 4410-01-P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities And Exchange Commission will hold the following meetings during the week of December 19, 1994.

Open meetings will be held on Monday, December, 19, 1994 at 10:00 a.m., and Tuesday, December 20, 1994, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Monday, December 19, 1994, following the 10:00 a.m., open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, December 19, 1994, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by George Salloum, former head trader of Thomas James Associates, Inc., and by the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact Kermit B. Kennedy at (202) 942-0879.

The subject matter of the closed meeting scheduled for Monday December, 19, 1994, following the 10:00 a.m., open meeting will be:

Post oral argument discussion.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive action.

The subject matter of the open meeting scheduled for Tuesday, December 20, 1994, at 10:00 a.m., will be:

1. Consideration of a release that would adopt amendments to Rule 19b-4 and Form 19b-4 under the Securities Exchange Act of 1934 (the "Act") to expand the scope of proposed rule changes filed by self-regulatory organizations ("SROs") that may become effective immediately. The release also would adopt amendments to Rules 6a-2, 15Aj-1, 17a-21, and Form X-15AJ-2 under the Act to streamline and conform requirements for SROs and the Municipal Securities Rulemaking Board to file certain information annually. For further information, please contact Andrew S. Margolin, at (202) 942-0073.

2. Consideration of whether to adopt proposed Rule 17a-23 and form 17A-23, to establish recordkeeping and reporting requirements for brokers and dealers that operate automated trading systems. The rule would require registered broker-dealer sponsors of these systems to maintain participant, volume and transaction records and to report system activity periodically to the Commission. The Commission published

the proposed Rule and Form for comment on January 9 1994 For further information, please contact Kristen N Geyer (202) 942–0799

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 contract: The Office of the Secretary (202) 942–7070

Dated December 13, 1994

Margaret H McFarland,

Deputy Secretary

[FR Doc 94–31022 Filed 12–13–94, 3:55 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 240
Thursday, December 15, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85D-0505]

Guideline for Adverse Experience Reporting for Licensed Biological Products; Availability

Correction

In notice document 94-26484 appearing on page 53994, in the issue of Thursday, October 27, 1994, make the following corrections:

1.On page 53994, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the first full paragraph, in the third line, "with" should read "will".

2.On the same page, in the same column, in the second paragraph, in the first line, "guidelines" should read "guideline".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Adminstration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin in Combination With Roxarsone and Lincomycin, or Virginiamycin, or Roxarsone and Virginiamycin

Correction

Rule document 94-12288 beginning on page 26423 in the issue of Friday, May 20, 1994 was published out of order and should have appeared before rule document 94-12289.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4210-06; GP4-199; OR-50856]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

Correction

In notice document 94-22841 beginning on page 47346 in the issue of Thursday, September 15, 1994 make the following correction:

On page 47346, in the second column, in the land description, in the 16th line "Sec. 38" should read "Sec. 28".

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

Correction

In notice document 94-29514, beginning on page 61345 in the issue of November 30, 1994, make the following corrections:

1. On page 61345, in the third column, under the heading "Schedules Pending", in paragragh number 4, in the third line, "(N1-461-94-3)" should read "(N1-467-94-3)".

2. On page 61346, in the first column, in paragraph number 10, in the second line, "(N1-269-92-1)" should read "(N1-269-92-2)".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-20630; File No. 812-9158]

Nationwide Variable Account-7, et al.

Correction

In notice document 94-26218 beginning on page 53502 in the issue of Monday, October 24, 1994, the release number is corrected as set forth above

BILLING CODE 1505-01-D

federal register

Thursday
December 15, 1994

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 174

Hazardous Materials in COFC and TOFC Service; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 174

[Docket No. HM–197; Amdt. Nos. 171–130, and 174–79]

RIN 2137–AC26

Hazardous Materials in COFC and TOFC Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes standards for transporting portable tanks containing certain hazardous materials in container-on-flatcar (COFC) or trailer-on-flatcar (TOFC) service, without obtaining prior approval from the Federal Railroad Administration (FRA). Adoption of these standards as rules of general applicability will provide wider access to the benefits of transportation services that have been proven to be effective and safe. Persons holding approvals issued prior to this rulemaking who are unable to meet the standards established by this final rule will need to re-apply to the Associate Administrator for Safety, FRA, prior to the expiration date stated in their current approval.

The intended effects of this action are to reduce the need for obtaining written approval for certain COFC or TOFC services and to facilitate domestic and international commerce.

DATES: *Effective date.* February 13, 1995.

Compliance date. Compliance with the requirements as adopted herein is authorized immediately.

Incorporation by reference date. The incorporation by reference of a publication listed in this final rule is approved by the Director of the Office of the Federal Register as of February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Edward W. Pritchard, Telephone (202) 366–0897, Chief Hazardous Materials Division, RRS–12, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone (202) 366–0897 or Thomas A. Phemister, Telephone (202) 366–0443, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, RCC–30, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 1985, RSPA published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) titled "Shippers; Use of Cargo Tanks, Portable Tanks, IM Portable Tanks, and Multi-Unit Tank Car Tanks in COFC and TOFC Service," under Docket No. HM–197, Notice No. 85–2 (50 FR 18278). In the ANPRM, RSPA solicited comments and information to assist in the identification and development of safety criteria for COFC and TOFC service of tanks transporting hazardous materials. Specific comments were requested on the adequacy of means used to secure a highway chassis (trailer) or a container to a flatcar, and the trailer's potential vulnerability in COFC/TOFC service. Comments were also requested on other safety issues involving the double stacking of containers, securement and cushioning of trailers and containers, liquid surge prevention, tank thermal protection, tank puncture resistance, and train placement. A public hearing was held on June 11, 1985, to discuss the proposals.

On May 7, 1993, RSPA published in the **Federal Register** a notice of proposed rulemaking (NPRM) under Docket No. HM–197, Notice No. 93–11 [58 FR 27257], based on comments received to the ANPRM. In the NPRM, RSPA proposed to allow the transportation of IM portable tanks and portable tanks containing certain hazardous materials in COFC and TOFC service under conditions prescribed in the Hazardous Materials Regulations (HMR). Currently, these COFC and TOFC movements are authorized under approvals issued by the Associate Administrator for Safety, FRA. RSPA explained in the preamble of the NPRM that, because of strong concerns raised by commenters on the transport of cargo tank motor vehicles in TOFC service and because of the limited availability of experience data, these services would remain under FRA approval. With regard to the transport of multi-unit tank car tanks (DOT 106 and 110), FRA believes that less than ten units are being transported and that they should continue under FRA approval.

RSPA received seven comments in response to the NPRM from rail carriers, rail car and portable tank manufacturers, and trade associations representing rail carriers and shippers. Six commenters supported the proposals but requested certain changes.

The remaining commenter stated that the transport of hazardous materials in COFC/TOFC systems should be subject to the same performance requirements in accidents as those currently required for tank cars transporting the same materials. The commenter also took exception to RSPA's statement in the preamble of the NPRM that the proposal was, in part, based on the transportation safety record of more than 50,000 portable tanks in COFC/TOFC service. The commenter stated that it had not seen the results of this sample or a comparison between performance of these containers and the performance of tank cars presently authorized to transport similar materials.

RSPA and FRA disagree with this commenter's position. The capacity of a portable tank (5000–6000 gallons) is considerably less than that of a rail tank car (18,500–34,500 gallons), and tank cars and portable tanks have significantly different operating environments. FRA has approved methods for portable tanks transporting hazardous materials in COFC and TOFC service for more than ten years. Based on the years of satisfactory transportation experience using safety standards established under the approval process, RSPA and FRA believe additional safeguards are unnecessary. Therefore, this final rule merely incorporates the approval safety standards into the HMR and eliminates the approval process.

On July 26, 1994, RSPA published a final rule establishing standards for the construction, maintenance and use of intermediate bulk containers (IBCs) for the transportation of hazardous materials [59 FR 38040]. IBCs are bulk packagings with a capacity ranging from 450 liters (119 gallons) to 3,785 liters (1,000 gallons) and are designed for mechanical handling. IBCs are generally transported in closed freight containers and transport vehicles when transported by rail. These packagings may continue to be transported in this manner in conformance with § 174.63(b).

The following is a summary of the changes made under this final rule and, where applicable, a discussion of comments received.

II. Summary of Regulatory Changes

Section 171.7

In the table in paragraph (a)(3), the proposal would have removed the entry for the Association of American Railroads's (AAR) publication "AAR Specification for Tank Cars" and updated the entry for "AAR Specification for Tank Cars, Specification M–1002, Section C" from the 1988 edition to the 1990 edition. The AAR and another commenter requested adoption of the 1992 edition of the publication. The 1992 publication contains discussions on the controlled interchange movement of portable tanks on double-stack cars without end-of-car cushioning. Agreeing with commenters that the 1992 edition should be adopted.

RSPA removed the "AAR Specification for Tank Car" entry and incorporated by reference the 1992 edition of the AAR publication under another rulemaking action (Docket No. HM–166Z [59 FR 28487]). As proposed in the NPRM, an entry is added for "AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment." The edition referenced is corrected to read "1988," which is the latest edition.

Section 174.61

RSPA proposed to revise this section to include requirements applicable to transport vehicles and freight containers containing packages of hazardous materials only. This proposal was supported by commenters and is adopted in this final rule.

Section 174.63

This section contains requirements for portable tanks, IM portable tanks, cargo tanks, and multi-unit tank car tanks transported by rail. Proposed paragraph (a) contained requirements applicable to DOT 51, 52, 53, 56, and 57 and IM 101 and 102 portable tanks that are transported inside a transport vehicle or container body. A commenter stated that the term "container body" was ambiguous and requested that the term "container body" be replaced with the term "freight container." RSPA agrees and has made the revision. In addition, the proposed provisions contained in this section are rearranged for clarity. A general provision on the transport of tanks by rail, in proposed paragraph (c), is moved to paragraph (a). Proposed paragraphs (a) and (b), a remaining provision in paragraph (c), and paragraph (d) are rearranged as paragraphs (b), (c), (d) and (e) respectively.

Several commenters requested clarification on the prohibition in proposed paragraph (b)(3) against movement of portable tanks in a double-stack configuration. They asked whether it was RSPA and FRA's intent to disallow the transport of portable tanks in double-stack cars or to disallow placement of a portable tank as the top container in a double-stack configuration. RSPA and FRA's intent was to disallow portable tanks from being placed under or on top of another portable tank or freight container, creating a double-stack configuration. Several commenters requested revisions to allow the transport of portable tanks in double-stack well cars (i.e., a flatcar with a depression in the center that allows the container to extend below the normal floor plane). One commenter recommended placement of the portable tanks in the bottom well, with the outlet valve facing outboard away from the middle of the car and towards the end of the car. The commenter also recommended that the well car be equipped with a device to fill voids between the sides and corners of the well and the frame. RSPA and FRA agree that well cars should be allowed, subject to the conditions that the portable tanks are located in the bottom well in a single-stack configuration and are fitted to prevent movement in the well car. RSPA and FRA also agree that the outlet valves should face towards the ends of the car to allow ready access to these valves and to facilitate emergency response in case of their leakage. This provision is revised accordingly and appears in paragraph (c)(6) in this final rule.

A commenter pointed out that proposed paragraph (b)(4), containing requirements for TOFC service, incorrectly refers to AAR Specification M–952 which addresses only COFC service. RSPA agrees the reference to AAR Specification M–952 is incorrect and has removed the reference from the provision appearing in paragraph (c)(4) in this final rule.

Finally, a commenter requested that rail carriers be allowed to move cargo tanks on flatcars in work trains when necessary for responding to hazardous materials releases. Because work trains are generally associated with railroad maintenance assignments, RSPA agrees only emergency response situations deserve special consideration and has added an exception for cargo tank movements in paragraph (e).

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Polices and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not "substantively the same" as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

(A) the designation, description, and classification of hazardous material;

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses the handling of hazardous materials. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not "substantively the same" as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be April 1, 1995.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule relaxes certain provisions applying to persons who offer for transportation and transport hazardous materials by rail, some of whom are small entities. This rule should result in minor cost savings to affected entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule. This rule, in fact, reduces information collection burdens and should result in minor cost savings to affected entities.

E. Regulations Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action

listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Incorporation by reference, Radioactive materials, Railroad safety.

In consideration of the foregoing, 49 CFR parts 171 and 174 are amended as set forth below:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53

2. In § 171.7, in paragraph (a)(3) table, under the Association of American Railroads, the existing entry for "AAR Manual of Standards and Recommended Practices" is revised and a new entry is added, in alphabetical order, to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) Table of material incorporated by reference. * * *

Source and name of material	49 CFR reference
* * * * * * *	
Association of American Railroads	
AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, September 1992.	173.31; 174.63; 179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400.
AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, 1988.	174.63.
* * * * * * *	

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PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 174.61, paragraph (c) is removed and the section heading and the first sentence in paragraph (a) are revised to read as follows:

§ 174.61 Transport vehicles and freight containers on flat cars.

(a) A transport vehicle, freight container, or package containing a hazardous material must be designed and loaded so that it will not become damaged to an extent that would affect its integrity under conditions normally incident to transportation * * *

* * * * *

5. Section 174.63 is revised to read as follows:

§ 174.63 Portable tanks, IM portable tanks, intermediate bulk containers, cargo tanks, and multi-unit tank car tanks.

(a) A carrier may not transport a bulk packaging (e.g., portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flatcar (COFC) or trailer-on-flatcar (TOFC) service except as authorized by this section or unless approved for transportation by the Associate Administrator for Safety, FRA.

(b) A bulk packaging containing a hazardous material (including IM 101 and IM 102 when appropriate according to dimensions and weight distribution) may be transported inside a fully closed transport vehicle or fully closed freight container provided it is properly secured with a restraint system that will prevent it from changing position, sliding into other packages, or contacting the side or end walls (including doors) under conditions normally incident to transportation.

(c) When not transported in conformance with and subject to paragraph (b) of this section, a bulk packaging may be transported in COFC service or TOFC service subject to the following conditions as applicable:

(1) The bulk packaging contains a material packaged in accordance with § 173.240, 173.241, 173.242, or 173.243 of this subchapter;

(2) The tank and flatcar conform to requirements in AAR 600 of the AAR Specifications for Tank Cars.

Specification M–1002, entitled "Specifications for Acceptability of Tank Containers";

(3) For TOFC service, the trailer chassis conforms to requirements in paragraphs 3, 4, 5, and 6 of AAR Specification M–943 "Container Chassis For TOFC Service" of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment",

(4) For COFC service, the container support and securement systems conform to requirements in Specification M–952 "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment".

(5) If transported in a well car—

(i) The tank is not in a double-stacked configuration (i.e., no freight container or portable tank is placed above or below the tank); and

(ii) The tank is transported in the well with its outlet valve facing outward towards the end of the well and away from any adjacent tank or container; and

(6) All securement fittings shall be fully engaged and in the locked position, provided; however, if the tank is transported in a well car, it must be loaded into a well appropriate for the length of the container and any void

filling device present must be secured in its designed appropriate position.

(d) An approval in effect on February 28, 1991 for the transportation of portable tanks or IM portable tanks in TOFC or COFC service expires on the date stated in the approval letter or June 15, 1995, whichever is later.

(e) A carrier may not transport a cargo tank or multi-unit tank car tank containing a hazardous material in TOFC or COFC service unless approved for such service by the Associate Administrator for Safety, FRA. However, in the event of an accident or incident, no such approval is necessary for the transportation of a cargo tank containing a hazardous material in TOFC service under the following condition(s):

(1) There is an emergency need for the cargo tank in order to mitigate the consequences of an incident; and

(2) Movement of the cargo tank is limited to transportation necessary for emergency purposes.

Issued in Washington, DC, on December 7, 1994, under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration

[FR Doc. 94-30593 Filed 12-14-94; 8:45 am]

BILLING CODE 4910-60-P

federal register

Thursday
December 15, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Low Income Housing: Administrative Guidelines: Limitations on Subsidy Layering; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3722; FR–3334–N–05]

Administrative Guidelines: Limitations on Combining HUD and Other Government Assistance; "Subsidy Layering"

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

ACTION: Notice of Administrative Guidelines to be Applied in Implementing section 911 of the Housing and Community Development Act of 1992 (HCDA '92) (42 U.S.C. 3545 note) and section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HRA '89) (42 U.S.C. 3545).

SUMMARY: This document sets forth the Administrative Guidelines which qualified allocating and suballocating Housing Credit Agencies (HCAs), as defined under section 42 of the Internal Revenue Code of 1986, must follow to comply with section 911 of the Housing and Community Development Act of 1992 (HCDA '92). HUD State/Area Offices will apply the Revised Subsidy Layering Guidelines (RSLGs) in accordance with Implementing Instructions to monitor HCAs accepting 911 authority. HUD State/Area Offices also have residual 102(d) Subsidy Layering Review authority and must apply the RSLGs in areas where HCAs do not (non-acceptance of delegation or revocation) or for cases where HCAs cannot (non-LIHTC cases) accept 911 Subsidy Layering Review authority. The RSLGs were designed to ensure that participants in affordable multifamily housing projects do not receive excessive compensation by combining sundry HUD Housing Assistance with assistance from other Federal, State, or local agencies.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: For questions, write to the attention of Helen Dunlap, Deputy Assistant Secretary for Multifamily Housing Programs, Room 6106, 451 Seventh Street, S.W., Washington, D.C. 20410, or call (202) 708–0624; TDD # (202) 708–4594. Please note that these phone numbers are not toll free.

SUPPLEMENTARY INFORMATION:

Purposes

The Revised Subsidy Layering Guidelines (RSLGs) make final the actions taken in the Interim Guidelines published on February 25, 1994, to (1) replace HUD's previous Subsidy Layering Review procedure for Low Income Housing Tax Credit (LIHTC) projects under section 102(d); (2) eliminate redundant Subsidy Layering Reviews on LIHTC projects through implementation of section 911; and (3) activate Subpart D of 24 CFR part 12 for non-LIHTC Subsidy Layering Reviews.

Statutory Basis for Delegation of Authority

Section 911 of the Housing and Community Development Act of 1992 (HCDA '92), as amended by section 308 of the "Multifamily Housing Property Disposition Reform Act of 1994," provides, as follows:

Subsidy Layering Review

(a) Certification Of Subsidy Layering Compliance.—The requirements of section 102(d) of the Department of Housing and Urban Development Act of 1989 may be satisfied in connection with a project receiving assistance under a program that is within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be greater than is necessary to provide affordable housing.

(b) In Particular.—The guidelines established pursuant to subsection (a) shall—

(1) require that the amount of equity capital contributed by investors to a project partnership is not less than the amount generally contributed by investors in current market conditions, as determined by the housing credit agency; and

(2) require that the project costs, including developer fees, are within a reasonable range, taking into account project size, project characteristics, project location and project risk factors, as determined by the housing credit agency

(c) Revocation By The Secretary.—If the Secretary determines that a housing credit agency has failed to comply with guidelines established under subsection (a), the Secretary—

(1) may inform the housing credit agency that the agency may no longer submit certification of subsidy layering compliance under this section; and

(2) shall carry out section 102 (d) of the Department of Housing and Urban Development Reform Act of 1989 relating to affected projects allocated a low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986.

(d) Applicability.—Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) shall apply only to projects for which application for assistance or insurance was filed after the date of enactment of the Housing and Urban Development Reform Act.

Applicability

In all cases where a project receives HUD Housing Assistance (HHA) and receives or is expected to receive Other Government Assistance (OGA), a section 102(d) or 911 certification is required. That certification shall be executed affirmatively without further review, unless developers or owners combine HHA and OGA which programmatically allow payment for similar project uses within the same Multifamily Project. In such cases, Subsidy Layering Reviews are required. HHA includes the types of assistance listed in Subpart D, 24 CFR Part 12. OGA is broadly defined to include "any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof." (See section 102(b)(1) of HRA '89 and 24 CFR 12.30.) A Subsidy Layering Review will be required even if HHA and OGA are not requested and combined at precisely the same time, if the available Sources may pay for similar Uses. (There are potential overlaps in program assistance provision periods.) Nevertheless, a detailed Subsidy Layering Review will not be required if HHA and OGA Sources categorically cannot duplicate payment of similar Uses during any overlap in periods, e.g., if an HHA program of rental assistance pays only for operations and maintenance, while the OGA program pays only for capital improvements. (See Comment Responses 5 and 17 below for other examples.) Note that there must be the LIHTC form of OGA combined with HHA for an HCA to perform a 911 Subsidy Layering Review.

FHA-Housing applied other Administrative Guidelines (See **Federal Register**, dated April 9, 1991, at 56 FR 14436) and Instructions to HHA requests received prior to February 25, 1994. HUD published its Interim Guidelines for effect on February 25, 1994, at 59 FR 9332, inviting further public comment for their refinement. This notice responds to those comments, makes revisions as discussed below, and establishes the Final RSLGs.

HUD reserved until February 25, 1994 implementation of its regulations at 24 CFR Part 12, Subpart D (as well as implementation of conforming changes made to HUD's program regulations—see **Federal Register**, January 16, 1992, 57 FR 1942) for Subsidy Layering Review of Non-LIHTC projects under section 102(d) of HRA '89. These regulations are now fully effective for all forms of OGA combined with HHA. The Final RSLGs and HUD's Implementing Instructions supersede HUD's previously published notices, memoranda, Administrative Guidelines and February 25, 1994 Interim Guidelines.

HCAs may communicate their acceptance of section 911 Subsidy Layering Review authority to HUD State/Area Offices for all projects involving LIHTCs. HCAs may also subsequently re-delegate Subsidy Layering Review authority back to the HUD State/Area Office through written notice. HUD MFIOs will perform section 102(d) Subsidy Layering Reviews for all projects combining non-LIHTC forms of OGA with HHA, and monitor all 911 Subsidy Layering Reviews. HUD State/Area Offices will also perform 102(d) Subsidy Layering Reviews for all LIHTC projects located in states or areas where the HCA having allocation or suballocation authority has declined to accept section 911 Subsidy Layering Review authority, has re-delegated the authority back to HUD, or has had its authority revoked by HUD for non-compliance with the RSLGs. If monitoring reviews of an HCA's files are deemed necessary, HCAs must allow designated HUD or Office of Inspector General personnel access to all section 911 Subsidy Layering Review records. HCAs may appeal HUD State/Area Office determinations to revoke section 911 Subsidy Layering Review authority directly to Headquarters.

The RSLGs deliberately emphasize HUD mortgage insurance and HCA LIHTC assistance, because these forms of HHA and OGA provide comprehensive debt and equity financing for the new construction and rehabilitation of multifamily units. Please note that acquisition and rehabilitation LIHTCs can be combined with non-mortgage insurance HHA without necessarily triggering 102(d) or 911 Subsidy Layering Reviews (See Comment Response 17 below and HUD State/Area Office Implementing Instructions for further clarification).

When a 102(d) or 911 Subsidy Layering Review is triggered, additional application exhibits are required (See HUD State/Area Office Instructions). If the Sponsor has previously submitted its Form HUD–2880, "Applicant/Recipient Disclosure/Update Form," to HUD with its mortgage insurance application and indicated no intention to apply for or receive LIHTCs, and the application has been processed through to a commitment as of the date of RSLG publication, and the Sponsor now submits Form HUD–2880 revisions indicating application for or receipt of LIHTCs, then a "significant deviation" from the Form HUD–92013, "Application for Multifamily Housing Project," is proposed, and new processing fees are required. For cases reviewed under HUD's previous guidelines which have not reached final endorsement, Sponsors may accept the results of that previous Subsidy Layering Review or resubmit the case to the applicable HUD State/Area Office or HCA for Subsidy Layering Review under the RSLGs.

The Office of Public and Indian Housing (PIH) will publish a separate set of guidelines which will apply to Section 8 Moderate Rehabilitation projects developed under 24 CFR Part 882, Subparts D and E, and project based Rental Certificate projects developed under part 882, Subpart G. Until PIH's guidelines are published, Subsidy Layering Reviews will continue to be conducted at Headquarters, with input from PIH Field Offices. In performing these reviews, PIH will rely on the Interim Administrative Guidelines published February 25, 1994.

The Office of Special Needs Assistance Programs (SNAPS), of the Office of Community Planning and Development, will issue its own set of guidelines, tailored to its individual programs. Until further guidance is provided to CPD Field Offices and SNAPS grantees, Subsidy Layering Reviews for Section 8 Moderate Rehabilitation SRO projects and SRO projects under the Shelter Plus Care Program will continue to be conducted at Headquarters. For these reviews, SNAPS will generally rely on the Interim Administrative Guidelines published February 25, 1994. Please contact Maggie H. Taylor, Acting Director, (202) 708–4300 for additional information.

Responses to Public Comments

The Department published Interim Guidelines on February 25, 1994 (59 FR 9332) which: initially implemented section 911 of HCDA '92; revised its implementation of section 102(d) of HRA '89; and invited further public comment. Comments were received from 16 sources including 6 national trade organizations or their legal representatives, 5 state or city housing credit agencies (HCAs), 2 law firms, 1 mortgage banker, 1 syndicator, and 1 housing development consultant. Issues raised and HUD's responses are organized as follows:

Comment No.	Issue reference
1	Semantics: New Title and Organization.
2	HUD Handbook References and Non-LIHTC Subsidy Layering Reviews.
3	Pipeline Cases and Subsidy Layering Review Timetables.
4	Which HCAs May Accept 911 Subsidy Layering Review Authority.
5	What Types of OGA Trigger a Subsidy Layering Review
6	"Back-End" Subsidy Layering Reviews and Cost Certification.
7	Communication between HUD State/Area Offices and HCAs.
8	Monitoring Details.
9	HCA Fees if 911 Subsidy Layering Review Authority Accepted.
10	Blanket Approvals to Exceed Safe Harbors.
11	Revisions to Standards 1 through 3.
12	Absolute Ceilings for Standards 1 through 3.
13	Revisions to Standard 4.
14	Standard 4 Typical Ownership Requirements.
15	Acceptable Source and Use Statement Formats.
16	"Applicability Exception" Category.
17	Additional RSLG Exclusions.
18	Additional RSLG Inclusions.
19	Operating Deficit Reserves.
20	Resident Initiative Fund Reserves.
21	Compounding and Discounting of Installments.

1. Whether the title, terminology, and organization should be revised?

Comment: Three commenters noted terminology and organization problems in the Interim Guidelines, and one pointed out problems with the title.

Response: The Department has made several semantic and organizational revisions to the RSLGs. Note that procedural descriptions, HUD forms, and Source and Use (S & U) Formats have been moved from the RSLGs to the HUD State/Area Office Instructions. Regarding the title, HUD accidentally retained the title associated with the previous effective Guidelines which were applicable to only LIHTCs combined with HUD and Other Government Assistance. The title is now amended to "Administrative Guidelines: Limitations on Combining HUD and Other Government Assistance," and may be colloquially referred to as the Revised Subsidy Layering Guidelines (RSLGs).

2. Whether HCA standards should be exclusively referenced in the RSLGs, rather than as alternatives to HUD Handbook standards; and whether the RSLGs should be restructured to more clearly address how HUD will perform Subsidy Layering Reviews for non-LIHTC projects?

Comment: Three commenters suggested that references to HUD Handbook rules not well-known by all market participants are confusing and should be either expanded upon, or simply replaced by an HCA's program administration standards. One suggested that not enough detail is provided for projects utilizing non-LIHTC Other Government Assistance (OGA).

Response: Not all HCAs may accept 911 Subsidy Layering Review authority, and every Subsidy Layering Review case may not involve LIHTCs. The RSLGs must provide standards applicable to all cases. Also, reference to HUD program areas and rules is inevitable since HUD Housing Assistance (HHA) must be involved to trigger a Subsidy Layering Review. If an HCA accepts 911 Subsidy Layering Review authority, HUD State/Area Office communication of HHA program requirements to all parties involved in the transaction is essential. FHA Housing's Implementing Instructions, which have been revised in accordance with RSLG changes, explain in greater detail how HUD State/Area Offices will perform 102(d) Subsidy Layering Reviews for non-LIHTC assisted projects.

3. What rules apply to pipeline cases; and how much time will Subsidy Layering Reviews take to complete?

Comment: Five commenters raised related issues. Four requested clarification regarding the effect of the "Effective Date" of February 25, 1994 to cases pending, or at least some more discussion of "transition rules". Two recommend that the RSLGs bind HUD and HCAs to specific time requirements for 102(d) or 911 Subsidy Layering Reviews.

Response: HCAs have been eligible to accept 911 Subsidy Layering Review authority since February 25; but since few have, HUD is still performing section 102(d) Subsidy Layering Reviews in most states through a collaboration between Headquarters and HUD State/Area Offices. After HUD officially issues its Implementing Instructions and conducts some orientation, HUD State/Area Offices will efficiently perform 102(d) Subsidy Layering Reviews at the local level, and the process may be greatly improved for LIHTC projects where cooperating HCAs accept 911 Subsidy Layering Review authority. Sponsors with cases reviewed under previous Guidelines and Standards have the option of accepting HUD or an HCA's previous determinations, or requesting a new Subsidy Layering Review under the RSLGs. Regarding the establishment of fixed time frames for 911 or 102(d) Subsidy Layering Reviews, HUD will not bind itself or HCAs to definite time periods. If Sponsors fully comply with the new RSLG and HUD State/Area Office Instruction requirements regarding additional application exhibits, then additional application processing time triggered by the Subsidy Layering Review will be kept to a minimum, *e.g.*, in mortgage insurance cases, the Sponsor's submission and updating of Forms HUD–2880, HUD–92013 and exhibits, Financing Plan, Syndication and Partnership Agreements all affect the amount of time required to start construction or rehabilitation.

4. Which Allocating and Sub-Allocating HCAs may accept section 911 Subsidy Layering Review authority?

Comment: Four commenters raised related issues. One commenter noted that the RSLGs do not speak specifically to whether HCAs in New York, Minnesota, and Illinois may independently accept section 911 Subsidy Layering Review authority, and avoid any overlap in authority. One stated that the RSLGs do not cover which HCA has Subsidy Layering Review authority where 9% credits are awarded by one HCA, but another HCA awards tax-exempt financing and 4% LIHTCs. Another commenter stated that the RSLGs should clarify that LIHTCs must be involved for an HCA to accept section 911 Subsidy Layering Review authority.

Response The words "or suballocation authority" have been added to the RSLG text for clarification. The HUD State/Area Office Implementing Instructions describe what any interested HCA should do to accept 911 Subsidy Layering Review authority from HUD. Regardless of how state and local HCAs share allocating responsibilities, any HCA which has the authority to allocate LIHTCs and issue Form IRS–8609 may accept 911 Subsidy Layering Review authority. Such acceptance should be conveyed to all state or local HUD State/Area Offices which are within the HCA's geographical authority. It should also be noted that an HCA cannot provide 9% LIHTCs to a project already receiving tax-exempt bond financing, with or without 4% LIHTCs, so the hypothetical overlap in authority suggested cannot occur. Clearly, LIHTCs must be involved for an HCA to perform a 911 Subsidy Layering Review.

5. Whether the inclusion of Historic Tax Credits on the list of examples of Other Government Assistance (OGA) should be eliminated or modified?

Comment. One commenter noted that HCAs do not award Historic Tax Credits, and that this reference should be stricken or amended.

Response· Historic Tax Credits are an example of OGA which HUD under 102(d) and an HCA under 911 must consider. The RSLGs now reference the broad definition of OGA included in the statute and regulations. This means that HCAs should use a slightly higher Market Rate (Standard 4) for projects receiving both Historic Tax Credits and LIHTCs, award only the amount of Gap Financing necessary, and calculate LIHTC Allocations accordingly. HUD in its residual 102(d) Subsidy Layering Review responsibilities (where there is no participating HCA) will observe the same differential HCAs deem appropriate in such combination cases when reviewing net amounts obtainable. If Historic Tax Credits are *not* combined with LIHTCs, Sponsors must simply demonstrate to the HUD State/Area Office on its Form HUD–2880 that no excess Sources are available for the same or similar Project Uses to satisfy the 102(d) Subsidy Layering Review.

6. Whether an HCA must perform a "back-end" Subsidy Layering Review at Placement in Service?

Comment. Two commenters raise this issue in the context of year-end cost certification submissions to HUD, and meeting the issuance date for Form IRS-8609 following the year of Placement in Service.

Response: HUD has eliminated the "back-end" 911 Placement in Service or 102(d) Cost Certification Subsidy Layering Reviews *except* where new types of HHA or OGA are subsequently added, or construction or rehabilitation costs are reduced. (See Comment 13 below.)*

7. Whether communications between HUD State/Area Offices and HCAs can be improved in 102(d) and 911 Subsidy Layering Reviews?

Comment. One commenter requested that HUD provide mortgage insurance processing results in cases involving LIHTCs to the applicable HCA, and encouraged HUD to work with HCAs to "do everything possible and practical to resolve its concerns before canceling a commitment."

Response· HUD State/Area Offices and HCAs must communicate with each other as contemplated in the HUD State/Area Office Instructions, sharing all relevant application processing results

The Department believes it has made vast improvements in the sequence and delivery of "joint" assistance application processing. The RSLGs reflect solutions developed through consultation between HUD and the National Council of State Housing Agencies, its underwriting partner in 911 Subsidy Layering Reviews.

8. Whether HUD should describe its monitoring of HCAs in the RSLGs?

Comment. One commenter requested that HUD's monitoring procedure be described in the RSLGs.

Response: The Department intends to issue its Implementing Instructions soon so that HUD State/Area Offices and HCAs are fully advised of new 911 and 102(d) Subsidy Layering Review responsibilities.

9. Whether the RSLGs must address HCA Fees, and whether such Fees may be excluded from the definition of Syndication Expenses for the purposes of Standard 3?

Comment. Three commenters request clarification on HCA Fees. One requests that the RSLGs contain a reasonable fee standard. Two others suggest that such fees not be included as a Syndication Expense subject to Standard 3 limitations.

Response. The Department is not responsible for the setting or monitoring of an HCA's fee schedule for LIHTC application reviews. Further, section 911 does not specifically authorize HUD to define what fee is reasonable if an HCA accepts the Department's delegated Subsidy Layering Review authority. The HUD-established RSLGs, and an HCA's responsibilities for satisfying HUD's requirements, are clearly distinguishable from an HCA's previous layering review activities because of varying statutory and regulatory standards. Whether such distinctions affect past fee schedules is a matter for affected HCAs to determine. The Department also agrees that whatever fees HCAs determine to be reasonable should not be categorized as "Syndication Expenses" subject to Standard 3 limitations, *e.g.*, HCA Fees are now included on the Sources and Uses (S & U) Format as a "Use Payable from Non-Mortgage Sources".

10. Whether an HCA must seek Governing Board or Approving Authority approvals on a case-by-case basis, or, may instead obtain blanket approval through a Board of Directors' resolution to raise Safe Harbor standards for all projects exhibiting defined characteristics, or, by including in its Qualified Allocation Plan provisions regarding applicable Safe Harbor standards according to project type and risk correlations?

Comment. Eight commenters noticed that the Interim Guidelines required case-by-case approvals, a procedure believed to cause delay without any corresponding gain.

Response: The Department agrees and has revised the RSLGs accordingly HCAs may increase Safe Harbor limitations by either including higher limits in their Qualified Allocation Plans, or, by obtaining a Board of Directors' resolution raising the limits for various types of projects and associated project risks. Pursuant to Notes which follow the Standards, the HCA or Board must specifically reference in the Qualified Allocation Plan or Resolution what special factors justify exceeding base published Safe Harbor limits in such cases, effectively establishing higher Safe Harbors for all such projects. Ceiling amounts may not be exceeded by Qualified Allocation Plan provision or Board Resolution, but may be exceeded in a limited number of "Applicability Exception" cases (see Comments 12 and 16). Where applicable, each section 911 certification and supporting Sources and Uses (S & U) Statement which an HCA submits to the affected HUD State/Area Office must also include a photocopy of the Qualified Allocation Plan provision or Board Resolution supporting the "blanket" application Safe Harbor standard for the type of project involved. So long as adequate opportunity for public review and comment on the increasing of the Safe Harbor standards for well-defined projects is provided by HCAs, and all those who might support or oppose such revisions are heard in the process, HCAs may take a blanket approach to revising Safe Harbors through these or functionally equivalent methods.

11. Relating to Standards 1 through 3: whether proposed Safe Harbor Standards should be increased, whether HUD should exceed Safe Harbors in 102(d) Subsidy Layering Reviews; whether the base for Builder's Profit and Developer's Fees should be revised; whether "lump sum" contracts may be used pursuant to Standard 1; and whether HCAs must elect between using HUD's processing fees or Alternatively "funding" fees for each case, or make one election for all 911 Subsidy Layering Reviews.

Comment. Nine commenters expressed disagreement over the adequacy of Safe Harbor standards HUD established. Three of these recommend that HUD State/Area Offices should also have the option to exceed Safe Harbors. Two object to any Standard 3 limitations on Public Offerings and seek clarification regarding "Regulation D" Private Offerings. Six commenters stated that the base for estimating Standard 2 Developer's Fees in rehabilitation cases should not be HUD's definition of Total Development Costs, but rather, should include the acquisition cost of the property for rehabilitation proposals (HUD includes "as is" value of improvements and land in mortgage insurance processing replacement cost, but not in the base for fee calculation). Four noted in particular that HUD's Property Disposition sales, "bargain sale" rehab, and Section 223 (f) proposals will suffer as a result of not including acquisition cost in the base for Developer's Fees. Four recommend the Alternative Standard 1 Builder's Profit base should be defined as construction costs, not Total Development Costs. Two request clarification on whether HCAs must "elect" to apply Alternative standards on a case-by-case or blanket basis. Two stated that establishing numerical "builder's profit" standards discourages the use of "lump sum" contracts and unnecessarily promotes exclusive use of "cost-plus" contracts. One commenter requested additional discussion of how Builder's and Developer's Overhead is treated in HUD mortgage insurance processing.

Response: Safe Harbors can be Adjusted for 911 Subsidy Layering Reviews—The Department's response to Comment 10 makes it unnecessary to address uniform theoretical standards, allowing for more practical local solutions. HCAs may increase Safe Harbor percentages for projects exhibiting specified risk factors in accordance with market data in their area for 911 Subsidy Layering Reviews, and must document their actions through acceptable public accountability measures.

HUD State/Area Offices limited to Safe Harbor processing limitations in 102(d)—Although the National Council of State Housing Agencies issued its "Standards for State Tax Credit Administration," members are not bound to uniformly accept and apply them. State and local HCAs apply varying Developer Fee allowances to induce strong and dependable market participation, producing a large range in the fee schedule ceilings adopted. HUD's RSLGs are deliberately designed to respect the autonomy of our partners in this endeavor, and reaffirm the Department's confidence in an HCA's ability to measure local market conditions and needs. HUD is relying on the HCAs' experience and, therefore, recognizes and accommodates potentially higher fees so long as HCAs specifically reference risk or market

factors which justify higher compensation in accordance with market data. Also, HCAs have public "sunshine" processes in place to ensure that the public good is being served in the establishment of appropriate fee schedules for builders and developers. HUD has no such procedure in place, and will not create another bureaucracy to serve this function. HUD will generally limit itself to Safe Harbor allowances in 102(d) Subsidy Layering Reviews, *e.g.*, only SPRA or BSPRA for Section 221(d) proposals reviewed under Standard 2 Developer's Fee.

Standard 1 Revisions: Base for Calculating Builder's Profit is now Construction Cost; "Lump Sum" and "Cost Plus" Construction Contracts are both Acceptable—HUD's typical processing assumes construction "hard costs" as the base for its non-identity of interest builders profit, and the "soft costs" as a base for the Sponsor's Profit and Risk Allowance (SPRA)/developer's fee. In contrast, identity-of-interest builders profit and developer's fees are intermingled in the BSPRA calculation, which is estimated on a much larger "hard and soft cost" of the improvements base, *i.e.*, "Total Development Cost". Each of these profit calculations is separate from overhead. Builders overhead, general requirements, and developer's overhead (HUD terms the latter "organizational expenses") are estimated and included in the Total Development Cost as separate items, the first two as hard costs, and the latter as a soft cost. HUD included smaller percentages (4% and 6%) of the larger Total Development Cost base in its Interim Guidelines in an effort to accommodate potential variance with HCAs in Standard 1 "Alternative" allowances.

But the Department has revised Standard 1's structure and allowances because of the confusion created. BSPRA (Builders and Sponsors Profit and Risk Allowance) will be retained as one acceptable Safe Harbor standard for identity-of-interest developer/builders under Standards 1 and 2, and SPRA and Builder's Profit for non-identity of interest developer/builders.

Lump sum contracts are permissible for non-identity-of-interest developers and builders under 221 (d)(4), but the Builder must break out its profit and overhead for HUD under 102, or the HCA under 911, on Form FHA–2328, "Contractor's and/or Mortgagor's Cost Breakdown" in accordance with Standard 1 limitations.

For identity-of-interest 221 cases, HCAs performing 911 Subsidy Layering Reviews may apply the HUD processing numbers to satisfy Standard 1, or, substitute as an Alternative up to 6% of construction costs for Builder's Profit, 2% for Builder's Overhead, and 6% for General Requirements, *i.e* , the "Standards for State Tax Credit Administration" must be applied (except for "high cost" areas, where the HUD State/Area Office processing numbers may be used to comply with Safe Harbor). Standard 1's previous Safe Harbor amounts are now effectively Ceiling amounts and have been retitled.

Standard 2 Revisions: Base for Calculating Developers Fee & Alternative Calculation of Fee—The Department initially required HCAs to adhere to its definition of the Total Development Cost base for Standard 2 calculation, and separated out appraised values for projects for at least two sound reasons: (1) HCAs benefit from HUD's appraisals of land or land and improvements and have some basis for evaluating the economic reasonableness of a Sponsor's proposed acquisition and new construction or rehabilitation (and can compare that to competing Sponsors and their proposals for the limited LIHTC resource); and (2) HUD State/Area Offices benefit from the selection of its definition of estimated replacement cost for monitoring purposes. These two goals can be achieved without requiring HCAs to uniformly define the Total Development Cost base. HCAs may look to Line G73 of Form HUD–92264 for an independent appraisal opinion, and at the same time, Alternatively fund by applying percentages to its definition of Total Development Cost, reflecting state and local LIHTC-program requirements and practices. However, acquisition cost in excess of value may not generally be considered in the base for Developers Fees. An HCA indicates its election regarding the application of HUD's processing results versus Alternative funding by selecting between the two numbers on the Mortgageable Use portion of the S & U Format, and may do so on a case-by-case basis. HUD will generally use BSPRA/SPRA allowances and its Total Development Cost definition in performing 102(d) Subsidy Layering Reviews.

Please note that HUD substitutes "Sales Price" for "Property Value" in Property Disposition (PD) cases, and HUD Approved Debt as a Use in cases where new HHA and OGA will be provided to projects already receiving some form of HHA. HUD will generally not include these amounts in the base for fee calculation in 102(d) Subsidy Layering Reviews, and HCAs must determine what acquisition costs (up to a maximum of price or debt) may be included in the base in 911 Subsidy Layering Reviews if fees are Alternatively funded.

Standard 3 Revisions The Department is raising Private Offering RSLG Standard 3 limitations to a Safe Harbor of 10% and a Ceiling of 15%. Public Offering levels will be retained as proposed Although two commenters pointed out that the latter transactions are otherwise regulated by the Securities and Exchange Commission and the North American Securities Administrators Association, the Department believes that sections 102(d) and 911 require efficiency, accountability, and cost containment in the guidelines established for all transactions. Also, a new enforcement mechanism has been added, as described in Notes following the Standards Regarding Private "Regulation D" Offerings marketed to individuals, the RSLGs now clarify that these are subject to the same standards as for Public Offerings: 15% Safe Harbor and 24% Ceiling.

12. Whether Ceiling amounts in Standards 1 through 3 should be raised, or, HCAs should be permitted to establish Ceilings through Qualified Allocation Plans or Governing Board or Approving Authority Resolutions rather than HUD through its RSLGs?

Comment: Five commenters raised related issues. Two commenters agreed with HUD's Ceiling percentages, but two others disagreed. One commenter stated, "HCAs ought to be able to secure governing body approval of Ceiling standards as a part of their allocation plans and reserve project-specific governing body reviews to projects with special circumstances (such as those elaborated in the Note on Standards 1 and 2 on page 9336 of the SLGs as published in the February 25, 1994 **Federal Register**)."

Response: The Department believes that absolute "Ceilings" are within its authority and responsibility to establish in the RSLGs. It has established these in an objective manner. There are a limited number of "Applicability Exceptions" for the truly extraordinary circumstances referred to which may arise and require some flexibility from imposition of the Ceilings; but generally the Department's own experience, as reinforced by HCA data regarding these standards, strongly supports the position that uniform maximums must be established and maintained. The revisions made pursuant to our responses to Comments 10 and 11 also ameliorate the expressed concern. The Department is maintaining absolute Ceilings in the RSLGs except for in Applicability Exception cases (Comment 16), and will consider any

hardships caused in the future in determining whether revision is necessary to encourage greater market interest and participation.

13. Whether Standard 4 should be revised to clarify its purpose and application?

Comment: Ten commenters raised this concern. Eight commenters agree with Standard 4 in concept but request clarification and modification. Six of these same commenters offered suggestions for improving the standard. Observations and suggestions include the following: Clarify what effect reaching the "threshold" has; clarify that such cases are still subject to the HCA's Qualified Allocation Plan standards; base the numerical standard on only 99% ownership; remove all references to a specific number for the upper level in Standard 4, but retain the concept; tie the upper Standard 4 numerical standard to an established index so adjustments take place automatically; allow the FHA Commissioner to frequently adjust the standard, *e.g.*, through monthly Notice to HCAs and HUD State/Area Offices, rather than through publication; retain a specific numerical Standard 4 upper level, but revise the RSLGs to describe what criteria HUD will use to adjust it.

Response: The Department is revising Standard 4 as follows:

—The numerical concept of "thresholds" has been eliminated from Standard 4, and the standard has been modified to be more consistent with section (b) (1) of 911, HCDA '92 in that HUD recognizes that maximum equity contributions may be obtained by reliance on "current market conditions, as determined by the HCA";

—At its LIHTC Reservation stage, the HCA will rely on current market conditions; previous syndication data; and proposed syndicator's offers, Syndication Agreements, or Partnership Agreements (if available at the time of Reservation processing) in selecting the appropriate Market Rate for an individual Project. The HCA will simply capitalize (divide) the Gap Filler equity reflected on the applicable S & U Format by its selected Market Rate to estimate the maximum LIHTC Allocation amount (if eligible project cost calculations or other criteria produce a lower Allocation, the HCA will use it).

—An HCA may complete its 911 Subsidy Layering Review responsibilities by forwarding a balanced S & U Format and Certification to HUD prior to formal HUD assistance approval, e.g., Initial Endorsement in mortgage insurance cases. No "back-end" Subsidy Layering Review is required unless: (1) A new Source type (or a mortgage increase) not previously considered in the front-end Subsidy Layering Review is subsequently requested or obtained, or, (2) certified Project Uses (costs) decrease by more than 2% from estimates used in the front-end Subsidy Layering Review.

—Standard 4 and the section 911 certification (Attached) have been revised to clarify that a project which reaches the Market Rate-estimated Gap Filler amount is not exempt from the Guidelines, nor necessarily from "further review." Rather, it should be noted that HUD or 911 HCAs always perform a Subsidy Layering Review if new HHA and LIHTCs are requested, and HCAs always apply at least Qualified Allocation Plan limitations to LIHTC projects;

—The lower level of Standard 4 has also been eliminated. HUD anticipates that so long as LIHTC-application requests significantly outnumber overall allocation resources, competition should keep Market Rates at reasonable levels;

—HUD or HCAs will apply adjusted Market Rate assumptions to Sponsors retaining greater than 5% ownership interests. The effect of capitalizing the necessary Gap Filler by such "above" Market Rates will be to reduce the LIHTC Allocation in 911 Subsidy Layering Reviews (See Comment 14 below). HUD strongly discourages Sponsors from changing syndication/ownership assumptions after Initial Endorsement. Sponsors must notify HUD through Form HUD–2880 of any change in ownership retention intentions, and after Initial Endorsement, HUD must approve such changes. Such revisions will likely cause serious delays, *i.e.*, HUD Transfer of Physical Asset approval requirements pertain, which should be avoided once construction has commenced. (Sponsors should determine percentage ownership and related Gap Filler funding issues prior to construction closing, and stick to the original Financing Plan submitted to HUD, if possible.)

14. Whether the Sponsor's required 1–5% minimum ownership retention assumption when an HCA estimates Net Syndication Proceeds should be eliminated or modified?

Comment: One commenter states, "This requirement is entirely unfair and will deny access to HUD programs to those tax credit project Sponsors who wish to receive compensation in the form of tax credits." Another remarks, "Please explain why HCAs should make this assumption in cases where there is evidence otherwise (where the ownership interest exceeds 5%)." Yet another suggests, "A separate, higher standard for net equity contribution (as compared to Net Syndication Proceeds when equity comes from outside sources) should be inserted in the guidelines . . . when the developer retains more than a 5 percent ownership interest in the tax credits. Such a standard should be at least 15 percent higher than the standard for net syndication proceeds."

Response: In 911 Subsidy Layering Reviews, HCAs must make Market Rate adjustments when calculating maximum LIHTC Allocations for projects not completely syndicated. Also, the value of a "given" LIHTC Reservation amount must be more accurately assessed by HUD State/Area Offices in 102(d) Subsidy Layering Reviews where projects are not fully syndicated. These requirements prevent owners and developers who retain and use larger percentages of LIHTCs from reaping an unintended windfall of benefits not available to the developer who must seek limited partner investment to fill equity gaps. For example, because "syndication expenses" are foregone in owner-held LIHTC projects, the value of the interest retained is worth more than the Market Rate for sale of the LIHTC project per allocation dollar. The value associated with any cash flow, depreciation, and gain or loss on disposition which is retained must also be considered. HUD or HCAs, when performing Subsidy Layering Reviews under these RSLGs, must therefore recognize the full value of LIHTC projects which are not fully syndicated. The Department is retaining its paradigm for the Standard 4 Market Rate calculation: syndication of 95%–99% of the project, with adjustments required for projects with higher than typical percentage ownership retention. (See Standard 4 for effects, and the Glossary under "ownership".)

15. Whether additional Source and Use formats may be developed?

Comment: One commenter requested that the Department allow HCAs to develop formats for non-mortgage insurance cases since the Interim Guidelines Sources and Uses Statements did not cover every possible combination of HHA and OGA.

Response: See HUD State/Area Office Instruction supplements. Risk-Sharing and Reinsurance Agencies may develop appropriate variations for risk-sharing and reinsurance cases.

16. Whether the "Applicability Exceptions" category appearing under "Guideline Standards" should be retained as proposed, modified, extended to HUD 102(d) Subsidy Layering Reviews, or eliminated altogether?

Comment: Five commenters expressed diverging opinions on the "Applicability Exceptions" category. Three agree with the concept, and one of these suggests HUD State/Area Offices performing 102(d) Subsidy Layering Reviews should also consider granting Exceptions. Two others question the category because it may produce "inequitable" treatment of like circumstances. One commenter urges revision of the criteria HCAs apply in granting Applicability Exceptions.

Response: HUD believes the Applicability Exceptions category is necessary and retains it in the RSLGs. If HUD State/Area Office monitoring of HCAs reveals abuse, then HUD may revoke the delegation of the offending HCA (HCAs must specify as justification for granting an Exception the extraordinary circumstance involved). If HUD finds that several HCAs abuse this category, which was added for the worthwhile purpose of adding flexibility for extraordinary development circumstances, then HUD will prospectively eliminate the category altogether without further public notice.

The RSLG criteria have been revised to clarify that "extraordinary circumstances" must be involved before an HCA grants an Exception. Examples are provided describing the types of circumstances which might warrant compensation for added building, development, and investment risks. HCAs may not act arbitrarily in awarding Applicability Exception category status to a project. HCAs should exercise due diligence in identifying extraordinary circumstances justifying departure from one or more standards, and must include copies of approved Exceptions to the HUD State/Area Office. To the extent that an HCA runs out of its allocated Applicability Exceptions, the result may be that similar cases are not treated similarly. Sponsors with projects which are similar to Applicability Exception projects, but who are limited by the standards because the HCA did not have enough Exceptions to provide them to all like Sponsors similarly situated, do not have grounds for complaint against an HCA, its Governing Board, or Approving Authority. HUD Headquarters and State/Area Offices will not hear individual Sponsors' appeals relating to not receiving an HCA's Exceptional status and treatment. Generally, HUD will monitor an HCA's performance in its totality rather than on the basis of isolated incidents. Consistent with our reasoning in Comment 10 Response above regarding exceeding Safe Harbor standards, HUD State/Area Offices will generally not consider granting Applicability Exceptions to individual project owners pursuant to section 102(d) Subsidy Layering Reviews.

17. Whether there should be additional exclusions to the scope of the RSLGs?

Comment: Six commenters recommend additional exclusions to the RSLGs or raise applicability issues. One commenter said that the Department should make clear that Section 223(a)(7) refinance and 202 elderly housing programs are not HHA which may trigger Subsidy Layering Reviews if combined with OGA. The same commenter requests HUD to join it in "asking Congress for a statutory change which would subject only those projects combining HUD subsidies with Low Income Housing Tax Credits to a subsidy layering review." One commenter stated, "HUD's subsidy layering requirements should not interfere with an HFA's statutory authority to use its own underwriting criteria for loans insured under the risk-sharing program. Please clarify in the final guidelines that an HFA's developer and builder fee limits are the limits that should be utilized for the subsidy layering review of projects financed under the risk-sharing program." One commenter requests that the Department explicitly exempt from Subsidy Layering Reviews projects which receive no greater than 25% project-based Section 8 assistance. One commenter requests that HUD clarify that routine annual Section 8 increases are not considered HHA and do not trigger a Subsidy Layering Review. One commenter requests that the Department exclude application of the Standards to multifamily projects with less than 24 units. One commenter requests that HUD clarify how projects which received LIHTCs 2–8 years ago will be treated if they make application for Section 223(f) financing 3 years after construction, *i.e.*, are these applicants subject to a Subsidy Layering Review, and if so, who will do it?

Response: HUD notes that Section 223(a)(7) refinances involving no OGA do not require a Subsidy Layering Review. Please note also that new HHA under 223(a)(7) may not exceed the original mortgage insurance assistance provided, and only modest repairs are allowed under this program. But if the repairs are substantial and OGA such as LIHTC proceeds have been or will be obtained, then the proposal is subject to a Subsidy Layering Review. With respect to Section 202 proposals, the Department notes that these are on the lists of covered programs at 24 CFR 12.10 (8) and 12.30(8),(9); 12.50(7),(8). HUD will continue to subject such HHA combined with OGA to 102(d) Subsidy Layering Reviews.

This is also the Department's position regarding excluding all non-LIHTC OGA from subsidy layering requirements. The Department notes that Congress's mandate to HUD in the HRA '89 made statutory a practice FHA-Housing has followed for approximately a decade for combinations of HHA with OGA, *i.e.*, grants or loans for mortgageable or direct loan uses caused reductions in HHA. While it is true that the Department did not develop a similar device for controlling excess subsidy in LIHTC cases between 1986 and 1989, FHA-Housing has essentially and consistently performed Subsidy Layering Reviews on other OGA cases for at least 10 years, and would not recommend statutory revisions at this time to well-established underwriting, direct loan, and capital advance processing practices.

The Department does not agree that required Risk-Sharing Subsidy Layering Reviews should be performed pursuant to a participating HFA's Builder's Profit and Developer's Fee limitations, rather than Standards 1 and 2. HCAs must apply the RSLGs and Standards 1 and 2 to Risk-Sharing cases. (However, Risk-Sharer's may define the Total Development Cost base as discussed above in Comment 11, *e.g.*, for rehabilitation proposals, acquisition costs not in excess of value may be included.) A risk-sharing HFA, if it is also a 911 Subsidy Layering Review HCA, may make appropriate alterations to HUD's S & U Formats for risk-sharing projects subject to 911 Subsidy Layering Reviews. (HUD Headquarters is available to provide any necessary guidance regarding content.)

Where HOME fund grants or loans are provided together with some form of HHA, please see the HUD State/Area Office Implementing Instructions for further guidance.

Projects receiving only project-based Section 8 rental assistance for 25% or less of the units combined with OGA are subject to a Subsidy Layering Review. However, if the OGA and project-based Section 8 HHA involved, whatever the percentage, are not provided for the same or similar Project Uses (*e.g.*, LIHTCs are provided for a capital improvement Use, but Section 8 rental

assistance does not include debt service for capital improvement loans, but only operating expense increases or reimbursement) then "layering" concerns are absent (*i.e.*, potential Project Uses do not overlap), and a 102(d) or 911 Certification may be made without further Subsidy Layering Review. Thus, routine budget-based increases based on higher operating costs, and annual adjustment factor increases in Section 8 assistance, do not trigger a detailed Subsidy Layering Review unless the increase is related to debt service obligations on capital improvement loans (where combination with LIHTCs would clearly trigger a more detailed and substantive Subsidy Layering Review).

Note that program participants are generally only required to submit detailed Form HUD–2880s if the HHA request involved is greater than $200,000. (See 24 CFR 12.32(a)(1).) Where less than this amount of HHA is requested, HUD State/Area Offices and HCAs may, in lieu of Form HUD–2880, accept the Sponsor's simple written attestation that all programs of assistance involved do not produce a potential overlap in Project Uses. By way of example, if a Flexible Subsidy Capital Improvement Loan for $40,000 is sought, and LIHTCs are also provided to finance capital improvements, a Subsidy Layering Review is required; i.e., for cases involving clear potential program overlap, Sponsors must demonstrate to HUD (102(d) Subsidy Layering Reviews) or to the HCA (911 Subsidy Layering Reviews) through fully detailed Form HUD–2880s that no overlap in Project Uses is contemplated (capital improvement Sources being provided do not exceed capital improvement costs estimated), and that both Sources are necessary to provide the affordable multifamily housing. This is consistent with the regulatory requirement that Sponsors provide details on OGA "*as HUD deems necessary*" to make a Subsidy Layering Review Certification. (Emphasis added: see 24 CFR 12.32(b)(1)(iv).) In summary, where there is no potential program assistance overlap, *i.e.*, where overlap cannot occur programmatically, HUD does not require detailed disclosures or Subsidy Layering Reviews, because they are not deemed necessary; but where there is potential overlap, the burden is on Sponsors to demonstrate no actual overlap in Project Uses to satisfy either a 102(d) or 911 Subsidy Layering Review.

Small projects of 24 units or less are already specifically identified in the RSLG Note regarding Standards 1 and 2 as deserving of special attention and compensation under the risk factor "size". HCAs should be mindful of the importance of not discouraging this type of development and risk by ignoring its Builders' and Developers' legitimate expectation to be properly compensated for developing needed low and moderate income housing which fits into every neighborhood, and offers a multifamily development alternative which avoids over-concentration issues. HUD and HCAs will seriously consider economy of scale arguments such participants present.

With respect to Section 223 (f) applications, where LIHTCs were allocated some years ago to a project which is now somewhere "in the middle" of the 10-year stream, a Subsidy Layering Review is required because new HHA is being combined with OGA which still provides current benefits to the project. These benefits, while previously awarded by the HCA, fall under the broad definition of OGA contained in section 102, HRA '89, and were presumably awarded pursuant to capital improvements performed. HUD will perform the required Subsidy Layering Review, since HCAs cannot practically adjust LIHTCs awarded after Placement in Service. The Sponsor's Disclosure and Updating form must thoroughly detail the actual costs incurred in acquisition and rehabilitation, and the conventional debt financing obtained and equity financing raised through the syndication of the project to meet such costs. HUD will apply the RSLGs and Implementing Instructions in making adjustments to the actual net equity obtained as of the Placement in Service date to determine the appropriate Section 223 (f) mortgage necessary to replace the conventional financing. Note that HUD will observe this procedure regardless of what year the project is currently in with respect to the annual LIHTC stream. No Subsidy Layering Review is required if 223 (f) insurance is sought on a project which has received the full stream of LIHTCs, or, has fallen out of compliance and completely lost its LIHTC Allocation (assuming no other OGA is involved).

18. Whether there should be additional inclusions to the scope of the RSLGs?

Comment: One commenter states, ". . . a standard should be established for cash flow distributions to limited partners . . . The previous guidelines contained such a standard. If HUD acts to reduce the mortgage amount, or if a low mortgage is proposed, and the credit agency comes in and provides tax credits (with or without other subsidies) to fill up whatever financing gap remains, there is a potential for excessive profit in the form of cash flow distributions. A judgement cannot be made as to whether or not government assistance is more than is necessary to make a project work unless there is some judgement on the amount of cash flow the project is likely to receive." The commenter cites 24 CFR 207 19(b)(4), and the Department would supplement by citations to 24 CFR 12.52(a)(2)(ii); 221.532(d); 231.8(c),(d); 232.45(b); 241.130(c); 882.714(c)(4); 882.715 (c); and 882.732 (c). The same commenter observes that HUD should add to its list of risk factors under Standard 2 the "proposed percentage of set-aside units which will benefit low income households."

Response: The Department does not agree that cash flow distributions must be analyzed and approved at precisely defined levels in order to establish whether the necessary amount of government assistance is being provided to a project. This is why HUD moved from the "16% Internal Rate of Return" model applied under its previous guidelines to a "net equity" model. (See also "Net Syndication Proceeds" and "Ownership" in Glossary section of RSLGs). The Department agrees with industry critics who urged revision to HUD's guidelines in 1992. Cash flow from LIHTC projects is not a significant element affecting investor decisions, because positive cash flow cannot be assured. But note that HUD does limit returns in cases where there are limited dividend Sponsors, or where HUD Section 8 project-based rental assistance is combined with OGA.

The Department agrees with the commenter to add to the "Note on Standards" the factor indicated: a project's estimated occupancy by truly low income households does affect the developer's risk, which may be rewarded by HCAs through the fee. (This is consistent with HCA guideline requirements under OBRA § 7108(o) to give priority to projects serving the lowest income tenants and to projects obligated to serving qualified tenants for the longest period.) Some HCAs already apply such a policy to applications, exclusively reserving LIHTCs only for proposals which limit rents to 50% or less of area median income. But HUD does not believe it is appropriate to dictate that all HCAs apply such a policy to all applications.

19. Whether any balance remaining in Operating Deficit Reserve escrows (when funded by Net Syndication Proceeds) may be used to reduce secondary debt, or, must instead roll over into the Replacement Reserve in all mortgage insurance cases; whether any additional Reserves or separate policy

may be established for non-mortgage insurance HHA cases; and whether such Reserves affect permissible Developer's Fees under Standard 2?

Comment: Four commenters raise related issues. Two commenters requested that the Glossary discussion of the permissible uses of any remaining balance of Operating Deficit Reserve be expanded to include the option of paying off secondary debt or extended to other uses. Two others request clarification on how the Developer's funding of such Reserves (or Working Capital Reserves) should be treated under Standard 2 limitations. One of the former two commenters stated that HUD is too restrictive in its Reserves policy, or at least, should adopt a different policy in non-mortgage insurance cases than in other FHA-Housing-assisted cases where the Department does not bear the long term risks, *e.g.*, project-based Section 8 rental assistance cases which FHA-Housing administers.

Response: Because many projects may receive only HUD mortgage insurance assistance and no HUD rental assistance in conjunction with LIHTCs, the Department is concerned that projected operating deficits be adequately funded. HCAs may allow additional "Rent Reserves" so long as it is understood by the Sponsor that HUD's Operating Deficit Reserve and the HCA's Rent Reserve are commingled in the HUD Loan Management-administered Escrow (Form HUD–92476–A) and must be funded by the Sponsor prior to Initial Endorsement. In 911 Subsidy Layering Reviews, HCAs must determine whether Net Syndication Proceeds may be projected and used to fund such reserves. Since many rent-restricted projects will not have rental assistance, and because project expenses may increase at a faster rate than project income over the holding period in many areas, and project replacement reserves for necessary repairs in 10 to 15 years may not be fully funded under such "tight" cash flow situations, HUD has decided to retain the limitation on uses of any remaining balance in funded Operating Deficit Reserve escrows (commingled with Rent Reserves).

Regarding the question about a separate policy for Flexible Subsidy loans, Loan Management Set-Aside, or Housing's Project-based Section 8-assisted cases and application of unused Reserves, FHA-Housing agrees that while its long-term interests are not affected when it is not taking the long-term risks through mortgage insurance assistance, the project's long-term needs do not change, *i.e.*, Replacement Reserve needs do not shift when the form of HHA is different. FHA-Housing believes it is demonstrating its long-term commitment to a project receiving these other forms of HHA by requiring that any unused Operating Deficit Reserves roll over into the Replacement Reserve account. FHA-Housing is not responsible for program administration outside its purview, and will not presume to speak regarding PIH or CPD program assistance and policy in this area; these offices will be establishing and issuing their own authoritative Guidelines. In regards to FHA-Housing's policy, however, new lines have been added for "Additional Working Capital" and "Rent Reserves" to the Sources and Uses Formats which, if funded, may contribute to the project's long term viability (see Glossary).

Regarding the question about the effect on Developer's Fees of a Sponsor funding such reserves, HCAs should follow their established practice, making that practice clear to the HUD State/Area Office monitoring them. Please note that where the HCA's practice requires a Developer to fund Reserves out of its fee, "Developer Fees Returned to Fund Reserves" may be reflected as a separate Source line on the S & U Format. (See Glossary discussion of Developers Fees as "paper" allowances.) Developers must plead their case to the applicable HCA regarding reserves and fees. The total amount of assistance the LIHTC program and Net Syndication Proceeds can provide in this mix is limited, and while S & U Statement fees represent the sum total of potential earnings eventually received by the Developer, reserves stay with the project. HCAs must determine a reasonable proportional allocation between fees and necessary reserves for individual projects within the confines of overall fee limitations and overall LIHTC-program resources.

20. Whether the Resident Initiative Fund Reserve requirements should be revised?

Comment: Two commenters raise this issue. One commenter stated that HCAs should not be required to coordinate any LIHTC proceed funding of these reserves with HUD because the HCA "does not have the requisite experience to determine the amounts necessary to provide services to be funded from such a fund." The other commenter noted as follows: "The Guidelines require that any resident initiative funds unspent after ten years be used to pay down the mortgage or added to project reserves . . . We believe this limitation should be deleted."

Response: It is because HCAs may not have experience in funding and administering these services that the RSLGs encourage them to coordinate LIHTC-proceeds-provided assistance with the HUD State/Area Office offering assistance in such cases. With potential assistance from both sources, more tenants may benefit from such services. Regarding the second comment, HUD notes that the "transfer after ten years" requirement was included to encourage active use of the funds provided for the stated purpose of the fund. However, Sponsors may request an extension of the term beyond ten years if there are funds remaining which will be used for resident initiatives.

21. Whether Discounting and Compounding at applicable Bridge Loan Rates is the only acceptable method for estimating the net present value of syndication proceeds as of the Placement in Service date?

Comment: Three commenters suggested alternative methods for discounting and compounding, using different rates than the bridge loan rate to more accurately estimate the net present value of syndication proceeds as of the Placement in Service date, whether projects in fact obtain bridge loan financing or utilize an equivalent equity funding source at lower rates. One commenter suggested HCAs should simply be required to reflect the sum of the face amounts of all installments.

Response: The Department agrees that an HCA may implement its own compounding and discounting requirements for the calculation. Compounding and Discounting may be calculated using other rates such as a construction rate (composed of the prime plus 2% or 3%) or the 7-year Treasury Note rate. If the final syndication installment is conditioned on several contingencies occurring, perhaps an even higher rate may be applied to discount its present value as of Placement in Service. Example: Assume a first installment of 30% of proceeds is received 2 years prior to construction completion at the execution of the Syndication Agreement, a second installment of 40% is received at construction completion and Placement in Service, and a final installment of 30% is received after sustaining occupancy is reached, estimated to occur 2 years after completion. If the HCA determines that the early and late installments are to be compounded and discounted at the same rate, *e.g.*, the bridge loan rate, then simply adding the face amounts of all installments is adequate, *i.e.*, the 2 year compounded 30% portion and 2 year discounted 30% portion exactly "offset" each other, and the middle installment received as of Placement in Service is neither compounded nor discounted.

The proportion of early and late installments, and the difference between compounding and discounting rates are the factors affecting Net Syndication Proceed value as of the Placement in Service date. The HUD State/Area Office Instructions describe how Sponsors are required to provide the Net Present Value as of the Placement in Service date in accordance with the HCA's selected compounding and discounting method in 911 reviews (HCA verification of the net will typically occur after a 911 review is completed), while HUD State/Area Offices will review the Sponsor's submission for technical accuracy in 102(d) reviews.

Guideline Standards

Applicability—Standards 1 and 2 apply to all cases combining HHA and OGA, if the program assistance involved provides for either builder profit or developer fees. Standards 3 and 4 specifically apply to LIHTC cases, whether reviewed under section 102(d) or 911.

Separate Standards Appear for Standards 2 and 3—HCAs may simply apply published Safe Harbors in 911 Subsidy Layering Reviews, or raise the Safe Harbors through Governing Board or Approving Authority Resolution or Qualified Allocation Plan provision up to the published maximum Ceiling level. Documentation of such action should be submitted to the HUD State/Area Office, as applicable to individual cases. Ceiling Standards represent absolute limitations, except for Applicability Exception cases.

Applicability Exceptions—An HCA may grant a limited number of exceptions to the standards referenced below, *i.e.*, it may exclude the greater of either 5 individual projects or 10 percent of the total number of projects reviewed under 911 in a single calendar year from Standards 1 through 3 below. (There are no exceptions to Standard 4.) These exceptions should only be granted when extraordinary circumstances relating to the market or risk factors, as discussed below in the Note on Standards 1 and 2, warrant excluding the project from the standards. HCAs may not act arbitrarily, and all exceptions must be approved by the HCA Governing Board or Approving Authority in a public forum. For example, a small project of no more than 24 units may receive a Builders Profit greater than the Alternative Ceiling amount as one exceptional case, if approved by the Board. Similarly, a project located in a qualified census tract may receive a Developer's Fee of greater than 15 percent and may incur Syndication Expenses for private placement of greater than 15 percent of gross proceeds as a second exceptional case. Additionally for these cases, the HCA must determine whether the amount of equity capital raised and project costs incurred satisfy the mandates in section 911(b) of the HCDA '92, and do not exceed the HCA's Qualified Allocation Plan allowances.

1. Builder's Profit

Ceiling Standard—Where there is no Identity-of-Interest (See Glossary) between the Builder and the Sponsor/Developer, the Builder's Overhead, General Requirements, and Profit may not exceed HUD's estimates reflected on Lines G42 through G44 of Form HUD–92264, "Rental Housing Project Income Analysis and Appraisal," except for Lump Sum contracts, where the amounts reflected on Form FHA–2328 must be acceptable to the HUD State/Area Office. Where there is an Identity-of-Interest, the combined Builder's Profit and Sponsor's Profit/Developer's Fee is limited to BSPRA, as reflected on Line G68. At HUD's discretion, commensurate amounts may be estimated in non-mortgage insurance programs. Alternatively, HCAs may elect to use the "Estimated Cost Excluding . . . Overhead and Profit" line on the "Mortgageable Replacement Cost" Uses portion of the S & U Statement, and may reflect up to 6% of construction costs for Builder's Profit, 2% for Builder's Overhead, and 6% for General Requirements (pursuant to the National Council of State Housing Agencies' "Standards for State Tax Credit Administration") under the "Non-Mortgageable Uses—Alternative Builders Profit" line of the Statement. (HCAs may accept HUD State/Area Office processing allowances for builders in high cost areas which exceed the National Council Standard allowances.)

2. Sponsor's Profit/Developer's Fee

Safe Harbor Standard—Where there is no Identity-of-Interest between the Sponsor/Developer and the Builder, SPRA will be recognized as a limitation by HUD in Section 221 mortgage insurance application processing and section 102(d) Subsidy Layering Reviews. Where there is an Identity-of-Interest, BSPRA will be recognized as the Safe Harbor standard limitation for the combined Builder's Profit and Developer's fee. Developer Overhead/"Organization" expenses on Line G65 are also separately calculated and allowed in HUD processing under the Safe Harbor standard. At HUD's discretion, commensurate amounts may be estimated in non-mortgage insurance programs. Alternatively, HCAs may elect to allow up to 10 percent of its definition of Total Development Cost on the "Non-Mortgageable Uses—Alternative Developers Fee" line of the applicable S & U Statement.

Ceiling Standard—Following the Alternative funding pattern above, the HCA may reflect Developer's Fees of up to 15 percent of the HCA's definition of Total Development Cost under the "Non-Mortgageable Uses" portion of the applicable S & U Statement where approved by the Governing Board or Approving Authority in accordance with special market or risk factors.

3. Syndication Expenses

Safe Harbor Standard—The sum total of expenses, excluding bridge loan costs, incurred by the Sponsor in obtaining cash from the sale of LIHTC project interests to investors through public offerings may not exceed 15 percent of the gross syndication proceeds, and the total incurred pursuant to private offerings may not exceed 10 percent.

Ceiling Standard—The sum total of expenses, excluding bridge loan costs, incurred by the Sponsor in obtaining cash from the sale of LIHTC project interests to investors through public offerings may not exceed 24 percent of the gross syndication proceeds, and the total incurred pursuant to private offerings may not exceed 15 percent.

4. Net Syndication Proceeds and Market-Derived Rate Assumptions for Calculating Maximum LIHTC Allocations

Net Syndication Proceeds as of Placement in Service Date—HCAs will divide the Gap Filler equity amount necessary to balance Sources against Uses for a project by an applicable Market-Rate, expressed in cents netted per dollar of credit allocation, in calculating maximum LIHTC Allocations. Net Syndication Proceeds estimated as of Placement in Service may approximate, but should not generally exceed, Gap Filler needs. The projected Placement in Service date is the date of valuation of Net Syndication Proceeds regardless of when a Subsidy Layering Review is performed. The sum of the value of all installments received must be included in the calculation. Sponsors must calculate and report the effects of compounding and discounting in accordance with an HCA's selected rates and methodology. An HCA's LIHTC Allocation may not generally produce net syndication proceeds exceeding the necessary Subsidy Layering Review Gap Filler, and HCAs will subsequently lower the annual

dollar amount of credit on Form IRS–8609 accordingly. The Market Rate selected should be based on: (1) An individual project's market value as reflected in competing Letters of Intent the Sponsor submits, and/or (2) comparable Syndication/ Limited Partnership Agreements from the most recent past transactions; and/or (3) the HCA's judgment regarding market trends.

Ownership Retention Adjustments—HCAs must capitalize Gap Filler requirements by Market Rates plus the following incremental values (Rates) if higher than typical ownership interests are retained (See "Ownership" in Glossary):

0–5% ownership retention: use Market Rate
5–50% ownership retention: add 10 cents
over 50% retention: add 20 cents

and reduce the maximum LIHTC Allocation accordingly.

Note On Standards 1 through 3: An HCA may choose to allow fees which are less than the Standard 2 Safe Harbor standard, or less than the Ceiling amount under Standard 1. Between Standard 2 Safe Harbor and Ceiling amounts, and beneath Standard 1 Ceiling amounts, HCAs may also use their discretion in awarding incremental Builder's Profit or Developer's Fees depending on project market or risk factors (and may re-establish the Standard 2 Safe Harbor through a blanket approach for well-defined categories of projects as described in Comment 10). Project risk factors may include: location in a "qualified census tract"; project size; challenging substantial rehabilitation projects; affordability, *e.g.*, the degree to which the project's set-aside units will serve lower income tenants earning less than 50% of median income; whether there is an Identity-of-Interest relationship between the Developer and Builder affecting total fees. An HCA may develop and rely on other factors not listed above, and may reference in its Qualified Allocation Plan all factors which its Application scoring procedure requires of all projects awarded Reservations, and which justify higher Safe Harbor levels "across-the-board" to projects receiving LIHTCs.

Note Also: Because *HUD* analyzes and determines the allowance for Builder's Overhead in processing (See Line G43 of Form HUD–92264), and Developer's Overhead under the rubric "Organization " Line G65, extraordinarily high overhead may not be cited as a factor justifying a higher Developer's fee. Similarly, where relatively high local development fees are involved, HUD already includes these fees under the rubric "Other Fees," Line G48 of Form HUD–92264, so this factor does not justify higher fees (may not be duplicated as a Project Use). If HUD's processing which reflects Safe Harbors is relied on, all of these items may be included within the mortgage as mortgageable items, and may be reflected on the S & U Statement under "Mortgageable Replacement Cost". But Alternatively funded "Builders Profit" must also include "General Requirements" and "Overhead," consolidated on the S & U Statement, or itemized in accordance with the Standard allowances under "Non-Mortgageable Uses," and Alternatively funded Developers Fees must include consolidated overhead and profit. Developer's acquisition cost in excess of the HUD-appraised value does not generally warrant higher Developer's Fees, and should not be included in the base of estimation.

For Section 223(f) refinances the Developer's Fee must be Alternatively funded and reflected under the "Non-Mortgageable Uses" portion of the S & U Format (See applicable HUD State/ Area Office Instruction Format), because HUD typically recognizes minimal overhead but no profit allowance in this program. The base for the calculation will be Total Development Costs as defined by the HCA in 911 Subsidy Layering Reviews; but HUD will use 10% of the "work write up" total for 102(d) Subsidy Layering Reviews. Builders Profit may *not* be Alternatively funded, because 223 (f)'s "work write-up" includes such profit and overhead as mortgageable items if value is added through proposed repairs.

For Section 241 proposals, Developers Fees must be Alternatively funded if LIHTCs are involved. 10% of Line G72 less Lines G42 through G44 and G65, Form HUD–92264 will be permitted in 102(d) Subsidy Layering Reviews, but HCAs may Alternatively fund the appropriate percentage of their definition of Total Development Cost in 911 Subsidy Layering Reviews. Builders Profit percentages are dependent on whether there is an identity-of-interest, but generally, will be based on construction hard costs for non-identity builders.

Note On Standards 3 and 4: If ownership interests retained are between 5%-50%, then Standard 3 Private Offering Safe Harbors multiplied by 50% will be applied. Where greater than 50% ownership interest is retained, then "Owner Overhead and Organization Expense" must be reported in lieu of "syndication expenses".

Amounts in excess of Standard 3 are added to the "Additional Required Sponsor Equity Contribution" line of the S & U Statement in 911 Subsidy Layering Reviews, or to the Net Syndication Proceeds line in 102(d) Subsidy Layering Reviews, and consequently, will cause a reduction in Mortgage or LIHTC assistance depending on who performs the Subsidy Layering Review. This requirement supports enforcement of Standard 3 limitations, and also supports HCAs' enforcement of OBRA § 7108 (o), which provides that state guidelines must give highest priority to projects that have the lowest percentage of costs attributable to intermediaries.

In 102(d) Subsidy Layering Reviews, HUD State/Area Offices will simply review Letters of Intent, or Syndication or Partnership Agreements, to estimate Net Syndication Proceeds, whatever the LIHTC Reservation or Allocation amount is, and thereafter provide their assistance as a Gap Filler accordingly to balance the appropriate S & U Format (subject to other program limitations). High percentage ownership adjustments also apply.

Glossary

Bridge Loan Costs and Other Interim Financing Devices. Sponsors must report and HUD or the HCA must evaluate all interim financing costs incurred on loans obtained by the pledge of investors' deferred capital contributions to the project receiving LIHTCs. Such loans and advances must be on an "arm's-length" basis, *i.e.*, Identity-of-Interest between the lender and any partners or investors in the project is prohibited. If bridge financing is secured by future Syndication Proceed installments, it should not be reflected on the S & U Format as either a Source or a Use, since the Net Syndication Proceeds line already includes the discounted value of such installments, less bridge loan interest and costs. Bridge financing must be an obligation of a third party who is not the mortgagor.

BSPRA/SPRA. Line G68, Form HUD-92264 BSPRA for Identity-of-Interest Builder/Developers is calculated as follows: (1) Not more than 10 percent of the sum of Lines G50, G63, and G67, and (2) no profit is allowed on Line G44. Line G68, Form HUD–92264 SPRA for non Identity-of-Interest Developer/ Sponsors is calculated as follows: (1) Not more than 10 percent of the sum of Lines G45, G46, G63, and G67, and (2) profit is allowed on Line G44.

Developer's Fees. The amount reflected on the Alternative developer's fee line of the S & U Format is the

"paper" allowance for Developer's Fees. A developer's actual net fee will be affected by whether: acquisition costs exceed or are less than recognized HUD value; third party consultants are involved whom the developer must pay; the developer must fund other costs or reserves which are not otherwise reflected on the S & U Format out of its fee; there are highly contingent "deferred fees" involved, e.g., latter installment(s) valued as of Placement in Service.

Grants. HUD and HCAs must recognize all grant amounts available for any allowable project Uses. In mortgage insurance cases, grants available for mortgageable item Uses are subtracted by HUD in the determination of the mortgage Source. However, all such grant amounts, plus the remaining grant amounts available to meet allowable project Uses outside of the mortgage, should be reflected on the S & U Format, and the "Non-Mortgageable Uses" portion should be supplemented by whatever costs the grant covers outside the mortgage.

Gross Syndication Proceeds. All amounts paid by purchasers of project interests before subtraction of syndication and bridge loan costs. Sponsors must certify such amounts on Form HUD–2880, and also calculate Net Syndication Proceeds in the manner prescribed in these RSLGs. HUD and HCAs will verify whether such calculations have been properly performed.

Identity-Of-Interest. A financial, familial, or business relationship that permits less than arm's length transactions. Includes but is not limited to existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, or stockholders; or family relationships between officers, directors, or stockholders.

Loan Term. In cases where LIHTCs are combined with mortgage insurance, HUD now provides loan terms commensurate with the terms relating to restricted use. The mortgage term equals the initial LIHTC-compliance period of 15 years plus whatever extended use agreement period applies (a minimum of 15 years), up to a maximum under Section 221(d)(4) of 40 years. Section 223(f) mortgage insurance allows a maximum loan term of 35 years, so combinations of post-1989 LIHTCs and mortgage insurance should provide for full amortization of debt over 30 to 35 years.

Net Syndication Proceeds Estimates & Market Rates. The net estimated by Sponsors and reviewed by HUD and the HCA shall be the net present value of all syndication proceed installments as of the Placement in Service date (does not include annual cash flows; see "ownership" and Comment 18) less any bridge loan interest and costs, and less syndication expenses. For the purpose of making estimates, installments received subsequently will be discounted at an appropriate rate, and installments received prior to Placement in Service will be compounded. Thus, the difference between "early" and "late" installments, the rate(s) selected, the syndicator's load, and an individual Sponsor's need for bridge financing all affect the actual net and appropriate Market Rate to be applied. Market Rates are estimated and established by HCAs to approximate the market price for syndications of projects with varying investment risks and combinations of assistance. Gap Filler Financing divided by a Market Rate equals the maximum LIHTC Allocation, which should approximately produce Net Syndication Proceed estimates, i.e., equity needs.

Operating Deficit Reserve. An escrow established to fund net operating losses projected to occur between the date of initial occupancy and the date by which the project's operating income is expected to cover replacement reserve deposits, debt service, expenses, and ground rent, if any, related to operation of the rental project. HCAs may make recommendations to the HUD State/Area Office to increase (through the "Rent Reserves" line item) but not decrease the Operating Deficit Reserve, if funded by Net Syndication Proceeds; but the Sponsor must agree to enter into HUD's standard Escrow Agreement for the total amount involved. In addition, the Escrow Agreement must be amended to provide that any escrow remaining after the escrow period will be transferred to the project's Replacement Reserve account rather than being returned to the Sponsor (Form HUD–92476–A, "Escrow Agreement Additional Contribution by Sponsors;" amend clause 4).

Ownership. There are essentially 4 benefits deriving from the ownership of LIHTC-assisted real estate which may be syndicated, i.e., sold: (1) The LIHTCs; (2) cash flow; (3) depreciation losses; and (4) any reversionary value at the end of the investment period. HUD's previous Guidelines attempted to value all four ownership benefits based on a Discounted Cash Flow model and defined projections occurring over an extended holding period. HUD's Net Syndication Proceeds/Gap Filler analysis replaces the previous Guidelines method, and contains fewer speculative factors. It simply reflects the value of all sales proceeds received in exchange for the ownership interests conveyed to limited partners, *i.e.*, what limited partners agree to pay the developer in cash to acquire an equity position. Typically, investors purchase 98% or 99% of the LIHTCs and depreciation, but share greater proportions of cash flow and reversions with the Developer.

Property Value. HCA must accept the HUD State/Area Office's estimates of allowable value when performing the section 911 Subsidy Layering Review, *i.e.*, Line G73 of Form HUD–92264, except for Subsidy Layering Reviews involving risk-sharing cases. HUD estimates this value without considering any additional subsidies to be made available to the project, or any LIHTCs or other tax benefits the owner will receive. This permits Sponsors to acquire property for new construction or rehabilitation at its market value. By using "as-is" market value of improvements and/or land instead of investment value or acquisition cost, HUD seeks to eliminate any value attributable to the LIHTCs the owner/purchaser seeks, and prevent unearned windfall profits. Note: HUD will not require appraisals for property purchased from HUD, or at a foreclosure sale where HUD is the foreclosing mortgagee. In these cases, the allowable amount will be the purchase price when a project is competitively sold based on the high bid price at either a foreclosure sale or HUD-owned sale (if new HHA is involved; otherwise no Subsidy Layering Review is required). When HUD sells a property at a predetermined price, as in a negotiated sale, the allowable amount is that price and is not subject to adjustment. Also, for acquisition or refinance and rehabilitation of projects that will remain subject to existing HUD-insured loans (whether current or assigned/HUD-held) HUD and HCAs will generally permit the outstanding indebtedness as a Mortgageable or Approveable item in lieu of value or acquisition cost, *e.g.*, Section 241 cases may recognize outstanding indebtedness on Line G73.

Public Versus Private Offerings. Public offerings are those syndications which must be registered with the Securities and Exchange Commission and Regulation "D" private offerings; Private offerings include all others.

Qualified Census Tracts. Those census tracts, census enumeration districts, and/or block numbering areas designated by the Secretary in accordance with section 42(d)(5)(C)(ii)(I) of the Internal Revenue Code as amended (See **Federal Register**, Vol. 59,

No. 204, Monday, October 24, 1994, page 53518).

Replacement Cost Uses (Section 221 cases). The "Elected Mortgageable Replacement Cost Uses" reflected on an individual project's S & U Format (See HUD State/Area Office Instruction Formats) must be equal to HUD's Line G74 of Form HUD–92264, except for cases where Standard 1 or 2 amounts are Alternatively funded as "Non-Mortgageable Uses," in which case Line G74 is reduced by the sum of Lines G42, G43, G44, G65, and G68.

Required Repairs/Substantial Rehabilitation. For mortgage insurance, those repairs which HUD multifamily staff include in the work write-up pursuant to Section 223(f) processing, or determine to be necessary in Section 241 processing. FHA "substantial rehabilitation" thresholds for Sections 221 and 232 are defined in accordance with various criteria described in those sections of the National Housing Act and program instructions. Required Repairs in other HHA programs are defined by project need and cost estimation review.

Resident Initiative Fund Reserve. If such a reserve is to be combined with other HUD Housing-administered assistance, it is required that: (1) The fund will be used *only* for resident management/ownership initiatives, security/drug free housing initiatives, job-training or other support services; and (2) all initiatives or services will be targeted to the residents of the project for which the fund is established. The HCA must coordinate any LIHTC proceed funding of such reserve escrows with the affected HUD Housing Office, *e.g.*, the HUD State/Area Office responsible for Multifamily Property Disposition should be consulted pursuant to the activities described in Chapter 9 of HUD Handbook 4315.1 REV–1. Preservation cases involving such activities will be analyzed in accordance with Chapter 9, HUD Handbook 4350.6. Hope 2 resident initiative activities for multifamily projects must be analyzed in accordance with the Resident Initiative Office's "Interim Guidelines". Generally, the HCA may include as much as it and HUD deems necessary to support such activities, but the Sponsor must agree as a term of the reserve escrow that any unused funds remaining after 10 years will be transferred to the Replacement Reserve account, or, in the event of default, will immediately be applied to prepay HUD-insured mortgage loans (if any are applicable). The Sponsor may petition the HUD State/Area Office to extend this period if activities will continue and any funds remain.

Set-Aside Assumptions. HUD requires that the Sponsor provide the materials listed in Form HUD–2880 regarding the amount of LIHTCs or OGA being sought at the time any form of HHA is requested, and update this information as changes occur. LIHTC set-aside assumptions must be detailed on the form in order for HUD to perform the appraisal in mortgage insurance cases. Sponsors must specify whether units will be set aside and marketed to very low income tenants below 60% area median income, e.g. 45%, and HCAs should communicate with HUD State/Area Offices regarding LIHTC Application "Applicable Fraction" and "Qualified Basis" assumptions so that the debt financing underwriting is performed properly. HUD State/Area Offices will closely scrutinize project marketability and feasibility at proposed set-aside levels.

Total Project Uses. All HUD-recognized or RSLG-allowed project Uses must be identified and the total cost must appear on the applicable S & U Format. If allowable total project Uses exceed total available Sources, either Gap Filler LIHTC proceeds may be provided, or, additional equity is required of the Sponsor to "balance" S & U. If total available Sources are greater than allowable total Uses, then too much assistance has been provided to the project, and one of the Sources must be reduced. In 911 Subsidy Layering Reviews, HCAs will reduce the assistance within its control to balance S & U, *i.e.*, LIHTC Allocations. In 102(d) Subsidy Layering Reviews, HUD will reduce the applicable assistance within its control to balance S & U, *e.g.*, reduce the mortgage, Section 8 assistance, etc.

Working Capital Reserve. For Profit-Motivated Sponsors developing Section 221 new construction proposals the HCA may allow within Project Costs HUD's estimated working capital reserve of 2 percent of newly insured mortgages, but the reserve must be funded by non-mortgage sources. HUD also determines whether any working capital is necessary for substantial rehabilitation cases, and will communicate any necessary amounts on Form HUD–92264A. HCAs and HUD may allow working capital reserves in excess of HUD's 2% to be funded by non-mortgage sources so long as an escrow is established prior to construction or rehabilitation, and at Final Closing, any remainder is at the Sponsor's option applied to repay grants or loans or transferred to the Replacement Reserve account.

Other Matters

HUD Negotiated or Competitive sales In addition to the restrictions described above, and outlined in HUD State/Area Office Instructions, HUD reserves the right to negotiate/impose other conditions when it sells real estate.

Environmental Review A Finding of No Significant Impact with respect to the environment was made on the Interim Guidelines in accordance with HUD regulations at 24 CFR Part 50 which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, at the above address. Since the provisions of these Final Guidelines are unchanged with respect to the impact on the environment, the original Finding is still valid.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

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

List of Forms Referenced

Forms HUD–2530; 92013; 92264; 92264–A; 92330; 92330–A; 92331; 92410; 92476–A; FHA–2328; 2331A; 2580: Available through DHUD State/Area Offices.

Forms HUD–92264–T and Form HUD–2880: See DHUD State/Area Office Implementing Instructions.

Dated: December 2, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Attachment

Section 911 Certification

Pursuant to section 911 of the Housing and Community Development Act of 1992 (HCDA '92), as amended, and in accordance with HUD's Administrative Guidelines for implementation thereof, (*name of HCA*) of (*location of HCA*) hereby certifies that (*project name and HUD project number*) (Check applicable line or lines below):

_____will be receiving tax credits for the number of units presumed by and discussed with your office;
or,

_____will not be receiving tax credits in the amount assumed by HUD in processing assistance requests, with the following revisions to be noted by your office:

_____

_____

Attached hereto please find the applicable approved Sources and Uses Statement. Pursuant to the subsidy layering review performed for projects receiving tax credits I also certify that:

_____a "Market Rate" in accordance with Standard 4 was used to establish the maximum LIHTC Reservation/ Allocation, and,

_____Standards 1 and 2 have been applied in accordance with _____ HUD processing allowances, or, _____ Alternatively funded amounts (check applicable), and,

_____ Standards 2 and 3 Safe Harbor or Ceiling amounts have been applied, as applicable, with all supporting Governing Board, Approval Authority, or Qualified Allocation Plan documentation attached,
or,

_____ at least one Ceiling standard was exceeded, but the HCA has determined that this case presents extraordinary circumstances warranting an Applicability Exception, and the HCA's Governing Board or Approving Authority approves (copy attached).

Project Cost estimates reflected on the attached applicable Sources & Uses Statement Format are those provided by or discussed with your office, and are deemed reasonable.

(Name of HCA) certifies that it has properly implemented the Administrative Guidelines and that the mandates of section 911 (b) of the HCDA '92, as amended, have been satisfied. (name of HCA) further certifies that, in accordance with its Qualified Allocation Plan, section 911, and the Administrative Guidelines, the combination of tax credits, HUD Assistance—(specify here, *e.g.* mortgage insurance, Section 8 HAP contract, etc.)—and any other Other Government Assistance, being provided to meet allowable project uses, is not more than is necessary to provide affordable housing.

_____

(Authorized HCA Official)

_____

Date

[FR Doc. 94–30776 Filed 12–14–94, 8:45 am]
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federal register

Thursday
December 15, 1994

Part IV

Department of Health and Human Services

Centers for Disease Control and Prevention

Prevention of Group B Streptococcal Diseases: A Public Health Perspective; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prevention of Group B Streptococcal Disease: A Public Health Perspective

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, Health and Human Services.

ACTION: Notice.

SUMMARY: This notice is a request for review and comment of the draft document, Prevention of Group B Streptococcal Disease: A Public Health Perspective. The draft document was prepared by the Childhood and Respiratory Diseases Branch, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, CDC, with input from multiple reviewers.

DATES: Written comments on the draft document must be received on or before February 13, 1995.

ADDRESSES: Comments should be submitted in writing to the Centers for Disease Control and Prevention (CDC), Attention: GBS Recommendations Review Committee, Mailstop C–09, 1600 Clifton Road, NE., Atlanta, GA 30333. The **Federal Register** containing this draft document may be viewed and photocopied at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries that receive the **Federal Register** throughout the country. In addition, copies of this **Federal Register** notice document can be obtained by calling (404) 639–2215

FOR FURTHER INFORMATION CONTACT: Cynthia Whitney M.D., or Anne Schuchat M.D., telephone (404) 639–2215 or FAX (404) 639–3970.

SUPPLEMENTARY INFORMATION: The purpose of this document is to summarize the literature on group B streptococcal disease in newborns and to recommend a prevention strategy for clinicians providing obstetric care.

Dated: December 9, 1994.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC).

Appendix—

Prevention of Group B Streptococcal Disease: A Public Health Perspective

Executive Summary

This document contains a summary of the literature on the epidemiology and prevention options for neonatal group B streptococcal (GBS) disease and proposes recommendations for prevention of early-onset neonatal disease.

Neonatal GBS disease has become the major infectious cause of illness and death among newborns since its emergence in the 1970s. An estimated 7600 episodes of invasive GBS disease, primarily sepsis and meningitis, occur in newborns each year in the United States; approximately 80% of these episodes represent early-onset disease, occurring within the first week of life. Early-onset disease occurs in newborns through vertical transmission from a mother who carries GBS in her anorectum or genital tract. Several obstetric factors have been identified that indicate a high risk of a newborn developing early-onset GBS disease; the most important include prolonged or premature rupture of membranes, premature gestational age, and maternal chorioamnionitis, which is manifest by intrapartum fever.

Administering intravenous penicillin or ampicillin to mothers during labor and delivery is an effective way of preventing early-onset GBS disease. Several strategies have been proposed to select which women should receive intrapartum chemoprophylaxis. Many intrapartum chemoprophylaxis strategies are cost-effective, but they vary in their simplicity, the proportion of disease prevented, and the number of women who receive intrapartum chemoprophylaxis.

Where possible, we recommend the following strategy, which will prevent the majority of early-onset disease and limit the use of antimicrobials to about 5% of all deliveries, thus minimizing maternal side effects and the emergence of antimicrobial-resistant organisms. This strategy identifies women who are colonized with GBS through prenatal screening cultures at 26 to 28 weeks and restricts intrapartum chemoprophylaxis to colonized women who develop one or more of the following risk factors: intrapartum fever, prolonged rupture of membranes (≥12 hours), and premature onset of labor or membrane rupture (<37 weeks). In addition, all women who have previously delivered an infant with GBS disease should receive intrapartum chemoprophylaxis. This strategy requires appropriate methods for specimen collection and laboratory processing because culture methods substantially affect the ability to recover organisms. We recognize that this strategy is most applicable to women who are compliant with recommended prenatal care schedules and in settings where prenatal screening is practical. Women who do not receive prenatal care or whose GBS culture status is unknown should receive intrapartum chemoprophylaxis if one of the stated risk factors is present without regard to culture status.

An alternate strategy, for practices in which prenatal screening for GBS colonization is not done, is to give intrapartum antimicrobials to all women who develop one of the above obstetric risk factors (intrapartum fever, prolonged rupture of membranes, and premature onset of labor or membrane rupture) and to women who have previously delivered an infant with GBS disease. This strategy may require giving antimicrobials to up to 25% of deliveries, however, and those who employ this strategy should monitor for side effects of antimicrobial agents and for infections caused by antimicrobial-resistant organisms in their patient population.

Effectively implementing prevention strategies require communication among clinicians, microbiology laboratory personnel, delivery ward staff, and patients to ensure that cultures are properly collected, that the results are available at delivery, and that high-risk women receive appropriate intrapartum chemoprophylaxis. The majority of early-onset GBS disease and nearly all deaths can be prevented with currently available methods. Despite this, however, continued efforts are needed to simplify prevention strategies, through development of highly sensitive and rapid antigen detection tests or an effective vaccine, and to monitor the impact of current prevention efforts.

Introduction

During the last 2 decades, group B streptococcus (GBS) has emerged as a major infectious cause of neonatal morbidity and mortality. During this time, studies of the epidemiology and risk factors for GBS disease in newborns have contributed to advances in the development and evaluation of prevention strategies for this illness. This report will (1) review the epidemiology of GBS disease and summarize options for prevention of GBS disease in newborns, and (2) propose guidelines for screening and the use of intrapartum chemoprophylaxis for prevention of neonatal GBS disease.

Background

GBS, or *Streptococcus agalactiae*, is a gram-positive coccus that causes invasive disease primarily in newborns, pregnant women, and adults with underlying medical conditions. In infants, GBS disease is characterized as either early-onset (occurring in infants <7 days old) or late-onset (occurring in infants ≥7 days old). Disease in infants most commonly occurs as bacteremia, pneumonia, or meningitis (1). Approximately 25% of neonatal GBS disease occurs in premature infants (2).

GBS infection in pregnant women includes urinary tract infection, chorioamnionitis, endometritis, and wound infection; stillbirths and premature delivery have also been attributed to GBS (1). In nonpregnant adults, skin or soft tissue infection, bacteremia, genitourinary infection, and pneumonia are the most common manifestations of disease (2, 3).

The case-fatality rate for GBS disease is estimated as 5–20% for newborns (1, 2) and 15–32% (2–4) for adults. A recent multistate active surveillance system in a population of 10 million persons (2) found that 6% of early-onset GBS infections resulted in death This case-fatality rate is lower than those reported previously (1, 5), particularly the rates of 15–50% observed in series from the 1970s (6–8). This reduction in deaths most likely resulted from improvements in neonatal care (9, 10).

Epidemiology

Colonization

The gastrointestinal tract is the major human reservoir of GBS, with the

genitourinary tract the most important site of secondary spread (1). Colonization rates may vary among ethnic groups, geographic locales, and by age, but rates are similar for pregnant and nonpregnant women (1, 11–13). Five percent to 40% of all pregnant women are colonized with GBS in the vagina or rectal area (11, 14, 15). Of all infants born to colonized parturients, about 1–2% will develop early-onset invasive disease (1).

The isolation rate of GBS from clinical specimens depends on a variety of factors. Culturing specimens from both the anorectum and the vagina increases the likelihood of GBS isolation by 5–27% over vaginal culture alone (14–16). The use of selective media, or broth containing antimicrobials to inhibit competing organisms, is particularly important because it can increase the yield of screening cultures by as much as 50% (17, 18).

Incidence of Neonatal Disease

Recently, multistate, population-based methods of case-finding have been used to estimate the incidence of neonatal GBS disease in the United States. Age- and race-adjusted projections to the entire U.S. population suggested that in 1990, there were 7600 episodes (incidence 1.8 per 1000 live births) and 310 deaths due to GBS disease among infants ≤90 days of age (2). Early-onset infections accounted for approximately 80% of neonatal GBS infections (2). Long-term neurologic sequelae may result from meningitis or complications of severe sepsis, but the incidence and cost of these sequelae are not known.

Risk Factors

Studies have identified a number of obstetric, maternal, and neonatal factors that increase the likelihood that early-onset GBS disease will occur in a newborn. Deliveries in which premature onset of labor, prolonged rupture of membranes, intrapartum fever, or multiple gestation (5, 19–22) occurs are more likely to be complicated by GBS early-onset disease. The incidence of GBS disease also is higher among infants born to mothers who are <20 years old, of black race, or who have a high inoculum of GBS in genital cultures, GBS bacteriuria during pregnancy, or low levels of anti-GBS capsular antibody, or who previously delivered an infant with GBS disease (5, 7, 23–25). Risk factors identified for neonates include low birth weight and heavy surface colonization with GBS (7, 26).

Determinants of late-onset GBS disease are not well documented. Some evidence suggests that late-onset disease may be acquired through either vertical or nosocomial transmission (5, 27, 28), although acquisition of disease in the community also is possible (13).

Review of Prevention Strategies

Almost half of invasive GBS disease occurs in newborns (2); therefore, efforts to prevent GBS disease have concentrated on this group. Research has focused on inducing protective immunity in the newborn (active and passive immunization) or eradicating colonization with GBS from the mother and/or newborn (chemoprophylaxis).

Immunization

Several studies have suggested that susceptibility to neonatal GBS disease is, in part, due to a deficiency of maternal anticapsular antibody (25, 29). Active maternal immunization holds promise for prevention of peripartum maternal disease and neonatal disease by transplacental transfer of protective IgG antibodies (30). Several vaccines designed to induce antibodies against the polysaccharide capsule of GBS are now being developed. Theoretically, these vaccines also could be used to prevent GBS disease in nonpregnant adults.

The potential impact of effective vaccines may be limited because of reduced transplacental transport of protective antibody before 32–34 weeks gestation and because of possible difficulty in delivering the vaccine, particularly to those at highest risk such as teenage and nulliparous women.

Chemoprophylaxis

Efficacy Studies

Administering antimicrobials to pregnant women before the onset of labor or rupture of membranes is not likely to prevent neonatal GBS disease. In one study, asymptomatic pregnant women colonized with GBS were given oral antimicrobials in the third trimester; over 30% of those treated were still colonized at delivery, and there was no significant difference in carriage of the organism at delivery between treated and untreated groups (31). Another study showed that nearly 70% of colonized women who were treated in the third trimester were colonized at delivery even when their sex partners had also been treated (32).

Postnatal chemoprophylaxis with intramuscular penicillin given to infants just after birth also has been studied. Only one prospective, randomized, controlled study has been published in which blood cultures were obtained from all newborns before chemoprophylaxis was given (33). In this study, which enrolled only low-birth-weight infants, there were no differences between treated and untreated groups in the incidence of early- or late-onset GBS disease or in mortality. Another study suggested that postnatal chemoprophylaxis with penicillin may decrease neonatal illness due to GBS (34, 35). However, there was no significant effect on overall mortality, and mortality associated with penicillin-resistant pathogens was higher in the penicillin-treated group than the control group (1.0 vs 0.4 per 1000 live births, $p = 0.06$) (35). Since the majority of neonatal infections are acquired in utero (1), antimicrobials given to neonates, while useful for treatment, are unlikely to prevent GBS disease.

Intrapartum chemoprophylaxis (i.e., administration of antimicrobials after onset of labor or membrane rupture but before delivery) is the most promising method to prevent both early-onset disease and maternal illness due to GBS. Antimicrobial regimens that have been used for intrapartum chemoprophylaxis are shown in Table 1. Several studies have shown that intrapartum chemoprophylaxis decreases neonatal colonization (36–40) and early-onset invasive disease (39–42) when given to unselected pregnant women colonized with GBS. Other studies examined the use of intrapartum chemoprophylaxis for selected women colonized with GBS who were at increased risk for delivering an infant with GBS disease. The only prospective, randomized, controlled clinical trial using this approach focused on pregnant women colonized with GBS who experienced either preterm labor or membrane rupture (<37 weeks gestation) or prolonged rupture of membranes (>12 hours) (43). In a preliminary study of the obstetric population in the same community, the incidence of early-onset GBS disease in this high risk group was 8-fold higher than in colonized women without any of these risk factors (44, 45). In the intrapartum chemoprophylaxis trial, colonized mothers with preterm labor or prolonged rupture of membranes were randomized to receive intravenous ampicillin or no chemoprophylaxis. Infants delivered to mothers in the treatment (85 infants) and control groups (79 infants) differed significantly with respect to neonatal colonization (9% vs 51%, $p<0.001$) and early-onset invasive disease (0% vs 6%, $p<0.02$). Postpartum maternal febrile illness was also significantly reduced in the treatment group ($p<0.04$). The authors (Boyer and Gotoff) estimated that this strategy would prevent at least 50 percent of early-onset GBS infections in their population.

Other studies also have documented the protective efficacy of intrapartum chemoprophylaxis given to GBS carriers in selected high-risk groups. These included women with heavy genital colonization (46, 47) and with preterm prolonged rupture of membranes (48). A summary of published studies of the efficacy of intrapartum chemoprophylaxis is presented in Table 2. A recent meta-analysis of seven trials, which included studies of all carriers and carriers with risk factors, estimated a 30-fold reduction in early-onset GBS disease with intrapartum chemoprophylaxis (49).

Identification of Carriers

Most of the studies of intrapartum chemoprophylaxis have evaluated its impact on subsets of women who had been identified as GBS carriers. Although the GBS carriage rate in pregnancy does not change with trimester (11, 13), the duration of carriage is unpredictable (13), and prenatal screening cultures will not correctly identify all women with intrapartum GBS carriage. The later in pregnancy that cultures are performed, the better the correlation with intrapartum culture results. However, scheduling routine cultures very late in pregnancy will miss women who deliver prematurely. In one study, only 7.4% of women with a negative culture at 26–28 weeks were found to carry GBS at delivery when selective (antimicrobial-containing) broth medium was used and cultures were obtained from both the vagina and anorectum (15). The same large study showed that a single positive GBS culture during pregnancy was 67% predictive of a positive culture at delivery; the estimated sensitivity and specificity were 70.0% and 90.4%, respectively (15). Follow-up of over 5000 deliveries by women who had prenatal cultures for GBS found that 14 (88%) of the

16 infants who developed early-onset GBS disease were born to mothers who were detected prenatally as carriers (45).

Optimal identification of GBS carriers is dependant on technique. The correlation of prenatal culture results with intrapartum GBS carriage is likely to be substantially reduced when screening does not incorporate appropriate sites (rectum and vagina), timing (26 weeks gestation or later), and culture medium (selective broth). Since cultures from the vagina and rectum are more sensitive than cervical cultures (12), pelvic examination or visualization of the cervix by speculum examination is not required for collection of screening cultures.

Selection Criteria

Based on their randomized clinical trial, Boyer and Gotoff recommended intrapartum chemoprophylaxis for those women identified as GBS carriers through prenatal cultures who subsequently developed one of the following signs: rupture of membranes >12 hours, onset of labor or membrane rupture at <37 weeks, or intrapartum fever [>37.5°C](43). The American Academy of Pediatrics (AAP) supported the use of this strategy and added the following indications for intrapartum chemoprophylaxis: previous delivery of an infant with GBS disease and multiple gestation pregnancy in a GBS carrier (50).

Minkoff and Mead proposed an approach to GBS prevention that focused on prevention of disease associated with prematurity (51). This proposal suggested giving intrapartum antimicrobials to women who were either colonized with GBS or whose colonization status was unknown at the time of presentation with preterm labor or preterm rupture of membranes. However, strategies designed to prevent infection only in preterm deliveries would have limited impact since fewer than 30% of infants with GBS disease are born prematurely (2).

A pragmatic approach to determining the need for antimicrobial prophylaxis was recently advocated by the American College of Obstetricians and Gynecologists (ACOG, 52, 53). This strategy consists of using intrapartum antimicrobials for all women with one or more of the following conditions: preterm labor (<37 weeks), preterm premature rupture of membranes (<37 weeks), prolonged rupture of membrane (>18 hours), previous child affected by symptomatic GBS infection, or maternal fever during labor (53) This strategy is simpler than protocols requiring either prenatal or intrapartum identification of GBS carriage, although its impact on disease has not been evaluated in clinical practice. In addition, the strategy may lead to an increase in perinatal infections with penicillin-resistant organisms as a result of large-scale use of antimicrobials.

There have been no clinical trials directly comparing efficacy among suggested prevention strategies. Finding a statistically significant difference in efficacy may not be feasible; a recent article estimated that 100,000 women would be required for each arm of a randomized prospective trial comparing the efficacy of universal screening and selective intrapartum chemoprophylaxis with treatment based on risk factors alone (54). This limitation on directly comparing the efficacy of several prevention strategies is reflected in a recent national consensus statement by the Society of Obstetricians and Gynaecologists of Canada and the Canadian Paediatric Society, which recommended use of either the AAP (Boyer and Gotoff) strategy or the ACOG approach and underscored the need for further prevention research (55).

Adverse Effects

Because a substantial proportion of pregnant women are colonized with GBS, administration of intrapartum chemoprophylaxis to all GBS carriers is likely to cause an unacceptably high number of adverse reactions. It has been estimated—assuming a GBS colonization rate of 25%, 4 million deliveries in the United States annually, and a rate of fatal anaphylaxis to penicillin of 0.001%—that giving intrapartum antimicrobials to all women who are GBS carriers would result in about 10 deaths per year from anaphylaxis (56). Another 0.7 to 10% of women given prophylaxis would be expected to have less severe reactions (57). Severe complications can occur in the fetus even when maternal anaphylaxis is relatively mild (58). In addition, widespread antimicrobial use is known to increase the risk for emergence of antimicrobial-resistant organisms. GBS isolates have not yet developed clinically important resistance to penicillin, but infections with penicillin-tolerant GBS have been described (59–61). Development of antimicrobial-resistance in other peripartum pathogens is an even greater threat. McDuffie et al. report four episodes of adverse perinatal outcome due to antimicrobial-resistant *Enterobacteriaceae* among women treated with ampicillin or amoxicillin for premature rupture of membranes (62).

Restricting antimicrobials to selected populations at increased risk for delivering a newborn with GBS disease would decrease the likelihood of adverse reactions and antimicrobial resistant organisms. The strategy proposed by Boyer and Gotoff (giving intrapartum ampicillin to women identified prenatally as GBS carriers who have rupture of membranes >12 hours, labor or membrane rupture at <37 weeks, or intrapartum fever [>37.5°C]) would require administering antimicrobials to 4.6% of the obstetric population served by their urban hospital (43). The approach suggested by Minkoff and Mead (giving antimicrobials to women with either labor or membrane rupture at <37 weeks gestation who are intrapartum carriers of GBS or whose GBS status is unknown) was estimated to require prophylaxis for 8.9 percent of parturients (51). Strategies that treat all GBS carriers (42) or all women with obstetric risk factors (e.g., prolonged membrane rupture, prematurity) (52) are estimated to require administering antimicrobials in over 20% of deliveries; this level of antimicrobial use could lead to unacceptable numbers of serious adverse reactions and contribute to the emergence of antimicrobial-resistant organisms.

Implementation Issues

Despite the encouraging results of efficacy studies, routine GBS screening and selective intrapartum chemoprophylaxis have not been widely adopted in the obstetric community (53, 63). Practical problems include logistic concerns related to screening for GBS colonization and concern about the cost-effectiveness of implementing chemoprophylaxis.

A strategy based on detecting colonization by prenatal screening and using these results to guide selective intrapartum chemoprophylaxis would not be effective for persons receiving no prenatal care or in persons whose prenatal records are not available to caregivers at the time of delivery Ideally, GBS carriage would be determined at the time of labor onset or at rupture of membranes. However, since identification of GBS by culture takes 24–48 hours, intrapartum culture results would not be available in time for intervention in the majority of deliveries. Rapid detection of GBS antigen from vaginal specimens may identify GBS carriers when prenatal screening is not available (64). Although rapid tests for detection of GBS are very specific and many recently developed tests can be performed in less than 1 hour, the sensitivity of rapid detection tests has been variable, and, often, unacceptably low (15–74%) (64). Some rapid detection kits appear to be sensitive for detecting women who are heavily colonized. Three studies have confirmed the efficacy of intrapartum chemoprophylaxis given to women identified by rapid detection techniques as GBS carriers (46–48). However, since many infants with neonatal GBS disease are born to women who are lightly colonized (48, 65), using currently available rapid detection techniques to identify women for prophylaxis would prevent only a minority of GBS cases.

The cost-effectiveness of selective intrapartum chemoprophylaxis for the prevention of GBS disease has been studied using population-based rates of disease (66). The approach recommended by Boyer and Gotoff was shown to be cost-effective at the current rates of disease. The cost per case prevented (<35,000 dollars) was similar to maternal screening and intervention programs for other perinatal diseases such as congenital syphilis (67). Four other studies also have suggested that selective intrapartum chemoprophylaxis is cost-effective for the prevention of neonatal GBS disease (45, 68–70).

Two additional problems related to implementation of chemoprophylaxis should be mentioned. Clinicians have been concerned about adopting a strategy that will inevitably have failures (52). This concern may be influenced by the complexity of communicating GBS risk information to women during pregnancy or by medicolegal considerations. Increasing intrapartum antimicrobial use may have a substantial impact on management of the newborn (71, 72). Some pediatricians routinely perform additional diagnostic tests on infants whose mothers received intrapartum antimicrobials or observe these infants longer, leading to prolonged hospital stays for many low-risk newborns (71). The American Academy of Pediatrics has recommended that management of newborns whose mothers received intrapartum antimicrobials be based on clinical manifestations and the infant's estimated gestational age (50)

Some of the challenges of instituting a prevention strategy are illustrated in two recent reports. Pylipow et al initiated selective intrapartum chemoprophylaxis in their hospital in response to an increased rate of early-onset GBS disease (72). They enrolled 2040 women, 16.3% of whom were colonized with GBS. Among women colonized at delivery, 122 (37%) had at least one obstetric risk factor. However, 33 of these women did not receive intrapartum chemoprophylaxis because of failure to follow the protocol (N=17), birth less than 1 hour after arriving at the hospital (n=9), negative prenatal culture but positive culture at delivery (n=4), or no prenatal care (n=3). Eleven infants had early-onset GBS disease; two had received one dose of intrapartum chemoprophylaxis and were asymptomatic, and nine were born to carriers with risk factors who did not receive intrapartum chemoprophylaxis. No affected infants were born to colonized women without risk factors or to women whose prenatal screening culture was negative for GBS. One woman who received intrapartum chemoprophylaxis developed a rash and transient hypotension and was delivered by cesarean section because of transient fetal bradycardia. The study suggested that selective intrapartum chemoprophylaxis was effective in preventing early-onset GBS disease, that the infants of colonized women without labor complications are at low risk of disease, and that administering intrapartum antimicrobials is not without risks. The second report, by Gibbs et al (73), also illustrates that a prevention strategy employing selective intrapartum chemoprophylaxis is not easily implemented. In this study, which was conducted in an academic setting, 80.3% of 142 women who had positive GBS screening cultures and who developed risk factors at delivery received intrapartum antimicrobials. Reasons for those failing to receive appropriate treatment included failure to follow protocol, marginal indications for chemoprophylaxis, or patient refusal. The study is ongoing but early results suggest a downward trend in the rate of disease.

Conclusions

Group B streptococcal disease continues to be a major cause of illness and death among newborns despite clinical advances in the last 2 decades. Major risk factors for early-onset neonatal GBS disease include prolonged rupture of membranes, intrapartum fever, prematurity, GBS bacteriuria during pregnancy, and previous delivery of an infant with GBS disease (5, 20, 22–24). Studies have shown that much early-onset neonatal disease can be prevented by prophylactic antimicrobials given during labor, and that prenatal screening—by culture at 26 to 28 weeks gestation of both the vagina and rectum using selective broth media—can detect the majority of women who will be colonized with GBS at delivery (45). A growing body of evidence suggests that it is more costly to treat GBS-infected newborns than to prevent the infection, and that well-implemented prevention programs can substantially reduce illness and death due to GBS (45, 66, 68–70). As with any prevention program, prevention programs for GBS must be implemented carefully; failure to use optimal culture methods can seriously compromise the efficacy of screening strategies, and nonselective approaches to antimicrobial prophylaxis may result in excessive antimicrobial use which entails risk. A recent survey of Georgia obstetric care providers suggests that there is some confusion among practitioners over currently published prevention recommendations; only 9% of those who obtained screening cultures followed recommended procedures and 32% gave antimicrobials prenatally when carriage was detected even though 93% stated they knew such treatment is ineffective (74).

Of the options outlined above, a program of universal prenatal screening and intrapartum chemoprophylaxis for carriers with obstetric risk factors has several features supporting its use for preventing early-onset GBS disease. This strategy relies on currently available technology, minimizes potential adverse effects associated with antimicrobials, has been validated through a randomized controlled trial, and is least likely to contribute to selection of antimicrobial-resistant microorganisms. This strategy is cost-effective at the current rate of disease in the United States (66). However, it uses prenatal screening as a method to identify women with GBS carriage and would miss those women who have not received any prenatal care and some women whose carriage of GBS is not detected by prenatal culture. In addition, the use of prenatal screening cultures could result in overuse of antimicrobials if clinicians give intrapartum chemoprophylaxis to GBS carriers who do not develop risk factors at the time of delivery or if antimicrobials are given before delivery or rupture of membranes.

Determining when to use intrapartum antimicrobials solely on the basis of obstetric criteria (e.g., prematurity, prolonged membrane rupture, or intrapartum fever) (53) may be helpful for women who have not had the benefits of prenatal care or in settings where prenatal screening is not feasible. Such a program would require giving antimicrobials to a larger proportion of women in labor than a program based on prenatal screening and selective chemoprophylaxis, and is likely to cause excessive adverse reactions and selection of antimicrobial-resistant organisms. Institutions that choose this empiric approach are encouraged to monitor its effectiveness and quantify adverse outcomes associated with the strategy for review in the medical literature. The impact of intrapartum chemoprophylaxis on management of low risk newborns also need to be evaluated.

A program of universal prenatal screening for GBS, although it may be the best option available now, is not a permanent solution to the problem of neonatal GBS disease. A more sensitive rapid screening test for GBS that could accurately detect women who carry GBS at the time of delivery would avoid the need for prenatal screening. Sensitive intrapartum testing would also permit detection of GBS carriage among women without adequate prenatal care. Since an intrapartum test might detect a higher proportion of women who carry the organism at delivery and avoid detecting women who only carry the organism earlier in pregnancy, intrapartum use of a sensitive rapid detection test could make a prevention program more simple and more efficient. Development of a vaccine against GBS that is highly immunogenic in women and permits transplacental transfer of protection to the fetus would also eliminate the need for prenatal screening.

Since incidence may vary widely, State or local health departments or groups of affiliated hospitals should consider establishing surveillance systems for neonatal GBS disease or reviewing data from existing systems to identify the current magnitude of disease and provide further information for evaluating the effectiveness of prevention measures. In hospital settings, prevention programs should monitor the occurrence of adverse reactions to chemoprophylaxis, the emergence of perinatal infections due to antimicrobial resistant organisms, and the impact of obstetric antimicrobial use on pediatric management protocols. Only through enhanced communication among obstetric care providers, pediatricians, laboratory personnel, infection control practitioners, infectious disease clinicians, and local and State health departments can programs for prevention of this serious disease succeed. Open communication between clinicians and patients is also an important component of GBS disease prevention. An informational brochure for pregnant women on GBS is available through CDC (CRDB/DBMD, National Center for Infectious Diseases, Mailstop C–09; Atlanta, GA 30333). The following recommendations for the prevention of GBS disease will need periodic reappraisal to incorporate advances in technology or other refinements in prevention strategies.

Recommendations

(1) Screen all pregnant women at 26–28 weeks gestation for anogenital GBS colonization (figure 1). Screen for GBS colonization at the first opportunity thereafter if it is not possible to screen at 26–28 weeks. Screening earlier in pregnancy is not recommended because of poor correlation with intrapartum carriage. Information systems should be developed and monitored to assure that prenatal culture results are available at the time and place of delivery.

(2) Use culture techniques that maximize the likelihood of GBS recovery. Speculum examination is not necessary for specimen collection. A single swab or two separate swabs of the distal vagina and anorectum inoculated into selective broth medium and then subcultured onto solid medium appears to be optimal. A standard culture swab may be used, but the sample should be identified for the laboratory as specifically for GBS culture; in this screening culture, there is no need for the laboratory to culture for other organisms. Appropriate selective broth media are commercially available. A laboratory procedure to maximize recovery of GBS is detailed in Table 3.

(3) Do not use oral antimicrobials to treat women who are found to be colonized with

GBS during prenatal screening. Such treatment is not effective in eliminating carriage or preventing neonatal disease.

(4) Give intrapartum chemoprophylaxis to women with a history of previously giving birth to an infant with early-onset GBS disease; prenatal screening is not necessary for these women.

(5) Give intrapartum chemoprophylaxis to pregnant women identified as GBS carriers who meet at least one of the following criteria: a) Intrapartum fever (T≥37.5°C) not clearly attributable to an extrauterine source; b) onset of labor or membrane rupture before 37 weeks gestation; or c) rupture of membranes longer than 12 hours.

(6) For women without prenatal care, in settings in which prenatal screening cultures are not done, or if GBS culture results are unknown, assume the patient carries GBS and administer intrapartum antimicrobials to women who have the criteria listed in 5a–c (figure 2). Screening cultures for GBS colonization may be performed upon admission to the hospital for delivery; intrapartum antimicrobials may be stopped if cultures are complete and are negative for GBS.

(7) Use intravenous penicillin G (5 million units every 6 hours) or ampicillin (2 grams initially followed by 1 gram every 4–6 hours) until delivery for intrapartum chemoprophylaxis. Clindamycin or erythromycin may be used for women allergic to penicillin, although the efficacy of these drugs for GBS disease prevention has not been measured in controlled trials. (**NOTE:** women with clinical diagnoses of chorioamnionitis may require other treatment regimens.)

(8) Treat women found to have symptomatic or asymptomatic GBS bacteriuria during pregnancy at the time of diagnosis. Although data related to this issue are limited, intrapartum chemoprophylaxis could be considered for women with a history of GBS bacteriuria during the pregnancy, even if other risk factors are absent.

(9) Routine use of prophylactic antimicrobials for infants born to mothers who received intrapartum antimicrobials is not recommended. However, therapeutic use of antimicrobials is appropriate for those infants suspected clinically of having GBS disease or other acute infection. Additional research is needed to determine algorithms for assessing sepsis in infants born to mothers who receive intrapartum antimicrobials.

TABLE 1.—SUMMARY OF ANTIMICROBIAL REGIMENS USED FOR INTRAPARTUM CHEMOPROPHYLAXIS FOR GBS DISEASE

Reference	Antimicrobial	Dose and schedule	Comments
Yow[36]	Ampicillin	500 mg IV every 6 hrs	30/34 received only one dose before delivery.
Allardice[41]	Ampicillin	500 mg IV every 6 hrs	
Easmon[37]	Benzyl penicillin	600 mg IM every 8 hrs	Erythromycin 100 mg IM for penicillin-allergic women.
Matorras[39]	Ampicillin	500 mg IV every 6 hrs	46/57 received only one dose before delivery.
Garland[42]	Penicillin	1 mU IV every 6 hrs	
Boyer[43]	Ampicillin	2 g IV load then 1 g IV every 4 hrs.	Mean duration of prophylaxis 5.4 hrs.
Tuppurainen[47]	Penicillin G	5 mU IV every 6 hrs	If labor lasted >18 hrs, then penicillin V 1 mU PO every 8 hrs after initial IV therapy.
Morales[48]	Ampicillin	1 g IV every 6 hrs	
Morales[46]	Ampicillin	1 g IV every 6 hrs	Ampicillin levels measured in 8 mother-infant pairs.

IV = Intravenous, IM = Intramuscular, PO = By mouth.

TABLE 2.—SUMMARY OF TRIALS EMPLOYING INTRAPARTUM CHEMOPROPHYLAXIS FOR PREVENTION OF NEONATAL COLONIZATION AND EARLY-ONSET GROUP B STREPTOCOCCAL DISEASE

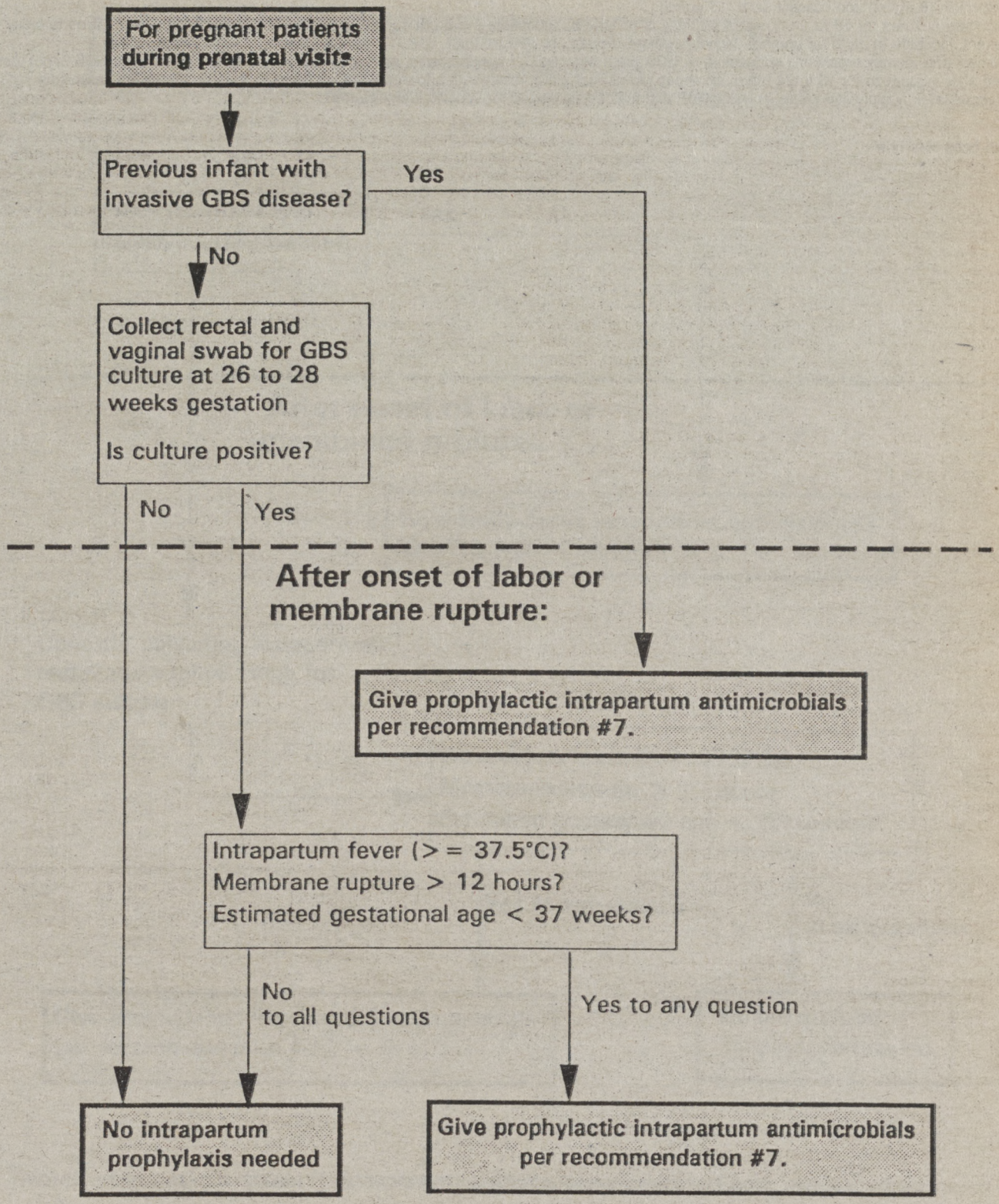
Reference	Study design, control selection	Case selection criteria	Neonatal colonization			Early-onset disease		
			IC	No IC	P value	IC	No IC	P value
Yow[36]	R Random	I	0/34	14/24	0.001	0/34	0/24	NA
Allardice[41]	P/R Nonrandom	I	4/57	62/136	<0.01	0/57	9/136	0.06
Easmon[37]	P Random	PC	0/38	17/49	0.001	ND	ND	NA
Matorras[39]	P Random	I or PC	2/60	24/65	<0.01	0/60	3/65	0.14
Garland[42]	P Nonrandom	PC	ND	ND	NA	16/NG	27/NG	NG
Boyer[43]	P Random	PC and Pre/PROM	8/85	40/79	0.001	0/85	5/79	0.02
	P Nonrandom	PC and Pre/PROM	5/82	102/233	<0.01	0/82	7/233	0.02
Tuppurainen[47]	P Random	Heavy PC	ND	ND	NA	1/88	10/111	0.03
Morales[48]	P/R Nonrandom	Light I and PPROM	ND	ND	NA	0/29	6/37	0.03
	P/R Nonrandom	Heavy I and PPROM	ND	ND	NA	0/7	7/11	0.01
Morales[46]	P Random	Light PC	0/98	35/98	<0.01	0/98	0/98	NA
		Heavy PC	0/37	24/30	<0.01	0/37	3/30	0.09

Legend—Table 2

IC=Intrapartum chemoprophylaxis, R=Retrospective, I=Intrapartum colonization, NA=not applicable, P/R=Prospective case selection, retrospective control selection, P=Prospective, PC=Prenatal colonization, ND=not done, NG=Not given, Pre/PROM=Preterm labor (gestation <37 weeks) or prolonged rupture of membranes (<12 hours), PPROM=Preterm prolonged rupture of membranes.

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Figure 1: Prevention strategy for early-onset group B streptococcal disease employing prenatal screening



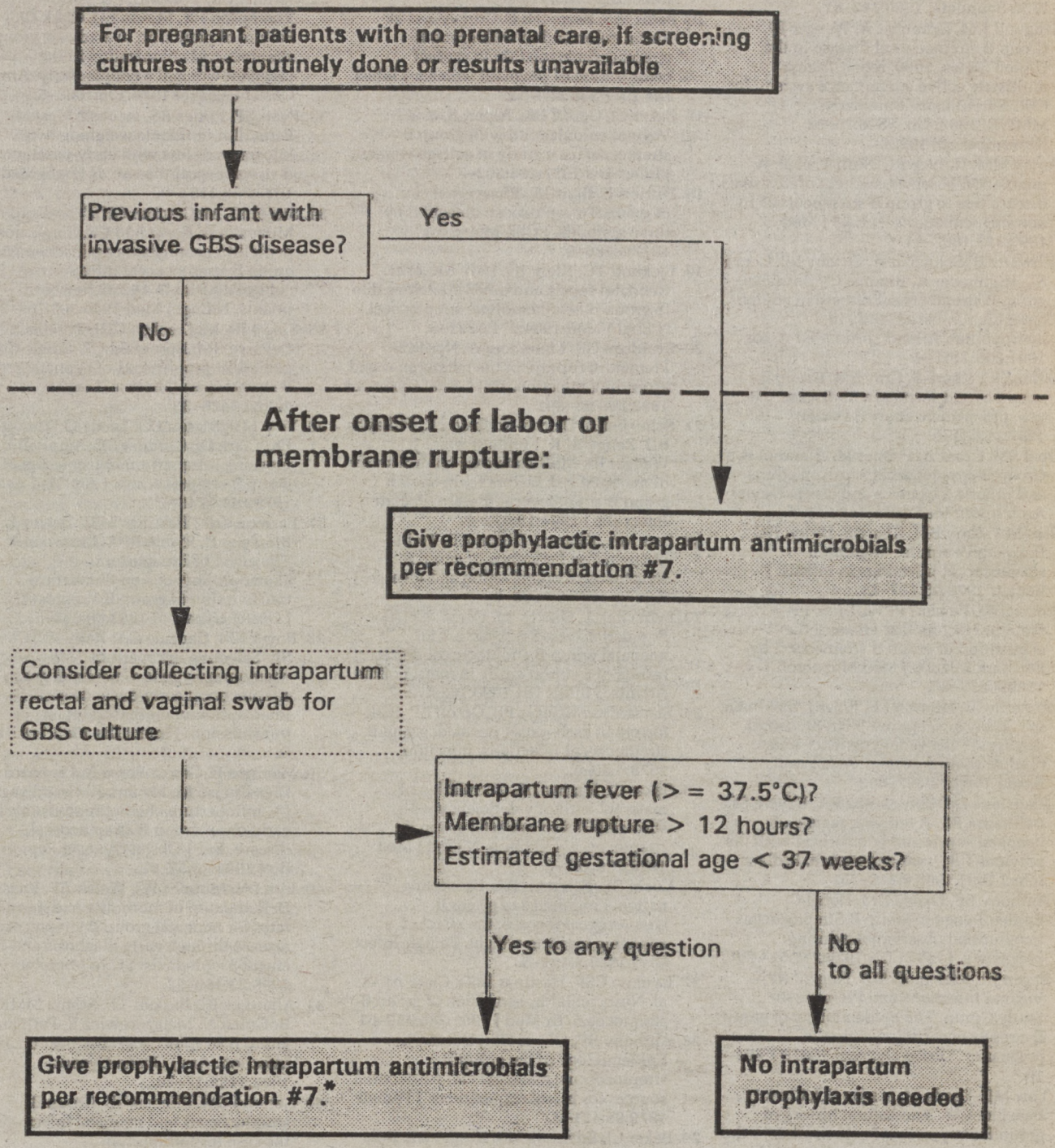
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TABLE 3.—PROCEDURE FOR COLLECTION AND PROCESSING OF CLINICAL SPECIMENS FOR CULTURE OF GBS

(1) Obtain one or two swab(s) of the vaginal introitus and anorectum.
(2) Inoculate both swabs together into Todd-Hewitt broth supplemented with either colistin (10 µg/ml) and nalidixic acid (15 µg/ml), or with gentamicin (8 µg/ml) and nalidixic acid (15 µg/ml).
(3) Incubate cultures for 18 to 24 hours. If turbidity is observed, subculture the broth culture growth to sheep blood agar plate. If no turbidity is present, incubate in broth for another 24 hours before discarding.
(4) Inspect and identify organisms suggestive of GBS (beta hemolytic or nonhemolytic, gram-positive and catalase negative). If GBS is not identified after incubation for 18 to 24 hours on sheep blood agar plate, reincubate and inspect at 48 hours to identify suspected organisms
(5) Various latex agglutination tests or the CAMP test may be employed for specific identification.

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Figure 2: Prevention strategy for early-onset group B streptococcal disease without prenatal screening



*Note: stop antimicrobials if intrapartum cultures were collected and are negative.

BILLING CODE 4163-18-C

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[FR Doc. 94–30806 Filed 12–14–94; 8:45 am]

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federal register

Thursday
December 15, 1994

Part V

Department of Labor

Employment and Training Administration
20 CFR Part 655

Wage and Hour Division
29 CFR Part 508

Foreign Students: Attestations by Employers for Off-Campus Work Authorizations; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 508

RIN 1205–AA88 and RIN 1215–AA

Attestations by Employers for Off-Campus Work Authorization for Foreign Students (F–1 Nonimmigrants)

AGENCIES: Employment and Training Administration, Labor, and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Joint interim final rule.

SUMMARY: The Department of Labor amends regulations relating to attestations by employers seeking to use nonimmigrant foreign (F–1) students in off-campus work. Statutory authority for the program expired on September 30, 1994, but on October 25, 1994, Public Law 103–416 revived and extended the program through September 30, 1996. This rule implements that law.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart J, and 29 CFR part 508, subpart J, contact Ms. Flora T Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0174 (this is not a toll-free number).

On 20 CFR part 655, subpart K, and 29 CFR part 508, subpart K, contact the Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 221 of the Immigration Act of 1990 (IMMACT), supplements sections 101(a)(15)(F) and 214 of the Immigration and Nationality Act. It created a pilot program, of limited duration, allowing nonimmigrant foreign students admitted as F–1 nonimmigrant students to work off-campus if: (1) He/she has completed one academic year as such a nonimmigrant and is maintaining good academic standing at the institution; (2) he/she will not be employed off-campus for more than 20 hours per week during the academic term (but may be employed full-time during vacation periods and between terms); and (3) the employer provides an attestation to the Department of Labor (DOL) and to the educational institution that it unsuccessfully recruited for the position for at least 60 days and will pay the higher of the actual wage at the worksite or the prevailing wage for the occupation in the area of employment.

The employer submits such attestations to DOL and the educational institution for foreign students to receive work authorization, if otherwise qualified. The attestation process is administered by the Employment and Training Administration.

Complaints and investigations regarding violations of employer attestations are handled by the Wage and Hour Division, Employment Standards Administration. If DOL determines an employer made a materially false attestation or failed to pay wages in accordance with an attestation, the employer, after notice and opportunity for a hearing, may be disqualified from employing F–1 students under the program.

IMMACT established the program as a 3-year pilot to end September 30, 1994. Public Law 103–416 (October 25, 1994) revived the program through September 30, 1996. An Advance Notice of Proposed Rulemaking for this and a number of other IMMACT programs was published at 55 FR 11705 (March 20, 1991), describing DOL-administered provisions and seeking comments. Comments received from a variety of persons and organizations were considered fully in developing an interim final rule. 56 FR 56860 (November 6, 1991). The 1991 interim final rule provided that the employer's attestation may remain in effect, unless withdrawn or invalidated, through no later than September 30, 1994, the termination date for the pilot, as specified in 1990 in IMMACT. That interim final rule sought further public comment, analysis of which is ongoing. A final rule is expected to be published before June 30, 1995. Should that not occur, the interim final rule will be extended again.

This rulemaking extends, through June 30, 1995, attestations which were in effect on September 30, 1994. Absent such an amendment to existing regulations, all previously valid attestations, which expired on September 30, 1994, would remain expired and no new attestations could be filed, since the last validity date under the 1991 interim final rule was September 30, 1994. Consequently, without such amendment, F–1 students would not have work authorization under this program. New attestations, filed after the effective date of this interim final rule, also will be valid through June 30, 1995, unless withdrawn or invalidated. Thus, this new interim final rule alleviates hardships for covered students and employers. In addition, this limited extension gives DOL additional opportunity to complete the analysis of the comments on the interim final rule, as well as the program report developed pursuant to IMMACT section 221(b).

For these reasons, DOL, for good cause, finds a proposed rule is impracticable and contrary to the public interest (5 U.S.C. 553(b)(B)); and finds good cause to make the rule effective immediately (5 U.S.C. 553(d)(3)).

This rule is not significant under E.O. 12866.

This rule was not preceded by a proposed rule and, thus, is not covered by the Regulatory Flexibility Act. When the interim final rule was published, however, DOL notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule did not have a significant economic impact on a substantial number of small entities.

The program is not in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 508

Administrative practice and procedure, Aliens, Employment, Enforcement, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

Text of Joint Interim Final Rule

The text of the joint interim final rule appears below:

1. Section ____.900(b)(2)(i) is amended by removing the date "September 30, 1994" and adding in lieu thereof the date "June 30, 1995"

2. Section ____.900(d) is amended by removing the date "September 30, 1994" and adding in lieu thereof the date "June 30, 1995"

3. Section ____.900 is amended by adding a new paragraph (e), to read as follows:

§ .900 Purpose, procedure and applicability of subparts J and K of this part.

* * * * *

(e) *Revalidation of employer attestations in effect on September 30, 1994* Any employer's attestation which was valid on September 30, 1994, is revalidated effective on December 15, 1994, and shall remain valid through June 30, 1995, unless withdrawn or invalidated

4 Section 910(b)(2)(i) is amended by removing the phrase "for three years, or until September 30, 1994, whichever is sooner" and adding in lieu thereof the phrase "through June 30, 1995"

5 Section 910(e) is amended by removing the date "September 30, 1994" both times it appears and adding in lieu thereof the date "June 30, 1995"

6 Section _ 940(d)(1)(i)(B) is amended by removing the date "September 30, 1994" and adding in lieu thereof the date "June 30, 1995"

7 Section _ 940(h)(1) is amended by removing the date "September 30, 1994" and adding in lieu thereof the date "June 30, 1995"

8 Section _ _ 940(h)(3) is amended by removing the date "September 30, 1994" and adding in lieu thereof the date "June 30, 1995"

Adoption of Joint Interim Final Rule

The agency-specific adoption of the Joint Interim Final Rule, which appears at the end of the common preamble, appears below:

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

1. Part 655 of chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

a. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*, sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.* and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U S.C. 1101(a)(15)(H)(i)(a), and 1182(m), and 1184, 29 U S.C. 49 *et seq.*, and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; and 29 U.S.C. 49 *et seq.*

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

b. Part 655 is amended as set forth in the Joint Interim Final Rule, which appears at the end of the end of the common preamble.

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

2. Part 508 of chapter V of title 29, Code of Federal Regulations, is amended as follows:

PART 508—ATTESTATIONS FILED BY EMPLOYERS UTILIZING F–1 STUDENTS FOR OFF-CAMPUS WORK

a. The authority citation for part 508 continues to read as follows:

Authority: 29 U.S.C. 49 *et seq.*, and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

b. Part 508 is amended as set forth in the Joint Interim Final Rule, which appears at the end of the end of the common preamble.

Signed at Washington, DC, this 9th day of December 1994.

Robert B. Reich,

Secretary of Labor

[FR Doc. 94–30757 Filed 12–14–94, 8:45 am]

BILLING CODE 4510–30–M; 4510–27–M

federal register

Thursday
December 15, 1994

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 505
Inmate Incarceration Fee Costs; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 505

[BOP–1024–F]

RIN 1120–AA27

Costs of Incarceration Fee

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for the assessment and collection of a fee to cover the costs of incarceration for Federal inmates. This fee, which is to be assessed no more than once for any separate period of incarceration, shall be equivalent to the average cost of one year of incarceration. An inmate will be assessed a fee in accordance with his or her ability to pay as determined by application of the Department of Health and Human Services poverty guidelines. No fee is to be collected from an inmate with respect to whom a fine intended to recover costs of incarceration was imposed or waived by a United States District Court. An assessed fee may be waived or reduced in cases of financial hardship. This final rule, which implements newly enacted statutory authority and Departmental regulations on recovering costs of incarceration, is intended to ensure the continued efficient operation of Federal correctional institutions, including the provision of programs which help inmates better themselves.

EFFECTIVE DATE: This rule is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Federal Bureau of Prisons, phone (202) 514–6655, 320 First Street, NW., Room 754, Washington, DC 20534.

SUPPLEMENTARY INFORMATION: On June 28, 1993, the Justice Department published a proposed rule (58 FR 34541) establishing procedures for the assessment and collection of a fee to cover the costs of incarceration for Federal inmates. Comments were received from seven individuals, consisting of a federal employee, a law professor, and five federal inmates. In response to public comment on this proposed rule and for reasons of administrative management, the Department published a second proposed rule on April 5, 1994 (59 FR 15880) separating provisions relating to the establishment of the fee from those provisions relating to the administration and collection of the fee. The proposed rule delegated authority relating to the latter provisions to the Director of the Bureau of Prisons. This second proposed rule contained the Department's response to comments pertinent to statutory authority, applicability, establishment of the fee, determination of the average cost, and administrative procedure. One further comment from the general public was received on this second proposed rule. After review of the public comment received on this second proposed rule, the Department has published a document in the November 25, 1994 **Federal Register** (59 FR 60557) adopting as final the provisions contained in the April 5 proposed rule. The Bureau, in this document, is adopting as final regulations that portion of the Department's June 28, 1993 proposed rule relating to the assessment and collection of the fee by Bureau staff. A summary of the public comment and agency response follows.

Three commenters disagreed with the fact that the Unit Team will rely exclusively upon the information contained in the Pre-Sentence Investigation Report (PSI) and the orders and findings of the sentencing judge in order to determine an inmate's financial status. One commenter believed that Unit Team staff would benefit from assessing high fees and that they would only rely on the Government's statements, instead of the inmate's contentions that he or she is unable to pay. Another commenter contended that the Unit Team is not qualified to assess a fine and that there are no safeguards in place to protect inmates from abusive assessments. The third commenter recognized that facts in the PSI could be controverted at the sentencing hearing, but argues that the focus at that point in time is on sentencing, not on cost-of-confinement fee assessment. He also argues that the PSI does not distinguish between the joint assets of two equally culpable married offenders, leaving them both open to a full assessment based upon the full property value. One commenter asked what would happen if no findings of financial fitness were made in the PSI or the inmate's assets changed during incarceration.

The decision to rely exclusively upon the findings made in the PSI and during sentencing proceedings was based upon considerations of fairness and administrative necessity. Unit Team staff have neither the time nor resource information necessary to make individual assessments of financial fitness to pay the fee. Instead, the initial findings made in the PSI and finalized at the sentencing hearing provide a reasonable basis upon which to evaluate the financial standing of the inmate.

Under existing federal statutes and the Sentencing Guidelines, an offender's sentence could, and should, include a fine. Thus, every PSI contains an assessment and recommendation as to an offender's financial status and resources. This assessment, while dependent upon state property law, will make distinctions between joint and individual property. Consequently, at the sentencing hearing, the offender will have an opportunity to dispute the financial findings and put forth his or her own favorable evidence as to income. Because federal statutes and the Sentencing Guidelines make it clear that an offender's fine will depend upon income, financial resources, and dependents, it is in the offender's own best interest to ensure that the PSI and the judge's ultimate findings are as complete as possible with regard to his or her financial status. Thus, the Unit Team will not have to conduct individual fact-finding, but can make simple, objective calculations based upon previously established figures.

Moreover, under the proposed rule, additional review is provided through the Bureau of Prisons' Administrative Remedy Process so that the inmate can demonstrate his or her inability to pay the fee. Two commenters were critical of the Bureau's remedy process, one individual commenting that the remedy procedures are only a "rubberstamp" process meant to delay an inmate's access to the courts. He also contended that the waiver under § 505.2(f) will only be granted to informants. Despite this cynicism, the Bureau's three-tiered administrative remedy process ensures that decisionmaking and review are made at three impartial administrative levels and promotes the efficient and non-adversarial resolution of inmate grievances.

Another disagreement with the proposed rule was with regard to the management of the fees under the Inmate Financial Responsibility Program (IFRP), 28 CFR part 545, subpart B. Two commenters felt the IFRP was manipulative, forcing inmates to either choose to participate or lose higher-paying jobs in UNICOR or other institutional privileges. One commenter felt that the fee assessments would force more inmates to work in UNICOR factories. Nevertheless, the use of this program to manage the fee assessments is efficient and sound. The program is currently being used to help inmates coordinate the payment of their financial obligations in light of each inmate's institutional program and job assignments. Logically, the fee assessment will merely become another financial obligation to be considered in

making these payments. Likewise, the IFRP has been upheld in the federal courts as a reasonable means of helping inmates meet legitimate financial obligations. *See, e.g., Dorman* v. *Thornburgh,* 955 F.2d 57 (D.C. Cir. 1992); *James* v. *Quinlan,* 866 F.2d 627 (3d Cir.), *cert. denied,* 493 U.S. 870 (1989).

Another commenter queried whether a failure to pay the fee prior to release would result in a longer prison term or a Bureau of Prisons' lien upon an inmate's property. As mentioned earlier, the fee assessment is neither punitive nor part of an inmate's sentence. Thus, a failure to pay off the assessment prior to release will not lengthen an inmate's original imprisonment term. As proposed, unpaid amounts were to be referred to the appropriate United States Attorney's Office. This procedure is part of the Federal Claims Collection Standards. In order to emphasize that any referral of an unpaid amount is to be handled in the same manner as other unpaid claims to the Federal government, the Bureau has revised § 505.9 to specify that any unpaid amount will be referred in accordance with Federal Claims Collection Standards (4 CFR Chapter II).

One commenter objected to the Department's April 5, 1994 proposed rule, stating that it was a draconian rule imposing an additional "punishment fine" on the inmate, that it would punish the inmate's spouse and children through the threat of poverty and dependence upon welfare, and that it would prevent the inmate from regaining financial stability upon release from prison. As noted in the Department's final rule and also above in this document, the cost of incarceration fee is not an additional assessment to any fine imposed by the court. Provisions in the proposed rule intended to protect the inmate and the inmate's dependents from financial hardship have been retained in this final rule. These protections include use of the Department of Health and Human Services annual poverty guidelines for the purpose of assessment, reduction or waiver of the fee in instances where the inmate establishes that he or she is not able and, even with the use of a reasonable installment schedule, is not likely to pay all or part of the fee, or that imposition of the fee would unduly burden the inmate's dependents.

This same commenter also objected to the requirement that the fee is due and payable fifteen days after notice and may also be subject to interest charges. The commenter stated that there was no information on how the late payment "fine" will be determined. The commenter objected to the prioritization of payment, claiming that it meant the fee would be paid before any other financial obligations such as child support, federal or state taxes or court fine. The Bureau believes that the various protections against the imposition of a financial hardship in assessing the fee will ensure that payment of the fee is not unreasonable. The Bureau's Inmate Financial Responsibility Program already provides for payment in full or for payment by installment of inmate financial obligations. The regulations for payment of the cost of incarceration fee merely defer to these procedures. The cost of incarceration fee is to be included under the category of "other federal government obligations", and shall be paid before other financial obligations in that same category. Under the priority order for payment contained in 28 CFR 545.11(a), payment of the cost of incarceration fee is made after (not before, as assumed by the commenter) State or local court obligations such as child support, court fines, and state taxes.

This commenter disagreed with the stated aim of both proposed rules as being intended to ensure the continued efficient operation of Federal correctional institutions, including the provision of programs to help inmates better themselves. The commenter stated that there was no indication as to what this meant nor was there a system to audit the use of the funds collected. By statute, the funds collected in accordance with these regulations shall be deposited as offsetting collections to the appropriate Federal Prison System, "Salaries and expenses," and shall be available, *inter alia,* to enhance alcohol and drug abuse prevention programs. 106 Stat. 1842 (18 U.S.C. 4001 note). As budgetary expenditures, these funds are subject to the same audit systems as the rest of the Bureau's budget.

In issuing these final regulations separately from the Department's provisions, the Bureau has editorially revised the provisions in order to make better organizational use of section headings.

List of Subjects in 28 CFR Part 505

Penalties, Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General by 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 505 is added to subchapter A, Chapter V of title 28 of the Code of Federal Regulations as follows.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 505—COSTS OF INCARCERATION FEE

Sec.

505 1 Purpose and scope.
505.2 Fee assessment—annual determination of average cost of incarceration.
505.3 Calculation of assessment by unit staff.
505 4 Inmates exempted from fee assessment.
505.5 Inmates subject to prorated fee assessment.
505 6 Waiver of fee by Warden.
505 7 Procedures for payment
505.8 Procedures for appeal
505.9 Procedures for final disposition

Authority: 5 U S C. 301, 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 31 U.S C. 3717, Pub L 102–395, 106 Stat 1842 (18 U S.C. 4001 note); 28 CFR 0.95–0.99

§ 505.1 Purpose and scope.

This part establishes procedures for the assessment and collection of a fee to cover the cost of incarceration The provisions of this part apply to any person who is convicted in a United States District Court and committed to the custody of the Attorney General, and who begins service of sentence on or after January 1, 1995. For purposes of this part, revocation of parole or supervised release shall be treated as a separate period of incarceration for which a fee may be imposed.

§ 505.2 Fee assessment—annual determination of average cost of incarceration.

(a) The Attorney General is required to collect and establish a fee to cover the cost of confinement which is equivalent to the average cost of one year of incarceration. See 28 CFR 0.96c.

(1) For the fiscal year 1995, the fee to cover the cost of incarceration shall be $21,352. This figure represents the average cost to the Bureau of Prisons of confining an inmate for one year.

(2) The fee is calculated by dividing the number representing the obligation encountered in Bureau of Prisons facilities (excluding activation costs) by the number of inmate-days incurred for preceding fiscal year, and by then multiplying the quotient by 365. See 28 CFR 0.96c.

(b) The Director of the Bureau of Prisons shall review the amount of the fee not less than annually to determine the cost of incarceration. The new figure

shall be published as a notice in the Federal Register.

§ 505.3 Calculation of assessment by unit staff.

Bureau of Prisons Unit Team staff shall be responsible for computing the amount of the fee to be paid by each inmate.

(a) Unit Team staff shall rely exclusively on the information contained in the Presentence Investigation Report and findings and orders of the sentencing court in order to determine the extent of an inmate's assets, liabilities and dependents.

(b) The fee shall be assessed in accordance with the following formula: If an inmate's assets are equal to or less than the poverty level, as established by the United States Department of Health and Human Services and published annually in the Federal Register, no fee is to be imposed. If an inmate's assets are above the poverty level, Unit Team staff shall impose a fee equal to the inmate's assets above the poverty level up to the average cost to the Bureau of Prisons of confining an inmate for one year.

§ 505.4 Inmates exempted from fee assessment.

A fee otherwise required by this part may not be collected from an inmate with respect to whom a fine was imposed or waived by a United States District Court pursuant to section 5E1.2 (f) and (i) of the United States Sentencing Guidelines or any successor provisions.

§ 505.5 Inmates subject to prorated fee assessment.

For any inmate committed to the custody of the Attorney General for a period of less than 334 days (including pretrial custody time), the maximum fee to be imposed shall be computed by prorating on a monthly basis the average cost for one year of confinement.

§ 505.6 Waiver of fee by Warden.

The Warden may reduce or waive the fee if the person under confinement establishes that:

(a) He or she is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fee, or

(b) Imposition of a fee would unduly burden the defendant's dependents.

§ 505.7 Procedures for payment.

Fees imposed pursuant to this part are due and payable 15 days after notice of the Unit Team actions. Fees shall be included in the Inmate Financial Responsibility Program under the category "other federal government obligations", and shall be paid before other financial obligations included in that same category. Fees not paid within 15 days may result in interest charges.

§ 505.8 Procedures for appeal.

An inmate may appeal the Warden's decision not to grant a waiver or the Unit Team's calculation through the Administrative Remedy Procedure (see part 542 of this chapter) and may submit information to demonstrate substantial hardship.

§ 505.9 Procedures for final disposition.

Before the inmate completes his or her sentence, Unit Team staff shall review the status of the inmate's fee and any unpaid amount will be referred for collection in accordance with Federal Claims Collection Standards (4 CFR Chapter II).

[FR Doc. 94-30775 Filed 12-14-94; 8:45 am]
BILLING CODE 4410-05-P

federal register

Thursday
December 15, 1994

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1 and Parts 7, 11, 16, et al.
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–24]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD); General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary of interim rules and technical corrections.

SUMMARY: This document introduces the documents, set forth below, which comprise Federal Acquisition Circular (FAC) 90–24. The Department of Defense, General Services Administration and National Aeronautics and Space Administration are issuing FAC 90–24 pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act). These Federal Acquisition Regulation (FAR) revisions are implemented in the following subject areas:

Item	Subject	FAR case	Team leader
I	Repeal of Requirement for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts.	94–700	Melissa Rider.
II	Micro-Purchase Procedures	94–771	Diana Maykowskyj.

EFFECTIVE DATES: FAC 90–24 is effective December 15, 1994.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. For specific information contact the team leader whose name appears in relation to each FAR case or subject area (see table under **SUMMARY**). Please cite FAC 90–24 and applicable FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–24 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Repeal of Requirement for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts (FAR Case 94–700)

This interim rule deletes the requirement for a "determination and findings" before using a cost type or incentive contract and to delete references to 10 U.S.C. 2301.

Item II—Micro-Purchase Procedures (FAR Case 94–771)

This interim rule implements the new micro-purchase requirements of the Act.

Dated: December 8, 1994

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994

Federal Acquisition Circular

Number 90–24

Federal Acquisition Circular (FAC) 90–24 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–24 is effective December 15, 1994

Dated: December 8, 1994

Ida M Ustad,

Associate Administrator for Acquisition Policy, GSA

Dated: December 8, 1994.

Colonel Roland A Hassebrock,

Deputy Director, Defense Procurement, DOD

Dated: December 8, 1994.

Deidre A Lee,

Associate Administrator for Procurement, NASA

[FR Doc. 94–30603 Filed 12–13–94, 10:43 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 16, and 19

[FAC 90–24; FAR Case 94–700; Item I]

RIN 9000–AG25

Federal Acquisition Regulation; Repeal of Requirement for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to delete the requirement for a "determination and findings" before using a cost type or incentive contract and to delete references to 10 U S.C. 2301. 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 15, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 13, 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, Attn. Ms. Beverly Fayson, Washington, DC 20405.
Please cite FAC 90–24, FAR case 94–700 in all correspondence related to this case

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Contract Award Team Leader at (703) 614–1634 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 90–24, FAR case 94–700

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 proposed FAR revisions developed under FAR case 94–700, Repeal of Requirement for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts. Sections 1021 and 1071 repealed the requirement for a determination regarding use of a cost type or incentive contract. Therefore, the FAR at 16.301–3, 16.403, 16 403–1, and 16 403–2 has been amended to delete the requirement. Section 1501 repealed Section 2301 of Title 10, United States Code. The references to 10 U S.C. 2301 at FAR 7 102, 11 002 and 19.000 have been deleted

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 94–700) 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 17, 1995 The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

This interim rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because it affects internal operating procedures of the Federal Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR Subparts will also 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 90–24, FAR case 94–700) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

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, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. The Federal Acquisition Streamling Act provided that sections 1021, 1071, and 1501 are effective upon enactment. However, public comments received in response to this interim rule will be considered in formulating the final rule. This rule is necessary to implement Sections 1021 and 1071 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) which repealed the requirement for a determination regarding use of a cost type or incentive contract.

List of Subjects in 48 CFR Parts 7, 11, 16, and 19

Government procurement.

Dated: December 8, 1994.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 7, 11, 16, and 19 are amended as set forth below:

1. The authority citation for 48 CFR Parts 7, 11, 16, and 19 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 7—ACQUISITION PLANNING

7.102 [Amended]

2. Section 7 102 is amended by removing from the second parenthetical "10 U.S.C. 2301(a)(5) and"

* * * * *

PART 11—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

11.002 Policy.

3. Section 11.002 is amended by removing the last sentence.

PART 16—TYPES OF CONTRACTS

16.301–3 [Amended]

4. Section 16.301–3 is amended by removing from the end of paragraph (b) "and" and inserting it at the end of paragraph (a); by removing the semicolon from the end of paragraph (b) and inserting a period in its place; and by removing paragraph (c) and redesignating paragraph (d) as (c).

16.403 [Amended]

5. Section 16.403 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

16.403–1 and 16.403–2 [Amended]

6. Sections 16.403–1 and 16.403–2 are both amended at the end of paragraph (c)(1) by adding the word "and" after the semicolon; at the end of paragraph (c)(2) by removing "; and" and inserting a period; and by removing paragraph (c)(3).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.000 [Amended]

7. Section 19.000 is amended in the introductory text of paragraph (a) by removing the parenthetical "(10 U.S.C. 2301, et seq.)" and inserting "(10 U.S.C 2302, et seq.)".

[FR Doc. 94–30604 Filed 12–13–94; 10:44 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 13 and 25

[FAC 90–24, FAR Case 94–771, Item II]

RIN 9000–AG26

Federal Acquisition Regulation; Micro-Purchase Procedures

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, General Services Administration, and the National Aeronautics and Space Administration have agreed to an interim rule to implement the new micro-purchase requirements of the Federal Acquisition Streamlining Act of 1994 (the Act). 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 15, 1994

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 13, 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 4035, Attn: Ms Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–24, FAR case 94–771 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms Diana Maykowsky, the team leader of the Simplified Acquisition Procedures/FACNET Team, at (703) 274–6307 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 90–24, FAR case 94–771

SUPPLEMENTARY INFORMATION:

A. Background

The Act, Pub. L 103-355, provides the authority to streamline the acquisition process and minimize burdensome requirements unique to the Federal Government. 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 (FACNET).

This notice announces FAR revisions developed under FAR case 94–771. This interim rule implements the micro-purchase requirements of Pub. L. 103–355. The term "micro-purchase" is coined and defined by Pub. L. 103–355 Pub. L. 103–355 establishes the micro-purchase threshold at $2,500 and exempts purchases not exceeding the micro-purchase threshold from the Buy American Act and certain small business requirements. It is noted that construction requirements are limited to $2,000 under the FAR 13.101 definition for micro-purchase to accommodate the Davis-Bacon Act requirements under Subpart 22.4. FAR 13.105(a) has been amended to exempt micro-purchases from the requirement for small business set-asides. A more extensive revision to 13.105 will be included in implementation of the full requirements of Pub. L. 103–355 pertaining to acquisitions not exceeding the simplified acquisition threshold. For micro-purchases, Pub. L. 103–355 requires competition only if prices are not considered reasonable. This rule provides for expanded use of the governmentwide commercial purchase card to take maximum advantage of the micro-purchase authority provided in Pub. L. 103–355 by delegating the authority, to the maximum extent practicable, to individuals in the offices that will be using the supplies or services to be purchased. Your attention is directed to the provisions at FAR 13.601(d) which indicates that such individuals are considered "contracting officers" within the meaning of FAR 2 101 The individuals, generally non-acquisition personnel, may be appointed under delegations of procurement authority in accordance with agency procedures.

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 94–771) because of the clarifying 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 17, 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 changes may 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 it implements the portion of the Act which eliminates the small business setaside for purchases not exceeding the micro-purchase threshold However, full implementation of the Federal Acquisition Streamlining Act of 1994 will require that all actions exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, $100,000, be set aside for small businesses. This will be an increase from the current requirement that all acquisitions less than $25,000 be set aside for small businesses. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. 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.* (FAR Case 94–771), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

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 Federal Acquisition Streamlining Act of 1994 requires implementation of the micro-purchase portion of the Act within 60 days of enactment. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 3, 4, 13 and 25

Government procurement.

Dated: December 8, 1994.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 1, 3, 4, 13 and 25 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 13 and 25 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.603–3 is revised to read as follows:

1.603–3 Appointment.

Contracting officers whose authority will be limited to micro-purchases (see subpart 13.6) shall be appointed in writing in accordance with agency procedures. Other contracting officers shall be appointed in writing on a "Certificate of Appointment", SF 1402, which shall state any limitation on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all Certificates of Appointment that have not been terminated.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.104–4 is amended by adding paragraph (h)(5) to read as follows:

3.104–4 Definitions.

* * * * *

(h) * * *

(5) For purposes of 3.104–4(h) the term *procurement official* does not include contracting officers if their contracting authority is limited to the micro-purchase threshold (see 13.101) and the head of the contracting activity determines that it is unlikely that the individual will conduct acquisitions in a total amount greater than $20,000 in any 12-month period.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4.800 [Amended]

4. Section 4.800 is amended by revising the reference "13.106(c)" to "13.106(b)".

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

5. Section 13.101 is amended by adding the following definitions in alphabetical order to read as follows:

13.101 Definitions.

* * * * *

Governmentwide commercial purchase card means a purchase card, similar in nature to a commercial credit card, issued to authorized agency officials for their use in acquiring supplies and services.

Micro-purchase means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed $2,500. Micro-purchases for construction are limited to $2,000.

Micro-purchase threshold means $2,500.

* * * * *

6. Section 13.105 is amended by revising paragraph (a); in (d)(3) by removing "(see 13.106(c))" and inserting "(see 13.106(b))" in its place, and in (d)(4) by removing "(see 13.106(b)(4))" and inserting "(see 13.106(a)(4))". The revised text reads as follows:

13.105 Small business—small purchase set-asides.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500, but not exceeding $25,000, and is subject to small purchase procedures, shall be reserved exclusively for small business concerns. This shall be accomplished by using the category of set-asides established by Pub. L. 95–507, specifically for small purchases, identified as small business—small purchase set-asides established by Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) (see Pub. L. 95–507).

* * * * *

13.106 [Amended]

6. Section 13.106 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b), respectively.

13.502 [Amended]

7. Section 13.502(c) is amended in the last sentence by removing "(see 13.106(c))" and inserting "(see 13.106(b))" in its place.

8. Part 13 is amended by adding Subpart 13.6 to read as follows:

Subpart 13.6—Micro-Purchase

Sec.

13.601 General.
13.602 Policy.
13.603 Soliciting competition, evaluation of quotes, and award.

Subpart 13.6—Micro-Purchase

13.601 General.

(a) This subpart applies to purchases of supplies or services (except for construction) at or below the micro-purchase threshold. Micro-purchases for construction are limited to $2,000.

(b) Micro-purchases may be awarded using any of the purchasing methods covered by part 13.

(c) Agencies are encouraged to use the governmentwide commercial purchase card and electronic purchasing techniques, to the maximum extent practicable. The governmentwide commercial purchase card may be used to purchase and pay for micro-purchases in accordance with agency procedures. This is not intended to limit use of the purchase card to micro-purchases, if otherwise authorized under agency procedures.

(d) Agency heads are encouraged to delegate micro-purchase authority to individuals who will be using the supplies or services being purchased (see 1.603–3). Individuals delegated this authority are contracting officers within the meaning of 2.101. See 3.104–4(h)(5) for procurement integrity requirements.

13.602 Policy.

(a) Contracting officers shall comply with the requirements of part 8, Required Sources of Supplies and Services.

(b) Micro-purchases shall be distributed equitably among qualified suppliers.

(c) Requirements aggregating more than the micro-purchase threshold shall not be broken down into several purchases that are less than the threshold merely to permit purchase under this subpart.

13.603 Soliciting competition, evaluation of quotes, and award.

(a) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer determines that the price is reasonable.

(b) The administrative cost of verifying the reasonableness of the price for purchases at or below the micro-purchase threshold may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(1) The contracting officer suspects or has information to indicate that the price may not be reasonable (e.g.,

comparison to the previous price paid or personal knowledge of the supply or service); or

(2) Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(c) Prompt payment discounts should be solicited.

PART 25—FOREIGN ACQUISITION

9. Section 25.100 is revised to read as follows:

25.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10) and Executive Order 10582, December 17 1954 (as amended). It applies to (a) supply contracts exceeding the micro-purchase threshold; and (b) contracts for services that involve the furnishing of supplies when the supply portion of the contract exceeds the micro-purchase threshold.

[FR Doc. 94–30605 Filed 12–13–94; 10:45 am]

BILLING CODE 6820–34–P

federal register

Thursday
December 15, 1994

Part VIII

Department of Energy

48 CFR Part 917
Acquisition Regulation; Interagency Agreements; Final Rule and Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Part 917

RIN: 1991–AB16

Acquisition Regulation; Interagency Agreements

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: This action removes guidance in the Department of Energy Acquisition Regulation regarding interagency agreements found at 48 CFR subpart 917.5. Elsewhere in today's **Federal Register** the Department also is withdrawing a proposal to amend subpart 917.5. The decision to take these actions was made as part of the Department's efforts to reduce and streamline its regulations pursuant to Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, and Executive Order 12866, Regulatory Planning and Review.

EFFECTIVE DATE: This rule becomes effective on January 17, 1995.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Management (HR–521.1), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–8247.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Regulatory Review
B. Review Under the Regulatory Flexibility Act
C. National Environmental Policy Act

I. Background

On July 9, 1993 (58 FR 36918), the Department of Energy (DOE) published a notice of proposed rulemaking in the **Federal Register** soliciting comments on proposed amendments to subpart 917.5 of the Department of Energy Acquisition Regulation (DEAR) regarding interagency agreements. As a result of our further review in light of Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations (58 FR 48255, September 11, 1993), and Executive Order 12966, Regulatory Planning and Review (58 FR 51735, October 4, 1993), we have decided to cancel the proposed rule to revise and expand subpart 917.5. A notice to this effect appears elsewhere in today's **Federal Register**.

The decision that the earlier proposed expansion of subpart 917.5 was unnecessary resulted in a reevaluation of the existing regulation as well. Our review finds that the existing regulation also can be canceled. The matters covered in subpart 917.5 as well as the proposed amendments thereto are sufficiently addressed in Office of Management and Budget Circular A–34 and in internal DOE guidance.

DOE did not publish a notice of proposed rulemaking on removal of subpart 917.5, as allowed by 5 U.S.C. 553(a)(2) (for a matter relating to agency management) and 553(b)(A) (for rules of agency organization, procedure, or practice). This subpart is procedural in nature, and its removal does not raise any substantive issues. For this reason, DOE did not request public comments.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

C. National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because today's amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Part 917

Government procurement.

Issued in Washington, DC, on December 8, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Part 917 of Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 917—SPECIAL CONTRACTING METHODS

1. The authority citation for Part 917 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

[917.5 Removed]

2. Subpart 917.5, Interagency Acquisition Under the Economy Act, is removed.

[FR Doc. 94–30746 Filed 12–14–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

48 CFR Part 917

RIN 1991–AA98

Acquisition Regulation; Interagency Agreements

AGENCY: Department of Energy (DOE).

ACTION: Withdrawal of proposed rule.

SUMMARY: DOE is hereby withdrawing a proposal to amend 48 CFR subpart 917.5, Interagency Acquisition Under the Economy Act. Elsewhere in today's **Federal Register** DOE also is removing existing subpart 917.5 from the CFR. The decision to take these actions was made as part of DOE's efforts to reduce and streamline its regulations pursuant to Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, and Executive Order 12866, Regulatory Planning and Review.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Management (HR–521.1), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8247

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments

I. Background

A notice of proposed rulemaking to amend 48 CFR subpart 917.5, Interagency Acquisition Under the Economy Act, was published in the **Federal Register** on July 9, 1993 (58 FR 36918). DOE originally proposed various amendments to the text of subpart 917.5, including providing additional definitions and guidance and discussion of the preferred method for financing. As a result of our further review in light of Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations (58 FR 48255, September 11, 1993), and Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), we have decided to cancel the proposed rule to revise and expand subpart 917.5.

The decision that the proposed expansion of subpart 917.5 was unnecessary resulted in a reevaluation of the existing regulation as well. Our review finds that the existing regulation also can be canceled. Thus, a notice appears elsewhere in today's **Federal Register** deleting all of subpart 917.5, Interagency Acquisition Under the Economy Act.

The matters covered in subpart 917.5 as well as the proposed amendments thereto are sufficiently addressed in Office of Management and Budget (OMB) Circular A–34 and in internal DOE guidance.

II. Public Comments

DOE thanks those persons who provided comments on the proposed rulemaking. A full discussion of those comments is not included here since the decision has been made to withdraw the proposed revisions to the Department of Energy Acquisition Regulation. Revision of internal DOE Order 1270.1, Funds-Out Interagency Agreements, is under consideration and the suggestions made in the public comments will be considered when that directive is next updated.

List of Subjects in Title 48 CFR Part 917

Government procurement.

Issued in Washington, DC, on December 8, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management

[FR Doc. 94–30747 Filed 12–14–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Thursday
December 15, 1994

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Alabama Sturgeon; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule for Endangered Status and Critical Habitat for the Alabama Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule to determine endangered status and critical habitat for the Alabama sturgeon (*Scaphirhynchus suttkusi*) under the Endangered Species Act of 1973, as amended (Act). This sturgeon is endemic to, and was once widespread in, the Mobile River system in Alabama and Mississippi. It has significantly declined in both population size and range during the past century The fish was last known to exist in only a short, free-flowing reach of the Alabama River downstream of Claiborne Lock and Dam in Clarke and Monroe Counties, Alabama; it may still exist in some other portions of its historical range. The primary factors that have likely contributed to the sturgeon's decline include dams, the development of the rivers for navigation, altered river flows, gravel-mining operations, general habitat degradation from land use practices, and, perhaps, overfishing (particularly at the turn of the century). The Service finds there to be insufficient information to justify listing a species that may no longer exist.

ADDRESSES: For the first 6 months following the publication of this notice, the complete administrative file for the action will be available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 Six months after publication, the administrative file will be transferred to the U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: For information or comment upon this action for the first 6 months following publication, contact Mr Richard G. Biggins at the above Asheville address (704/665–1195, Ext 228) or Mr Robert S Butler, U S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (904/232–2580).

SUPPLEMENTARY INFORMATION:

Background

The Mobile River system is the largest drainage east of the Mississippi River that empties into the Gulf of Mexico. The system drains ten physiographic provinces, providing a unique mosaic of aquatic habitats and environments (U.S. Fish and Wildlife Service 1994). Several Southeastern regional aquatic faunas have influenced the Mobile River system's aquatic fauna. The influence of these regional faunas, coupled with the size of the system and the diversity of its aquatic habitats and physiographic features, has resulted in a high degree of diversity and endemism. The high percentage of aquatic endemism is particularly manifested in the snail (93 percent endemic), mussel (40 percent), and freshwater fish (25 percent) faunas, as well as in the crayfish and aquatic insect faunas (U.S. Fish and Wildlife Service 1994).

Commensurate with the high level of diversity and endemism, the Mobile River system also has a high number of federally protected and candidate aquatic species. Presently, 17 mussels, 8 fishes, 2 turtles, and 1 snail are protected under the Act, and 64 more aquatic taxa are candidates for Federal protection (U.S. Fish and Wildlife Service 1994). The Service has also documented the extinction of 37 endemic snail and 18 endemic mussel taxa in the Mobile River system (U.S. Fish and Wildlife Service 1994). The high extinction rate and the number of federally protected and candidate taxa in the system clearly define an unstable and imperiled riverine ecosystem. Further decline of the riverine ecosystem can be expected if the anthropogenic forces impacting the fauna continue without considering the needs of this aquatic ecosystem.

The Alabama sturgeon, once called the Alabama shovelnose sturgeon, or simply shovelnose sturgeon, has been recognized since 1976 as a distinct, undescribed taxon (Ramsey 1976) that is most similar to the shovelnose sturgeon (*Scaphirhynchus platorynchus*) of the Mississippi River system. The Alabama sturgeon is a relatively small sturgeon; the maximum standard length is about 72 centimeters (28 inches). It has an elongated, heavily armored, depressed body and an attenuated caudal peduncle. The caudal fin has a long filament on the upper lobe that is characteristic of the genus. Sexual dimorphism is slight. Morphological characteristics of the juvenile Alabama sturgeon are unknown. The Alabama sturgeon can generally be distinguished from the shovelnose sturgeon by several characters; the Alabama sturgeon almost always has larger eyes, it has different plate numbers posterior to the anal fin, there is a difference in dorsal fin ray numbers (Williams and Clemmer 1991; Mayden and Kuhajda, in press), and there are diagnostic characters associated with its head armature (Mayden and Kuhajda, in press).

The Alabama sturgeon was described as *S. suttkusi* by Williams and Clemmer (1991) and was accepted as a distinct species in the proposed rule of June 3, 1993 (58 FR 33148). Subsequently, various scientists have examined museum specimens of the Alabama sturgeon and genetically analyzed tissue samples from a specimen captured in December 1993. A comparison of these specimens was then made with the congeneric shovelnose and pallid sturgeons, both of the Mississippi River system. (The latter species was listed as endangered on September 6, 1990 (55 FR 36647).) Various investigators have derived conflicting results as to the Alabama sturgeon's taxonomic distinctiveness.

In the original description of the Alabama sturgeon (Williams and Clemmer 1991), a comparison based on morphological characters was made of the Alabama sturgeon to several populations, mostly southern or lower midwestern, of the shovelnose sturgeon. Mayden and Kuhajda (in press), in a study recently accepted for publication in a peer-reviewed scientific journal, concluded that the Alabama sturgeon is indeed a distinct species. In fact, they found three additional diagnostic morphological characters associated with head armature that would distinguish the Alabama sturgeon from the shovelnose sturgeon, which are based upon a thorough reexamination of the raw data used in the original description, combined with data gathered from the recently captured Alabama sturgeon and data from additional shovelnose sturgeon populations. In addition, there was no evidence of geographic clinal variation in these diagnostic features to suggest that the two taxonomic entities were not morphologically distinct at the species level (Mayden and Kuhajda, in press).

Unpublished reports by Howell (1993, 1994), Blanchard and Bartolucci (1994), and Blanchard (1994) also reevaluated the raw data used in the description by Williams and Clemmer (1991). These studies questioned the taxonomic validity of *S. suttkusi*. They concluded that the data analyses in the original description were inconclusive and that

the Alabama sturgeon could not be distinguished from the shovelnose sturgeon. In another unpublished report, Howell *et al.* (1994) critiqued Mayden and Kuhajda (in press), questioning their statistical methods and repudiating one of the three additional taxonomic characters determined to separate the two sturgeon species in the latter study. However, the Mayden and Kuhajda study (in press) has been peer-reviewed and accepted for publication in a scientific journal.

The capture of a single specimen of the Alabama sturgeon in December 1993 afforded scientists the opportunity to obtain fresh tissue samples and compare its genetic distinctiveness with other sturgeons. One completed, but unpublished, report comparing the genetics of these two sturgeons (Schill and Walker 1994) concluded that the Alabama shovelnose and pallid sturgeons were indistinguishable based on estimates of sequence divergence at the mitochondrial cytochrome *b* locus. This result is similar to other studies where no cytochrome *b* differentiation was found among other fish species within a genus where the species were based on well-accepted morphological, behavioral, and other characteristics (Avise 1994). Therefore, the use of the very conservative cytochrome *b* locus appears to be of little taxonomic use in differentiating members of the genus *Scaphirhynchus*.

The Service has received a very recent study report prepared for the Corps of Engineers and the Service (Genetic Analyses 1994). The study compared a number of nuclear DNA markers for the three *Scaphirhynchus* sturgeons and found no measurable difference between pallid and shovelnose sturgeons but significant differences between those sturgeons and the one Alabama sturgeon. Further, this study shows that the single specimen of Alabama sturgeon captured in 1993 was considerably different from pallid and shovelnose sturgeons. This genetic study also indicated that another specimen of Alabama sturgeon would very probably provide conclusive evidence of these consistent differences.

The Service recognizes that the taxonomic status of the Alabama sturgeon is being reviewed by the scientific community. However, none of the recent taxonomic information has been subjected to peer review and published in a scientific journal, with the exception of the study of Mayden and Kuhajda (in press), which has been accepted for publication in a peer-reviewed scientific journal. Williams and Clemmer's (1991) description of the Alabama sturgeon was published in a peer-reviewed scientific journal and complied with all the rules of the *International Code of Zoological Nomenclature* (§ 17.11(b)). Furthermore, the study by Mayden and Kuhajda (in press) corroborates the determination by Williams and Clemmer (1991) that the Alabama sturgeon is a distinct species.

Thus, until such time as the Alabama sturgeon's taxonomic status is revised in an appropriate peer-reviewed scientific journal and accepted by the scientific community, the Service will consider the Alabama sturgeon (*S. suttkusi*) to be a distinct species based on these two studies. The Alabama sturgeon's taxonomy may be subsequently revised to subspecies or population status by the scientific community; if so, the Alabama sturgeon would still qualify as being eligible for protection under the Act (see the response to Issues 22 and 45 in the "Summary of Comments and Recommendations" section of this notice).

Section 3(15) of the Act (16 U.S.C. 1531–1544), specifically provides for listing species, subspecies, and distinct population segments of vertebrate species as endangered or threatened. Although the Service finds that there is some disagreement among ichthyologists concerning the Alabama sturgeon's taxonomic status, the Service has determined that the Alabama sturgeon warrants recognition as a species as defined by the Act.

The Alabama sturgeon is known only from the Mobile River system of Alabama and Mississippi. Historically, this sturgeon was found in the Mobile, Tensas, Alabama, Tombigbee, Black Warrior, Cahaba, Tallapoosa, and Coosa Rivers of the Mobile River system (Burke and Ramsey 1985). The only recent confirmed record of the Alabama sturgeon (since about 1985) is from the free-flowing portion of the Alabama River downstream of Claiborne Lock and Dam, Clarke and Monroe Counties, Alabama.

The Alabama sturgeon was once common in Alabama. In a statistical report to Congress in 1898 (U.S. Commission of Fish and Fisheries 1898), the total catch of "shovelnose sturgeon" from Alabama was 19,500 kilograms (kg) (42,900 pounds (lb)). Of this total, 18,000 kg (39,500 lb) came from the Alabama River, 1,000 kg (2,300 lb) from the Black Warrior River, and 500 kg (1,100 lb) from the Tennessee River. The "shovelnose sturgeon" reported from the Alabama and Black Warrior Rivers was the Alabama sturgeon (*S. suttkusi*), which averages about 1 kilogram (2 lb) for a large specimen; the sturgeon from the Tennessee River was the shovelnose sturgeon (*S. platorynchus*). An anonymous article in the *Alabama Game and Fish News* in 1930 stated that the Alabama sturgeon was "not uncommon."

Records of this fish supported by preserved specimens are rare. Clemmer (1983) listed 23 specimens in museum collections. In their status survey, Burke and Ramsey (1985) captured only five Alabama sturgeons. Williams and Clemmer (1991) located another nine specimens in addition to those examined by Clemmer (1983), making a total of 32 specimens in museum, university, and private collections. Interestingly, since 1953 there has generally been a 7- to 8-year hiatus between representative collections of the Alabama sturgeon in museums (Mayden and Kuhajda, in press), suggesting that the population may cycle in abundance. It would appear that the Alabama sturgeon, throughout much of its life, occupies habitat that is inaccessible to collectors (Kuhajda, University of Alabama, *in litt.*, 1994). Based on museum records, the Alabama sturgeon has been captured in February, March, April, May, June, November, and December, with the majority of specimens representing spring collections (Kuhajda, *in litt.*, 1994). Verified localities of the captures have primarily been large channels of big rivers in the Mobile River system. However, a couple of Alabama sturgeon records are from oxbow lakes (Williams and Clemmer 1991).

When the proposed rule was published (June 15, 1993; 58 FR 33148), the most recent documented evidence of the Alabama sturgeon's continued existence consisted of the capture of five Alabama sturgeons in 1985 (Burke and Ramsey 1985); two were gravid females and one was a juvenile about 2 years old. Biologists from the Alabama Department of Conservation and Natural Resources (ADCNR), with the assistance and cooperation of the U.S. Army Corps of Engineers (Corps), have in recent years (1990 and 1992) conducted periodic searches for the Alabama sturgeon, utilizing a variety of sampling gear, without verifying the presence of a single specimen (Tucker and Johnson 1991, 1992). Nevertheless, the gravid females and juvenile Alabama sturgeons captured by Burke and Ramsey (1985) provided sufficient evidence that reproduction was occurring during at least the mid-1980s. Coupled with a high longevity, the likelihood that the Alabama sturgeon could have survived to the present appeared sufficient to warrant making the proposal.

Since the Burke and Ramsey (1985) status survey, there have been several

anecdotal reports by commercial fishermen that two distinct sturgeons have been taken from the Mobile River system in portions of the Alabama River upstream of Claiborne Lock and Dam. These reports presumably refer to the Alabama sturgeon and the Gulf sturgeon (*Acipenser oxyrynchus desotoi*). The Gulf sturgeon can achieve lengths up to 2 meters (m) (6.6 feet), lacks the long filament on the upper lobe of the caudal fin, is generally more robust, and has a shorter and deeper caudal peduncle than does the Alabama sturgeon. In addition, the Gulf sturgeon is anadromous, migrating as adults up rivers from the Gulf of Mexico to spawn. The Gulf sturgeon was listed as threatened on September 30, 1991 (56 FR 49658).

The Service and the ADCNR conducted an extensive sampling program in 1993 in an effort to locate the Alabama sturgeon in the Mobile River system. On December 2, 1993, a mature male Alabama sturgeon was caught alive in a gill net by staff of the Service's Panama City, Florida, Field Office. The capture site was in the free-flowing portion of the Alabama River downstream of Claiborne Lock and Dam, Clarke and Monroe Counties, Alabama. This specimen represents the only verified record of the Alabama sturgeon in about 8 years. From the chronology of commercial harvest and scientific collections of the Alabama sturgeon, it is obvious that this fish has experienced a tremendous decline in both population size and range in just 100 years.

After publication of the notice of a 6-month extension of the deadline and comment period (June 21, 1994; 59 FR 3197), the Service undertook further efforts to capture specimens of the Alabama sturgeon. These efforts, which began in late September 1994, are planned to continue semi-monthly until May 1995, environmental conditions permitting. The Service is primarily using gill nets, with lesser emphasis on utilizing trotlines and electrofishing, in efforts to capture this fish. Sampling effort is focused on the free-flowing portion of the Alabama River downstream of Claiborne Lock and Dam. At the time of publication of this notice of withdrawal, the Service had not collected any specimens of the Alabama sturgeon in 1994.

The specific habitat needs of the Alabama sturgeon are largely unknown. The shovelnose sturgeon is most common in river channels that have strong currents over sand, gravel, and rock substrates (Trautman 1981, Hurley *et al.* 1987, Curtis 1990) but may occasionally occur over softer sediments (Bailey and Cross 1954). Habitat selection also appears to be dictated by current velocities (Hurley *et al.* 1987). The shovelnose sturgeon often uses habitats associated with channel-training devices (Hurley and Nickum 1984, Hurley *et al.* 1987, Curtis 1990), which are water-diversion structures (e.g., training dikes, wing walls, and closing dams) used for directing currents to maintain channels. The association of the shovelnose sturgeon with these habitats may be correlated with higher prey item densities and suitable current velocities (Hurley *et al.* 1987); high silt loads directly impact many invertebrates that require a relatively stable substrate. The Corps provided funds for the Service to investigate the possibility that the Alabama sturgeon also uses habitats associated with channel-training devices in the Alabama River. However no conclusions were derived from this study as no Alabama sturgeons were captured (Corps, *in litt.*, 1993).

Based upon the limited information available, the Alabama sturgeon appears to prefer relatively stable substrates of gravel and sand in river channels with swift currents (Burke and Ramsey 1985). Relying upon data from Alabama sturgeon prey items and the prey's typical habitats, it was hypothesized (Haynes 1994) that the Alabama sturgeon, primarily collected from the confluence of the Cahaba and Alabama Rivers, was using feeding habitat that could include areas that are relatively shallow and sandy and that have a slow to moderate current. Limited data collected from a radio-collared Alabama sturgeon suggested that it frequented swift currents in water 7.5 to 12.0 m (25 to 40 feet) deep (Burke and Ramsey 1985).

Members of the genus *Scaphirhynchus* are freshwater fish (Bailey and Cross 1954) that do not make seasonal migrations to and from the sea. Sturgeons are thought to swim upstream to spawn (Becker 1983). Shovelnose sturgeons, based on telemetry studies conducted during the spawning season, were found to migrate limited distances (Hurley *et al.* 1987). Spawning habitats for the Alabama sturgeon are generally unknown. Spawning shovelnose sturgeons generally use hard substrates that may occur in main-channel areas or deep-water habitats associated with channel-training devices in major rivers or possibly in tributaries (Hurley and Nickum 1984). Observations by Burke and Ramsey (1985) suggest that the Alabama sturgeon prefers spawning habitat similar to the shovelnose sturgeon.

Currents are required for the development of sturgeon's adhesive eggs, which require 5 to 8 days to hatch (Burke and Ramsey 1985). Shovelnose sturgeon spawning apparently occurs from April to July (Moos 1978). The spawning period for the shovelnose sturgeon probably depends upon water temperature and flows (Moos 1978), as it does for numerous other fish species. Henry and Ruelle (1992) conducted a study of shovelnose sturgeon reproduction in the Mississippi River system, concluding that they do not spawn every year and that poor body condition may result in the production of fewer eggs or infrequent spawning attempts. The shovelnose sturgeon was reported to reach sexual maturity after 4 to 6 years, with spawning occurring at 1- to 3-year intervals (Helms 1974, Moos 1978). Little is known about the Alabama sturgeon's reproductive biology. However, given what is known concerning the chronology of Alabama sturgeon collections and the reproductive biology of other sturgeon species, populations of the Alabama sturgeon may be cyclical, with peak numbers possibly occurring every 7 to 8 years (Mayden and Kuhajda, in press).

Several studies have aged sturgeon of the genus *Scaphirhynchus* by cross-sectioning pectoral fin spines. Helms (1973) aged shovelnose sturgeons in the Mississippi River at up to 12 years. Durkee *et al.* (1979) aged shovelnose sturgeons at up to 14 years in the upper Mississippi River system. Ages ranged from 8 to 27 years for the 288 shovelnose sturgeons sampled from the Missouri River (Zweiacker 1967). However, Zweiacker (1967) could not validate the marks interpreted as annuli (Moos 1978). Ruelle and Keenlyne (1993) aged three pallid sturgeons (*S. albus*) in the Missouri River at 10, 37, and 41 years. Considering the longevity of other members of this genus, the rarity of the Alabama sturgeon, the extreme difficulty in capturing specimens, and the several-year hiatus that occurs between major year classes, frequent Alabama sturgeon encounters should not be expected.

Burke and Ramsey (1985) conducted stomach analyses of a few Alabama sturgeons. They found that aquatic insect larvae were a major dietary component, but fish eggs, snails, mussels, and fish were also taken. A recent study (Haynes 1994) examined the stomach contents of 12 additional Alabama sturgeon specimens. Aquatic insects, which were found in all 12 stomachs, were represented primarily by true flies (mostly Ceratopogonidae and Chironomidae), mayflies (mostly Heptageniidae), dragonflies (mostly

Gomphidae), and caddisflies (mostly Hydropsychidae). Small fish and plant material were also found in five and four stomachs, respectively (Haynes 1994). The shovelnose sturgeon, based on a study conducted in the Missouri River, is an opportunistic feeder (Modde and Schmulbach 1977); various groups of aquatic insect larvae generally comprised their diet in that river (Modde and Schmulbach 1977, Durkee *et al.* 1979).

Previous Federal Actions

The Alabama sturgeon was included in **Federal Register** notices of review for candidate animals in 1982, 1985, 1989, and 1991. In the 1982 notice (47 FR 58454) and in the 1985 notice (50 FR 37958), this fish was listed as a category 2 species (sufficient information indicates proposing to list may be appropriate, but conclusive data are not currently available to support a proposed rule). In the 1989 and 1991 notices (54 FR 554 and 56 FR 58816), the Alabama sturgeon was listed as category 1 species (substantial information supports listing). On June 15, 1993, the Service proposed the Alabama sturgeon to be listed as endangered with critical habitat (58 FR 33148). The Service has determined that endangered status for the Alabama sturgeon is not appropriate at this time because of insufficient information available to conclude that the species still exists (see the responses to Issues 21, 22, and 45 in the "Summary of Comments and Recommendations" section and the concluding paragraph in the "Summary of Factors Affecting the Species" section of this notice).

Summary of Notices and Related Actions following Proposal

In the June 15, 1993, proposed rule and through associated notifications, interested parties were requested to submit factual reports and information that might contribute to the development of a final rule to list the Alabama sturgeon as endangered with critical habitat. The initial comment period was open until October 13, 1993. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated June 21, 1993; a copy of the proposed rule was enclosed, and their comments on the rule were solicited. Legal notices were published in the *Birmingham News*, Birmingham, Alabama, on July 25, 1993; the *Mobile Press-Register*, Mobile, Alabama, on July 25, 1993; the *Montgomery Advertiser*, Montgomery, Alabama, on July 24, 1993; and the *Clarion Ledger*, Hinds County, Mississippi, on July 23, 1993. The proposed rule also stated that a public hearing would be conducted to answer questions and gather additional information on the biology of the Alabama sturgeon and discuss issues relating to the proposed listing and critical habitat designation.

The first scheduled public hearing on the Service's proposal to list the Alabama sturgeon as an endangered species with critical habitat was for August 31, 1993, in Mobile, Alabama. The comment period remained open until October 13, 1993. A notice of the hearing was published in the **Federal Register** on July 27, 1993 (58 FR 40109), and a legal notice was published in the *Birmingham News* on August 1, 1993. This public hearing was subsequently canceled at the request of some members of the Alabama Congressional delegation. A cancellation notice was published in the **Federal Register** on August 24, 1993 (58 FR 44643), and legal notices were published in the *Birmingham News* on August 29, 1993; the Montgomery Advertiser on August 29, 1993; and the *Clarion Ledger* on August 27, 1993.

The August 1993 public hearing on this proposal was rescheduled for October 4, 1993, at the William K. Weaver Hall Auditorium on the campus of Mobile College, Mobile, Alabama. The comment period would remain open until October 13, 1993. A notice of the hearing and extension of the comment period was published in the **Federal Register** on September 13, 1993 (58 FR 47851).

Due to the tremendous interest in this issue, a large number of people who came to the October 4, 1993, hearing had to be turned away due to space constraints. Although neither the Act nor the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) required that a second hearing be held, the Service decided that it was in the best interest of all concerned parties that they have an opportunity to comment on issues raised in the Alabama sturgeon proposed rule. Therefore, an additional public hearing was scheduled in Montgomery, Alabama, on November 15, 1993, to allow for additional comments from the interested public. A notice of the second hearing, reopening of the comment period (from October 25, 1993, to December 8, 1993), and notice of availability of a scientific panel report was published in the **Federal Register** on October 25, 1993 (58 FR 55036). Legal notices for this second hearing appeared in the *Birmingham News* on October 26, 1993; the *Mobile Press-Register* on October 24, 1993; the *Montgomery Advertiser* on October 29, 1993; and the *Clarion Ledger* on October 29, 1993.

In an effort to clarify some of the biological information concerning the sturgeon, the Secretary of the Interior committed the Service to forming a peer-review panel. The Service completed the formation of a panel of biologists in September 1993; the panel was to provide a peer review of all the scientific and commercial data then available and to prepare individual reports to specifically review three issues—(1) the taxonomy of the sturgeon, (2) the likely existence of the fish based on available data, and (3) what information would be necessary to conclude that the taxon is likely extinct Just prior to submission of their reports, the panel requested permission to submit a single consolidated report; the Service agreed to this. The report was delivered to the Service on November 5 1993.

The November 15, 1993, hearing was canceled in response to a preliminary injunction issued on November 9, 1993 The timing of the injunction gave the Service insufficient time to publish public hearing notices of cancellation in either the **Federal Register** or area newspapers. A second public hearing notice appeared in the **Federal Register** (59 FR 289) dated January 4, 1994. The hearing was scheduled for January 13, 1994, and the comment period was extended through January 31, 1994. Legal notices for this rescheduled hearing were published in the *Birmingham News* on December 26, 1993; the *Mobile Press-Register* on December 26, 1993; the *Montgomery Advertiser* on December 27, 1993; and the *Clarion Ledger* on December 28, 1993.

As outlined in the January 4, 1994, **Federal Register** notice, the preliminary injunction restrained the Service and others from (1) disseminating the scientific panel report to the public and (2) utilizing or relying upon the scientific panel report or any product of the experts' deliberations in connection with the decision-making process on the proposal to list the Alabama sturgeon and designate its critical habitat. The January 4, 1994, notice also referred to another court order issued December 22, 1993; the relevant parts of that court order are as follows:

> Federal defendants and defendant-intervenor, and those acting in active concert with them, are hereby permanently enjoined from publishing, employing and relying upon the advisory Committee report . . . for any purpose whatsoever, directly or indirectly, in the process of determining whether to list the Alabama sturgeon as an endangered species.

In a notice appearing in the **Federal Register** (59 FR 997) on January 7, 1994, the January 13, 1994, public hearing was canceled and rescheduled for January 31, 1994, at South Hall #1, Montgomery Civic Center, Montgomery, Alabama. The comment period was extended to February 15, 1994. Cancellation of the second public hearing was made to provide more notice of the hearing to the public. Legal notices for the rescheduled public hearing appeared on January 19, 1994, in four area newspapers—the *Birmingham News*, *Mobile Press-Register*, *Montgomery Advertiser*, and *Clarion Ledger*. Mention was also made in this notice that, in keeping with the court restrictions issued in *Alabama-Tombigbee River Development Coalition* (Coalition) v. *Fish and Wildlife Service*, Civ. No. 93–AR–2322–S, the Service considered itself compelled to enforce constraints on the submission of oral and written comments while the court restrictions remained in effect. Individuals or organizations could not refer to the scientific report or to any drafts or other products derived from the preparation of that report in presenting any oral statement or written comment and individuals or organizations could not attempt to bolster their oral or written comments or opinions by referring to the scientific report as authority. Therefore, the departmental hearing officer at the next hearing was authorized to terminate the opportunity to speak of any person making a statement if, in the judgment of the hearing officer, that person disregarded the instructions not to address the scientific report or its contents. Written comments or materials which contained information that violated the above restrictions would be marked and thereafter excluded from the administrative record while the court restrictions remained in effect.

The **Federal Register** (59 FR 31970) on June 21, 1994, contained a notice of a 6-month extension of the deadline and reopening of the comment period for the proposed rule to list the Alabama sturgeon as an endangered species with critical habitat. The Service's rationale for the 6-month extension was based on the premise that there continued to be a lack of substantial information available concerning whether the Alabama sturgeon still existed. The comment period was reopened through September 15, 1994, to seek additional comments on the population status of the Alabama sturgeon, and the deadline for final action on the proposal was extended to December 15, 1994. Legal notices for the extension and reopening of the comment period appeared in the *Birmingham News* on August 11, 1994; the *Mobile Press-Register* on August 5, 1994; the *Montgomery Advertiser* on August 8, 1994; and the *Clarion Ledger* on August 12, 1994.

On September 15, 1994, the **Federal Register** (59 FR 47294) contained a notice that further extended the comment period to October 17, 1994, and sought additional comments on only the scientific point of whether the Alabama sturgeon still exists. Legal notices for this extension of the comment period appeared in the *Birmingham News* on September 28, 1994; the *Mobile Press-Register* on September 24, 1994; the *Montgomery Advertiser* on September 23, 1994; and the *Clarion Ledger* on September 28, 1994. By way of 81 letters to scientists dated September 13, 1994, the Service requested comments on two specific questions regarding the sturgeon's continued existence—(1) Is it likely that the Alabama sturgeon (*Scaphirhynchus suttkusi*) still exists in the Mobile River system and (2) what information would be needed to substantiate claims that the Alabama sturgeon is likely extinct?

Eight scientists responded to this inquiry. Five respondents strongly supported the assertions that the Alabama sturgeon is extant, and that at least several decades of negative data from sturgeon sampling efforts would be needed to consider the species extinct. The other three respondents did not specifically address the question of the present existence of the sturgeon.

The Service believes that it is premature to make a definitive decision on the species' continued existence (see the response to Issue 15). Therefore, the Service finds that there is insufficient information available that the Alabama sturgeon is still extant.

Summary of Public Comments

The Service received several thousand written and oral comments associated with the two hearings, the two extended comment periods regarding the proposed listing of the Alabama sturgeon with critical habitat, and the two comment periods associated with the 6-month extension of the deadline. Several hundred individuals and organizations supported the listing; however, the vast majority of the respondents did not support the listing and most of these comments were opinions based upon perceived economic impacts and not scientific data, as required under the Act. Following is a summary of the comments, concerns, and questions (referred to as "Issues" for the purpose of this summary) expressed in writing or presented orally during the comment periods and at the public hearings. Issues of similar content have been addressed under one issue heading. These issues and the Service's response to each are presented below.

Issue 1: Various respondents were concerned that listing the Alabama sturgeon would require the Corps' maintenance dredging of the Alabama River to be sharply curtailed or even eliminated, ultimately ceasing barge navigation on the river and costing millions, or billions, of dollars in lost revenue and possibly 20,000 jobs to the Alabama economy.

Response: Maintenance dredging by the Corps to maintain the navigation channel on the Alabama and lower Tombigbee Rivers annually removes 1.5 to 3.8 million cubic meters (2 to 5 million cubic yards) of unconsolidated aggregate (e.g., sand, mud, and silt). Dredge material from the Tombigbee River downstream of Coffeeville, Alabama, is disposed of at upland sites and within the banks of the river. On the Alabama River, fewer upland disposal areas have been established, and the majority of the dredge material is placed within the shallow reaches of the river.

Based on limited information on the Alabama sturgeon and studies of the shovelnose sturgeon, it appears that these fish require currents over relatively stable substrates for feeding and spawning (see "Background" section of this notice). They are generally not associated with those unconsolidated substrates that settle in slower current areas and must be removed annually to maintain navigation. Therefore, removal and disposal of unconsolidated materials is not perceived as a threat to the sturgeon or to its feeding or spawning habitat.

In the proposed rule, the Service expressed concern that turbidity increases associated with the Corps' annual maintenance dredging could affect the sturgeon, and the Service still has some concern regarding this issue. The Corps and the Service agree that (1) the Alabama and Tombigbee Rivers are currently characterized as turbid rivers; (2) channel maintenance activities produce only localized and temporary elevation of turbidity; (3) the extent to which turbidity impacts the Alabama sturgeon is unknown; and (4) the Corps, in cooperation with the Service, will pursue research (within 3 years and based on the availability of funds) regarding the potential impacts of maintenance dredging activities, including turbidity, on the shovelnose sturgeon. Consequently, the Service has concurred with the Corps'

determination that, based on current information, their annual maintenance dredging program does not adversely affect the Alabama sturgeon.

Thus, as it is currently believed that the Corps' annual maintenance dredging program on the Alabama and lower Tombigbee Rivers is not likely to affect the Alabama sturgeon, these channel maintenance activities will not need to be eliminated, modified in timing or duration, or altered to protect any surviving Alabama sturgeon. Therefore, no loss of revenue from diminished annual channel maintenance activities would have been associated with the listing of the Alabama sturgeon (see response to Issue 19).

Issue 2: Numerous respondents felt that the Service had failed to meet the minimum standard of proof that the Alabama sturgeon was an endangered species. Therefore, the Service cannot comply with the Act's best available information standard for making a listing determination.

Response: The Service agrees that little information exists on the species' life history, environmental requirements, or its historic and current population levels. However, the best available information standard (section 4(b)(1)(A)—"A determination to list a species shall be based on the best available scientific and commercial information on the species' status") does not require the Service to possess detailed or extensive information upon the general biology of the species or an actual determination of the causes for this status in order to make a listing determination. The Act's information standard requires only that the best available information must support a conclusion that the species meets the Act's definition for threatened or endangered species status after consideration of the five factors discussed in the "Summary of Factors Affecting the Species" section of this notice.

On July 1, 1994, the Service announced (59 FR 34271) an interagency policy to provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best available scientific and commercial data available. The Service has complied with those procedures and criteria of the policy in making this decision and has carefully reviewed all data submitted on this matter.

For example, the best available information clearly supports the conclusion that the species has experienced a significant population decline in the last 100 years. The Alabama sturgeon was common in the late 1890s (U.S. Commission of Fish and Fisheries 1898) and was reported to be "not uncommon" in the 1930s (Anonymous 1930). However, Burke and Ramsey (1985) were able to capture only five Alabama sturgeons in the mid-1980s. After searches by the ADCNR in 1990, 1991, and 1992, utilizing a variety of sampling gear (Tucker and Johnson 1991, 1992), and by the ADCNR and the Service in 1993, only one specimen was captured. Based on these factors and other information discussed in the "Summary of Factors Affecting the Species" section of this notice, the Service is confident that the best available information standard, as required by the Act, was met in the decision to withdraw the proposal to list the Alabama sturgeon as endangered.

Issue 3: Several respondents believed that the Service should defer any decision to list the species until solid, verifiable scientific information is available on the fish's habitat requirements, threats, and population status.

Response: As discussed in the response to Issue 2, the Act does not require the Service to possess detailed or extensive information on the first two factors in order to make a listing determination. However, the Service has concluded that there is insufficient information available to substantiate the present existence of this species.

Issue 4: A few respondents stated that the Alabama sturgeon did not need Federal protection because Alabama State law provided sufficient protection for the species.

Response: Alabama State law does prohibit take and possession of the Alabama sturgeon without a State scientific collecting permit. However, this law does not protect the species from other threats. Federal listing would provide significant additional protection for the species by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the Alabama sturgeon. In addition, listing would make section 6 funding under the Act available to the State of Alabama for Alabama sturgeon recovery activities.

Issue 5: One respondent contended that listing the sturgeon would have a significant effect on the cost and duration of the U.S. Department of Agriculture's (USDA) boll weevil eradication program.

Response: In a March 23, 1994, letter, the Service informed the USDA of specific pesticide use restrictions that USDA must meet in order to avoid adverse effects to listed aquatic species by their boll weevil eradication program. As the Alabama sturgeon inhabited the same riverine systems as other federally listed aquatic species covered by the March letter, the Service does not believe that listing the Alabama sturgeon would have a separate or significant impact on the cost or duration of the boll weevil eradication program.

Issue 6: Several respondents stated that listing the sturgeon would require changes in the State's water quality standards.

Response: Although it is possible that some point-source discharges negatively impact the Alabama sturgeon, there is no evidence to support the conclusion that the State's water quality standards must be changed if the fish were ever to be listed. As discussed in the proposed rule, the potential exists for point discharges to impact the Alabama sturgeon, and it is noted that there is an increasing demand for discharge permits in the Mobile River system. However, there are two factors that work to minimize any impacts to this fish from point-source discharges—(1) as the Alabama sturgeon inhabits larger channel areas, the effects of any point discharge into its habitat would likely be minimized by dilution and (2) the State of Alabama, with assistance from and oversight by the Environmental Protection Agency (EPA), sets water quality standards that are presumably protective of aquatic life.

It is the Service's position, as stated in the proposed rule, that as long as current fish and wildlife standards under the Clean Water Act of 1977 (CWA) are used to issue discharge permits and the conditions of the permits are enforced, there is no need to modify the State's water quality standards to protect the Alabama sturgeon. A violation of State water quality standards would be a violation of the CWA, and listing the Alabama sturgeon could potentially increase noncompliance penalties. However, based on current information, the need for changes in State water quality standards would not have increased if the species had been listed.

Issue 7 A respondent stated that if the Alabama sturgeon was listed the resulting recovery plan would restrict land use practices.

Response Recovery plans do not impose restrictions on private land use practices. However, as there is a strong, direct correlation between poor land use practices and unhealthy aquatic ecosystems, the Service encourages landowners to consider any impacts their activities might have on aquatic resources. A recovery plan for the sturgeon would likely address this issue and suggest best management practices

for various land uses Recovery plan development would proceed under the policy announced by the Service on July 1, 1994 (59 FR 34272); this policy provides, among other points, for participation by all stakeholders in the development of a plan and the minimization of the social and economic impacts of its implementation.

Issue 8: Several respondents stated that listing the sturgeon would adversely impact the gravel-mining industry.

Response: In-stream gravel mining involves work in navigable waters of the United States and includes the discharge of the noncommercial dredge material back into the waterway. Thus, in-stream gravel mining comes under the Corps' authority, pursuant to section 10 of the River and Harbors Act of 1899 (RHA) (33 U.S.C. 403) and section 404 of the CWA (33 U.S.C. 1344). The Service believes that the Alabama sturgeon likely uses relatively stable substrate for breeding and feeding habitat (see "Background" section of this notice for a more detailed discussion of this fish's life history and biology). Thus, mining of this stable substrate could threaten the species. However, the Service believes the mining of unconsolidated material or relatively stable material that is covered by several inches of fine sediment would not be likely to jeopardize the species' continued existence.

Prior to the issuance of a permit by the Corps for in-stream gravel mining, the applicant must receive State water quality certification from the State of Alabama pursuant to section 401 of the CWA. As the Service does not believe that more restrictive water quality standards would have been needed to protect the Alabama sturgeon from this activity, the likelihood of an applicant's receiving State water quality certification will not be affected by the listing of the Alabama sturgeon. However, as in-stream gravel mining generally produces higher turbidity levels than are produced by maintenance dredging, the Service believes that increases in turbidity within Alabama sturgeon habitat from in-stream gravel mining activities could be considered a "may adversely affect" situation that the Corps would need to address through section 7 consultation with the Service, if the species were to have been listed However, the Service does not anticipate that turbidity produced from gravel-mining of unconsolidated substrates would likely jeopardize the continued existence of the Alabama sturgeon.

Issue 9: Several respondents were concerned that if the Alabama sturgeon were listed anyone could file a class action suit and stop a Federal project (such as maintenance dredging) or stop the issuance of discharge permits.

Response: Citizen suits, not class action suits, are available under the Act. However, it is unlikely that suits challenging activities already determined by the Service not to be likely to jeopardize the continued existence of a species would be successful.

Issue 10: A few respondents felt that the Service should not change its position on various issues addressed within the proposed rule after the rule had been published.

Response: The Service has modified its position on a number of issues addressed in the proposed rule; these changes are reflected in this final decision document (see the response to Issue 39). As new information becomes available, the Service, as part of its review process, is expected to and should modify and clarify its position from what was stated in the proposed rule. This is a normal procedure. A species is considered for Federal protection through the proposed rule process as a means of soliciting comments. The period in which comments are solicited in a proposed rule is typically 60 to 90 days but may be much longer, as was the case with the proposed rule for the Alabama sturgeon. The Service is then expected and required to modify and clarify its position based on any pertinent comments that the Act allows the Service to consider.

Issue 11: Some respondents wanted to know if the Alabama sturgeon has any economic value.

Response: The Alabama sturgeon, according to historic records, once sustained a significant commercial fishery (see the response to Issue 18 and the "Background" section of this notice); if the species is recovered, it may again be a valuable economic resource. However, section 4(b)(1)(A) of the Act requires that a decision to list a species shall be based solely on the best scientific and commercial data available on the species' status. Therefore, the Service cannot weigh a species' economic value when it is being considered for protection under the Act.

Issue 12: Several respondents wanted to know who would make the final listing decision.

Response: The decision on whether to add a species to the Federal list of endangered and threatened wildlife and plants (50 CFR part 17) is made by the Director of the Service under authority delegated by the Secretary of the Interior.

Issue 13 Several respondents supported the proposed rule and urged the Service to protect the Alabama sturgeon.

Response: The Service finds that such action is not presently supportable but will continue to survey for the sturgeon and can repropose its listing at any future time should sufficient information that the species still exists become available.

Issue 14: One respondent stated that the decline of the sturgeon was an early warning sign of a decline in the Alabama River's ecosystem.

Response: The Service agrees that the sturgeon's decline over the past 100 years or more is likely another warning that the ecosystem may be in trouble (see the "Background" section of this notice).

Issue 15: Several respondents felt that there was no firm evidence that the Alabama sturgeon still existed and therefore should not be listed.

Response: An Alabama sturgeon was captured in December 1993 and comments were received from scientists pertaining to the species' continued existence (see chronological history of the proposal in the above "Previous Federal Actions" section for a further discussion of this issue). Based on all available information, the Service does not assume that the Alabama sturgeon still exists, even in low numbers. It is possible that future surveys will reveal an existing population of this fish. There are numerous other examples of the rediscovery of fishes long thought to be extirpated or extinct in the scientific literature (Kuhajda, *in litt.*, 1994).

Issue 16: Several respondents felt it was disrespectful that Service personnel were not present in the hearing room during the entire January 31, 1994, hearing, and some respondents felt that Service personnel should have been present at all times so they could hear every comment that was made.

Response: Senior-ranking Service personnel (a Deputy Director from the Service's Washington Office and two Assistant Regional Directors from the Service's Southeast Regional Office) were present in the audience during the hearing in question. This represents a greater Service presence than is normal or required by the public hearing process. Furthermore, transcripts of all oral statements made during the public hearing have been reviewed by the Service in making this final decision.

Issue 17: Some respondents questioned the Service's use of life history and habitat preference

information from related species to make assumptions regarding the behavior of the Alabama sturgeon. Other respondents provided copies of some sturgeon publications that the Service did not reference in the "References Cited" section of the proposed rule and felt the Service should use all relevant papers on sturgeon species from the Mississippi River system.

Response: It is a common practice in science to use information on closely related species to help form judgments on the needs of rare species where little information exists (Mayden and Kuhajda, in press). For example, when the Service was researching reintroduction techniques for the rare California condor and whooping crane, the Service used the related Andean condor and sandhill crane as substitutes, respectively. Certainly, specific studies of a species would be the ideal. However, when a species is rare and little data exist, information on related species provides valuable insights. Most of the inferences regarding the Alabama sturgeon's life history and environmental requirements were derived from studies of the closely related shovelnose sturgeon.

The Service appreciates receiving additional information on the biology of sturgeons from the Mississippi River system. The Service has incorporated some information from these publications, where appropriate. However, the Act does not require the Service to cite every publication on related species in order to make a determination that a species qualifies for the Act's protection.

Issue 18: One respondent stated that the Service should not use an "arcane" report that is a century-old in its assessment of the historic abundance of the Alabama sturgeon.

Response: The Service did use a nearly century-old report to Congress concerning commercial fish harvests from interior waters of the United States (U.S. Commission of Fish and Fisheries 1898) in concluding that the Alabama sturgeon was historically more common in the Mobile River system. This 1898 report, which estimated a commercial Alabama sturgeon harvest of 18,000 kg (39,500 lb) from the Alabama River, provides valuable historic insight into the Alabama sturgeon's abundance at the turn of the century. As discussed in the responses to Issues 2, 11, and 27, the Service is required by the Act to make a listing determination utilizing the best available scientific and commercial information. Thus, the Service concludes that it was appropriate to use these available commercial fisheries data as to the former historical abundance of this sturgeon.

Issue 19: Several respondents were concerned that Service biologists contacted individuals and reporters to discuss the listing and tried to sway public opinion concerning issues that developed subsequent to publication of the proposed rule. This concern was expressed particularly with reference to the Service's explanation regarding the extent of any impact the listing might have on maintenance dredging and navigation in the Mobile River system and the Tennessee-Tombigbee Waterway (TTW).

Response: The proposed rule stage of the listing process provides an opportunity to gather information on a species and to discuss the merits and effects of protecting that species under the Act. During the proposed rule stage, misconceptions often develop regarding the potential impacts of the listing on existing programs and activities. When a misconception exists or when the Service recognizes that the media, local officials, or others have made erroneous statements, the Service is obligated to inform the public that a misconception or misinformation exists.

For example, the Service stated in the proposed rule that maintenance dredging was a threat to the Alabama sturgeon. This statement was interpreted by many to mean that if the fish were listed, maintenance dredging would be stopped, navigation would cease, and as a result the region would be left in economic ruin. The Service agrees that if navigation in the Mobile River system were stopped, the economic impact would be tremendous. However, the Service does not believe nor did it intend to imply that maintenance dredging for navigation and the Alabama sturgeon cannot coexist; they can coexist, and the Service pledges to continue working with the Corps toward this end (see the response to Issues 1, 46, and 47 for a detailed discussion of why listing would not have significantly affected maintenance dredging or navigation).

Section 7 of the Act and implementing regulations (50 CFR part 424) make a clear distinction between activities that may adversely affect a species and activities that are likely to jeopardize a species' continued existence. Federal agencies are required to avoid the likelihood of jeopardizing a listed species' continued existence, but the Act does not require Federal agencies to avoid all negative impacts to a listed species. Thus, at public hearings, in interviews with reporters, and during conversations with individuals and agencies, Service biologists attempted to clarify this issue regarding any listed species. These attempts at clarification were not improper.

Issue 20: A few respondents stated that the Act should balance the needs of listed species with the needs of people.

Response: Since the Act's inception in 1973, the Service has consulted on tens of thousands of projects and has developed a long record of balancing the needs of species with the needs of society. Section 7 of the Act requires the Service to assist Federal agencies in determining whether their actions will likely jeopardize the continued existence of listed species. However, the Act also calls for the Service to recommend alternative courses of action that are protective of the species but still allow for project objectives to be met. Only a few situations have arisen in the past 2 decades where disagreements between the Act and development interests could not be resolved. In all other cases, the Service, through the cooperative efforts of governmental agencies, industry, and individuals, was able to reach equitable solutions.

If after consulting in good faith the Service and the Federal agency cannot resolve a jeopardy situation, the Act provides a further means to balance human needs with the needs of species. Section 7(h)(1)(A)(ii) provides for exemptions to the requirements of the Act when, among other things, the benefits of a Federal action clearly outweigh the benefits of an alternative course of action that would conserve the species.

The Service's section 7 consultation history in the State of Alabama provides a good example of how the Service has been able to balance the needs of species and people in section 7 consultations. The citizens of Alabama have been coexisting with many endangered species for a number of years. As of November 30, 1994, the State of Alabama had the fourth largest number of federally listed species (88) of any State in the nation. From 1988 to 1993 the Service's Daphne, Alabama, Field Office, reviewed about 10,000 Federal actions in Alabama for compliance with the Act. During that time period, they issued only one jeopardy biological opinion that resulted in stopping a project. In that particular case, there were no reasonable and prudent alternatives to the proposed action; the project proponent elected to withdraw the project, rather than initiate the Act's exemption process (50 CFR parts 450–453).

Issue 21: Scientists who closely examined the data that were used to

describe the Alabama sturgeon generally agreed that Williams and Clemmer (1991) made statistical and procedural errors in their analysis. Some biologists, upon examination of those data and additional data to that provided by Williams and Clemmer (1991), concluded that the Alabama sturgeon was still a valid species. Other biologists, based on their analyses, maintained that the Alabama sturgeon and the shovelnose sturgeon (*S. platorynchus*) were the same species.

Response: Ichthyologists provided considerable information concerning the taxonomic status of the Alabama sturgeon during the comment period (see the "Background" section of this notice for a discussion of this material). However, all of the taxonomic information has consisted of unpublished reports; none of this taxonomic information has been subjected to peer-review and accepted for publication in a scientific journal, with the exception of the study by Mayden and Kuhajda (in press). The description of the Alabama sturgeon as a full species by Williams and Clemmer (1991) is the only taxonomic account that has been published in a peer-reviewed scientific journal. However, the study by Mayden and Kuhajda (in press) corroborates the determination of Williams and Clemmer (1991) that the Alabama sturgeon is a distinct species. Thus, until such time that the Alabama sturgeon's current taxonomic status is revised in an appropriate peer-reviewed scientific journal, the Service will consider the Alabama sturgeon (*S. suttkusi*) to be a full species that is distinct from the shovelnose sturgeon (*S. platorynchus*) (see the response to Issue 22 for a discussion of why the Alabama sturgeon would still qualify for protection under the Act even if it were determined to be a subspecies or population of the shovelnose sturgeon).

As indicated in the Background section, the Service has received a very recent study report prepared for the Corps of Engineers and the Service (Genetic Analyses 1994). The study compared a number of nuclear DNA markers for the three *Scaphirhynchus* sturgeon and found no measurable difference between pallid and shovelnose sturgeons but significant differences between those sturgeons and the one Alabama sturgeon. Further, this study does show that the single specimen of Alabama sturgeon captured in 1993 was considerably different from pallid and shovelnose sturgeons. This genetic study also indicated that another specimen of Alabama sturgeon would very likely provide conclusive evidence of these consistent differences.

Issue 22: Several respondents recognized that if the Alabama sturgeon's taxonomic status could not be resolved, the Act would allow the Service to list the Alabama sturgeon as an endangered subspecies or distinct population of the shovelnose sturgeon (*S. platorynchus*). However, opinions differed greatly concerning the appropriateness of such a listing. A few respondents stated that the Service should defer any decision to list the Alabama sturgeon until a full taxonomic review of the species is completed.

Response: Taxonomic questions regarding the Alabama sturgeon's status as a full species have been raised, and the Service admits that there is controversy surrounding this issue. However, as discussed in the response to Issue 21, the only peer-reviewed scientific publication on the Alabama sturgeon's taxonomic status is Williams and Clemmer (1991). Further, a study by Mayden and Kuhajda (in press), which has been accepted for publication in a peer-reviewed scientific journal, corroborates the determination of Williams and Clemmer (1991) that the Alabama sturgeon is a distinct taxonomic species. Upon publication of the study by Mayden and Kuhajda (in press), two peer-reviewed scientific publications will support the distinct taxonomic status of the Alabama sturgeon.

The Alabama sturgeon (*S. suttkusi*) has been recognized in both the proposed rule, the June 21, 1994, notice of extension, and this notice of withdrawal as a distinct species, not a population or subspecies (see the response to Issue 21 and the "Background" section of this notice). However, the Act (section 3(15)) provides for listing subspecies or distinct population segments of vertebrate species as endangered or threatened. Thus, if the Alabama sturgeon is subsequently recognized as a distinct subspecies or population segment of the shovelnose sturgeon (*S. platorynchus*), it would still qualify as being eligible for the Act's protection. This second conclusion is based on the fact that, even if the sturgeon in the Mobile River system is the shovelnose sturgeon and not recognized as a subspecies of that species, it is a distinct population segment of a vertebrate species and is a population that may be in danger of extinction (see the "Summary of Factors Affecting the Species" section of this notice).

To explain further, all members of the genus *Scaphirhynchus* are freshwater fish (Bailey and Cross 1954), and there are no known records of any member of this genus in marine waters or the intermediate rivers between the mouths of the Mississippi and Mobile Rivers. Thus, if the Alabama sturgeon's taxonomy is subsequently revised to population status in a peer-reviewed scientific journal and the revision is generally accepted by the scientific community, the Service would recognize that information to reflect the most current nomenclature.

Issue 23: A few respondents presented a list of potential impacts, including impacts to recreation, flood control, existing interstate water disputes, and numerous other water-related issues. However, little specific information was presented to indicate how the listing would impact these activities.

Response: Without specific information on how these activities would have been impacted if this species had been listed, the Service is unable to evaluate the extent of the impacts and in any case is not allowed to consider such impacts when determining any species to be endangered or threatened. However, the Service does not foresee significant impacts to these activities if the Alabama sturgeon were to be listed in the future.

Issue 24: One respondent commented that the Service should not list another species because the Service has a poor record of recovering species and the Service cannot take care of all the species already on the list.

Response: As outlined in the response to Issue 2, the Act allows the Service to consider only information related to the species' status when deliberating as to whether a determination of endangered or threatened status is warranted under the Act. Therefore, the Service cannot and does not consider its historic recovery record or its current recovery workload in determining whether a species deserves protection of the Act.

Issue 25: Several respondents commented that, as the Service had not prepared a Regulatory Impact Analysis or complied with the Regulatory Flexibility Act, it could not proceed with the listing.

Response: In dealing with this rulemaking process, the Service has complied with all applicable laws, regulations, and departmental guidance. Preparation of a Regulatory Impact Analysis was an element of Executive Order 12291, which was revoked by Executive Order 12866. The Service is exempt from the requirements to comply with the Regulatory Flexibility Act with respect to the listing process under section 4 of the Act in accordance with the intent of Congress.

Issue 26: There were allegations from some respondents that the minimum

flow requirement of 90 cubic meters per second (cms) (3,000 cubic feet per second (cfs)) for the Alabama sturgeon, which was stated in the proposed rule, was arrived at arbitrarily. There was also concern that if any minimum flow releases were necessary, substantial loss of revenue from hydropower facilities at Robert F. Henry and Millers Ferry Locks and Dams would occur and that hydroelectric dams further upstream in the Alabama River system could also be affected by the listing.

Response: A series of dams now control water flows in much of the Mobile River system. Changes in the natural flow patterns have probably had both direct and indirect effects on the Alabama sturgeon and its habitat. In the proposed rule, it was stated that "The Service expects that continuous minimum flows of approximately 3,000 [cfs] will be required [to sustain the Alabama sturgeon] below both Robert F. Henry and Millers Ferry Locks and Dams on the lower Alabama River" and that ". . . minimum flows below Claiborne Lock and Dam are already maintained at approximately 5,000 cfs to provide for cooling water intake of downstream industry." Although the Service concedes that little information on the flow needs of the sturgeon is available, a minimum figure of approximately 90 cms (3,000 cfs) was arrived at by Service and other biologists familiar with the Alabama River and its fish populations.

The Service now has information that the Alabama Power Company (APC), through an agreement with the Corps, attempts to maintain (for the purposes of navigation) a minimum average daily flow of approximately 149 cms (4,640 cfs) over any seven consecutive day period and a minimum average daily flow of approximately 81 cms (2,667 cfs) over any three consecutive day period downstream of Claiborne Lock and Dam. Further, the average daily flows over the last decade downstream of Claiborne Lock and Dam have ranged from 114 to 6912 cms (3,800 to 244,000 cfs). Therefore, the Service believes that the minimum average daily flows, as agreed to by the Corps and the APC, coupled with historic and Federal Energy Regulatory Commission (FERC)-ordered flow patterns, are likely adequate to sustain any Alabama sturgeon in this river reach.

The Service's opinion on flow requirements for river segments upstream of Claiborne Lock and Dam, as stated in the proposed rule, has changed somewhat. The Service's position remains that the best biological judgment at this time is that a combined minimum average daily flow of approximately 90 cms (3,000 cfs) from the Robert F. Henry and Millers Ferry Locks and Dams would be required to maintain a population of the Alabama sturgeon upstream of Claiborne Lock and Dam. However, the continued existence of the sturgeon upstream of Claiborne Lock and Dam has not been substantiated in nearly a decade, although anecdotal evidence exists.

Therefore, based on our current knowledge of the Alabama sturgeon, no changes in water releases from these structures or from structures located in the headwaters of the Alabama River system (e.g., Coosa and Tallapoosa Rivers) would have been suggested for the benefit of the sturgeon nor would they have been anticipated by the Service as a result of listing. Thus, without changes in flow releases from power-generating dams, there would have been no loss of electrical power revenue resulting from any listing of the Alabama sturgeon.

Issue 27: Numerous respondents maintained that the listing of the Alabama sturgeon would devastate Alabama's economy and requested that the Service consider economic, social, or other impacts that might occur if the Alabama sturgeon was listed. They also requested that the Service, as a result of these forecasted impacts, withdraw the proposal to list the Alabama sturgeon.

Response: Section 4(b)(1)(A) of the Act requires the Service to base its decision on whether to list a species solely on the best scientific and commercial data available on the species' status and precludes the Service from considering economic or other impacts that might result from the listing. Public comments directed to economic or other impacts are outside the scope of topics that the Service can consider in making any final rule determination. However, even though economic impacts cannot be considered in the listing process, the Service believes that the impact from a listing action on the region's economy would have been minimal (see the responses to Issues 1, 6, 26, 30, 46, and 47).

Issue 28: In the proposed rule, the Service maintained that channel-training devices could be used to further reduce the need to conduct extensive maintenance dredging operations in the Mobile River system. Some respondents disagreed, stating that the Corps was using as many channel-training devices as was necessary.

Response: In the proposed rule, the Service cited studies by the Corps and others that the use of channel-training devices (e.g., training dikes, jetties, sills, and revetments) in several rivers in the eastern half of the United States reduced dredging requirements by over 50 percent. The Corps' own data stated that structures in the Alabama River were assumed to eliminate about 60 percent of dredging requirements at the specific location where such structures were designed and constructed in the last phase of training works on the Alabama River. The present system on the Alabama River consists of 67 channel training works at 16 locations. The Corps has subsequently stated that, based on the Mobile District's criteria for the use of training works, these structures are already used to the maximum extent practicable. However, the Service understands that the Corps will continue to evaluate their use, will modify existing structures as necessary, and may construct additional training devices when justified.

Although the Service believes that training devices could reduce impacts to the Alabama sturgeon and encourages the Corps to consider their use in future planning, the Service does believe that more training devices would not be required to avoid jeopardy to the Alabama sturgeon, if ever listed in the future.

Issue 29: Several respondents expressed concern as to why non-Service biologists were permitted only 15 minutes to examine the dead Alabama sturgeon captured in December 1993 and why the Service decided that live tissue samples could not then be taken from the fish.

Response: The Service concedes that the 15 minutes granted to biologists associated with the Coalition to examine a specimen of a rare, poorly known sturgeon on or about January 7, 1994, may have been an insufficient amount of time in which to make a detailed identification. However, a short time for examination was considered best in order to prevent significant thawing of the frozen specimen and thus prevent further deterioration. Additionally, the 15-minute time interval was mutually agreed upon by biologists with both the Coalition and the Service but was negotiable, as subsequently clarified in a letter from the Service to the Coalition dated January 19, 1994. This letter stated, in part, "* * * additional time could have been arranged [to examine the sturgeon] had there been a request for such." No official request was made to the Service or hatchery staff for additional time to examine the fish prior to or during the Coalition's visit to the State of Alabama's Marion Fish Hatchery. No Service representative was present for this examination, but a representative from the Corps was in attendance to view the sturgeon. Hatchery personnel were informed of

the agreement between the Coalition and the Service and thus allowed the Coalition representatives only the previously agreed-upon 15 minutes in which to study the specimen.

The Coalition sent a letter to the Service on December 7, 1993, requesting fresh blood and muscle tissue samples from the live sturgeon that had been captured a few days earlier. In a letter dated December 17, 1993, the Service stated that it did not take muscle and blood samples from the sturgeon because of the intrusive nature of the sampling and the potential to traumatize or cause the death of the fish. However, fin clips were made and frozen for future study. When the Coalition received word that the sturgeon had been found dead on December 31, 1993, they arranged an examination of the fish. A January 6, 1994, letter from the Coalition and a January 12, 1994, letter from the Corps formally requested that the Service provide tissue samples from the now-frozen sturgeon and subsamples of the fin clips obtained prior to its death.

However, Service biologists decided that no intrusive tissue samples should be taken from the sturgeon prior to the necropsy that was to be conducted at the National Biological Survey's laboratory in Leetown, West Virginia. It was stated in Service letters dated January 18, 1994, to the Corps and January 19, 1994, to the Coalition that samples of tissue removed from the fish might jeopardize any chance for a determination of its cause of death but that a muscle tissue sample would be provided to Coalition biologists after the necropsy was completed. Immediately after the examination of the fish by biologists representing the Coalition, the carcass was shipped to the West Virginia laboratory. Following the necropsy, muscle tissue samples were sent to Coalition biologists and to the Corps.

Issue 30: Some respondents expressed concern regarding the potential effects the listing of the Alabama sturgeon would have on coalbed methane-associated industries.

Response: The extraction of coalbed methane can necessitate the release of produced water into the environment, and this discharge was mentioned as a potential threat to the Alabama sturgeon in the proposed rule. The Corps authorizes produced-water discharge structures pursuant to section 10 of the RHA (33 U.S.C. 403) if the outfall structure is placed into navigable waters of the United States. The Corps typically authorizes these structures with a Letter of Permission. Letters of Permission are a type of permit issued through an abbreviated processing procedure that includes coordination with Federal (including the Service) and State fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act (FWCA), and a public interest evaluation, but without publishing an individual public notice. Letters of Permission may be used in those cases subject to section 10 of the RHA when, in the opinion of the District Engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. Additionally, prior to discharge, the applicant must receive a permit from the State of Alabama under National Pollution and Discharge Elimination System (NPDES) guidelines. As the last known occupied habitat of the Alabama sturgeon existed far downstream of these permit activities, the Service does not believe that any modification to existing discharge structure authorization procedures is needed to protect the Alabama sturgeon.

The potential coalbed methane wells are far upstream of known Alabama sturgeon habitat and any discharge must meet State water quality standards (the Service has stated that the water quality standards will not have to be modified in order to protect the Alabama sturgeon). Therefore, the Service does not anticipate any direct or indirect impacts to the Alabama sturgeon from properly permitted produced-water discharges.

Issue 31: One respondent stated that he had seen sturgeon swim through locks and that the recently caught Alabama sturgeon might actually be a shovelnose sturgeon that had passed down the TTW from the Tennessee River system.

Response: Based upon morphological characters that can be used to differentiate the two sturgeon populations (see the "Background" section of this notice), various ichthyologists verified that the sturgeon caught in the Alabama River in December 1993 was an Alabama sturgeon. In addition, it is true that the opening of the TTW potentially facilitates the movement of certain fishes between the Tennessee and Tombigbee Rivers. However, passage of a shovelnose sturgeon from the Tennessee River system through the TTW, down the entire length of the Tombigbee River, and up the lowermost portion of the Alabama River to where the specimen was captured would require swimming downstream through a total of 12 locks. The shovelnose sturgeon is thought to migrate limited distances (see the "Background" section of this notice), but the likelihood of an individual sturgeon traversing a distance of over 645 kilometers (km) (400 miles (mi)) and getting caught in a gill net in the Alabama River is remote. Furthermore, populations of the shovelnose sturgeon in the lower Tennessee River are thought to be low, based on reports from commercial fishermen (John Conder, Tennessee Wildlife Resources Agency, personal communication, 1994).

Issue 32: One respondent quoted from a newspaper article that stated the Act's scatter-shot attempt to preserve everything made little sense and that unless the law was changed, biologists eventually would identify enough rare species for Federal protection to make everywhere off limits to humans. Another respondent noted that nature itself has destroyed the vast majority of life forms and that extinction is an inevitable fact of evolution.

Response: The Act specifically states that the Service is to list those species that are in danger of extinction throughout a significant portion of their range and that only the best biological information available can be used in these determinations (see the responses to Issues 2 and 27). At the present time, over 900 native species have been listed and tens of thousands of consultations (informal or formal) have been made with only a small percentage creating significant problems for the project or local economy. While it is true that catastrophic events over geological time have resulted in the extinction of millions of species since life evolved on our planet, the rate of extinctions in the past couple of centuries has accelerated dramatically as a direct result of human activities.

Issue 33: One respondent noted that the listing of the Alabama sturgeon would impact individuals conducting private activities by forcing them to pay for implementing costly habitat conservation plans (HCPs).

Response: The Service assumes that these activities are land-use activities that have no Federal permit requirement or funding source. Section 9 of the Act lists prohibited activities with respect to endangered species, including "take" (e.g., kill, wound, harm). Section 10(a) of the Act provides that private individuals whose activities would incidentally take a species may obtain an "incidental take permit" provided they prepare and are able to implement a habitat conservation plan (HCP) that meets the requirements of section 10(a)(2)(B). However, there is no need to prepare and implement an HCP unless it is established that an individual's

activity would incidentally result in the take of a listed species.

Issue 34: Some respondents noted that some sturgeon species actually might benefit from deep-water habitats created by various dredging activities.

Response: Other sturgeons have been documented from deep dredge holes of rivers. However, dredging should not be construed as an activity that is totally compatible with the well-being of the sturgeons (see the responses to Issues 1 and 8). Certain dredging activities may compromise foraging and spawning habitat for a sturgeon by removing relatively stable substrate and destabilizing adjacent habitat. Dredging, therefore, should not necessarily be viewed as a means of creating deep-water habitats with stable substrates for any sturgeon.

Issue 35: Several respondents stated that commercial fishing should be implicated in the overall decline of the Alabama sturgeon. Another respondent speculated that overexploitation of the paddlefish (*Polyodon spathula*) for its eggs in the 1980s may have resulted in an increased incidental catch of the Alabama sturgeon. This may have contributed to the sturgeon's decline.

Response: There is an historic account of commercial harvest for sturgeons in the Mobile River system at the turn of the century (U.S. Commission of Fish and Fisheries 1898) that stated that 18,000 kg (39,500 lb) of Alabama sturgeon were harvested. However, without historic population information, the Service cannot conclude that the Alabama sturgeon was overharvested during that period. Furthermore, the Service has no evidence, other than anecdotal reports, that incidental catches of the Alabama sturgeon occurred during the paddlefish fishery in the 1980s and contributed to the sturgeon's decline (see Factor B in the "Summary of Factors Affecting the Species" section of this notice). The Service believes that massive alteration of the river's aquatic ecosystem has played the most significant role in the Alabama sturgeon's decline (see Factor A in the "Summary of Factors Affecting the Species" section of this notice and the response to Issue 36). However, the Act does not require that the specific causative agents be known or even be well understood for a species to qualify for Federal protection.

Issue 36: Several respondents stated that the Service overemphasized the impact that recent impoundments may have had on the decline of the Alabama sturgeon.

Response: The Service acknowledges that the specific causes of the Alabama sturgeon's current status are poorly understood. However, the Service believes that it is reasonable to conclude that the impoundments constructed on the Alabama River in the late 1960s and early 1970s likely played a significant role in the decline of the Alabama sturgeon (see Factor A in the "Summary of Factors Affecting the Species" section of this notice). Additionally, even if reservoirs were not a factor, the Act does not require that the Service know all the specific causes of a species' decline before the Service can decide to list the species. The Act requires only that the Service use the best available information on the species' status to support the conclusion to list any species that is in danger of extinction (see the response to Issue 2). With respect to the Alabama sturgeon, as discussed under Factor A in the "Summary of Factors Affecting the Species" section of this notice, the best available information demonstrates that it has suffered a dramatic decline in both population size and range over the past 100 years, even if there are some uncertainties as to the cause(s) of this decline.

Issue 37: Several respondents stated that the Service should not use anecdotal information in this rulemaking process.

Response: The Service has included some anecdotal information in this notice. However, the decision whether to list this species was not been based on anecdotal information (see the "Summary of Factors Affecting the Species" section of this notice).

Issue 38: One respondent contradicted statements made by the Service in the proposed rule that the shovelnose sturgeon had changed its diet, allegedly because of the effects of channelization activities.

Response: The Service concedes that the reference in the proposed rule to a shift in the shovelnose sturgeon's diet, attributed to channelization activities, was erroneous. Any assertion that changes in the shovelnose sturgeon's food habits resulted from channelization activities has been deleted from this notice and was not considered when making the decision to withdraw the proposal.

Issue 39: Several respondents expressed concern over differences between how the Service addressed certain issues in the June 15, 1993, proposed rule and how the Service addressed these issues in subsequent oral presentations and official documents, especially the June 21, 1994, notice of a 6-month extension of the deadline and reopening of the comment period.

Response: The Service has received numerous comments and has had discussions with other Federal agencies (including the Corps) regarding the Alabama sturgeon's biology and taxonomic status and how listing the species could impact and be impacted by Federal activities. When clarifying information was provided by all these contacts, the Service considered it and has altered, as it should, its position on some factors addressed in the proposed rule (see the response to Issue 10 for a further discussion of this issue). These modifications of Service positions were partially reflected in the June 21, 1994, notice of a 6-month extension of the deadline. However, a full discussion of the Service's position on these issues, as influenced and modified by public comments, is contained in this notice.

Issue 40: A few respondents stated that the June 21, 1994, notice of a 6-month extension of the deadline did not make it clear to them what type of comments the Service was seeking.

Response The Service stated in the June 21, 1994, notice of a 6-month extension of the deadline that the Service was primarily seeking additional information on the population status of the Alabama sturgeon. However, in the development of this notice, the Service has considered all the comments received through October 17, 1994, the end of last open comment period.

Issue 41 In the June 15, 1993, proposed rule, the Service referred to the sturgeon that was being proposed for endangered species status as the "Alabama sturgeon." However, in the June 21, 1994, notice of a 6-month extension of the deadline, the Service referred to this same sturgeon as the "Mobile River system population of the Alabama sturgeon." Several respondents stated that this change created confusion as to whether the Service was proposing a species or a population of a species for Federal protection.

Response: The reference to the Alabama sturgeon as the "Mobile River system population of the Alabama sturgeon" in the June 21, 1994, notice was an error, and the Service regrets any confusion that may have been generated by this statement. The Alabama sturgeon was proposed as a distinct taxonomic species for endangered species status in the June 15, 1993, proposed rule, and the Alabama sturgeon was recognized as a full species in the June 21, 1994, notice (see 59 FR 31972, col. 3, lines 4–11), as well as in this notice (see the "Background" section of this notice and the response to Issues 21 and 22).

Issue 42: Several representatives of industries located along the Alabama River commented that they had, through their NPDES permit activities, collected large numbers of fish from the Alabama River, but they had never seen a sturgeon.

Response: Considering the rarity of the Alabama sturgeon and the difficulty of collecting the species as shown by the effort expended by the Service and the State of Alabama over the past several years that resulted in the capture of only one Alabama sturgeon, the Service is not surprised that fish collections associated with NPDES activities failed to encounter this species (see the "Background" section of this notice).

Issue 43: Several respondents stated that the Service should extend the comment period beyond the October 17, 1994, deadline to allow for public comments regarding the Service's Alabama sturgeon collection efforts.

Response: The comment period on the Alabama sturgeon proposed rule was reopened from September 15, 1994, through October 17, 1994 (September 15, 1994; 59 FR 47294) to allow for additional scientific peer review regarding the Alabama sturgeon's continued existence. The closing date of the comment period was set at October 17, 1994, to provide sufficient time for the Service to review all available information and comments and then draft this notice in order to publish the document by the December 15, 1994, deadline. The time allowed for the development and review of the document is far less than is normally provided, and the Service believed that the comment period could not have been extended beyond October 17, 1994, without compromising the Service's ability to meet the December 15, 1994, publication deadline.

Issue 44: A few respondents raised the issue of the viability of the remaining Alabama sturgeon population, and one individual commented that the Service should not list the Alabama sturgeon because there are not enough of them left in the river to maintain a viable population.

Response: The Alabama sturgeon population was significantly reduced in numbers, and there is not enough information presently available to conclude that the species still exists.

Issue 45: One respondent stated that the Service had used Williams and Clemmer (1991) as the taxonomic authority for the Alabama sturgeon in the proposed rule but used Mayden and Kuhajda (in press) as the taxonomic authority in the notice of a 6-month extension of the deadline.

Response: The Service did not intend to imply that the study by Mayden and Kuhajda (in press), which had not been accepted for publication at that time, was the taxonomic authority for the Alabama sturgeon when the notice of a 6-month extension was published. As referenced in Issue 21 and 22, as well as in the "Background" section of this notice, Williams and Clemmer (1991) have the only peer-reviewed scientific publication regarding the taxonomic status of the Alabama sturgeon. Therefore, the Service continues to consider Williams and Clemmer (1991) to be the taxonomic authority for the Alabama sturgeon. However, Mayden and Kuhajda (in press) has recently been accepted for publication in a peer-reviewed scientific journal. Upon publication of the study by Mayden and Kuhajda (in press), two peer-reviewed scientific publications will support the Service's contention that the Alabama sturgeon is a distinct taxonomic species.

Issue 46: Concern was expressed that listing the Alabama sturgeon would significantly impact commercial barge traffic if the Corps could not remove rock shelves from the navigation channel.

Response: The Alabama and Tombigbee Rivers naturally move laterally, and to some extent, vertically This natural river channel movement exposes rock shelves at the outer bends of the river. In order to provide for a reliable and safe navigation channel, these rock shelves must sometimes be removed, and similar channel alignment improvements of covered consolidated material are sometimes necessary on the inside bends. Although the removal of these obstructions to navigation are usually infrequent and restricted to isolated areas, this activity may adversely affect the Alabama sturgeon.

The Corps and the Service have informally discussed the potential impacts to the Alabama sturgeon of removing these rock shelves, and both agencies agree that, if the Alabama sturgeon were ever listed, section 7 consultation would be required prior to the commencement of any rock shelf removal project within or adjacent to potential Alabama sturgeon habitat. However, since both agencies agree that rock shelf removal projects are generally not emergency projects, there will be a significant period of time prior to the next dredging season for both agencies to consider the timing and habitat improvements that may be possible by the design and construction of the remaining shelf after excavation and by the selective placement of the excavated material. Thus, the Service does not anticipate that any consultations would result in a jeopardy situation or result in delays in these maintenance dredging activities should the species ever be listed.

Issue 47: Several respondents expressed concern that listing the Alabama sturgeon could significantly impact maintenance dredging for non-Federal activities.

Response: The Corps authorizes maintenance dredging for non-Federal navigation projects. Although these projects are usually on a much smaller scale than the Corps' annual maintenance dredging activities, they involve the removal of unconsolidated aggregate from navigable waters of the United States and include the discharge of some material back into the waterways. Thus, maintenance dredging by non-Federal entities comes under the Corps' authority pursuant to section 10 of the RHA (33 U.S.C. 403) and section 404 of the CWA (33 U.S.C. 1344).

Maintenance dredging by non-Federal entities for navigation removes unconsolidated aggregate (e.g., sand, mud, and silt) that washes down from upstream portions of the river and from tributaries. Based on limited information on the Alabama sturgeon and studies of the shovelnose sturgeon, it appears that these fish require currents over relatively stable substrates for feeding and spawning (see "Background" section of this notice). They are generally not associated with the unconsolidated substrates that settle in slower current areas. Therefore, removal and disposal of unconsolidated materials is not perceived as a direct threat to the sturgeon or to its feeding or spawning habitat.

Prior to the Corps' issuance of a section 404 permit for non-Federal maintenance dredging, the applicant must receive State water quality certification from the State of Alabama pursuant to section 401 of the CWA. As the Service does not believe that more restrictive water quality standards will be needed to protect the Alabama sturgeon from this activity, the likelihood of an applicant receiving a State water quality certification will not be affected by the listing of the Alabama sturgeon. Additionally, as addressed above under Issue 1, temporary increases in turbidity associated with maintenance dredging activities are not currently believed to adversely effect the Alabama sturgeon; and, as dredge material from non-Federal maintenance dredging projects is traditionally disposed of at upland sites, potential impacts to the sturgeon are further reduced.

Issue 48: Comments from the Corps and others concerned the effect of

listing the Alabama Sturgeon would have upon other Corps regulatory activities, such as authorizing pipeline crossings, piers, wharves, and small boat channels. These non-Federal activities are regulated through the Corps' regulatory program and evaluated on a case by case basis. Thus, concern has been expressed that if the Alabama sturgeon were ever listed permit applicants would be burdened by time delays and by requirements to conduct sturgeon surveys.

Response: Although these activities are on a much smaller scale than most other activities authorized by the Corps, these actions are more numerous and, therefore, could present a greater number of opportunities for the Service to consider impacts to the sturgeon. The Service recognizes that some of the non-Federal activities authorized by the Corps (e.g., bridge pier placement and pipeline crossings) in the Alabama River system may have been delayed by a requirement to conduct endangered species surveys (Alabama sturgeon, if listed, plus other listed species). However, it has been the experience of the Service that most of these non-Federal activities do not require a survey and, further, are not delayed because of endangered species issues.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that there is insufficient evidence available to justify listing the Alabama sturgeon. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Alabama sturgeon (*Scaphirhynchus suttkusi*) are as follows:

A The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Alabama sturgeon has experienced a highly significant decline in the last 100 years. An 1898 report to Congress on commercial fish harvests from the interior waters of the United States (U.S. Commission of Fish and Fisheries 1898) estimated a commercial Alabama sturgeon harvest of 18,000 kg (39,500 lb) from the Alabama River near the turn of the century. In the 1930s an *Alabama Game and Fish News* article (Anonymous 1930) stated that the fish was "not uncommon." However, by the 1980s and into the early 1990s the Alabama sturgeon had become a rare component of the Mobile River ecosystem. Burke and Ramsey (1985) conducted a wide-ranging survey for the fish in the mid-1980s and found only five individuals; the ADCNR searched the river for the Alabama sturgeon in 1990, 1991, and 1992, utilizing a variety of sampling gear, and was unable to capture any specimens (Tucker and Johnson 1991, 1992); and the ADCNR and the Service captured only one Alabama sturgeon after extensive searches in 1993. There is little question that a population that could yield 18,000 kg (39,500 lb) of fish at about 1 kilogram (2 lb) each in the late 1890s, only five fish in the early 1980s, and only one fish in the early 1990s has experienced a highly significant decline.

The distribution or range of the Alabama sturgeon has also been significantly reduced. Based on a review of historic records by Burke and Ramsey (1985), the Alabama sturgeon's range once included 1,635 km (1,022 mi) of the Mobile River system (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensas, and Cahaba Rivers) in Alabama and Mississippi. During the early to mid-1980s, when Burke and Ramsey (1985) conducted their Alabama sturgeon status survey, they estimated that the Alabama sturgeon had been extirpated from over half (57 percent; 938 km [586 mi]) of its range and that only 15 percent (243 km [152 mi]) of its former habitat had the potential to support a good Alabama sturgeon population. They felt that another 19 percent (310 km [194 mi]) of the fish's remaining potential habitat was marginal. They were unable to judge the status of another 9 percent (144 km [90 mi]) of the historic habitat. Since Burke and Ramsey (1985), there has been only one confirmed Alabama sturgeon captured. That individual was captured after searches by the ADCNR in 1990, 1991, and 1992, utilizing a variety of sampling gear (Tucker and Johnson 1991, 1992), and further searches by the ADCNR and the Service in 1993. It is possible that the Alabama sturgeon may now exist in only a short reach of the free-flowing Alabama River below the Claiborne Lock and Dam, where this last specimen was captured.

From a historic perspective, it is likely that not one but many factors have worked in concert to push the Alabama sturgeon to the brink of extinction. Land clearing for silviculture, agriculture, urban and industrial development, and gravel-mining operations have increased silt loads to the river and altered its water quality. Impoundments constructed for navigation, recreation, power production, and flood control have reduced the amount of riverine habitat, blocked spawning migrations, and changed the river's flow patterns. Uncontrolled discharges of polluted waste once occurred in the river. An early commercial fishery, as reported by the U.S. Commission of Fish and Fisheries (1898), may have played a role in the fish's initial decline. The physical, chemical, and biological characteristics of the Mobile River system have been altered, and the Alabama sturgeon, which evolved long before these changes occurred, has suffered.

The large-river portions of the Mobile River system are controlled by a series of dams that have changed this once free-flowing river system into a series of artificial impoundments. When rivers are dammed, the physical and chemical environment of the impounded waters changes, and these environmental alterations cause changes in the river's biological communities. Some species respond favorably to this altered environment and increase in numbers and range. Other species that rely on free-flowing large-river habitat for their survival are reduced in numbers or are eliminated.

As the Alabama sturgeon evolved and adapted to survive in a large, free-flowing river ecosystem, the construction of reservoirs likely played a significant role in its decline. The specific mechanisms by which reservoirs in the Mobile River system may have affected the Alabama sturgeon are not fully understood, and there is little specific life history information on the Alabama sturgeon from which to draw conclusions. However, studies of closely related sturgeons provide some insight into how the Mobile River system's reservoirs may have impacted this fish.

The Alabama sturgeon, like the shovelnose sturgeon, probably migrates upstream to spawn (Becker 1983). The dams in the Mobile River system likely either block their migration or at least impede it. The shovelnose sturgeon apparently forages and spawns on relatively stable substrates (Trautman 1981, Hurley and Nickum 1984, Curtis 1990). As the impounded river reaches above the dams accumulate silt, any stable substrate used for spawning could, over a period of time, become unavailable to the fish. Asian scientists in studies of sturgeons (genera *Acipenser* and *Huso*) (Khoroshko 1972, Zakharyan 1972, Veshchev 1982, Veshchev and Novikova 1983) have reported that reservoirs alter flows and

temperature regimes and that these factors adversely affect Asian sturgeons by decreasing their growth rates, decreasing spawning activity, altering gonad development, increasing egg predation, reducing egg survival, and increasing juvenile mortality. Although the Asian studies cited above refer to anadromous sturgeons, some of these same factors may be affecting the Alabama sturgeon.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

As discussed under Factor A and in the "Background" section of this notice, the Alabama sturgeon was commercially harvested around the turn of the century. Also, there are anecdotal reports of incidental catches of the Alabama sturgeon as part of a paddlefish fishery in the 1980s (see the response to Issue 35 in the "Summary of Comments and Recommendations" section of this notice). However, without any other population information, the Service cannot quantify what impact overfishing may have had on the Alabama sturgeon. The Service believes that a massive alteration of the river's aquatic ecosystem has played the most significant role in the Alabama sturgeon's decline and that commercial harvest is not currently a threat to the species. Alabama State law requires the immediate release of any incidentally caught sturgeons. As a result, this sturgeon is currently neither commercially nor recreationally valuable and is not pursued by humans. Based on limited numbers, if any, and the difficulty of capture, overutilization of Alabama sturgeon is unlikely.

C. Disease or Predation

There are no known threats from disease or natural predators. To the extent that disease or predation occurs, it becomes a more important consideration as the total population decreases in number.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing Alabama State law precludes the possession of, and requires the release of, all sturgeons caught with any gear, whether dead or alive (Burke and Ramsey 1985; Fred Harders, ADCNR, personal communication, 1991). Although the needs of the Alabama sturgeon, if ever it becomes protected under the Act, could be considered when Federal activities are authorized or permitted, there is currently no requirement within the scope of other environmental laws to specifically consider the Alabama sturgeon or ensure that a project will not jeopardize its continued existence.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

In addition to impacts discussed under Factor A, the Alabama sturgeon's reproductive capability has likely been adversely impacted by low numbers of mature individuals. As the Alabama sturgeon's range and population were severely reduced, populations became more scattered and isolated. This isolation has probably reduced levels of successful reproduction and also reduced gene flow among populations. As genetic diversity is reduced, the sturgeon's ability to adapt to adversity has likely been reduced. Reduction in reproductive success will exacerbate the problems impacting this fish and, if not reversed, may ultimately lead to its extinction.

The creation of the TTW has created the potential for the previously allopatric (geographically isolated) shovelnose sturgeon to pass between the Tennessee River (Mississippi River system) and the Mobile River system (see the response to Issue 31 in the "Summary of Comments and Recommendations" section of this notice) and interbreed with the Alabama sturgeon. However, given the small size of the populations of both fishes in these artificially connected river systems and the adversity that dispersing through numerous locks and dams and swimming hundreds of kilometers creates, the probability of genetic mixing between the shovelnose sturgeon and the Alabama sturgeon is presently very low.

The Service has carefully assessed the status of the Alabama sturgeon, as well as, the best scientific and commercial information available regarding the past, present, and future threats faced by the species in making this decision. Based on this evaluation, the Service has decided that insufficient information is available to justify listing the Alabama sturgeon (*S. suttkusi*) at this time. This decision is based primarily on the lack of evidence that the sturgeon still exists.

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Proposed Rule Withdrawal

The Service withdraws the proposed rule of June 3, 1993, (58 FR 33148) to list the Alabama sturgeon as an endangered species and designate its critical habitat. If sufficient new information becomes available to demonstrate the present existence of the Alabama sturgeon, the Service may take action to determine the species to be endangered in accordance with 50 CFR part 424. For the present, the Service places this species in Category 2 of its list of candidate species; category 2 is for those species for which sufficient information is not available to determine whether to proceed with a proposed rule to list or to consider the species no longer an active candidate (e.g., extinct).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: December 12, 1994

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–30859 Filed 12–14–94, 8:45 am]

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federal register

Thursday
December 15, 1994

Part X

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Munz's Onion, etc. (Four Southwestern California Plants); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC88

Endangered and Threatened Wildlife and Plants; Proposed Rule To List Four Southwestern California Plants as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Allium munzii* (Munz's onion) and *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale) as endangered and *Brodiaea filifolia* (thread-leaved brodiaea) and *Navarretia fossalis* (spreading navarretia) as threatened throughout their respective ranges in southwestern California and northwestern Baja California, Mexico, pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat is proposed for *Atriplex coronata* var. *notatior*. These four plants occur in vernal pools and other wetlands or on clay soils and moist grasslands and are threatened by a variety of factors including: habitat destruction and fragmentation from agricultural and urban development, pipeline construction, alterations of wetland hydrology by draining or channelization, clay mining, off-road vehicle activity, cattle and sheep grazing, weed abatement, fire suppression practices, and competition from alien plant species. This proposed rule, if made final, would extend the Act's protection to these four plants.

DATES: Comments from all interested parties must be received by February 13, 1995. Public hearing requests must be received by January 30, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Fred M. Roberts, Botanist, at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Allium munzii (Munz's onion), *Brodiaea filifolia* (thread-leaved brodiaea), *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale), and *Navarretia fossalis* (spreading navarretia) occur within restricted or unique habitats, often in association with a specific soil type or hydrologic regime, or both. The composite range of these four taxa encompasses the interior lowlands and foothills of Los Angeles, San Bernardino, Orange, and Riverside Counties south into coastal San Diego County, California, and northwestern Baja California, Mexico. Although some of these taxa are relatively wide-ranging, all are localized in distribution within their respective ranges because of the restricted and patchy nature of the habitats in which they are found. These four species occur in clay soils or in vernal wetlands that have a clay hardpan or silty alkaline substrate.

Allium munzii and *B. filifolia* have strong preferences for clay soils. Clay soils have unique physical and chemical properties. Fine grain size, small pore, and an expansive nature frequently results in a "hardpan" layer that inhibits water percolation and root penetration. Although rich in mineral content, clay soils hold tightly to soil nutrients resulting in low nutrient availability (Donahue et al. 1977). Adaption to these properties frequently results in a disproportionately large number of plant species (as compared to other soils types) that are endemic to (dependant on) clay soils. For this reason, clay soils are an important contributor to floristic diversity in western Riverside and coastal San Diego Counties.

Navarretia fossalis is largely restricted to vernal pools, with *B. filifolia* as an occasional associate species. Vernal pools occur in areas with shallow depressions that have a clay hardpan soil layer that inhibits water percolation resulting in a perched water table during the winter rainy season and the following spring. Vernal pools retain water only long enough to support relatively few species of aquatic emergent plants and invertebrates. As the pools dry and the surface water recedes toward the center of the pool, a unique and dynamic flora develops in its place. Vernal pools typically occur on mesa tops or valley floors and are surrounded by very low hills, usually referred to as mima mounds (Zedler 1987).

In western Riverside County, the Domino-Traver-Willows soil association (Soil Conservation Service and Bureau of Indian Affairs 1971) in the Perris, San Jacinto, and Menifee Valleys supports a unique assemblage of wetland habitats including vernal wetland plains and alkali lake playa. These vernal plains have a calcareous hardpan layer near the surface and as a result, a mosaic of dryer and wetter wetland regimes have formed. Vernal pools are scattered throughout the area. Obligate wetland plant species, including *Plagiobothrys leptocladus* (alkali plagiobothrys), *Psilocarphus brevisimus* (woolly marbles), *Plantago elongata* (= *Plantago bigelovii* ssp. *californica*) (California alkali plantain), and *Myosurus minimus* (little mousetail), occur within these areas but are not confined to depressions and are frequently found on the surrounding flats, forming an understory to alkali grasslands that are dominated by *Deschampsia danthanioides* (annual hairgrass) and *Hordeum depressum* (low barley). Of the plants considered in this proposed rule, *A. coronata* var. *notatior*, *B. filifolia*, and *N. fossalis* are found within these habitats (D. Bramlet, California Native Plant Society, *in litt.*, 1993).

Many of the same species found on the vernal plains also occur within the sporadically inundated playas of San Jacinto Lake and the San Jacinto River in Riverside County. However, the silty, alkaline soils found in these areas have resulted in alkali playa and alkali sink scrub associations that are markedly different in plant species composition. These communities are dominated by *Suaeda moquinii* (bush seepweed), *Atriplex argentea* (silverscale), *Frankenia salina* (alkali heath), *Lasthenia coulteri* var. *glabrata* (Coulter's goldfields), *Plagiobothrys leptocladus* (alkali plagiobothrys), and *Cressa truxillensis* (alkali weed).

Allium munzii (Munz's onion) was first collected by Philip Munz near Glen Ivy, Riverside County, California, in 1922 and referred to as *A. fimbriatum* var. *munzii* based on the suggestion of F. Owenby and H. Aase, noted experts on the genus *Allium* (Munz 1959). However, this name was not validly published. This error was rectified by H. Traub in 1972 (Traub 1972). In a revision of the *A. fimbriatum* complex, McNeal (1992) elevated this taxon to species status (applying the name *Allium munzii*) based on flower morphology.

Allium munzii is a member of the lily family (Liliaceae). It is a scapose perennial herb, 15 to 35 centimeters (cm) (0.5 to 1.2 feet (ft)) tall, originating from a bulb with a papery, reddish-brown outer coat and light brown inner coat. The scape is firmly attached to the bulb. The single leaf is generally 1.5 times as long as the scape and is round in cross-section (terate) and hollow. The inflorescence is umbellate, consisting of 10 to 35 flowers. The flowers have six

white, or white with a red midvein, perianth segments (undifferentiated petals and sepals) that are 6 to 8 millimeters (mm) (0.2 to 0.3 inches (in)) long that become red with age. The ovary is crested with fine, irregularly dentate processes and the fruit is a three-lobed capsule (Munz 1974, McNeal 1992).

Allium munzii can be distinguished from other members of the genus within its range by its single hollow and terate leaf, the shape of the perianth segments, flower color, and the irregularly dentate crest of the ovary.

Allium munzii is restricted to mesic clay soils in western Riverside County, California. This species is frequently found in association with southern needlegrass grassland, mixed grassland, and open coastal sage scrub or occasionally in cismontane juniper woodlands (California Department of Fish and Game 1989; Steve Boyd, Herbarium Manager, Rancho Santa Ana Botanical Garden, pers. comm., March 1993). *A. munzii* is known from 12 extant populations, 9 of which occur on privately owned land. Four populations occur within the Gavilan Hills including one at Harford Springs County Park. Two populations occur within the Temescal Valley. Five small populations occur in the Paloma Valley, Skunk Hollow, Domenigoni Hills, and Bachelor Mountain areas. One population is located in the Santa Ana Mountains, in part, on Federal land within the Cleveland National Forest (Boyd and Mistretta 1991).

The Service estimates that there are about 20,000 individuals of *A. munzii* (Roberts 1993a). However, in any given year the number of individuals varies depending on rainfall and other factors. Few of the populations are large, and most cover an area from several square meters to 8 hectares (ha) (20 acres (ac)) in extent and contain fewer than 1,000 individuals.

Atriplex coronata var. *notatior* (San Jacinto Valley crownscale) was first described by Willis Jepson in 1914, based on specimen material he collected in 1901 from the dried bed of San Jacinto Lake, Riverside County, California. This taxon was considered a minor variant in a monographic treatment of the genus *Atriplex* (Hall and Clements 1923) and was generally not recognized as distinct from *A. coronata* until Munz (1974) concurred in Jepson's findings in his treatment of southern California plants.

Atriplex coronata var. *notatior* is a member of the goosefoot family (Chenopodiaceae). It is an erect, gray-scurfy annual, 1 to 3 decimeters (dm) (4 to 12 in) tall. The grayish leaves are sessile, alternate, 8 to 20 mm (0.3 to 0.8 in) long and elliptic to ovate-triangular in outline. This taxon is monoecious (male and female flowers on the same plant). The flowers are obscure and develop spherical bracts in the fruiting phase. These bracts have dense tubercles that are roughly equal in number to the marginal teeth (Munz 1974, Taylor and Wilken 1993).

Atriplex coronata var. *notatior* can be distinguished from the more northern *A. coronata* var. *coronata* by its erect stature, the shape of the bract, and the number of tubercles and marginal teeth. *A. coronata* var. *notatior* occurs with seven other species of *Atriplex* within its range (Bramlet 1993b). It can be distinguished from these taxa by a combination of characteristics, including annual habit, the shape of the leaf, and the size and form of the bract (Munz 1974, Taylor and Wilkin 1993).

Atriplex coronata var. *notatior* is restricted to highly alkaline, silty-clay soils in association with the Traver-Domino-Willows soils association (see Soil Conservation Service and Bureau of Indian Affairs 1971 for soil type descriptions). It occurs in alkali sink scrub, alkali playa, vernal pools, and, to a lesser extent, in alkali grassland communities (Bramlet 1993a). These areas are typically flooded by winter rains. The duration and extent of flooding is extremely variable from one year to the next. *A. coronata* var. *notatior* germinates after the water has receded. It usually flowers in April and May and sets fruit by May or June (D. Bramlet, *in litt.*, 1992).

Atriplex coronata var. *notatior* is restricted to the San Jacinto, Perris, and Menifee Valleys of western Riverside County, California. This taxon consists of 10 populations that are primarily associated with the San Jacinto River and Old Salt Creek tributary drainages.

About 280 ha (700 ac) of nearly 2,800 ha (7,000 ac) of potential habitat is currently occupied by *A. coronata* var. *notatior*. Three population complexes contain nearly 70 percent of 76 known stands and over 90 percent of the individual plants. These three populations occupy less than 80 ha (200 ac) of habitat. The number of individuals in these populations varies in any given year in response to rainfall, extent of winter flooding, and temperature. Between 1990 and 1994, an estimated 78,000 plants were located. Most stands contain fewer than 1,000 individuals and the majority of the individuals are concentrated in fewer than 10 stands (Roberts 1993b).

The majority of the population complexes of *A. coronata* var. *notatior*, including the three largest, are located on privately owned lands; less than 30 percent of all known stands and only 10 percent of the population occur on publicly owned land. This taxon is not known to occur on Federal lands.

Brodiaea filifolia was first described by Sereno Watson in 1882 based on a specimen collected by the Parish brothers in 1880 at Arrowhead Hot Springs, San Bernardino County, California (Niehaus 1971). Edward Greene (1887) transferred *B. filifolia* to the genus Hookeria. However, recent floristic treatments have not adopted Greene's work, and *B. filifolia* is the currently accepted name (Munz 1974, Beauchamp 1986, Keator 1993).

Brodiaea filifolia is a member of the lily family (Liliaceae). It is a scapose perennial originating from a dark-brown, fibrous-coated corm. The stems are 2 to 4 dm (8 to 16 in) tall with several narrow leaves that are shorter than the scape. The flowers bloom from May to June and are arranged in a loose umbel. The six perianth segments are violet, spreading, and 9 to 12 mm (0.4 to 0.5 in) long. The broad and notched anthers are 3 to 5 mm (0.1 to 0.2 in) long. The fruit is a capsule (Munz 1974, Keator 1993).

Brodiaea filifolia can be distinguished from the other species of *Brodiaea* that occur within its range (*B. orcuttii, B. jolonensis, and B. terrestris*) by the presence of narrow, pointed staminodia and a thin perianth tube, which splits when in fruit (Munz 1974).

This species typically occurs on gentle hillsides, valleys, and floodplains in mesic, southern needlegrass grassland and alkali grassland plant communities in association with clay, loamy sand, or alkaline silty-clay soils (California Department of Fish and Game 1981, Bramlet 1993a). Sites of occupation are frequently intermixed with, or near, vernal pool complexes, such as in the vicinity of San Marcos (San Diego County), the Santa Rosa Plateau, and southwest of Hemet in Riverside County.

The historical range of *B. filifolia* extends from the foothills of the San Gabriel Mountains at Glendora (Los Angeles County), east to Arrowhead Hot Springs in the western foothills of the San Bernardino Mountains (San Bernardino County), and south through eastern Orange and western Riverside Counties to Carlsbad in northwestern San Diego County, California (California Natural Diversity Data Base (CNDDB) 1992; R. Riggins, private consultant, *in litt.*, 1993).

Twenty-seven populations of *B. filifolia* are known to exist. The majority of the remaining populations are located on the Santa Rosa Plateau in

southwestern Riverside County and in the Vista-San Marcos-Carlsbad region of northwestern San Diego County. The largest population of this species is located on the Santa Rosa Plateau, owned by The Nature Conservancy (TNC). One small population was recently discovered on Camp Pendleton Marine Corps Base (Dawn Lawson, U.S. Marine Corps, range conservationist, pers. comm., 1993). All other extant populations are on privately owned land.

Brodiaea filifolia occupies less than 240 ha (600 ac) of habitat. The total number of individuals of this species and the extent of occupied habitat vary on an annual basis in response to the timing and amount of rainfall, as well as temperature patterns. Most populations contain fewer than 2,000 plants and occupy less than 16 ha (40 ac). The largest extant population is estimated to contain over 30,000 individuals and occupies about 20 ha (50 ac) of habitat.

Brodiaea filifolia occasionally hybridizes with *B. orcuttii* and possibly *B. joloensis*, where these species coexist. At least one major population of plants in the vicinity of Miller Mountain (San Diego County) in the Cleveland National Forest appears to have individuals that represent *B. filifolia*, however, the population is a hybrid swarm between *B. orcuttii* and *B. filifolia* (Boyd et al. 1992).

Navarretia fossalis (spreading navarretia) was first described by Reid Moran in 1977 based on a collection made by Moran in 1969 near La Mission in northwestern Baja California, Mexico. *N. fossalis* is a low, mostly spreading or ascending, annual herb, 10 to 15 cm (4 to 6 in) tall. The lower portions of the stems are mostly bare. The leaves are soft and finely divided, 1 to 5 cm (0.4 to 2 in) long, and spine-tipped when dry. The flowers are white to lavender white with linear petals and are arranged in flat-topped, compact, leafy heads. The fruit is an ovoid, 2-chambered capsule (Moran 1977, Day 1993).

Several other species within the genus occur within the range of *N. fossalis*. Two of these species, *N. intertexta* and *N. prostrata*, can occur in similar habitat. *N. fossalis* can be distinguished from these species by the size and shape of the calyx, the position of the corolla (as compared to the calyx), and the form of the corolla lobes. All *Navarretia* species can be distinguished by the appearance of the pollen grain surface (Day 1993; S. Spencer, Rancho Santa Ana Botanic Garden, *in litt.*, 1993)

The primary habitat of *N. fossalis* is vernal pools. This species occasionally occurs in ditches and other artificial depressions. However, these depressions often occur within degraded vernal pool habitat (Moran 1977). In western Riverside County, *N. fossalis* has been found in relatively undisturbed and moderately disturbed vernal pools within a larger vernal wetland plain dominated by alkali grassland (Bramlet 1993a).

Navarretia fossalis is distributed from western Riverside County south through coastal San Diego County, California to San Quintin in northwestern Baja California, Mexico. Fewer than 30 populations exist in the United States. Nearly 60 percent of these populations are concentrated in three locations: on Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (Bauder 1986, California Native Diversity Data Base 1993, Bramlet 1993a).

The number of individuals of *N. fossalis* varies on an annual basis in response to the timing and amount of rainfall and temperature. In Riverside County, at least one population contains 300,000 individuals. Another population contains 75,000 individuals. However, each of these populations occupies less than 8 ha (20 ac) of habitat and the majority of individuals occupy an area of less than 1 ha (2 ac) (D. Bramlet, *in litt.*, 1992). Most populations contain fewer than 1,000 individuals and occupy less than 0.5 ha (1 acre) of habitat. The Service estimates that less than 120 ha (300 ac) of habitat in the United States is occupied by this species.

The majority of *N. fossalis* populations are on privately owned lands. Two populations occur on lands with public or Federal ownership: Camp Pendleton Marine Corps Base and Miramar Naval Air Station.

In Mexico, *N. fossalis* is known from fewer than 10 populations clustered in three areas: along the international border; on the plateaus south of the Rio Guadelupe; and on the San Quintin coastal plain (Moran 1977).

Previous Federal Action

Federal government action on the four plant taxa considered in this rule began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51 and presented to Congress on January 9, 1975, recommended *B filifolia* for endangered status. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823), of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act and of the Service's intention to review the status of the plant taxa named therein, including *B. filifolia*. The Service published a proposal in the June 16, 1976, **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plants to be endangered species pursuant to section 4 of the Act. *B filifolia* was also included in this **Federal Register** notice.

General comments received in response to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17909). The Endangered Species Act amendments of 1978 required all proposals over 2 years old to be withdrawn, although a 1-year grace period was given to those proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal for that portion of the June 6, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review of plants in the **Federal Register** on December 15, 1980 (45 FR 82480). This notice included *B. filifolia* and *N. fossalis* as category 1 candidate taxa (species for which data in the Service's possession are sufficient to support a proposal for listing). On November 28, 1983, the Service published a supplement to the Notice of Review in the **Federal Register** (48 FR 53640). The plant Notice of Review was again revised on September 27, 1985 (50 FR 39526). *B filifolia* and *N. fossalis* were included in the 1983 and 1985 supplements as category 2 candidate taxa (species for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). *A. fimbriatum* var *munzii* (now treated as *A. munzii*) was included in the 1985 Notice of Review as a category 2 taxon. On February 21, 1990, a revised Notice of Review was published in the **Federal Register** (55 FR 6184) that included *A. fimbriatum* var *munzii* and *B. filifolia* as category 1 candidate taxa, and *A. coronata* var *notatior* as a category 2 candidate taxon; the status of *N. fossalis* remained unchanged from the 1985 Notice of Review All four plant taxa were listed as category 1 candidate species in the September 30, 1993, Notice of Review (58 FR 51144).

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982, requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section

4(b)(3)(C)(1) of the Act further requires that all petitions pending on October 13, 1982 be treated as having been newly submitted on that date. That was the case for *B. filifolia* because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, and 1992, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing proposals of higher priority. Publication of this proposal constitutes the final warranted finding for this taxon.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Allium munzii* (Traub) McNeal (Munz's onion), *Atriplex coronata* Wats. var. *notatior* Jepson (San Jacinto Valley crownscale), *Brodiaea filifolia Wats.* (thread-leaved brodiaea), and *Navarretia fossalis* Moran (spreading navarretia) are discussed below and summarized in Table 1

TABLE 1.—SUMMARY OF THREATS

Species	Threats					
	Urbanization agriculture	ORV[1] use	Mining	Alteration of hydrology	Trampling grazing	Alien species
Allium munzii	X	X	X	.....	X	X
Atriplex coronata var. *notatior*	X	X	.....	X	X	X
Brodiaea filifolia	X	.....	.....	.....	X	X
Navarretia fossalis	X	X	.....	X	X	X

[1] ORV = off road vehicle.

A *The present or threatened destruction, modification, or curtailment of their habitat or range.* The natural plant communities of coastal Orange and San Diego Counties, western Riverside and southwestern San Bernardino Counties, California, and northwestern Baja California, Mexico, have undergone significant changes as a result of both direct and indirect human-caused activities. The rapid urbanization of this region (which currently harbors over 17 million people) has already eliminated a significant portion of the habitat for these four taxa. The remaining patches of habitat are frequently isolated, degraded, and/or fragmented by agricultural practices, streambed channelization and other hydrological alterations, weed abatement, fire suppression practices, grazing, and mining.

Allium munzii occurs in open coastal sage scrub and mesic native perennial grasslands. *B filifolia* is known to occur in mesic native perennial grasslands. These communities have undergone significant reductions due to urban and agricultural development (Fish and Wildlife Service 1993, Oberbauer and Vanderweir 1991) Approximately 59 percent of the coastal sage scrub in Riverside County has been destroyed since 1945 and as much as 71 percent has been destroyed since 1930 (Fish and Wildlife Service 1993). In San Diego County, 95 percent of the native perennial grasslands and 72 percent of the coastal sage scrub have been destroyed (Oberbauer and Vanderweir 1991).

Little is known concerning the historical distribution of *A. munzii*. However, as much as 80 to 90 percent of the clay soils in western Riverside County that may have supported habitat for *A. munzii* have been adversely modified through extensive agriculture, urbanization, and clay mining (California Department of Fish and Game 1989).

Allium munzii has recently been extirpated from at least two sites as a result of either agricultural development or clay mining. Other populations of this species have been reduced in terms of available habitat and numbers. One population of *A. munzii* was partially eliminated in 1982 by the realignment of the Interstate 15 freeway corridor in the Temescal Valley of Riverside County (Roberts 1993a). Another population was reduced when a portion of its habitat was inundated for a reservoir (California Department of Fish and Game 1989).

Discing for the purpose of weed abatement or dry land farming results in habitat loss and population declines of *A. munzii*. Discing, combined with impacts from off-road vehicle activity, has recently affected over 30 percent of the population of *A. munzii*. (Steve Boyd and Dave Bramlet, pers. comm., 1993)

Of 12 known populations of *A. munzii*, 3 occur within major proposed development projects. One of these proposed projects will eliminate all of the *A. munzii* and much of its potential habitat within the project boundaries (Roberts 1993a).

Over 25 percent of *B. filifolia* populations have been eliminated by urbanization and agricultural conversion. One of the two largest populations of this species occurs in the Vista-San Marcos-Carlsbad region of northwestern San Diego County; nearly half of this population has been eliminated (California Native Diversity Data Base 1993; Wayne Armstrong, Palomar College, pers. comm., 1993). Over the last 15 years, nearly 60 ha (150 ac) of occupied habitat containing over 80,000 plants have been eliminated in the cities of San Marcos and Vista (CNDDB 1992; Taylor and Burkhart 1992; Wayne Armstrong, pers. comm., 1993). Urbanization continues to be the most significant threat to this species. Over 25 percent of the remaining populations of *B. filifolia* in San Diego and Riverside Counties are currently within proposed or approved development projects. It is probable that the only known population of *B. filifolia* reported for San Bernardino County in nearly 70 years will be removed by a major pipeline project (Robert Thorne, Rancho Santa Ana Botanical Garden, pers. comm., 1993; Edna Rey, U.S. Fish and Wildlife Service, pers. comm., 1993).

The only population of *B. filifolia* known to occur on Federal land was recently discovered within an abandoned weapons impact area on Camp Pendleton Marine Corps Base in San Diego County (Dawn Lawson, pers. comm., 1993).

At least one population of *B. filifolia* is associated with mesic grasslands that occur in association with vernal pools. This population occurs on 26 ha (65 ac) of habitat located near downtown San Marcos in San Diego County. Although the site is not currently within a planned project, the landowner intends to develop the site (Wayne Armstrong, pers. comm., 1993). This area also contains a small population of *N. fossalis* and a diverse number of other sensitive plant taxa.

Vernal pools have undergone an extraordinary reduction in number and have nearly been eliminated in Los Angeles, Orange, and San Diego Counties, California, and greatly reduced in Riverside County. In San Diego County, over 97 percent of vernal pool habitat occupied, in part, by *N. fossalis*, had been lost by 1990 (Bauder 1986, Oberbauer and Vanderweir 1991).

Loss estimates for vernal pools and vernal wetlands in Riverside County are less certain and are based on the status of soil types that support these kinds of habitat. The Service estimates that about 12,800 ha (32,000 ac) in the Perris, western San Jacinto, and Menifee Valleys were historically dominated by alkali scrub, alkali playa, alkali grassland, or vernal pool plant communities and contained significant populations of *B. filifolia*, *A. coronata* var. *notatior*, and *N. fossalis*. About 75 percent of this area is currently under a combination of intensive cultivation, urbanization, or channelization; is being filled; or is otherwise highly disturbed. A significant portion of the remaining 2,800 ha (7,000 ac) has been disturbed (Tierra Madre Consultants 1992, Roberts 1993b).

Extant populations of *A. coronata* var *notatior*, *B. filifolia*, and *N. fossalis* are associated with the San Jacinto River and a tributary of Old Salt Creek just west of the city of Hemet. Much of this area has been subject to dry land farming or irrigated farming at some time during the last 100 years. However, a 5-year drought contributed significantly to a reduction in agricultural activity, particularly along the San Jacinto River. Conversely, in some areas, the soils have routinely been too wet and too alkaline for dry land farming. Both of these factors have contributed to the continued existence of these taxa in this area.

Major commercial and urban development, transportation, and flood control projects have been proposed in General and Specific Plans for both the San Jacinto River Valley and the area west of Hemet. According to documents on file with the County of Riverside and the City of Perris, these proposals will result in over 19,000 new residential units, as well as hotel and commercial developments encompassing over 3,200 ha (8,000 ac) (Riverside County Planning Department 1991; Louis Massey, Department of Planning, City of Perris, pers. comm., 1993; Mark Goldberg, City of Hemet, pers. comm., 1993). These projects will reduce potential habitat for *A. coronata* var. *notatior*, *N. fossalis*, and *B. filifolia* over 1,400 ha (3,500 ac) (Roberts 1993b). These projects will destroy over 45 percent of the *A. coronata* var. *notatior* populations and at least 70 percent of the *N. fossalis* populations within the project areas.

Although the urbanization that will result from these major projects and others associated with the cities of San Jacinto and Hemet may not occur for 2 to 5 years, these same areas are more imminently threatened by a recent increase in pipeline construction, dry land farming, and weed abatement activities.

Three pipeline projects have recently destroyed vernal pool, alkali grassland, and alkali playa habitat and directly impacted several populations of *A. coronata* var. *notatior*, *N. fossalis* and at least one historical site for *B. filifolia* in the San Jacinto River floodplain near Hemet (Roger Turner, Eastern Municipal Water District, pers. comm., 1992, 1993; Tierra Madre Consultants 1992).

In 1993, over 200 ha (500 ac) of occupied or potential habitat for *A. coronata* var. *notatior*, *B. filifolia*, and *N. fossalis* were disced for weed abatement or fire suppression purposes (Roberts 1993b). In June 1993, an additional 80 ha (200 ac) of habitat containing *A. coronata* var. *notatior and N. fossalis* were disced and seeded for dry land farming (Bill Sweeney, landowner, pers. comm., 1993). At least 13 stands of *A. coronata* var. *notatior* have been adversely modified since 1990, including 2 of the largest. This has resulted in the potential loss of nearly 14 percent of the plants (Roberts 1993b).

Navarretia fossalis also occurred historically in the vicinity of Murrieta Hot Springs in Riverside County during the 1920's (Spencer, *in litt.*, 1993). Much of the Murrieta Hot Spring area has been urbanized or converted to agriculture resulting in a significant reduction and fragmentation of potential *N. fossalis* habitat (Service, unpublished data).

In San Diego County, *N. fossalis* occurs within vernal pool complexes (Bauder 1986, California Native Diversity Data Base 1993, Hogan and Belk 1992). These areas have been and continue to be impacted by urbanization and agricultural conversion (Bauder 1986; Nancy Gilbert and Ellen Berryman, U.S. Fish and Wildlife Service, pers. comm., 1993).

The largest concentration of *N. fossalis* occurs on Otay Mesa in San Diego County. At least 37 proposed Precise Plans and Tentative Maps for development have been filed pursuant to the California Environmental Quality Act for this area. These plans encompass about 80 percent of the undeveloped portion of the mesa within the jurisdiction of the city of San Diego and virtually all but four of the remaining vernal pool complexes. Several of these projects will impact *N. fossalis*. At least one major transportation project has been proposed for Otay Mesa and could potentially impact vernal pools that are occupied by *N. fossalis* (California Department of Transportation 1993).

Navarretia fossalis are found on Federal lands managed by the Navy: Miramar Naval Air Station and Camp Pendleton Marine Corps Base. These lands are used, in part, for military training activities that involve off-road vehicle maneuvers that adversely impact this species (Hogan and Belk 1992).

Trash dumping has also degraded vernal pools in San Diego County. Chunks of concrete, tires, refrigerators, furniture, and other pieces of garbage or debris have been found in pools containing *N. fossalis*. This trash crushes or shades vernal pool plants, disrupts the hydrologic functions of the pool, and, in some cases, may release toxic substances.

Vernal pools in Riverside and San Diego Counties and, to a lesser extent, the alkali wetland habitats of Riverside County have also been degraded by off-road vehicles. These vehicles compact soils, crush plants when water is present, cause turbidity, and leave deep ruts. This type of damage may alter the microhydrology of the pools. Dirt roads that go through or adjacent to pools are widened as motorists try to avoid mud puddles, and, in this way, the pools are gradually destroyed.

The vernal pool, alkali grassland, alkali playa, and alkali sink habitats upon which *N. fossalis* and *A. coronata* var. *notatior* and, to a lesser extent, *B. filifolia* depend are also vulnerable to indirect destruction due to an alteration of the supporting watershed. An increase in water due to urban run-off leads to increased inundation and makes pools vulnerable to invasion by marshy plant species resulting in decreased abundance of obligate vernal pool taxa. At the other extreme, some pools and alkali wetlands have been drained or blocked from their source of water and have shown an increased

domination by upland plant species. Of the species considered herein, *N. fossalis* is the most vulnerable to alterations in hydrology.

Development projects adjacent to vernal pools and alkali wetlands are often responsible for adverse alterations in drainage. Hydrological alterations are sometimes a result of agricultural development, or a combination of urban development and agriculture. This situation is exemplified by recent activities near Hemet in Riverside County, California. In 1989, drainage structures were constructed within alkali grassland and vernal pools west of Hemet in association with an Auto Mall (Mark Goldberg, pers. comm., 1993). These structures have significantly reduced standing water and are responsible for the gradual drying of wetland vegetation as evidenced by relic stands of *Eleocharis palustris* and other obligate wetland species (Wayne Ferren, University of California, Santa Barbara, pers. comm., 1993). Historically, wetlands have been drained for agriculture. In this case, the land becomes suitable for urban development.

Livestock grazing typically changes the composition of native plant communities by reducing or eliminating those species that cannot withstand grazing and trampling and by enabling more resistant (usually non-native) species to increase in abundance. Taxa that were not previously part of the native flora may be introduced and flourish under a grazing regime and may reduce or replace native species through competition for resources. Plants within vernal pools or adjacent alkali grasslands, playa, or scrub habitats may be trampled and killed or grazed prior to seed production.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not currently a known threat factor for the four taxa considered herein.

C. *Disease or predation.* Neither disease nor natural predation are known to be a factor for the four plant taxa. Cattle grazing occurs on Otay Mesa in areas where several vernal pool complexes contain *N. fossalis.* Intensive sheep grazing occurs west of Hemet and along the San Jacinto River in habitat occupied by *N. fossalis, A. coronata* var. *notatior,* and *B. filifolia. A. munzii* is not a forage plant utilized by domestic livestock, so far as can be determined by the Service.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for these species include: (1) listing under the California Endangered Species Act; (2) consideration under the California Environmental Quality Act; (3) implementation of conservation plans pursuant to the State of California's Natural Community Conservation Planning Act of 1991; (4) section 404 of the Federal Clean Water Act; (5) occurrence with other species protected by the Federal Endangered Species Act; (6) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations; (7) local laws and regulations; and (8) Mexican law.

The California Fish and Game Commission has listed *B. filifolia* as endangered and *A. munzii* (=*A. fimbriatum* var. *munzii*) as threatened under the Native Plant Protection Act (NPPA) (Div. 2, chapter 10, section 1900 *et seq.* of the California Fish and Game Code) and the California Endangered Species Act (CESA) (Div. 3, chapter 1.5, section 2050 *et seq.*). *A. coronata* var. *notatior* and *N. fossalis* are included on Lists 1A, 1B, or 2 of the California Native Plant Society's Inventory (Smith and Berg 1988), which, in accordance with section 1901, chapter 10 of the California Department of Fish and Game Code, makes them eligible for State listing. Although NPPA and CESA both prohibit the "take" of State-listed plants (chapters 10 and 1.5, sections 1908 and 2080, respectively), these existing statutes appear inadequate to protect against the taking of such plants via habitat modification or land use change by the landowner. After the Department notifies a landowner that a State-listed plant grows on his or her property, the Fish and Game Code requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (chapter 10, section 1913).

In addition, development proposals in Carlsbad (San Diego County) and in the Gavilan Hills (Riverside County) that involve direct impacts to *A. munzii* and *B. filifolia* have proceeded without notification to with the Department (Roberts 1993(a); Jim Dice, California Department of Fish and Game, pers. comm., 1993). In another case, a landowner disced a stand of *N. fossalis* growing with the State-listed *Orcuttia californica* for fire control without notifying the California Department of Fish and Game (Howard Windsor, Riverside County Fire Department, pers. comm., 1993).

The majority of the known populations of the four taxa considered herein occur on privately owned land. Local lead agencies empowered to uphold and enforce the regulations of the California Environmental Quality Act (CEQA) have made determinations that have or will adversely affect *A. munzii, A. coronata* var. *notatior, B. filifolia,* and *N. fossalis.* Required biological surveys are often inadequate and project proponents may ignore the results of surveys if occurrences of sensitive species are viewed as a constraint on project design. Mitigation measures used to condition project approvals are essentially experimental and fail to adequately guarantee long-term protection of sustainable populations. Relocation attempts have failed. Project designs have also failed to provide an adequate buffer zone around sensitive plant populations to protect their long-term viability (WESTEC 1988 D. Bramlet, *in litt.*, 1992, Hogan and Belk 1992, S. Boyd, pers. comm., 1993 M. Simovich, pers. comm., 1993).

Even though impacts to rare plant taxa including *N. fossalis, B. filifolia,* and *A. coronata* var. *notatior* were considered significant under CEQA when several pipeline projects and Specific Plans were proposed in Riverside County, California, only *A. coronata* var. *notatior* was consistently considered in the environmental impact analyses. These projects proposed either no or inadequate mitigation for impacts to sensitive plant taxa (D. Bramlet, *in litt.*, 1992; Roberts 1993b). In another case, a major development in San Marcos (San Diego County) resulted in a 70 percent reduction in *B. filifolia* habitat. Although 5 ha (12 ac) were set aside for preservation of this species, the preserve is surrounded by residential development, has inadequate buffers, and is poorly configured (WESTEC 1988).

The State of California has established the Natural Community Conservation Planning (NCCP) program to address the conservation needs of natural ecosystems throughout the State. The initial focus of this program is the coastal sage scrub community. *A. munzii* has been included as one of the species for consideration under the Coastal Sage Scrub NCCP Program. However, only 3 of 12 populations of *A munzii* that occur on private lands have been enrolled in this voluntary program At the present time, no plans have been completed or implemented, and no protection is currently provided by the NCCP program to the taxa considered herein.

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into waters of the United States, including navigable waters, wetlands (e.g., vernal pools), and other waters. The Clean Water Act requires project proponents to obtain a permit from the

Corps prior to undertaking many activities (e.g., grading, discharge of soil or other fill material) that would result in the fill of wetlands under the Corps' jurisdiction. The Corps promulgated Nationwide Permit Number 26 (see 33 CFR 330.5(a)(26)) to address fill of isolated or headwater wetlands totalling less than 4 ha (10 ac). Under Nationwide Permit 26, proposals that involve the fill of wetlands less than 0.4 ha (1 ac) are considered authorized. Where fill would adversely modify between 0.4 to 4 ha (1 to 10 ac) of wetland, the Corps circulates a predischarge notification to the Service and other interested parties for comment to determine whether or not an individual permit should be required for a proposed fill activity and associated impacts.

Individual permits are required for the discharge of fill material that would fill or adversely modify greater than 4 ha (10 ac) of wetlands. The review process for the issuance of individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, an analysis of cumulative wetland impacts is required for individual permit applications. Resulting permits may include special conditions that require the avoidance or mitigation of environmental impacts. On nationwide permits, the Corps has discretionary authority to require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the wetland's size. In practice, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit, unless a threatened or endangered species or other significant resources might be adversely affected by the proposed activity.

Atriplex coronata var. *notatior* and *N. fossalis* could potentially be affected by projects requiring a permit from the Corps under section 404 of the Clean Water Act. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. 1341 *et seq.*), which include navigable and isolated waters, headwaters, and adjacent wetlands, no specific provisions adequately address the need to conserve candidate species such as those considered herein.

In Riverside County, the Corps has not required a permit or mitigation for filling of wetland habitat occupied by *A. coronata* var. *notatior*, *N. fossalis*, or *B. filifolia* in instances where the land had previously been used for agriculture or where the wetland was determined not to be within the jurisdiction of the Corps. The Corps has indicated a lack of certainty over whether hydric soils existed on the site, even though hydric vegetation and hydrologic features were present (Service, *in litt.*, 1993). Even if the Corps establishes jurisdiction under the Clean Water Act over vernal pools, this does not ensure their protection. At least two vernal pool complexes under Corps jurisdiction in San Diego County have been destroyed or degraded without a section 404 permit (Jim Dice, pers. comm., 1993; Carrie Phillips, U.S. Fish and Wildlife Service, pers. comm., 1993).

The Endangered Species Act of 1973, as amended, (Act) may incidentally afford protection to the species under consideration in this proposal if they co-exist with species already listed as threatened or endangered under the Act. *Pogogyne abramsii* (San Diego mesa mint), *Pogogyne nudiscula* (Otay Mesa mint), *Orcuttia californica* (California Orcutt grass), *Eryngium aristulatum* var. *parishii* (San Diego button celery), and the Riverside fairy shrimp (*Streptocephalus wootoni*) are listed as endangered under the Act and occur in the same habitat as several of the taxa considered in this proposal. However, these species are generally not found in the same vernal pool complexes as the taxa considered in this proposal. *N. fossalis* co-exists with other listed species in only seven vernal pool complexes (one in Riverside County, six in San Diego County).

The Stephens' kangaroo rat (*Dipodomys stephensi*) is listed as endangered and the coastal California gnatcatcher (*Polioptila californica*) is listed as threatened under the Act. These species occur in coastal sage scrub (gnatcatcher) and grassland (kangaroo rat) habitats. Although A. *munzii* is known from similar habitats, less than 30 percent of its population overlaps known populations of these listed animals. Where overlap does occur, the *A. munzii* populations are either already preserved or potentially protected from development by other regulations. However, in these cases, *A. munzii* is still threatened by off-road vehicle activity and exotic plant species.

Land acquisition and management by Federal, State, or local agencies or by private groups and organizations has contributed to the protection of some localities inhabited by the taxa under consideration in this proposal. However, as discussed below, these efforts are often directed at other species and are inadequate to assure the long-term survival of the taxa considered in this proposal.

Allium munzii is found in the Cleveland National Forest and is recognized by the Forest Service as a sensitive species (Forest Service 1992). The Forest Service has policies to protect sensitive plant taxa, including attempting to establish these species in suitable or historic habitat, and encouraging land ownership adjustments to acquire and protect sensitive plant habitat. To this end, the Forest Service (1992) has released a Management Guide for *A. munzii*. However, only a portion of a single population actually occurs within the Cleveland National Forest, and it continues to be threatened by off-road vehicle activity.

The Service recently entered into a Memorandum of Understanding (MOU) with local jurisdictions in Riverside County, the California Department of Fish and Game, and the Corps concerning channelization of the San Jacinto River and protection of *A. coronata* var. *notatior* habitat along the river. The purpose of this MOU is to reconcile conflicts between the conservation of this floodplain species and proposed flood control measures associated with major urban development plans. New information on the distribution of *A. coronata* var. *notatior* indicates that less than 10 percent of its population would be protected in the project area. The MOU does not address the conservation of *N. fossalis*, *B. filifolia*, or other rare plant taxa that also occur within the project area. The proposed project could result in significant urban development and hydrological alterations that will contribute to the decline of all these taxa. The MOU has no binding control over private land use. In 1993, about 160 ha (400 ac) within a potential preserve area for *A. coronata* var. *notatior* were disced, apparently as weed abatement. It is noteworthy that the location of these 160 ha (400 ac) coincides with the location of proposed development project areas (Roberts 1993b).

At least two of the taxa considered herein occur within the San Jacinto Wildlife Preserve, which is managed by the State of California. Although this preserve provides protection from urbanization and agriculture, it was originally established to maintain waterfowl hunting along the San Jacinto River. In meeting this objective, a significant area of habitat for the taxa considered in this proposal has been converted into waterfowl habitat and planted with exotic grasses as food for migrating waterfowl. Habitat within the preserve is also threatened, in part, with destruction from construction of utility lines (Metropolitan Water District of Southern California 1992).

The Santa Rosa Plateau Preserve is managed by The Nature Conservancy and contains the largest remaining population complex of *B. filifolia* and a single, small population of *N. fossalis*. Although these populations are managed for long-term protection and viability, they represent only a fraction of the range of either species and do not adequately ensure the continued existence of these species.

The County of Riverside has initiated the preparation of a Multi-Species Habitat Conservation Plan (MSHCP). Although the intent of this plan is to identify and acquire areas with high biological diversity and sensitive species, the program is focused on animal species. Plant taxa are not well represented. The MSHCP has identified potential acquisition areas and has made limited land acquisitions. These areas, as currently proposed, will not provide for the long-term survival of *A. munzii*, *N. fossalis*, or *B. filifolia*. The largest known *A. coronata* var. *notatior* population is within a potential acquisition area. However, this site is still threatened by seasonal agricultural activities.

Local laws and regulations potentially offer some protection to species considered within this proposal but these laws and regulations are subject to overriding considerations, are seldom enforced, and, in some cases, are conflicting. For example, the city of Hemet General Plan requires that biological surveys be conducted at sites that may contain sensitive plants prior to alteration of a site for development. However, the City has also adopted an ordinance that requires vacant land to be cleared for weed abatement (Ron Wrench, City of Hemet, Fire Department, pers. comm., 1993). This activity has contributed to the decline of *A. coronata* var. *notatior*, *N. fossalis*, and other sensitive plant species for which the City general plan requires surveys.

Habitat in Riverside County for *A. coronata* var. *notatior*, *N. fossalis*, and *B. filifolia* has been degraded by discing for weed abatement and fire management purposes. County ordinances require that parcels smaller than 2 ha (5 ac) and up to 30 meters (100 feet) adjacent to roads be cleared to reduce the potential for fire (Howard Windsor, Riverside County Fire Abatement, pers. comm., 1993). These activities have contributed to the decline of *N. fossalis* and the Federal endangered *Orcuttia californica*. In some cases, landowners have exceeded the clearing requirements resulting in additional reduction of sensitive plant populations and the adverse modification of their habitat.

Navarretia fossalis also occurs in northwestern Baja California, Mexico. The Service is not aware of any existing regulatory mechanisms in Mexico that would protect this taxon or its habitat. Although Mexico has laws that could provide protection to rare plants, these laws are not easily enforced.

E. *Other natural or manmade factors affecting their continued existence.* Non-native species of grasses and forbs have invaded many of southern California's plant communities. Their presence and abundance are often an indirect result of habitat disturbance from grazing, development, mining, discing, and alteration of hydrology. All four plant taxa considered in this proposal are subject to displacement by such alien plant species.

Many vernal pools on Otay Mesa and in San Marcos (San Diego County) have become dominated by *Lolium perenne*. This alien plant species is tolerant of inundation and displaces native species such as *N. fossalis* and *B. filifolia*. Other non-native grass species such as *Avena barbata* and *Bromus rubens* are dominate on the clay soils required by *A. munzii*. In Riverside County, *Crypsis niliaca*, an aggressive alien grass, has been seeded as a food source for migratory waterfowl along the San Jacinto River. This species is becoming widespread and has replaced or is in the process of replacing native vernal pool and other native species, including *N. fossalis*, *B. filifolia*, and *A. coronata* var. *notatior*, on the San Jacinto Wildlife Preserve and other areas west of Hemet (D. Bramlet, *in litt.*, 1992).

The taxa under consideration in this proposal are highly reliant on seasonal rainfall. Drier conditions, such as those that prevailed from 1986 to 1992, reduce the number of individuals in populations. Climatic conditions stress species and reduce germination and survival rates. Negative effects of habitat loss and degradation from other factors including development, discing, and grazing, when combined with climatic conditions, increase the level of threat to the involved species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these four taxa in determining to propose this rule. Based on this evaluation, the Service finds that *Allium munzii* and *A. coronata* var. *notatior* are in danger of extinction throughout all or a significant portion of their ranges. Both taxa are threatened by urbanization and agricultural development, off-road vehicle use, trampling and grazing by cattle and sheep, and competition from exotic plant taxa. *A. munzii* is also threatened by clay mining activities. *A coronata* var. *notatior* is threatened by alteration of hydrology of its vernal pool and alkali vernal wetland plains habitats. Therefore, the preferred action is to list these taxa as endangered.

For reasons discussed below, the Service finds that *B. filifolia* and *N. fossalis* are likely to become endangered species in the foreseeable future throughout all or a significant portion of their ranges. Therefore, the preferred action is to list these taxa as threatened. While many populations of *B. filifolia* are threatened by urbanization and agricultural development, trampling, grazing, and competition from exotic plant taxa, the Service finds that threatened status is appropriate for *B. filifolia* because the largest remaining populations are protected. The Service finds that threatened status is appropriate for *N. fossalis* because, while many populations are threatened by urbanization and agricultural development, alteration of hydrology of its vernal pool habitat, trampling, and competition from exotic plant taxa, this taxon has demonstrated resilience to some forms of disturbance and occurs in enough populations that it is not in immediate danger of extinction. Except for *A. coronata* var. *notatior*, critical habitat is not being proposed for these taxa for the reasons discussed below.

Critical Habitat

As defined by section 3(5)(A) of the Act, the term "critical habitat" for a threatened or endangered species means—(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a taxon is listed. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity and identification of

critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat is not determinable if insufficient information exists to perform an economic impact analysis of designating a particular area as critical habitat or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

The Service finds that designation of critical habitat is not prudent at this time for *A. munzii* and *B. filifolia*. Most populations of *A. munzii* and *B. filifolia* are on privately owned lands with little or no Federal involvement. The additional protection provided by the designation of critical habitat is achieved through section 7. Therefore, the designation of critical habitat for these two taxa would not appreciably benefit the species. Identification of critical habitat is also expected to increase the degree of threat from human activity for these two taxa. Publication of precise maps and descriptions of critical habitat could result in additional habitat destruction through trampling, discing, and grading. Unregulated grazing activity, which results in trampling of habitat by sheep or cattle, may be encouraged to reduce habitat viability.

In several cases, after a species has been identified and located on a site, the landowner has elected to disc or otherwise alter the site. A number of these alterations have occurred and could represent efforts to eliminate sensitive resources that could pose a constraint to future development. In 1986, one land owner hired a biological firm to identify *A. munzii* localities on a specific property in Riverside County. After the report was released, areas of clay soil (including those with *A. munzii* populations) on the parcel were disced (Department 1989). In another case in Los Angeles County, after a population of *B. filifolia* was identified and well publicized in Glendora, the site was disced for fire control (Swinney 1991).

The largest remaining population of *B. filifolia* occurs on the Santa Rosa Plateau, which is managed by The Nature Conservancy. The Nature Conservancy is adequately managing the mesic grassland habitat within the preserve for the long-term preservation of *B. filifolia* and other sensitive plant species. Although the Service finds that the area is essential to the conservation of *B. filifolia*, designation of critical habitat at the Santa Rosa Plateau Preserve would not appreciably benefit the species. No Federal activities are expected to occur that would be the basis for formal consultation under section 7 of the Act. It is primarily through this means that added protection is provided to listed species through a critical habitat designation.

Based on the information discussed above, the Service finds that it is not prudent at this time to designate critical habitat for *A. munzii* and *B. filifolia* because such a designation may increase the degree of threat from trampling, discing, or other destructive activities and is unlikely to appreciably benefit the conservation of these taxa. Protection of habitat for *A. munzii* and *B. filifolia* will be addressed through the recovery process and, if Federal involvement occurs, through the section 7 consultation process.

The Service is in the process of defining critical habitat and determining more clearly what the ecological requirements and constituent elements are for *N. fossalis*. The Service may find that determination of critical habitat is not prudent for this taxon, however, at this time designation of critical habitat is not determinable.

The Service is proposing to designate critical habitat in Riverside County for *A. coronata* var. *notatior*. Although this designation is likely to increase the degree of threat to this taxon from human-related activities, the Service finds that the benefits of the additional protection provided through recognition and requirements for section 7 compliance associated with a critical habitat designation exceed the risk of vandalism and other destructive activities. *A. coronata* var. *notatior* and its habitat in Riverside County are resilient to intermittent discing and agricultural activities as indicated by the history of disturbance and reestablishment of this taxon in the area west of Hemet and along the San Jacinto River.

The Service is required to base critical habitat designations on the best scientific data available, after taking into consideration the probable economic and other impacts of making such a designation (50 CFR 424.12(a)). In determining what areas to propose as critical habitat, the Service considers those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, the following: (1) space for individual and population growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The Service also considers primary constituent elements of critical habitat that may include, but are not limited to, the following: roost sites; nesting grounds; spawning sites; feeding sites; seasonal wetlands or drylands; water quality or quantity; host species; plant pollinators; geological formation; vegetation type; and specific soil types.

Critical habitat is being proposed for *A. coronata* var. *notatior* to include alkali grassland, alkali sink, and vernal pools in Riverside County, California. The following areas are proposed as critical habitat:

1. Approximately 1,266 ha (3,165 ac) located along 10 km (6 miles) of the San Jacinto River from just above Davis Road south by southwest to Interstate 215.

2. About 272 ha (680 ac) along a tributary to Old Salt Creek, west of the town of Hemet, between Florida Avenue, Ryan Airfield, and the Atchison Topeka and Santa Fe Railroad tracks.

A total of approximately 1,540 ha (3,845 ac) are being proposed as critical habitat. These areas contain the majority of the remaining known populations of *A. coronata* var. *notatior* and potentially suitable habitat for this taxon in Riverside County. Both of the proposed critical habitat areas contain (or with recovery will contain) suitable alkali grassland, alkali scrub, alkali sink, or vernal pool habitat for this taxon. The distribution of *A. coronata* var. *notatior* is patchy within this habitat and is expected to shift over time. Because of these spatial and temporal factors, it is important to protect the watershed and microhabitat diversity upon which this taxon depend. Both areas contain unoccupied habitat or former (degraded) habitat that is needed for recovery of ecosystem integrity and to increase or maintain populations of this taxon.

Floodplains (seasonal wetlands) dominated by alkali playas, alkali scrub, alkali grasslands, and vernal pools represent the primary constituent elements of critical habitat for *A. coronata* var. *notatior* with respect to its survival needs (hydrology, soils, and associated species). The majority of these habitats occur in association with the Willows soils series (as defined by the Soil Conservation Service and Bureau of Indian Affairs (1971)) but some occur within the Waukena, Traver, Domino, and Chino soils series. These habitats can recover from dry land farming activities that are left fallow and

undisturbed for a number of years. As additional information is obtained, designation of other critical habitat areas may be proposed.

Atriplex coronata var. *notatior* requires seasonal inundation and/or flooding. The seasonal wetland habitats that it occupies are dependent on adjacent transitional wetlands and marginal wetlands within the watershed. These adjacent habitats would not be adequately protected under the listing prohibitions of the Act. Designation of critical habitat will benefit *A. coronata* var. *notatior* by providing additional protection to the ecosystem upon which it depends through recognition and section 7 consultation procedures (where applicable).

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation.

Actions that could adversely affect critical habitat for *A. coronata* var. *notatior* include: (1) destruction of alkali grassland, playa or scrub, and vernal pool habitat; (2) destruction of the hard pan layer that is responsible for a perched water table; or (3) increases in human-associated disturbance. Specific actions that could cause these effects are stream channelization, draining of ponds, water diversion, sheep grazing, discing for weed abatement, and conversion to agriculture or residential development. Complete or major destruction of the alkaline floodplain environment would significantly reduce or eliminate *A. coronata* var. *notatior* from the affected area and further endanger this species throughout the remainder of its range and preclude opportunities for recovery. Stream channelization would remove flooding that is necessary, in part, for seed dispersal. Draining winter ponds would alter the hydrology and render the habitat unusable and increase the opportunity for exotic and upland plants to invade. Sheep grazing selectively removes native species, damages plants through trampling, and encourages the establishment of invasive exotic plant species. Discing gradually reduces the viability and diversity of the habitat, particularly the perennial plant component, and increases the opportunity for weedy exotic plant species to invade and alter the habitat.

At least three Federal agencies (Corps, Environmental Protection Agency (EPA), and the Federal Highway Administration (FHA)) have or may have jurisdiction and responsibilities within the proposed critical habitat, and section 7 consultations might be required in a number of instances. Known proposals that could require consultation include: channelization of the San Jacinto River; widening of the Ramona Expressway; Metropolitan Water District Inland Feeder and Eastside Reservoir pipeline projects; and a number of specific plans sponsored by the County of Riverside and the City of Perris. These projects have the potential for significant adverse effects on *A. coronata* var. *notatior*. Section 7 consultation procedures usually result in modification, rather than curtailment of such projects.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider these impacts and all additional relevant information obtained during the public comment period or otherwise developed by the Service before finalizing this proposed action.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened 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 private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States 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 and animals 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 or threatened 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)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, 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 such a species or 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.

Federal agencies expected to have involvement with *A. coronata* var. *notatior*, *B. filifolia*, and *N. fossalis* include the Corps and the EPA due to their permit authority under section 404 of the Clean Water Act. The Federal Aviation Administration has jurisdiction over areas with vernal pools containing *N. fossalis* near Montgomery Field within the city limits of San Diego and Brown Field on Otay Mesa in San Diego County. This jurisdiction would also apply if any of the taxa considered in this rule are discovered at Perris Airport or Ryan Airport in Riverside County. The FHA will likely be involved through potential funding of highway construction projects near Hemet (Riverside County) and Otay Mesa (San Diego County). *N. fossalis* occurs on Miramar Naval Air Station and on Camp Pendleton Marine Corps Base. These bases will likely be involved through military activities or potential excessing of Federal lands. The Immigration and Naturalization Service will need to evaluate the effects of its activities on *N. fossalis*, which is known to occur along the international border and could be trampled by persons entering the United States illegally. The Forest Service has jurisdiction over at least a portion of one population of *A. munzii* in Cleveland National Forest.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, 17.63, 17.71 and 17.72 set forth a series of prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the four plant taxa considered herein, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession any such species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act makes it illegal to maliciously damage or destroy any such species on Federal lands or remove, cut, dig up, damage, or destroy any such species in knowing violation of any State law or regulation, including criminal trespass laws. Certain

exceptions apply to agents of the Service and State conservation agencies. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plants under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for the taxa considered herein because they are not common in cultivation or in the wild. These species have specific germination and growth requirements including, in some cases, seasonal inundation that would be difficult to recreate in cultivation.

Requests for copies of the requirements and regulations on permits or trade in wildlife and plants and inquiries regarding them should be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE., 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa;

(4) Current or planned activities in the subject area and their possible impacts on these species; and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat, especially for *A. coronata* var. *notatior*

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Carlsbad Field Office (see **ADDRESSES** section).

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 is available, upon request, from the Field Supervisor, Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Fred M. Roberts, Jr. of the Carlsbad Field Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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							
*	*	*	*	*	*	*	*
Allium munzii (=*A. fimbriatum* var. *munzii*)	Munz's onion	U.S.A. (CA)	Liliaceae	E		NA	NA
*	*	*	*	*	*	*	*
Atriplex coronata var. *notatior*	San Jacinto Valley crownscale.	U.S.A. (CA)	Chenopodiaceae	E		17.96(a)	NA
*	*	*	*	*	*	*	*
Brodiaea filifolia	Thread-leaved brodiaea.	U.S.A. (CA)	Liliaceae	T		NA	NA
*	*	*	*	*	*	*	*
Navarretia fossalis	Spreading navarretia	U.S.A. (CA), Mexico	Polemoniaceae	T		NA	NA
*	*	*	*	*	*	*	*

4. It is further proposed to amend § 17.96(a) for plants by adding critical habitat of *Atriplex coronata* var. *notatior* in the same alphabetical order as the species occurs in § 17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * *

* * * * * *

Family Chenopodiaceae. *Atriplex coronata* var *notatior* (San Jacinto Valley crownscale). California, Riverside County (San Bernardino Meridian):

1 San Jacinto River (USGS 7.5' Quads: Lakeview 1979 and Perris 1979)

T4S, R2W NW1/4 sec 5, SW1/4, NE1/4, and SE1/4 sec 6; NW1/4 and W1/2 SW1/4 sec 7

T4S, R3W San Jacinto River and adjacent lands below the 1,430 foot contour in sec. 12; sec. 13, San Jacinto River and adjacent lands commencing at a point 0 2 miles west of the northeast corner of sec 13, then southwest to a point 0.25 miles east of the southwest corner of sec. 13, E1/2 SE1/4 sec 14; E1/2 SW1/4, NE1/4, W1/2 SE1/4, and NE1/4 SE1/4 sec. 23; W1/2 NW1/4 sec 24; N1/2 NW1/4 and SW1/4 NW1/4 sec 26; SE1/4 NE1/4 and S1/2 sec. 27; San Jacinto River and adjacent lands east of Perris Valley storm channel in SE1/4 sec 33; N1/2 and SW1/4 sec 34.

T5S, R3W· N1/2 NE1/4 sec 4 east of Interstate 215

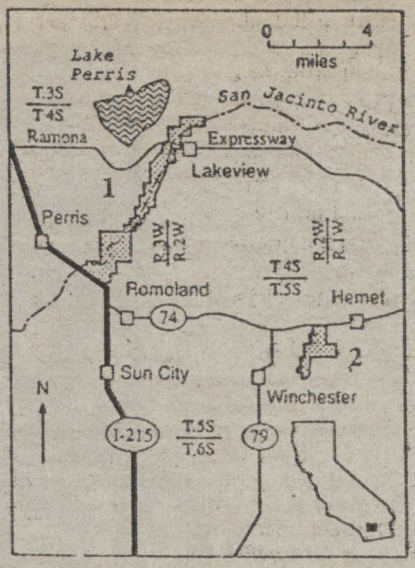
2 Unnamed tributary to Old Salt Creek (USGS 7 5' Quad: Winchester 1979).

T5S, R1W· W1/4 and S1/2 NW1/4 SW1/4 sec 18

T5S, R2W SE1/4 NW1/4, E1/2, E1/2 SW1/4, and E1/2 W1/2 SW1/4 sec 13; SE1/4 NE1/4 sec. 23; west of Metropolitan Water District canal and north of Atchison Topeka Railroad track in W1/2 sec 24.

Primary constituent elements include floodplain habitat in association with alkali scrub, alkali playa, alkali grassland, and vernal pool plant communities on associated soils

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Dated August 31, 1994.

Mollie H. Beattie,

Director, U S Fish and Wildlife Service.

[FR Doc. 94-30861 Filed 12-14-94, 8:45 am]

BILLING CODE 4310-55-P

federal register

Thursday
December 15, 1994

Part XI

Securities and Exchange Commission

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members and Gross Income Assessments and Other Fees for Member Firms; Notices

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34; 35073; File No. SR–NASD–94–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

December 9, 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 December 2, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing.[1] 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 NASD is proposing a rule change to amend Schedule A to the By-Laws to adjust the amount of credit as set forth in Section 1(d) of Schedule A, which is currently 62%, to 69%

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 NASD 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 NASD 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

Pursuant to Article VI of its By-Laws, the NASD requires its members to pay an annual assessment based on gross income as defined by Schedule A, Section 1 to the By-Laws. The NASD also allows a credit against such assessment pursuant to Subsection (d) to Section 1 The NASD calculates the gross income assessment from the gross income reported for the calendar or fiscal year preceding the NASD's calendar budget year Based on final gross income reports for 1993, the NASD earlier in 1994 amended the amount of credit set forth in Section 1(d) of Schedule A to the By-Laws from 59% to 62% to more closely reflect the assessment revenue budgeted for 1994 [2]

However, because overall 1994 revenue for the NASD continues to exceed budget projections, the NASD believes that the credit against the gross income assessment should be raised from 62% to 69% Based on the forecast operating results for 1994 and final actual gross income reports for 1993, the NASD is proposing to amend the credit to adjust member assessments to reflect lower assessment revenue needed to fund 1994 operations. This proposed rule change, therefore, amends the amount of credit set forth in Section 1(d) of Schedule A to the By-Laws, which is currently 62%, to 69%, and applies the credit to the entire 1994 calendar budget year to reflect the need for lower assessment revenue for 1994. The practical effect of the proposed rule change is that members will be assessed a smaller amount on 1993 gross income to cover 1994 operating costs, and this amount will be realized by members in 1995 in the form of a credit against 1995 assessments.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[3] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule change equitably adjusts the 1994 assessment credit rate based on the projected 1994 operating results and actual gross income reports for 1993

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and Section (e) of Rule 19b–4 promulgated thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority [4]

Margaret H. McFarland,

Deputy Secretary

[FR Doc 94–30852 Filed 12–14–94, 8 45 am]

BILLING CODE 8010–01–M

[1] The NASD has previously filed a proposed rule change to its fee structure amending, *inter alia*, Section 1(d) of Schedule A (SR–NASD–94–58) That amendment is scheduled to be effective January 1 1995 The instant rule change is effective through December 31 1994

[2] *See* Securities Exchange Act Release No 34207 June 13 1994, 54 FR 3166 June 20, 1994)

[3] 15 U S C 78*o*–3

[4] 17 CFR 20930–3(a)(12)

[Release No. 34–35074; File No. SR–NASD–94–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Gross Income Assessments and Other Fees for Member Firms

December 9, 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 30, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD [1] The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The NASD is, however, requesting that the fee be implemented on January 1, 1995 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 NASD is proposing a rule change to amend Schedule A, Sections 1, 2(a) and 5 to the By-Laws, to eliminate the basic membership fee, revise the definition of gross revenue for assessment purposes, adjust the fees assessed for branch office registration and oversight, and revise and adjust the calculation of fees assessed on gross revenue. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis

Sec. 1 Assessments

Each member shall pay an annual assessment composed of [the following]

[(a) A basic membership fee of $500.00]

[(b)] *(a)* An amount equal to the greater of [$350.00] *$850.00* or the total of

(i) [0.21%] *0.125%* of annual gross income from state and municipal securities transactions.

(ii) [0.25%] *0.125%* of annual gross income from other over-the-counter securities transactions, [and]

(iii) [with respect to members whose books, records, and financial operations regarding transactions in U.S. Government securities are examined by the NASD, 0.25%] *0.125%* of annual gross income from U.S. Government securities transactions, *and*

(iv) *with respect to members whose books, records and financial operations are examined by the NASD, 0.125% of annual gross income from securities transactions executed on an exchange.*

Each member is to report annual gross income as defined in Section 5 of this Schedule, for either the preceding calendar year or the [membership] *member's* fiscal year ending the preceding calendar year The 12-month reporting period must be in accordance with the [membership] *member's* previous written election. New members will be given an opportunity to make this election after they become members Members wishing to change their reporting year must advise the Association, in writing, of the change in dates and provide a reason for the change (i.e., merger or other organizational change and/or change in tax or fiscal year). If the change is from a fiscal year to the calendar year or to a new fiscal year ending at a later date, the member is to provide two reports of gross income covering the 12 consecutive months of both the new and old years. If such case, the assessment in the year of change will be the greater amount determined from the two reports. If the change is from a calendar year or a fiscal year to a new fiscal year ending at an earlier date, the member is to report gross income for the 12 consecutive months to the end of its new fiscal year

[(c)] *(b)* An amount equal to $10.00 for each principal and each representative in the member's organization who is registered with the Association as of December 31st of the current fiscal year of the Association, or in the case of a new applicant for membership, for each principal and representative who is registered when the applicant's membership first becomes effective

[(d) During calendar year January 1, 1994 through December 31, 1994, each member shall receive a credit of 62% against the amount of its annual assessment on gross income stated in paragraph (b) above; provided, however, that the minimum payment shall be $350.00]

(c) Members shall receive a credit against the annual assessment on gross income stated in paragraph (a) above as follows:

(i) Portion of assessment >$5,000—25%
(ii) Portion of assessment >$25,000—5%
(iii) Portion of assessment >$50,000—5%
(iv) Portion of assessment >$100,000—5% additional

Sec. 2. Fees

(a) Each member shall be assessed a fee of [$50.00] *$75.00* for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) [$50.00] *$75.00* per registered branch, or (2) the product of [$50.00] *$75.00* and the number of registered representatives and registered principals associated with the member at the end of the Association's fiscal year

* * * * *

Sec. 5 [Gross Income From Over the Counter Transactions in Securities]

Gross Revenue for Assessment Purposes

[Gross income from over-the-counter transactions in securities is defined for assessment purposes as the gross dollar amount of profits, commissions, concessions, fees, discounts, allowances and other income subject to deductions and exclusions listed below but without any deductions for salaries, wages or other operating and overhead expenses.]

[The amount to be reported as gross income includes but is not limited to:

Amounts realized from principal and agency transactions, from over-the-counter transactions in listed securities; from participation[s] in distributions as underwriters or as members of selling groups, from private placement fees, from proportionate interests in joint trading accounts, from transactions cleared through other firms acting as clearing agents; from transactions in municipal securities, from transactions in U.S. Government securities; from transactions in warrants, rights, options, bonds and stocks, and from sales of shares of investment companies, including contractual plans, real estate investment trusts and real estate syndicates, from transactions in interests in oil, gas and mineral rights, from all other over the counter transactions of securities. Include fees received in tender offers, fees for acting as financial advisor in a plan of merger fees for acting as manager in an

[1] The NASD originally submitted the proposed rule change on October 27 1994 On November 30 1994 the NASD filed Amendment No 1 to its filing requesting that two sentences be added to this Notice. This notice reflects the amendment

exchange offer, underwriting management fees.]

[Generally, U.S. Government securities are defined for gross income assessment purposes as securities issued or guaranteed as to principal and/or interest by the U.S. Government, it agencies or instrumentalities. The complete definition may be found at Section 3(a)(42) of the Securities Exchange Act of 1934.]

[Generally, municipal securities are defined for gross income assessment purposes to include securities that are direct obligations of, or are obligations guaranteed as to principal and/or interest, or are industrial development bonds issued by States or political subdivisions thereof or their agencies and instrumentalities. The complete definition may be found at Section 3(a)(29) of the Securities Act of 1934.]

[Gross income from sales of shares of investment companies shall include gross income from any shares purchased and later redistributed and from sales of shares by said member represented by reinvestment of income dividends.]

[Members of the Association that are wholesalers, distributors or underwriters of direct participation programs, variable life insurance, variable annuities, mutual funds, or similar securities are to report as gross income all amounts received directly or indirectly for services rendered in connection with the sale of such products, irrespective of whether such amounts are received in the form of commissions, fees, sales, charges, administrative charges, or similar forms of compensation, as described in the prospectus or other offering materials. A member of the Association that is a wholesaler, distributor or underwriter of direct participation programs and receives revenues in the form of reimbursed selling expenses from an affiliate which is the sponsor of such direct participation programs, should report the amount of such reimbursements as gross income. The gross amount of the preceding items is to be reported for public and private offerings regardless of whether the member or another organization maintains the accounting records and actually receives the proceeds. An offset may be made in the appropriate section of the Assessment Report for amounts paid to other members of the Association. In the case of variable life insurance and variable annuities, gross income does not encompass state premium taxes or insurance risk charges. Nine percent (9%) of proceeds from the distribution of variable life insurance may be reported as an alternative to maintaining detailed accounting records of the charges outlined in the prospectus.]

[Profits from transactions in securities held primarily for sale to customers and other broker-dealers, may be determined and may reflect profits and losses from inventory valuation on the basis shown by the member's books of account provided that the method of reporting is consistent from year to year.]

[Deductions from the amount to be reported.]

[Any commissions, concessions or other allowances paid to another member in connection with the execution or clearance of such transactions. For example, a member acting as a clearing agent for another member shall deduct from its gross income net amounts allowed to the non-clearing member. The non-clearing member shall include in gross income the amount of such allowance.]

[Losses from underwritings and over-the-counter trading transactions (as opposed to transactions in investments referred to in the last item under "Exclusions") may be deducted from underwriting and trading profits to the extent of such profits but not in excess thereof.]

[Exclusions from the amount to be reported.]

[Interest and dividends.]

[Advisory fees, investment management fees and finders' fees not directly involving the offering of securities; proxy fees, vault service fees, safekeeping fees, transfer fees, and fees for financial advisory services for municipalities.]

[Commissions derived from transactions executed on a registered national securities exchange or a foreign securities exchange.]

[Commissions derived from transactions of which *both* the purchase and sale are executed on a registered national securities exchange including arbitrage or outside the territorial limits of the United States.]

[Profits or losses derived from transactions in "exempted securities" as that term is defined in Section 3(a)(12) of the Securities Exchange Act as amended (the "Exchange Act"), except that this exclusion does not apply to "municipal securities" or, with respect to members whose books and records and financial operations regarding transactions in U.S. Government securities are examined by the NASD, to "government securities," as those terms are defined in Sections 3(a)(29) and 3(a)(42) of the Exchange Act.]

[Profits and losses derived from transactions in commercial bank time certificates of deposit and commercial paper, which is defined to include drafts, bills of exchange, and bankers acceptances if the bankers acceptances have maturities at the time of issuance not exceeding one year.]

[Profits and losses derived from transactions in securities held for investment purposes which are described in Section 1236 of the Internal Revenue Code as those securities designated within 30 days of acquisition and clearly identified in the dealer's records as being held specifically for investment and not primarily for sale to customers in the ordinary course of business.]

Gross revenue is defined for assessment purposes as total income as reported on FOCUS form Part II or IIA with the following exclusions

- *Other income unrelated to the securities business,*
- *Interest and dividends*
- *Commodities income,*
- *Advisory fees, investment management fees and finders' fees not directly involving the offering of securities, proxy fees, vault service fees safekeeping fees, transfer fees and fees for financial advisory services for municipalities*
- *Commissions derived from transactions executed on a registered national securities exchange or a foreign securities exchange (Note 1)*
- *Profits or losses derived from transactions of which both the purchase and sale are executed on a registered national securities exchange, including arbitrage (Note 1) and*
- *Profits and losses derived from transactions in certificates of deposit and commercial paper, which is defined to include drafts, bills of exchange and bankers acceptances*

In addition, members may deduct

- *Any commissions, concessions or other allowances paid to another member in connection with the execution or clearance of transactions included in reported revenue. For example, a member acting as a clearing agent for another member shall deduct net amounts allowed to the non-clearing member; and*
- *25% of gross wrap fees charged to and received from customers and paid or allocated to investment managers or advisors.*

Note 1. Income not subject to exclusion for members for whom the NASD is the designated examining authority.

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 NASD 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 NASD 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

Recently, the NASD has undertaken a comprehensive review of its fee structure and assessment process in order to more closely align revenues with the cost of providing particular services to members. The focus of the review was to identify and address the contribution or deficit of particular NASD services, and the consequent extent of subsidies and deficits of member firm categories, as a basis for considering realignment and adjustment of fees and assessments with the cost of providing services. In particular, the NASD undertook to review, by exam category, the average and median costs to conduct examinations of member firms. Pursuant to Article VI of the By-Laws of the Corporation, the NASD requires its members to pay an annual assessment fee, as defined by Schedule A, Section 1 to the By-Laws, and an annual fee for the registration of each branch office pursuant to Schedule A, Section 2(a) to the By-Laws. The annual assessment is based, in part, upon annual gross income from over-the-counter-transactions in securities, which is defined in Schedule A, Section 5 to the By-Laws. Based on its review of the costs associated with examining member firms, the NASD proposes to amend Schedule A, Section 1, 2(a) and 5 to the By-Laws to eliminate the basic membership fee, revise the definition of gross revenue for assessment purposes, adjust the fees assessed for branch office registration and oversight, and revise and adjust the calculation of fees assessed on gross revenue.

The NASD is proposing to eliminate the requirement that members be assessed a basic membership fee of $500.00 in subsection (a) to Section 1 of Schedule A. Current subsection (b) of Section 1 to Schedule A is proposed to be redesignated as new subsection (a). Proposed new subsection (a) to Section 1 would change the minimum assessment amount to the greater of $850.00 (up from $350.00) **or** the aggregate of 0.125% of annual gross income from state and municipal securities transactions (down from 0.21%), 0 125% of annual gross income from other over-the-counter securities transactions (down from 0.25%), and 0 125% of annual gross income from U.S Government securities transactions (down from 0.25%).

The assessment of all reportable revenue at the same rate eliminates the current 4 basis point lower rate for income from municipal and state securities transactions. Establishing the assessment rate at 125%, which is one-half of the present rate of 25%, is in recognition of the current 62% discount applied to the base rate of 25% and the fact that the discount has not been less than 50% since fiscal 1986 (based on 1984 reportable revenue). The effective rates for 1993 and 1994 were 0825% and .095%, respectively.

Proposed subsection (a) also amends existing paragraph (iii) to assess members' income from U.S Government securities transactions regardless of whether members are subject to financial responsibility oversight, and adds new paragraph (iv) which, with respect to members whose books, records and financial operations are examined by the NASD, assesses 0 125% of annual gross income from securities transactions executed on an exchange. That is, the NASD proposes to assess revenue from U.S. Government securities transactions for firms for whom the NASD *is not* the designated examining authority for purposes of financial responsibility oversight, but for whom the NASD now is assigned authority to conduct sales practice examinations involving U.S. Government securities transactions, *and* to assess revenue from exchange-related transactions (i.e., commissions, profits or losses derived from transactions executed on an exchange) for firms for whom NASD *is* the designated examining authority. Thus, the requirement in current paragraph (iii) that the NASD assess a member's income from U.S. Government securities transactions only if the member is subject to financial responsibility oversight is proposed to be eliminated.

Current subsections (b) and (c) are proposed to be reordered as sections (a) and (b), respectively. Current subsection (d), which designates the credit, if any, each member receives against the amount of its annual assessment, is proposed to be eliminated and replaced by proposed new subsection (c), which establishes tiered discount rates for assessments, as follows:

(a) Portion of assessment>$5,000—25%
(b) Portion of assessment>25,000—5% (additional)
(c) Portion of assessment>50,000—5% (additional)
(d) Portion of assessment>100,000—5% (additional)

The initial discount of 25% would bring the rate on assessments over $5,000 but less than $25,000 to 09375%, which is equivalent to a 62 5% discount at the current rate. However, this rate would only apply to the amount over $5,000, the assessment rate for amounts under $5,000 would be 125% `Based on the proposed tiering, a discount of 40% would accrue to incremental assessments over $100,000. The NASD notes that the costs incurred in providing oversight of small-to-medium sized firms are often proportionately higher than the costs for providing oversight for larger firms. This proposed tiering system is intended to address, to some extent, the regulatory subsidy currently provided by larger NASD member firms.

The NASD is also proposing to amend Section 2(a) of Schedule A to the By-Laws to increase the fee assessed for the registration of each branch office from $50.00 to $75.00, and to increase the annual fee assessed for each registered branch to an amount equal to the lesser of $75.00 (currently $50.00) or the product of $75.00 (currently $50.00) and the number of registered representatives and principals associated with the member at the end of the Association's fiscal year. The proposed increase reflects the NASD's increased costs for registration and regulatory oversight of branch offices.

Finally, the NASD is proposing to delete in its entirety the text of Section 5 of Schedule A, which contains the current definition of gross income from over-the-counter transactions in securities, and to replace it with a definition of gross income derived from revenue reported on the *FOCUS* report, with limited exclusions and deductions, in order to simplify reporting, clarify or eliminate definitional issues and reduce or control unreported revenue.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[2] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule more equitably realigns and adjusts fees and assessments with the costs of examining member firms. In particular, the NASD believes that, based on the most recent reported revenue (1993), the impact of the gross income assessment recommendations, including elimination of the basic fee and adoption of the new minimum assessment, will result in a slight

[2] 15 U.S.C. 78*o*–3.

reduction (approx. 1.3%) in assessment revenue compared to the present rate structure. However, this shortfall is offset by the higher branch office fee revenue and, furthermore, discount rates will continue to provide a mechanism to adjust revenues in the event of a material change, positive or negative, in reported industry revenue.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge. However, the NASD will not implement the rule change until January 1, 1995

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 in the Commission's Public Reference Room Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–94–58 and should be submitted by January 5, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority [3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–30853 Filed 12–14–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

federal register

Thursday
December 15, 1994

Part XII

The President

Presidential Determination No. 95–6—Assistance Program for Independent States of the Former Soviet Union

Presidential Determination No. 95–7—Resumption of U.S. Drug Interdiction Assistance to the Government of Colombia

Presidential Determination No. 95–8—Assistance Program for New Independent States of the Former Soviet Union

Federal Register
Vol. 59 No. 240
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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–6 of November 30, 1994

Assistance Program for Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (d) under the heading "Assistance for the New Independent States of the Former Soviet Union" in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (titles I–V of Public Law 103–306), I hereby determine that it is in the national interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 30, 1994.

FR Doc. 94–31026
Filed 12–13–94, 4.43 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–7 of December 1, 1994

Resumption of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337, I hereby determine with respect to Colombia that: (a) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (b) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 1, 1994.

[FR Doc 94–31027
Filed 12–13–94; 4:44 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–8 of December 6, 1994

Assistance Program for New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to section 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Titles I–V of Public Law 103–87), I hereby certify that Russia and the Commonwealth of Independent States continue to make substantial progress toward the withdrawal of their armed forces from Latvia and Estonia.

You are authorized and directed to notify the Congress of this certification and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 6, 1994.

FR Doc. 94–31028
Filed 12–13–94, 4:45 pm]
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A cumulative list of Public Laws for the second session of the 103d Congress will be published in Part II of the **Federal Register** on Monday, December 19, 1994.

Public Laws

104th Congress, 1st Session, 1995

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 104th Congress, 1st Session, 1995.

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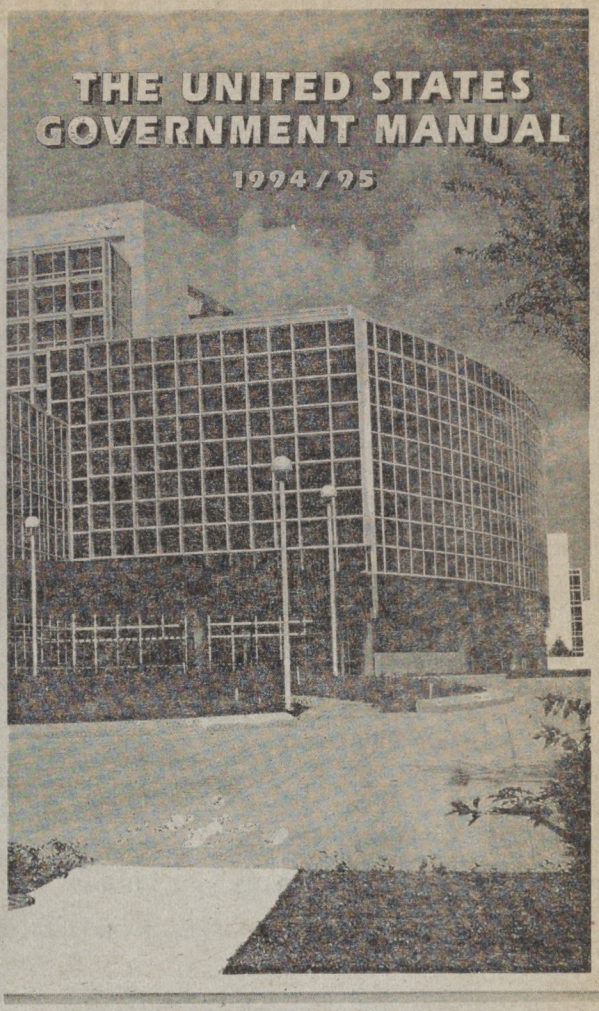
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Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933

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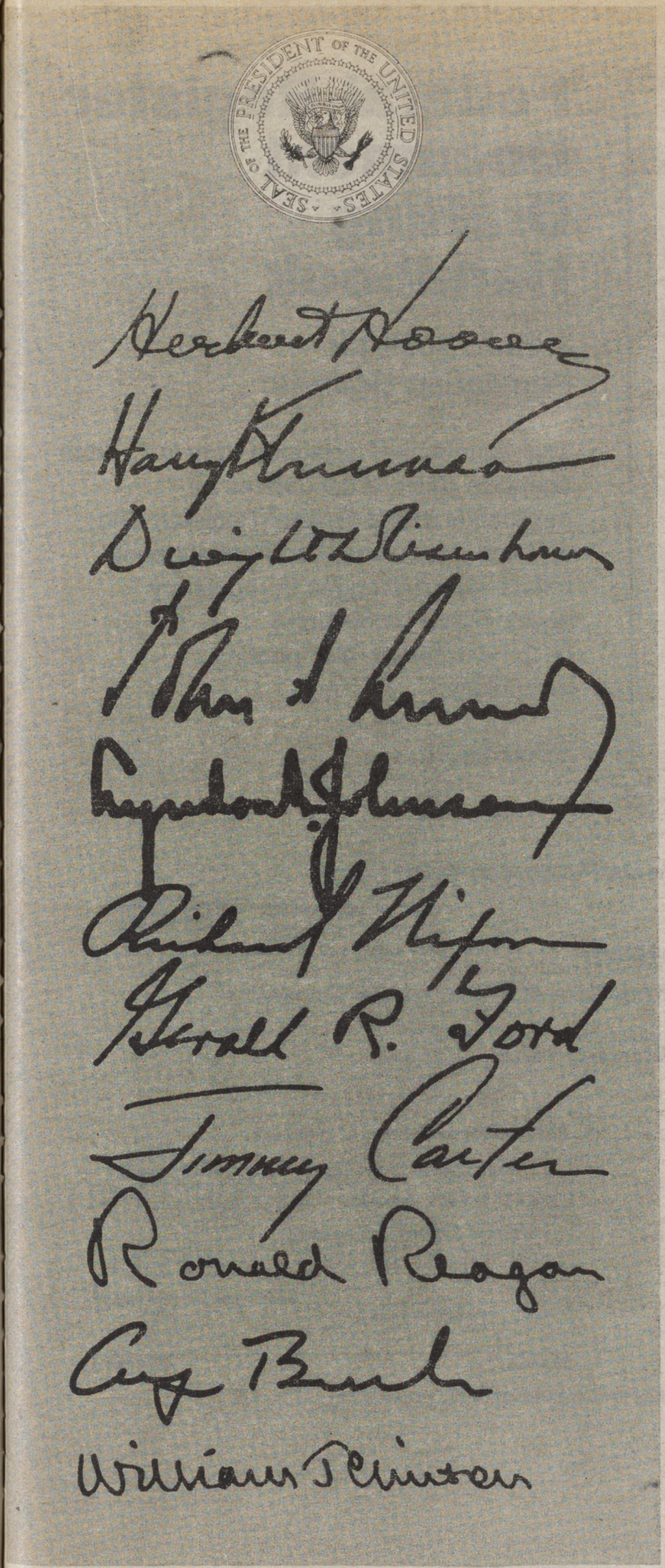
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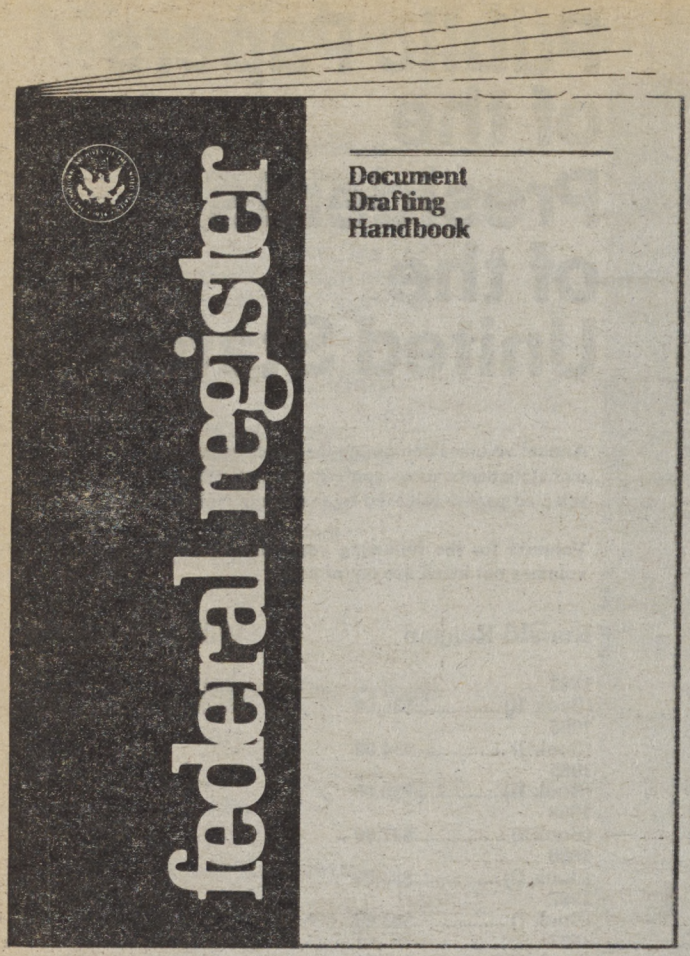
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